



City of Tracy

**Tracy Hills Specific Plan  
Recirculated  
Draft Subsequent Environmental Impact Report  
Volume II**

October, 2015

SCH#2013102053

Kimley » Horn



CITY OF TRACY

TRACY HILLS SPECIFIC PLAN

RECIRCULATED

DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT

VOLUME II

SCH#2013102053

OCTOBER 2015

Prepared By:

**Kimley»Horn**

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# 11 RESPONSE TO COMMENTS ON DRAFT SEIR

## 11.1 BACKGROUND

The Tracy Hills Specific Plan Draft Subsequent Environmental Impact Report (Draft SEIR) was circulated for public review from December 23, 2014 through March 3, 2015 as assigned by the State of California Governor's Office of Planning and Research, State Clearinghouse, and consistent with the California Environmental Quality Act Guidelines (CEQA Guidelines). Copies of the document were distributed to federal, state, regional, and local government agencies, as well as organizations and individuals, for their review and comment.

Section 15088(a) of the State CEQA Guidelines states that:

"The lead agency shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extension and may respond to late comments."

In accordance with Section 15088(a) of the State CEQA Guidelines, the City of Tracy (City), as the lead agency, has evaluated the comments received on the Draft Subsequent EIR for the Tracy Hills Specific Plan Project and has prepared written responses to the comments received.

All comments on the Draft SEIR, and the responses thereto, are presented in this chapter. Section 11.4 (Responses to Individual Comments) includes all of the comments received on the Draft SEIR, which are reproduced in their entirety, as well as responses to each comment.

State CEQA Guidelines Section 15088 requires that lead agencies evaluate and respond to all comments on the Draft SEIR that regard an environmental issue. The written response must address the significant environmental issue raised and provide a detailed response, especially when specific comments or suggestions (e.g., additional mitigation measures) are not accepted. In addition, the written response must be a good faith and reasoned analysis. However, lead agencies need only to respond to significant environmental issues associated with the project and do not need to provide all the information requested by the commenter, as long as a good faith effort at full disclosure is made in the EIR (CEQA Guidelines Section 15204).

State CEQA Guidelines Section 15204 recommends that commenters provide detailed comments that focus on the sufficiency of the Draft EIR in identifying and analyzing the possible environmental impacts of the project and ways to avoid or mitigate the significant effects of the project, and that commenters provide evidence supporting their comments. Pursuant to State CEQA Guidelines Section 15064, an effect shall not be considered significant in the absence of substantial evidence. State CEQA Guidelines Section 15088 also recommends that revisions to the Draft SEIR be noted as a revision in the Draft SEIR or as a separate section of the Final EIR. Section 3 of this Final EIR identifies all revisions to the THSP Draft SEIR.

As previously discussed, the City of Tracy previously circulated for public review and comment the December 23, 2014 Draft Subsequent Environmental Impact Report (Draft SEIR) for the proposed Tracy Hills Specific

Plan Project. Subsequent to the close of the public comment period for the Draft SEIR (which extended from December 23, 2014 through March 3, 2015), both the City and Project Applicant completed additional technical analysis for the Project. While the majority of the December 2014 DSEIR conclusions did not change, the City did identify several transportation improvements that are not within complete control/or jurisdiction of the City to implement. Many of these improvements are addressed in the Citywide TMP and are funded either in whole or in part by the City's TIF. However, the timing and/or control of implementation of the identified improvement is not wholly within the jurisdiction of the City of Tracy and therefore the timing of its implementation cannot be assured. Thus, in these cases, the City has identified the impacts as significant and unavoidable until such time as these improvements are constructed. In an effort to provide full disclosure of all potential impacts of the proposed Project and provide additional opportunity for public input, the City has elected to recirculate the Draft SEIR in its entirety for an additional 45 days of public review. Comments received on the Recirculated Draft SEIR will be responded to separately than comments on the Draft SEIR.

## 11.2 CONTENTS OF THE DRAFT SEIR

Consistent with Section 15132 of the State CEQA Guidelines, this Draft SEIR consists of the following:

- ◆ The Draft SEIR
- ◆ A list of persons, organizations, and public agencies that commented on the Draft SEIR
- ◆ All comments and recommendations received on the Draft SEIR
- ◆ Written responses to each comment provided on the Draft SEIR

## 11.3 CERTIFICATION OF FINAL SEIR AND APPROVAL PROCESS

In furtherance of Section 15088(b) of the State CEQA Guidelines, for a period of at least ten days prior to any public hearing during which a lead agency will take action to certify an EIR, the Final EIR must be made available to, any public agency that provided comments on the Draft EIR. Pursuant to Section 15090(a) of the State CEQA Guidelines, the Final EIR must be certified before the lead agency can take action on the project.

Following Final EIR certification, but prior to taking action on a project, the lead agency must prepare a Mitigation Monitoring and Reporting Program (MMRP). Before approving (or conditionally approving) the project, the lead agency must also prepare written CEQA Findings for each significant impact identified for the project, accompanied by a brief explanation of the rationale for the finding, in accordance with Section 15091 of the State CEQA Guidelines. If significant environmental impacts that cannot be reduced to a less than significant level are identified for the project, the lead agency must prepare a Statement of Overriding Considerations, pursuant to Section 15093 of the State CEQA Guidelines.

Certification of a Final EIR may occur at a public hearing independent of project approval or during the same hearing. Prior to approval of a project, the lead agency must adopt the CEQA Findings, Statement of Overriding Considerations, and MMRP. Certification of the Final EIR must be the first in this sequence of approvals.

## 11.4 RESPONSES TO INDIVIDUAL COMMENTS

The remainder of this chapter includes all of the comments received on the Draft SEIR, which are reproduced in their entirety, as well as responses to each comment.

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

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January 27, 2015

William Dean  
Assistant Director  
City of Tracy, Development Services Department  
333 Civic Center Plaza  
Tracy, CA 95376

Dear Mr. Dean,

**RE: TRACY HILLS SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT**

Thank you for including the California Office of Historic Preservation (OHP) in the environmental review process for the proposed Tracy Hills Specific Plan. Pursuant to the National Historic Preservation Act and the California Public Resources Code, the State Historic Preservation Officer (SHPO) and the OHP have broad responsibility for the implementation of federal and state historic preservation programs in California. Our comments are offered with the intent of protecting historic and cultural resources, while allowing the City of Tracy (Lead Agency) to meet its program needs. The following comments are based on the information included in the Draft Environmental Impact Report (DEIR) for the Tracy Hills Specific Plan.

The proposed project included in the DEIR includes an amendment to the 1998 Tracy Hills Specific Plan (THSP), which includes subdivision and development of 2,732 acres of currently undeveloped land surrounding the I-580 freeway in San Joaquin County. The cultural section of the 1998 THSP determined implementation of the THSP will result in potentially significant impacts to archeological resources, and includes mitigation measures to reduce the impacts to unforeseeable archeological discoveries. The 2014 DEIR for the THSP amendment finds that environmental impacts to archeological resources are less than significant with future mitigation incorporated.

SA1-1 The current (2014 DEIR) does not attempt to conduct any sort of additional analysis to determine if historic or archeological resources exist within the Specific Plan area. Instead, the 2014 DEIR relies entirely on the cultural resource analysis from the 1998 THSP environmental document (17 years old). At a minimum the DEIR amendment should have conducted a new record search to determine if any archeological resources have been identified over the past 17 years in the project area or vicinity.

A complete analysis of potential impacts to cultural resources is critical in the DEIR amendment because according to Public Resources Code § 65457, once a specific plan has been adopted and the EIR certified, any residential development project that is consistent with the specific plan is largely exempt from additional CEQA review. For

SA1-1 Cont. this reason the subsequent environmental document should make an attempt to study any new impacts to historic and cultural resources that result from substantial changes to the proposed THSP.

SA1-2 The DEIR defers archeological resource investigation and analysis until future phases of the Tracy Hills Specific Plan. As stated above, per PRC § 65457 future residential development projects will be exempted from environmental review. An effort needs to be made prior to the adoption of an environmental document to identify the potential for archeological resources in the project area and vicinity. If potential sites are identified before work begins on the site, they can be addressed early on, before construction occurs, and perhaps avoid potential impacts. The DEIR has addressed archeological resources only in terms of future mitigation. Simply referencing the investigation and mitigation measures from the 1998 Tracy Hills DEIR, a 17 year old programmatic environmental document, is not adequate.

SA1-3 We also recommend that the Lead Agency engage the Native American Heritage Commission (NAHC) and pursue efforts to consult Native American tribes regarding the presence of cultural materials likely to be impacted by the development of the Specific Plan area. The NAHC was consulted previously (1998); however, given the period of time that has passed since the original FEIR, the OHP advises the Lead Agency to consult with Native American tribes as part of the amended DEIR review process.

If you have questions, please contact Sean de Courcy of the Local Government and Environmental Compliance Unit, at (916) 445-7042 or at [Sean.deCourcy@parks.ca.gov](mailto:Sean.deCourcy@parks.ca.gov).

Sincerely,



Carol Roland-Nawi, Ph.D.  
State Historic Preservation Officer

## RESPONSES TO COMMENT LETTERS FROM STATE AGENCIES

### Letter SA1

State of California, The Natural Resources Agency  
Office of Historic Preservation  
Department of Parks and Recreation  
Carol Roland-Nawi, Ph.D.  
State Historic Preservation Officer  
January 27, 2015

**Response SA1-1:** The comment states the DEIR made no attempt to conduct any sort of additional analysis to determine if historical or archeological resources have been identified over the past 17 year in the project area or vicinity. This statement is in fact incorrect. As noted in the Draft SEIR, a records search was performed by Pacific Legacy, Inc. in 2014. The discussion of findings is located on page 4.05-16 of the DEIR, however since circulation of the Draft SEIR, the applicant has performed an updated cultural resources assessment for the THSP area as of February 2015, the scope and findings of which are discussed in the recirculated Draft SEIR, Chapter 4.5. This recirculated Draft SEIR updates the cultural resources chapter with information, analysis, and findings from the 2015 cultural resources assessment. The cultural resources assessment is appended to the recirculated Draft SEIR as Appendix J.

**Response SA1-2:** As discussed in Response OHP – 1, an archival records search was performed in 2014. Additionally, since circulation of the Draft SEIR, the applicant has performed an updated cultural resources assessment for the THSP area as of February 2015, the scope and findings of which are discussed in the recirculated Draft SEIR, Chapter 4.5. This recirculated Draft SEIR updates the cultural resources chapter with information, analysis, and findings from the 2015 cultural resources assessment. The cultural resources assessment is appended to the recirculated Draft SEIR as Appendix J.

**Response SA1-3:** The City initiated Native American consultation and discussion with the Native American Heritage Commission and applicable tribes is presently underway. Documentation associated with this consultation can be found in Appendix J, *Cultural and Paleontological Resources Assessment for the Tracy Hills Specific Plan*.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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State of California – The Natural Resources Agency  
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EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



SA2

January 28, 2015

RECEIVED

FEB 09 2015

CITY OF TRACY

Mr. Bill Dean  
City of Tracy  
Development Services Department  
333 Civic Center Plaza  
Tracy, CA 95376

Dear Mr. Dean:

Subject: Tracy Hills Specific Plan Amendment Project, Notice of Completion of a Draft Supplemental Environmental Impact Report, SCH #2013102053, City of Tracy, San Joaquin County

The California Department of Fish and Wildlife (CDFW) has reviewed the documents for the Notice of Completion of a draft Supplemental Environmental Impact Report (draft SEIR) submitted by the City of Tracy for the Tracy Hills Specific Plan Project (Project). The Project includes a comprehensive update to the previously adopted 1998 Tracy Hills Specific Plan (THSP) that covered approximately 6,175 acres and established land use and development standards for approximately 2,732 acres located near the existing interchange around Corral Hollow Road and the proposed Lammers Road interchange on Interstate 580 (I-580) within the City of Tracy, San Joaquin County, California.

The updated draft SEIR divides development zones into Areas A, B and C. Area A is located in the northern portion of the THSP, north of I-580 between the California Aqueduct and the Delta Mendota Canal. Area B is north of I-580, south of the California Aqueduct, west of Corral Hollow Road and south of the Union Pacific Railroad. Area C is the southern portion of the THSP, south of I-580. The San Joaquin Multi-Species Habitat Conservation Plan (SJMSCP) provides compensation for the conversion of open space uses which affect the biological resources covered by the Plan. Urban development in open space within areas A and B is covered under the SJMSCP, while development in Area C is not. Therefore, urban development in Area C as described within the draft SEIR must seek separate California Endangered Species Act (CESA) coverage from for the proposed impacts to State listed biological resources as a result of any projects approved within this Area.

The current Project proposes to develop an extensive community that would require mass grading, trenching, excavation, soil compaction, and paving and has the potential to impact unidentified wetlands, creeks, riparian habitats, natural drainages, swales and stream systems on the Project site. The Project also proposes to permanently alter large contiguous blocks of upland grassland, sagebrush and match weed scrub, and Great Valley oak and cottonwood riparian forest habitat that could significantly impact numerous plant

and wildlife resources that depend on these habitat types for refugia, foraging, reproduction, and movement corridors. Therefore, CDFW is concerned that the development in these areas could prevent future colonization or expansion opportunities of biological resources into their historic range, create significant barriers for wildlife access to creek and riparian habitat, render wildlife movement corridors impermeable and impede access to and constrict key linkage areas. As proposed in the draft SEIR, the Project has the potential to significantly impact several state threatened and endangered species not originally described and contemplated in the 1998 THSP. CDFW finds that the draft SEIR does not fully analyze and disclose significant direct, indirect, and cumulative impacts to biological resources as a result of Project implementation and as required by the California Environmental Quality Act (CEQA). Further, the draft SEIR does not present feasible, measurable and enforceable avoidance and mitigation measures to reduce the impacts to biological resources it does address to less-than-significant levels.

In order to adequately assess any potential impact to biological resources and to establish an appropriate baseline of suitable habitat and potential species present within the 2,732-acre Project site, the measures of the SJMSCP must be adhered to as required for Areas A and B. Within Area C, focused and protocol level biological surveys are advised to be conducted by qualified wildlife biologists and botanists during the appropriate season(s), including the required follow up surveys in subsequent seasons. The results of these surveys are advised to be included in the draft SEIR and should be used to inform the analysis of direct, indirect, and cumulative impacts to biological resources and to provision appropriate and enforceable avoidance, minimization, and mitigation measures to reduce impacts to less-than-significant levels. This information can also be used to determine areas of biological resource richness where corridors may need to be assessed and retained to ensure movement within and between wildlife and plant populations. Our specific comments follow:

SA2-1 **Suitable Habitat Assessments and Focused Surveys for Special-Status Species**

The rationale provided for the presence or absence of special-status species in the Project area is inadequate and is recommended to be updated to include additional information for Area C. While development projects within Areas A and B are subject to habitat assessments, avoidance, minimization and mitigation measures of the SJMSCP for the purposes of CEQA, CDFW advises that the impacts of these projects on biological resources be fully be analyzed and discussed in the draft SEIR. Further, as stated previously, Area C will require additional biological resource investigation and the development of species-specific avoidance, minimization and mitigation measures for potentially suitable habitat or areas determined to contain special-status species. Because Area C was never contemplated for inclusion under the SJMSCP, it was not surveyed for potentially suitable habitats capable of supporting special-status species. As a result, no baseline inventory of habitat types or the potential for special-status species to be within or adjacent to development projects in Area C is known and the impacts to these resources is not informed and discussed in the draft SEIR.

SA2-1  
Cont. If the habitat assessments reveal potentially suitable habitat for any special-status species to be present within Area C, CDFW recommends focused, protocol surveys be conducted following the specific protocol developed and/or accepted by State and Federal Wildlife Agencies to determine if the special-status species is present. The surveys should adhere specifically to the developed protocol, conduct the required follow up surveys in subsequent seasons to reinforce positive or negative findings and all final determination surveys should be conducted within one calendar year of project initiation to be considered valid scientific information. CDFW survey and monitoring protocols and guidelines are available using the following: [http://www.dfg.ca.gov/wildlife/nongame/survey\\_monitor.html](http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html).

SA2-2 Sensitive natural communities which occur on the Project site are advised to be identified and mapped and potential impacts evaluated and mitigated. A complete assessment (including but not limited to type, quantity and locations) of the habitats, flora and fauna within and adjacent to the project area, including endangered, threatened, and locally unique species and sensitive habitats is recommended to be presented in the environmental document. Inclusion of the reasonably foreseeable direct and indirect changes (temporary and permanent) that may occur with implementation of the project is merited as well. The draft SEIR should address potential impacts to all listed and sensitive species. Rare, threatened and endangered species to be addressed should include all those which meet CEQA definition (see CEQA Guidelines, Section 15380).

### Fish and Wildlife Resources

Based on aerial imagery and information obtained from the California Natural Diversity Database (CNDDB) CDFW finds the Project has habitat suitable to support and the potential to impact nesting birds, migratory birds and state special-status, fully protected or listed, threatened and endangered species, including but not limited to: San Joaquin kit fox (*Vulpes macrotis mutica*) ST; Townsend's big-eared bat (*Corynorhinus townsendii*) SCL; San Joaquin pocket mouse (*Perognathus inornatus inornatus*) SSC; American badger (*Taxidea taxus*) SSC; pallid bat (*Antrozous pallidus*) SSC; western mastiff bat (*Eumops perotis californicus*) SSC; California tiger salamander (*Ambystoma californiense*) ST; California red-legged frog (*Rana draytonii*) SSC; foothill yellow-legged frog (*Rana boylei*) SSC; western spadefoot toad (*Spea hammondii*) SSC; western pond turtle (*Emys marmorata*) SSC; coast horned lizard (*Phrynosoma blainvillii*) SSC; silvery legless lizard (*Anniella pulchra pulchra*) SSC; Alameda whipsnake a.k.a. Alameda striped racer (*Masticophis lateralis euryxanthus*) ST; San Joaquin whipsnake (*Masticophis flagellum ruddocki*) SSC; white-tailed kite (*Elanus leucurus*) FP; golden eagle (*Aquila chrysaetos*) FP; least Bell's vireo (*Vireo bellii pusillus*) SE; Swainson's hawk (*Buteo swainsoni*) ST; tricolored blackbird (*Agelaius tricolor*) SSC; western burrowing owl (*Athene cunicularia*) SSC; Ferruginous hawk (*Buteo regalis*); loggerhead shrike (*Lanius ludovicianus*) SSC; valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) FT, large-flowered fiddleneck (*Amsinckia grandiflora*) SE; round leaved filaree (*California macrophylla*) 1B; Lemmon's jewel flower (*Caulanthus lemmonii*) 1B; big tarplant (*Blepharizonia plumosa*) 1B; diamond-petaled California poppy (*Eschscholzia rhombipetala*) 1B; and hospital canyon larkspur (*Delphinium californicum* ssp.) 1B.

\*ST = State Threatened, SE = State Endangered, SCL = State Candidate for Listing, SSC = Species of Special Concern, FP = Fully Protected Species, FT = Federally Threatened, 1B = CA endemic in significant decline.

### **Trustee Agency Authority**

CDFW is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, CDFW is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA [Division 13 (commencing with Section 21000) of the Public Resources Code].

### **Responsible Agency Authority**

CDFW is a Responsible Agency when a subsequent permit or other type of discretionary approval is required from CDFW, such as an Incidental Take Permit (ITP), pursuant to the California Endangered Species Act (CESA), or a Lake and Streambed Alteration Agreement (LSAA) issued under Fish and Game Code Sections 1600 et seq.

CDFW has regulatory authority over projects that could result in the "take" of any species listed by the state as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under CESA, an ITP will be required. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species [Sections 21001(c), 21083, Guidelines Sections 15380, 15064, 15065]. Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080.

### **Section 1600 Lake and Streambed Alteration Agreement**

For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream, or use material from a streambed, CDFW may require an LSAA, pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant. Issuance of an LSAA is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the project. The CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the agreement. To obtain information about the LSAA notification process, please access our website at <https://www.wildlife.ca.gov/Conservation/LSA>; or to request a notification package, contact the Bay Delta Regional Office at (707) 944-5500.

SA2-3

The Project areas subject to Section 1600 et seq. of the Fish and Game Code (Fish and Game Code) are identified in the maps displayed in Figures 4.4-5a to 4.4-5d. However, there is no discussion regarding the overall habitat types, acreages of impact per area, suitable habitat description/determination and results of any general or focused surveys conducted for each stream system. Therefore, CDFW recommends separate paragraphs be included in the Biological Resources section of the environmental document that the habitat and species being impacted as well as provide information on what has the potential to be protected through mitigation and monitoring plans. CDFW recommends an additional mitigation measure that address impacts to 1600 jurisdictional areas be included in the Biological Resources Section of the draft SEIR as follows:

"In areas of permanent impact, mitigation ratios of 3:1 are recommended and ratios of 1:1 are recommended in temporary impact areas. In all areas where project related activities with impact to streams, drainages, and tributaries cannot be avoided, to the most feasible extent possible, all impacts to stream and riparian resources shall be mitigated onsite through the permanent protection and management of on-site habitat."

SA2-4

#### **Corral Hollow Creek Mitigation and Monitoring Plan**

Corral Hollow Creek and its associated flood plain and alluvial fan area have high species diversity and provide suitable habitat for, but not limited to, the following: San Joaquin kit fox; California red-legged frog; California tiger salamander (CTS); American badger; San Joaquin whipsnake; Alameda whipsnake; and a variety of special-status plant species. The mixed use business park and light industrial zone, two- low density residential zones, and two-general highway commercial zones directly north of Corral Hollow Road in the southern portion of the proposed Project pose the greatest potential to significantly impact the hydrology, riparian, and water quality values of this watercourse. CDFW advises the direct and indirect impacts to Corral Hollow Creek and the alluvial fan area associated with the flood plain be thoroughly described in a separate section of the environmental document and that feasible, measureable avoidance, minimization and mitigation measures be discussed and made enforceable conditions of Project approval in the terms of an appropriate mitigation and monitoring plan.

#### **Key Linkage Corridors**

The construction of this large-scale planned community has the potential to cause significant impacts to identified key linkage corridors for wildlife movement. The environmental document identifies impacts to wildlife movement and key linkage corridors on page 4.4-46 of the Biological Resources Section. These linkage corridors are an essential component to maintain landscape porosity and gene flow within and between California's wildlife populations without any significant barriers or blockades. The linkage corridor spans from north of the Byron Airport to the south across the two channels of the California Aqueduct, through I-580, to extend south of Corral Hollow Road and beyond. Development of Area A would include no direct pathway to the Diablo Range for wildlife movement. Area B proposes a 41-acre area of a 100-foot-wide conservation easement that

follows the California aqueduct as compensation for wildlife movement. The most adequate proposal occurs in the form of a conservation easement in Area C of the THSP that would allow movement through the Diablo range northwest to southeast.

The development of Areas A and B will result in significant impacts to wildlife corridors and wildlife movement by preventing movement from the Delta and Byron Airport Area through agricultural lands and south down through Alameda County along the Sierra Coastal Range. As currently proposed, the Project would significantly impact and impede the continued use by wildlife of this key linkage corridor through Bay Delta area. Alternative proposals or avoidance measures should be presented in the updated environmental document to offset the impacts to key linkage corridors in Areas A and B the currently existing 100-foot setback from the California aqueduct is not adequate to allow wildlife movement to persist throughout the area.

SA2-5

The Project is advised to incorporate corridors to allow wildlife to move north and south through areas A and B to the proposed open space preserve in Area C. The draft SEIR needs to discuss avoidance and minimization measures that keep known wildlife movement corridors intact, including but not limited to an appropriate number and size of permeable wildlife passage under and through water courses and roadways. It is further recommended that appropriate wildlife movement studies be initiated to determine the appropriate number and size of wildlife crossings that will be necessary to keep all linkage corridors identified in the environmental document functioning. In addition, other key linkage areas exist to the north of Coral Hollow Road that would be directly impacted the construction of the Project. CDFW strongly recommends avoidance of any impact to the Corral Hollow Creek key linkage corridor and corresponding flood plain and alluvial sand movement area. The CEQA document is advised to adequately analyze and address direct, indirect, and cumulative impacts to this and other key linkage areas, to public trust resources, and to discuss feasible mitigation measures to reduce these impacts to less-than-significant. CDFW recommends the draft SEIR present this information in a more detailed account in its own separate section.

### Special-Status Plant Species

Special-status plant species surveys presented on Page 4.4-31 of the draft SEIR were conducted in 1988 and 1990 and only reviewed for consistency with no field observations in 1996 for Areas B and C of the THSP. The information provided from those surveys is no longer considered valid scientific information and it is recommended that in all areas where potentially suitable habitat is identified botanical surveys are conducted and performed in accordance with the CDFW: *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations an Natural Communities* (CDFW, 2009) and the United States Fish and Wildlife Service (USFWS): *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants* (USFWS, 2000). Botanical surveys are floristic in nature and must be timed appropriately, cover the entire area of direct and indirect effects, and may require multiple surveys in order to detect all species which could potentially be present before CEQA impact analysis occurs. Note the

above referenced guidelines instruct the use of reference sites to confirm appropriate survey timing, particularly for seasonably variable, often difficult to detect species.

SA2-6

Mitigation Measure 4.4-1; Page 4.4-49 is ineffective as presented: "Prior to commencement of ground disturbing activities, communication with USFWS and CDFW should be initiated to determine if sensitive plant surveys would be required. If required, the applicant shall hire a qualified biologist to conduct sensitive plant surveys in accordance with CDFW 2009 and USFWS 1996 protocols." Surveys should be conducted over multiple blooming periods and reference populations of special-status plants identified. Therefore, CDFW advises the Mitigation Measure be revised as follows:

"Prior to commencement of ground disturbing activities in all areas of potentially suitable habitat to support special status plant species, surveys shall be initiated by a qualified botanist in accordance with CDFW (2009) and USFWS (1996) protocols. Surveys shall be floristic in nature and must be timed appropriately; cover the entire area of direct and indirect effects and may require multiple surveys over multiple seasons to adequately detect all species which could potentially be present. The results of these surveys shall be submitted to CDFW and USFWS for review. In the event special-status plant species are detected, individual plant(s) or populations shall plant be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species."

SA2-7

### Special-Status Wildlife Species

Mitigation Measure 4.4-2b on page 4.4-49, Focused Survey Requirements for Special-Status Wildlife Species is inadequate as presented and is recommended to be updated as follows:

"All applicants who conduct Projects within Areas A and B of the THSP shall adhere to the terms of the SJMSCP or be subject to secure take authorizations for State and/or Federally listed species in consultation with the wildlife agencies. Participation in the SJMSCP shall include compliance with all incidental take measures as required in the SJMSCP including but not limited to preconstruction surveys to determine presence. In Area C, all applicants who conduct Projects within the THSP in areas with potentially suitable habitat to support State and/or federally listed species shall be required to secure take authorizations for State and/or federally listed species in consultation with the wildlife agencies."

SA2-8

### Nesting Bird Avoidance and Minimization

Mitigation Measure 4.4-3 on Page 4.4-50, Line 2; CDFW recognizes the bird nesting season as February 1 to September 1 and Line 2 should be updated to reflect this. CDFW also recommends the following language is included as a fifth bullet point: "5) If a lapse in

SA2-8 Project activity occurs for 7 days or more during the bird nesting season (February 1 to  
Cont. September 1) than all surveys shall be repeated by a qualified biologist."

SA2-9 **Wetlands and Other Waters**

Mitigation Measure 4.4-4 on Page 4.4-51, for wetlands is recommended to include actual measures that will avoid temporary and permanent impacts to wetlands and other water features within the THSP. Avoidance measures are advised to include but not be limited to 1) complete avoidance of wetlands and other water features; 2) construction of clear-span bridges or structures to maintain natural floodplains; 3) install open channel drainages, swales or bottomless culvert systems to maintain the integrity of natural water features; 4) install culverts or wildlife crossings in sensitive and unique habitats to allow connectivity among water features or natural lands; 5) be required to use natural/biological materials in armoring of structures (i.e. bridges, culverts, etc.); 6) be required, when feasible, to install exclusionary fencing systems to guide wildlife away from roadways and into water features or sensitive habitats; and 7) consult with regulatory agencies to determine the most environmentally sound methods and alternatives prior to Project implementation.

SA2-10 **San Joaquin Kit Fox Avoidance and Minimization**

CDFW recommends an up to date focused and/or protocol-level surveys be conducted and included in the draft SEIR using the methods prescribed in the USFWS, "San Joaquin Kit Fox Survey Protocol for the Northern Range (1999)." The surveys must adhere specifically to the developed protocol, conduct the required follow up surveys in subsequent seasons to reinforce positive or negative findings and all final determination surveys should be conducted within one calendar year of Project initiation to be considered valid scientific information.

The Impacts and Mitigation Measures section of the draft SEIR is advised to include avoidance and minimization measures specific to San Joaquin kit fox that implements the protocol referenced in the USFWS "San Joaquin Kit Fox Survey Protocol for the Northern Range (1999)" and incorporates avoidance and minimization measures as described in the USFWS "Standard Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbing Activities (1999)" and the USFWS "San Joaquin Kit Fox Habitat Evaluation Forms (2001)" to reduce impacts to this species to less-than-significant.

SA2-11 **Western Burrowing Owl Avoidance and Minimization**

CDFW recommends surveys be conducted and included in the draft SEIR for western burrowing owl as identified in the CDFW "Staff Report on Burrowing Owl Mitigation (2012)." The surveys should adhere specifically to the developed protocol, conduct the required follow-up surveys in subsequent seasons to reinforce positive or negative findings and all final determination surveys should be conducted within one calendar year of Project initiation to be considered valid scientific information.

The Impacts and Mitigation Measures section of the draft SEIR is advised to incorporate the specific avoidance and minimization measures for western burrowing owl as described in

SA2-11  
Cont.

the CDFW "Staff Report on Burrowing Owl Mitigation (2012)" to reduce impacts below a significant level for this species.

SA2-12

### **Swainson's Hawk Avoidance and Minimization**

CDFW recommends surveys be conducted and included in the draft SEIR for Swainson's hawk as identified in the CDFW "Staff Report on Mitigation for Impacts to Swainson's Hawk (2012)"; the USFWS "Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures... (2010)"; and the Technical Advisory "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (2000)." The surveys should adhere specifically to the developed protocol, conduct the required follow up surveys in subsequent seasons to reinforce positive or negative findings and all final determination surveys should be conducted within one calendar year of Project initiation to be considered valid scientific information.

The Impacts and Mitigation Measures section of the draft SEIR is advised to include the avoidance and minimization measures as outlined in the CDFW "Staff Report on Mitigation for Impacts to Swainson's Hawk (2012)" to reduce impacts to Swainson's hawk to less-than-significant.

In addition, the removal of mature trees is a potentially significant impact to nesting raptors that is recommended to be mitigated. CDFW considers removal of known raptor nest trees, even outside of the nesting season, to be a significant impact under CEQA. This is especially true with species such as Swainson's hawk that exhibit high site fidelity to their nest and nest trees year after year. Regardless of nesting status, trees that must be removed are advised to be replaced with an appropriate native tree species planting at a ratio of 3:1 in an area that will be protected in perpetuity. This mitigation is needed to offset impacts to the loss of potential nesting habitat.

SA2-13

### **California Tiger Salamander Avoidance and Minimization**

The 1998 THSP did not adequately disclose the potential for CTS, foothill yellow-legged frog, and other special-status wildlife species to occur on the Project site and the most current environmental document remains insufficient in this respect. CDFW advises habitat assessments and surveys be conducted and included in the SEIR for CTS in accordance with the CDFW/USFWS "Interim Guidance to Site Assessment and Field Surveys for Determining Presence or a Negative Finding of California Tiger Salamander (2003)." In order for the results of the surveys to be scientifically valid, the surveys must adhere specifically to the developed protocol and be conducted over subsequent seasons to reinforce positive or negative findings. Surveys must also be concluded within one calendar year of Project initiation to be considered valid scientific information.

If CTS are found within Project Area C, "take" authorization is warranted prior to initiating ground-disturbing activities and would occur through the issuance of an ITP, pursuant to Fish and Game Code Section 2081(b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an ITP from CDFW.

Mr. Bill Dean  
January 28, 2015  
Page 10

SA2-13  
Cont.

Included in the ITP would be measures required to avoid and/or minimize direct "take" of CTS on the Project site, as well as measures to fully mitigate the impact of the "take." Mitigation measures for CTS should be fully addressed in the CEQA document prepared for the Project.

The Impacts and Mitigation Measures section of the draft SEIR is advised to incorporate the above recommendations.

SA2-14

#### **California Red-Legged Frog Avoidance and Minimization**

CDFW recommends up-to-date surveys be conducted and included in the environmental document for California red-legged frog as specified in the USFWS "Revised Guidance on Site Assessment and Field Surveys for the California Red-Legged Frog (2005)." The surveys must adhere specifically to the developed protocol, conduct the required follow up surveys in subsequent seasons to reinforce positive or negative findings and all final determination surveys be concluded within one calendar year of Project initiation to be considered valid scientific information.

The Impacts and Mitigation Measures section of the draft SEIR is advised to incorporate specific avoidance and minimization measures for California red-legged frog in consultation with the wildlife agencies to reduce impacts below a significant level as required by CEQA.

Thank you for the opportunity to comment on the Notice of Completion of a draft Supplemental Environmental Impact Report for the City of Tracy's Tracy Hills Specific Plan Amendment. CDFW is available to consult with the City regarding potential effects to fish and wildlife resources, as well as specific measures which would mitigate potential effects of the Project, once appropriate surveys have been conducted. If you have any questions, please contact Mr. Robert Stanley, Environmental Scientist, at (707) 944-5573; or Ms. Annee Ferranti, Senior Environmental Scientist (Supervisory), at (707) 944-5554.

Sincerely,



Scott Wilson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse

**Letter SA2**

**State of California, The Natural Resources Agency**

**Department of Fish and Wildlife**

**Bay Delta Region**

**Scott Wilson**

**Regional Manager**

**January 28, 2015**

**Response SA2-1:** Per NOREAS, as discussed in detail in this revised Biological Resources Section, the Applicant has done exactly that. To supplement the 2014 surveys conducted by RBF, in 2015, biologists from NOREAS conducted reconnaissance surveys of the entire Project Site, including Area C. In the RBF and NOREAS reconnaissance surveys conducted throughout the Project Site, a few wildlife species were detected in the Project Site, the majority of which were birds. (See, Appendix C-2, NOREAS Report, Appendix D; *see also*, RBF Appendix C-1.) Generally, wildlife species richness improved within the residences surrounded by agricultural fields due to increase availability food (e.g., bird feeders), water (i.e., irrigation and bird baths), and shelter (e.g., diverse assemblage of ornamental trees and shrubs), but on the whole, while the Project is large in total size, the study area has very low species richness and diversity; and those lands proposed for development do not support habitat for any State or Federal-listed species. Generally, the study area's porous soils quickly absorb rainfall, and any flows within it are predominately ephemeral - fast and short lived; ultimately reducing water availability for plants and wildlife within Project boundaries.

Based on information from the CNDDB, a quarter century of historical surveys, and these updated 2014 and 2015 reconnaissance surveys, in 2015, NOREAS conducted focused surveys for all listed, candidate or otherwise special status species that could potentially occur on Project Site. (See, Appendix C-2, 2015 NOREAS Report.) Specifically, focused surveys were conducted for rare plants, burrowing owl, California red-legged frog, California Tiger Salamander, San Joaquin Kit Fox, and Swainson's Hawk and other Raptors. (Appendix C-1, 2015 NOREAS Report, Appendices E through J.) These surveys covered all areas of the Project Site, specifically including Area C, and were conducted pursuant to the CDFW's established protocols.

As discussed in detail above, these comprehensive surveys show that the proposed Project will not result in significant impacts. No listed or candidate species have been documented on the Project Site over twenty-five years of surveys. The Project Site consists of low grade, highly disturbed habitat, and higher quality habitat for all the above-mentioned species occurs adjacent to the Project Site, in the 3,500 acre open space preserve area. While small, discrete subset of land within Area C of the Project is co-located with USFWS-designated critical habitat for CRLF, that portion of the Project Site does not actually support CRLF, and the CRLF has never been documented in that area, or any area of the Project Site. (See, Appendix C-2, 2015 NOREAS Report, p.\_\_\_\_.)

**Response SA2-2:** Refer to Response SA2-1, above.

**Response SA2-3:** Per NOREAS, as explained in this revised Biological Resources Section, the Project Site contains a very small amount (approximately 5 acres) of isolated wetlands that are not subject to federal jurisdiction. The proposed Project will not result in any net loss waters under state jurisdiction (e.g., 1600 jurisdictional areas), and as required by Mitigation Measures 4.4-3d, the Project Applicant

is required to obtain a streambed alteration agreement from the CDFW, if necessary. Additionally, the content of the commenter's proposed mitigation measure has been added to this revised Biological Resources Section as Mitigation Measure 4.4-3a.

Moreover, as discussed throughout this revised Biological Resources Section, the Project is designed to completely avoid any impacts to any riparian habitat or significant resources. Indeed, Mitigation Measure 4.4-4a implements a 50-foot setback from any stream or riparian resource being protected in place.

**Response SA2-4:** Per NOREAS, as discussed throughout this revised Biological Resources Section, the proposed Project completely avoid direct impacts Corral Hollow Creek and its associated flood plain and alluvial fan area by excluding that area from the proposed Project's footprint (Appendix C-2, 2015 NOREAS Report, p. 6-3), and avoids indirect impacts by implementing a 50-foot setback from any such areas. (See, Mitigation Measure 4.4-4a.) In fact, Corral Hollow Creek itself is actually located well off the Project Site, in the 3,500 acre open space preserve area. (See, e.g., Appendix C-2, 2015 NOREAS Report, Figure 6). Accordingly, as explained above, the proposed project will result in no impacts to the Corral Hollow Creek and its associated flood plain and alluvial fan area.

**Response SA2-5:** Per NOREAS, as the proposed Project includes 100-foot setbacks from both California Aqueduct and I-580 (in the form of conservation easements – see Mitigation Measure 4.4-4a) and will not develop the area that the commenter appears to reference south of Corral Hollow Road, which is part of the 3,500 acre open space preserve that will serve as a wildlife movement corridor.

As has been concluded in twenty-five years of study and confirmed by the 2014 and 2015 updated pedestrian-based surveys, the portion of the Project Site that will be developed does not support any State or Federally-listed flora and fauna, and is comprised entirely of non-native vegetation and low-grade habitat for any native wildlife species. As such, it is not a high value wildlife linkage corridor.

Additionally, Interstate 580 – which runs through the middle of the Project Site, separating Areas A and B from Area C – is a significant barrier which impedes and curtails wildlife movement throughout the region, severely limiting the Project site's utility as a wildlife movement corridor or linkage area. The Project will also implement a 100-foot setback from I-580 in the form of a conservation easement to provide for a linkage corridor through the middle of the Project Site (between Areas B and C). (See Mitigation Measure 4.4-4a.)

The California Aqueduct – which is the border between Area A and B – and Delta-Mendota Canal, which is located northeast as functions as the border of Area A/the Project Site, act as stepping stone refugia habitat for the dispersal of SJKF and other wildlife species that exist in the region outside of the Project Area. These man-made waterways provide unobstructed travel corridors for wildlife species to connect to habitats located to the north and south of the Project Site, and would not be affected by development of the Project. The proposed Project includes a 100-foot setback from the California Aqueduct, also in the form of conservation easements, to allow wildlife movement to persist north/south through a portion of the Project Site (between areas A and B) without any significant barriers or blockades.

The aforementioned 3,500-acre open space area adjacent to Area C was set aside by the Project Applicant under a series of conservation easements to protect the integrity of a provides a natural corridor to the north and the south extending along the southern coastal mountain ranges of

California. This preserve contains higher quality habitat for all relevant species than the low-grade habitat on the Project Site.

Area C of the Project Site is adjacent to the eastern foothills of the Diablo Mountain Range. The Diablo Mountain Range provides a natural wildlife corridor to the north and the south extending along the southern coastal mountain ranges of California. Development of Area C will be limited to the relatively flat grasslands south of I-580 and east of the foothills of the mountains, which is on the opposite side of the preserve area. As a result, the migration corridor west of the Project Site consisting of the Diablo Mountain Range will not be obstructed or significantly impacted. Additionally, the Project has been designed such that development of Area C will completely avoid direct impacts to the Corral Hollow Creek key linkage corridor (which is located just south of Area C) and its corresponding flood plain and alluvial sand movement areas. (Appendix C-2, NOREAS Report.) Corral Hollow Creek has higher species diversity and value for local and migratory wildlife than adjacent locales, and accordingly, the Project completely avoids development of the Corral Hollow Creek area to maintain local existing wildlife movement and dispersal linkages.

Due to the fact that the I-580 completely separates Areas A and B from Area C, even without any development of Areas A and B, species are not able to migrate from these Areas to the Diablo Mountain Range wildlife corridor. Accordingly, Area A and B (which encompasses the portion of the Project being analyzed by this EIR at the “project-level”) do not function as significant wildlife movement corridors nor do they provide linkage to significant habitats. Additionally, as stated above, the 100 setbacks from the California Aqueduct and the I-580, as well as the complete avoidance of the Corral Hollow Creek area, provides sufficient wildlife movement such that any impacts from the development of the proposed Project would be less-than-significant. (See reference within Appendix C-2, Jones & Stokes Evaluation of a proposed Corridor for the San Joaquin Kit Fox in the Tracy Hills Development [states that avoiding adverse effects to California Aqueduct and Corral Hollow Creek – as explained above, the proposed Project does – would be adequate to maintain local existing wildlife movement and dispersal corridors linkages]; *see also*, NOREAS 2105 Report, pp. 4-3, 4-4 [in accord].) In sum, development of the proposed Project (Areas A and B, and adjacent areas of Area C planned for development) will not impede any wildlife movement that occurs before development, nor result in any potentially significant impacts on the same.

Finally, it also bears noting that approximately 9 miles east of the Project Site the San Joaquin River traverses the agricultural fields on the valley floor of the Central Valley. The River was once dominated by riparian forest habitats and provided a major migration corridor through the middle of the State. This corridor was primarily used by migratory avian species (Pacific Flyway) but was also utilized by mammalian species. The San Joaquin River system is one of the most highly altered water systems in the state due to the diversion of water for agricultural purposes. However, the Project Site is separated from this regional migratory corridor by extensive existing urban development in the City of Tracy and extensive agricultural operations. There are no natural interconnecting habitats between the San Joaquin River and the proposed Project Site.

Accordingly, the proposed Project will not result in significant impacts on a wildlife movement corridor.

**Response SA2-6:** In 2015, NOREAS undertook a focused rare plant survey to determine whether any federally or state listed, candidate other special status plant species occur on the Project Site. (Appendix C-2, 2015 NOREAS Report, Appendix E.) As discussed above throughout this revised Biological

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

Resources Section, and consistent with previous surveys, this survey determined that no such plant species occur.

**Response SA2-7:** Per NOREAS, the suggested mitigation measure has been added as Mitigation Measure 4.4-1h. The revised Biological Resources Section has also added a number of specific mitigation measures requiring focused pre-construction surveys.

**Response SA2-8:** Per NOREAS, the suggested additions to the nesting bird avoidance and minimization mitigations have been made as part of Mitigation Measure 4.4-1j.

**Response SA2-9:** Per NOREAS, the suggested additions to the wetlands mitigations have been made as part of Mitigation Measure 4.4-3.

**Response SA2-10:** A focused survey was conducted for the SJKF in 2015, which consistent with all other surveys on the Project Site, found that the SJKF is not present anywhere on the Project Site. (Appendix C-2, 2015 NOREAS Report, Appendix I.) The commenter's recommended change to the mitigation measures as made. (See Mitigation Measure 4.4-1c.)

**Response SA2-11:** A focused survey was conducted for the burrowing owl in 2015. (Appendix C-2, 2015 NOREAS Report, Appendix F.) The commenter's recommended change to the mitigation measures has been made. (See Mitigation Measure 4.4-1i.)

**Response SA2-12:** A focused survey was conducted for the Swainson's Hawk in 2015. (Appendix C-2, 2015 NOREAS Report, Appendix J.) The commenter's recommended change to the mitigation measures as made. (See Mitigation Measures 4.4-1j and 4.4-1k.) Additionally, there are a very limited number of trees on the project Site. However, Mitigation Measure 4.4-1j ensures that no Swainson's hawk trees will be removed unless infeasible. Moreover, the 3,500 acre preserve area adjacent to the Project Site provides suitable habitat for any Swainson's hawk displaced by the Project (which based on the survey results, such displacement is unlikely in the first instance), meaning that no replacement trees on the Project Site are required.

**Response SA2-13:** A focused habitat assessment was conducted for the CTS in 2015. (Appendix C-2, 2015 NOREAS Report, Appendix H.) The commenter's recommended change to the mitigation measures as made. (See Mitigation Measure 4.4-1f.)

**Response SA2-14:** A focused habitat assessment was conducted for the CRLF in 2015. (Appendix C-2, 2015 NOREAS Report, Appendix G.) The commenter's recommended change to the mitigation measures has been made. (See Mitigation Measure 4.4-1g.)

## DEPARTMENT OF TRANSPORTATION

DISTRICT 10 DIRECTOR

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February 5, 2015

**10-SJ-580-PM 8.149**  
**Tracy Hills Specific Plan**  
**DEIR**  
**SCH 2013102053**

Bill Dean  
 City of Tracy  
 333 Civic Center Plaza  
 Tracy, CA 95376

Dear Mr. Dean:

The California Department of Transportation (Department) appreciates the opportunity to review and comment on the Tracy Hills Specific Plan (THSP) Draft Environmental Impact Report (DEIR). The proposed project is to develop approximately 2,732 acres with up to 5,499 residential dwellings, 1,589,156 sf of Business Park, 758,292 sf of Highway Commercial, and 3,349,927 sf of Light Industrial. The Department has the following comments:

**SA3-1** 1. According to Trip Generation, Distribution, and Assignment on page 4.13-62, THSP DEIR's traffic study, it states "The traffic analysis using the Tracy Travel Demand Model includes an overall higher trip generation compared to using ITE assumptions, and thus presents a worst case scenario of traffic operations. This trip generation caters to Tracy conditions and presents more accurate results." The Department does not agree with this statement. Most of the provided trip generation rates as shown in Table 4.13-17 (Project 2035 Trip Generation), 4.13-18 (Project Buildout-Post 2035 Trip Generation) and 4.13-58 (Phase 1a Trip Generation) are much lower than the trip generation rates from the ITE (Institute of Transportation Engineers) for the proposed project land uses of residential, retail, office and industrial/warehousing. Underestimating trip generation rates will provide underestimated project generated traffic on the adjacent freeway facilities. The THSP DEIR traffic study should be prepared using more accurate land uses and codes from ITE.

**SA3-2A** 2. According to the THSP DEIR's traffic study, Figure 4.13-10 Project Trip Distribution for Project 2035 and Project Buildout conditions, the proposed project's trip distribution shows only 4.6 AM trip percentage out to westbound I-580 and only 4.7 PM trip percentage in from eastbound I-580. These trip percentages seem low. Table 4.13-18 Project Buildout Trip Generation shows a total of 2,248 AM residential trips out and 3,602 PM residential trips in. With the proposed trip percentages of 4.6 AM trip out onto westbound I-580 & 4.7 PM trip in from eastbound I-580, there are only 105 trips out of a total of 2,248 AM residential trips out onto westbound I-580, and only 169 trips out of a

**SA3-2A Cont.** total of 3,602 PM residential trips in from eastbound I-580. The Department believes these trip assumptions to be low as THSP will undoubtedly attract commuters to and from the Bay Area. The Department also disagrees with the assumption that 80% of the THSP residents will be both working and living within the City of Tracy.

**SA3-2B** Moreover, these above mentioned trip distribution percentages are significantly lower than the ones shown Figure 4.13-20 Phase 1A Trip Distribution-Tracy. Figure 4.13-20 shows 31.6 AM trip percentage out to westbound I-580 and 16.9 PM trip percentage in from eastbound I-580. If there are no changes of the proposed project's land use, there should be no difference in trip distributions on eastbound and westbound I-580 under Phase 1A & Project Trip Distribution.

**SA3-2C** Inaccurate assumptions of trip distributions under Phase 1A (Figure 4.13-20) and Project Trip Distribution-Tracy (Figure 4.13-10) will provide inaccurate traffic analysis results, traffic impacts, and traffic mitigations under all traffic conditions.

**SA3-3** 3. The THSP DEIR's traffic study does not include approved projects such as Ellis and Cordes Specific Plan into Existing + Phase 1A condition. By omitting these approved projects, the traffic study neglects to evaluate the near-term impacts of this development in conjunction with other approved developments in the area.

**SA3-4A** 4. A review of the electronic Synchro analysis at I-580 and Corral Hollow Rd interchange indicates that I-580 WB & EB off-ramp have been coded as a two-lane off-ramp under Existing, Existing + Phase 1A. However, there is a single lane on WB & EB off-ramp. Incorrect ramp/intersection analysis inputs in Synchro will result incorrectly calculated LOS, and queues. The incorrect lane configuration input on the off-ramps also occurs in other study scenarios.

**SA3-4B** Similarly, the incorrect off-ramp lane configuration input is also shown in the Synchro analysis at I-580 and Patterson Pass Rd.

**SA3-5** 5. A review of the electronic Synchro analysis at WB I-580 Ramps and Corral Hollow Rd intersection under Existing + Phase 1A indicates that NB (north of this ramp intersection) has been coded as two thru-lane in the AM, while one thru-lane under in the PM. The inconsistent lane configuration input also occurs in Existing + Phase 1A Mitigations, Existing + Project 2035.

**SA3-6** 6. The Synchro analysis at other intersections which fall under the jurisdiction of The City of Tracy indicates that a PHF = 1.0 was used throughout for the intersection analysis under all study scenarios. PHF = 1.0 was also used for all I-580 ramps intersections under

**SA3-6 Cont.** L Cumulative (2035) + Project and Cumulative + Buildout. By using a PHF = 1.0, the intersection analysis will result in underestimated LOS and queues.

**SA3-7** 7. The electronic Synchro analysis report shows that at certain intersections the analysis was done coding the left-turns as "Permitted". The left-turns should have been made "Protected or Split" in the Synchro inputs.

For example, refer to the electronic Synchro analysis for the I-580 EB Ramps & Coral Hollow Rd for the "Existing + Phase 1A PM Mitigation" scenario. This intersection was analyzed as a signalized intersection with the southbound left-turn lane as a permitted movement opposing a northbound through movement. This should have been analyzed as the left-turn being coded as a "Protected or Split" movement.

**SA3-8** 8. According to Mitigation Measure 4.13-14a, THSP's traffic study page 4.13-207, the project proposes to install an AWSC (all-way stop controlled) intersection as an interim improvement once development is approved to generate 196 PM peak hour trips to mitigate interim impact at Corral Hollow Rd/I-580 EB Ramps under Existing + Phase 1A. Also, according to Table 4.13-61 Existing + Phase 1A Intersection Delay & LOS Trigger Analysis, it shows the mitigation with AWSC will improve the delay and LOS at this intersection. However, there is no Synchro analysis that supports this proposed AWSC mitigation.

**SA3-9** 9. A review of the electronic Synchro analysis report, Figure 4.13-12 Existing + Project 2035 Turning Movements, Figure 4.13-13 Existing + Buildout Turning Movements, and Figure 4.13-21 Existing + Phase 1A shows that certain turning movement volumes at EB and WB I-580 Ramps/Corral Hollow Rd intersections under Existing + Project 2035 and Existing + Buildout are considerably lower than the ones in Existing + Phase 1A. For instance:

- There are 420 vehicles making right-turns from SB Corral Hollow Rd onto the WB I-580 onramp under Existing + Project 2035 AM, while there are 645 vehicles under Existing + Phase 1A AM.
- There are 390 vehicles making left-turns from EB I-580 off-ramp onto NB Corral Hollow Rd under Existing + Project 2035 PM while there are 628 vehicles under Existing + Phase 1A PM.

Inaccurate inputs of turning movement volumes in Synchro analysis under Existing + Project 2035 and Existing + Buildout will provide incorrect LOS, queues, and mitigations. Therefore, the traffic impact analysis results and proposed mitigations under

**SA3-9**  
**Cont.** Existing + Project 2035 and Existing + Buildout are unacceptable and should be revised.

**SA3-10A** 10. A review of the Table 4.13-20 Existing + Project 2035 Intersection Delay & LOS Mitigation and electronic Synchro analysis report at EB and WB I-580 ramps/Corral Hollow Rd intersections under Existing + Project 2035 Mitigation TMP and Mitigation Beyond TMP, appears to show inconsistencies in lane configurations in the proposed mitigations at the intersections between Table 4.13-20 and Synchro analysis with input mitigations. For instance:

- Synchro analysis shows a total of 4 lanes including a dedicated left-turn lane on SB & NB on Corral Hollow overpass under TMP improvement. By doing that, the overpass needs to be widened; however, Table 4.13-20 does not mention the widening under TMP improvement. It just shows a left-turn pocket will be added on SB Corral Hollow Rd at the EB I-580 ramps intersection and on NB Corral Hollow Rd at the WB I-580 ramps intersection.
- Synchro analysis shows two dedicated off-ramp lanes on EB and WB I-580 off-ramps under TMP and Beyond TMP improvements; however, Table 4.13-20 does not mention any off-ramp widening.

**SA3-10B** The proposed mitigations at these locations in Table 4.13-20 are inaccurate and unacceptable as they are not consistent with the proposed geometric/lane configurations or inputs in the Synchro analysis. Furthermore, with these mitigations, EB and WB I-580 ramps/Corral Hollow Rd intersections still have unacceptable intersection LOS of E & F, and unacceptable approach LOS of E & F at some turning movements.

**SA3-10C** Similarly, the above comments are also applied under Existing + Buildout between Table 4.13-27 Existing + Buildout Intersection Delay & LOS Mitigation and the electronic Synchro analysis report at EB and WB I-580 ramps/Corral Hollow Rd intersections under Existing + Buildout Mitigation TMP and beyond TMP.

**SA3-11** 11. The proposed WB I-580 loop on-ramp under Existing + Project 2035 and Existing + Buildout have been coded incorrectly as a right-turn control at the signalized intersection of WB I-580 ramps/Corral Hollow Rd in the electronic Synchro analysis. This should be coded as a free WB loop on-ramp. Moreover, WB loop on-ramp cannot be coded parallel with the WB I-580 off-ramp. This should be revised.

**SA3-12** 12. Due to the constraint of the existing compact diamond (Type L-1) of I-580/Corral Hollow Rd interchange, the proposal of the WB loop on-ramp is not feasible if the WB I-580 off-ramp is not relocated to further north. Therefore, THSP DEIR's traffic study should include a discussion regarding the future footprint of the WB loop on-ramp and the

Mr. Dean  
February 5, 2015  
Page 5

**SA3-12**  
**Cont.** relocation of WB I-580 off-ramp further north as a part of its mitigation under Existing + Project 2035 and Existing + Buildout.

**SA3-13** 13. The THSP will generate a considerable amount of STAA truck traffic from the freeway onto the project site; therefore, the interchange of I-580/Corral Hollow Road needs to accommodate STAA truck turning radius. The THSP DEIR's traffic study should provide the STAA off-tracking analysis and provide improvements.

**SA3-14** 14. According to the SJCOG 2014 Regional Transportation Plan Amendment Project List-Interchange Improvements Category, construction of a new interchange of I-580/Lammers Rd and modification of existing interchange of I-580/Corral Hollow Rd are just listed as "Environmental Only" stage. There are no specific indications of the funding programs and estimated opening year to the public. Therefore, it seems unreasonable to analyze all of the cumulative scenarios with the assumption of I-580/Lammers Rd interchange. THSP DEIR's traffic study should revise all traffic analysis under cumulative scenarios without construction of I-580/Lammers Rd interchange.

**SA3-15** 15. As a result of what the Department believes to be significant flaws and errors, the THSP DEIR's traffic study does not accurately disclose and address the project's potential significant impacts to traffic. The affected areas and the severity of the impacts to transportation facilities would be greater than stated in this traffic study. The DEIR's traffic study should be revised to correct inconsistencies and assumptions that were addressed in the previous comments. Once revised the DEIR should be re-circulated for review and comment.

If you have any questions or would like to discuss our comments in more detail, please contact Joshua Swearingen at (209) 948-7142 (e-mail: [joshua\\_swearingen@dot.ca.gov](mailto:joshua_swearingen@dot.ca.gov)) or me at (209) 941-1921.

Sincerely,

*Joshua Swearingen*  
For

Tom Dumas, Chief  
Office of Metropolitan Planning



Letter SA3

State of California, California State Transportation Agency

Department of Transportation

District 10 Director

Tom Dumas

Chief, Office of Metropolitan Planning

February 5, 2015

**Response SA3-1:** The City of Tracy has collected data on the typical travel patterns of residents and businesses and has developed customized trip generation rates. These trip generation rates are more accurate compared to published ITE rates and are representative of the Tracy community. These customized trip generation rates have been used to develop the City TMP Horizon year (2035) and TMP Buildout Travel Demand Model (TDM); they are for used in the evaluation of potential impacts generated by all future development assumptions. Land use growth for the model is consistent with the City of Tracy General Plan. In addition, the Tracy Travel Demand Model tiers off the San Joaquin COG Travel Demand Model for regional roadway connections within San Joaquin County as well as travel to and from Alameda County and further west. The Tracy Travel Demand Model trip generation rates are overall higher when compared to ITE trip generation rates as shown in Table 3.6: Tracy Travel Demand Model Peak Hour Vehicle Trip Generation Rates vs ITE Peak Hour Trip Generation Rates, of the City of Tracy TMP. The City respectfully disagrees with Caltrans comment is position; using ITE rates would have underestimated the number of trips anticipated based on the mix of land uses in Phase 1. Phase 1 would generate approximately 1,542 trips in the AM peak hour and 2,299 trips in the PM peak hour based on the Tracy Travel Demand Model trip generation rates. Using ITE trip generation rates, Phase 1 would generate 1,088 trips in the AM peak hour and 1,524 trips in the PM peak hour. Using ITE trip generation rates, project buildout would generate 6,942 trips in the AM peak hour and 10,042 trips in the PM peak hour. Using the City Model rates, project buildout would generate 7,831 trips during the AM peak hour and 14,064 trips during the PM peak hours at buildout conditions. The Model rates were used in the analysis. The Draft SEIR evaluates the potential impacts of the entire project through buildout.

**Response SA3-2A:** Contrary to the Caltrans comment that the trip distribution is inaccurate, the City believes the traffic model, developed for City General Plan Buildout, tiering off the SJCOG model for 2035, is accurate. In this Draft SEIR, traffic analysis consistency was also observed between the City model and the Alameda County model, which further supports the finding that the model is indeed accurate.

The model is accurate because it is consistent with the following:

- ◆ Regional land use growth forecasts for both San Joaquin County and Alameda County
- ◆ Regional planned transportation improvements

- ◆ Regional economic historic data and forecasts
- ◆ Local General Plan development forecasts, as adopted by City Council
- ◆ The community and regional governing agencies
- ◆ Several development projects, which are currently in construction and final map phases and are consistent with local and regional planning efforts.

The Tracy Travel Demand Model tiers off the San Joaquin COG Travel Demand Model for regional roadway connections between and through the City and within San Joaquin County as well as travel to and from Alameda County and further west. In addition, the adopted San Joaquin County General Plan Buildout projections, City Buildout projections, and land use development scenarios indicate an improved jobs-to-housing balance resulting in a greater number of future traffic trips staying locally within the City of Tracy and in the County. The City Transportation Master Plan indicates forecasts 64,182 employed persons for year 2035, an increase of 40,078 (or 166.3 percent) from 24,104 in 2006. Dwelling units are forecasted to increase from 26,789 to 40,506 in 2035, a 51.4 percent increase from 2006. The number of jobs are thus forecasted to increase 3 times more when compared to the increase in housing. Increased jobs would result in a reduction in the percent of traffic leaving the City on a daily basis. This is clearly reflected in the traffic generation and trip distribution.

The City recently approved the Cordes Ranch Specific Plan which includes approximately 1,462 net acres of commercial, office, manufacturing, warehouse, and distribution uses. This increase in employment is forecasted to ultimately decrease traffic onto the regional road system. This increase in employment is forecasted to decrease traffic on the regional road system. FedEx, Cordes Building 1 and Medline are already under construction. The City also recently approved the following development projects that would create local employment opportunities: SuperLube, Prime Car Wash, McDonalds, Red Robin, WinCo, Bevmo, FasTrak car wash, Arco gas station, new Animal Shelter, St Bernard's Pre-school, CMC Rebar, El Pollo Loco, Dunkin Donuts, Tracy Collision Center, Sutter Hospital, Amazon and Shops at Northgate Village. These projects are anticipated to provide employment opportunities, furthering the City's 2013-2015 Economic Development Strategy, thereby resulting in greater internal trip capture and fewer trips leaving the City.

In addition, the jobs-to-housing balance identified in the Sustainable Community Strategies for the region (see Page 1-3 in Chapter 1) results in many trips staying local within Tracy. It illustrates that there is an increased demand in external travel towards the Stockton area and less growth in travel demand to Alameda County and points further to the west. In addition, implementation of the more recently completed Sustainable Community Strategies for the region (Page 5-3 to 5-5, Chapter 5) would result in higher densities and reduced Vehicle Miles Traveled (VMT) and could further reduce regional travel demand. The assumptions for the Project distribution are based on the adopted SJCOG Travel Demand Model and the Tracy Travel Demand Model. Both of these correlate with the Regional Transportation Plan (RTP) and the Tracy Transportation Master Plan (TMP). The trip distribution

**Response SA3-2B:** Contrary to the Caltrans comment that the trip distribution is inaccurate, the City believes the traffic model, developed for City General Plan Buildout, tiering off the SJCOG model for 2035, is accurate. In this Draft SEIR, traffic analysis consistency was also observed between the City model and the Alameda County model, which further supports the finding that the model is indeed accurate.

The model is accurate because it is consistent with the following:

- ◆ Regional land use growth forecasts for both San Joaquin County and Alameda County
- ◆ Regional planned transportation improvements
- ◆ Regional economic historic data and forecasts
- ◆ Local General Plan development forecasts, as adopted by City Council
- ◆ The community and regional governing agencies
- ◆ Several development projects, which are currently in construction and final map phases and are consistent with local and regional planning efforts.

The City of Tracy Roadway Transportation Master Plan Buildout assumptions for the City of Tracy were adopted by the City Council in 2012 and are consistent with the General Plan update adopted in 2011. Caltrans' disagreement with the General Plan land use growth assumptions, as stated in their comment, are inconsistent with City of Tracy, San Joaquin County and San Joaquin Council of Governments policies and goals. These goals and policies are also reflected in the City Sustainable Action Plan, which aims to reduce GHG and reduce VMT for Tracy residents. Regional trips to and from Tracy are consistent with the San Joaquin COG Travel Demand Model, as adopted by SJCOG and widely used within the County by all local agencies. In addition, the SJCOG model is calibrated to reflect regional trips to and from Alameda County and thus consistency has been established between the two travel demand models at the County line. The City and COG models both reflect the anticipated improved jobs-to-housing balance within San Joaquin County and more specifically within the City of Tracy, consistent with City land use growth and subsequent travel patterns.

The THSP Project is expected to be implemented over the life span of the General Plan. As future land uses in the General Plan develop, the road network will be expanded within the City and the County, and travel patterns would change compared to the existing conditions. The existing and future conditions analyses reflect this anticipated change accurately and reflect future conditions and changed travel patterns. The expansion of the road network is adopted in the City of Tracy Citywide Roadway and Transportation Master Plan. A more balanced jobs-to-housing ratio would result in more trips having origins and destinations within Tracy. The re-distribution of trips with origins and destinations within the City as more development occurs and jobs are created, is consistent with the assumptions under the 2011 General Plan and the THSP, and is clearly reflected in the Draft SEIR analysis. Within the THSP, as more employment -related land uses develop, internal distribution within the THSP and the City would increase, thus resulting in less regional trips traveling outside of the City boundaries.

The City just approved the Cordes Ranch Specific Plan which includes approximately 1,462 net acres of commercial, office, manufacturing, warehouse, and distribution uses. This increase in employment is forecasted to decrease traffic on the regional road system. FedEx, Cordes Building 1 and Medline are already under construction. The City also recently approved the following development projects that would create local employment opportunities: SuperLube, , Prime Car Wash, McDonalds, Red Robin, WinCo, Bevmo, FasTrak car wash, Arco gas station, new Animal Shelter, St Bernard's Pre-school, CMC Rebar, El Pollo Loco, Dunkin Donuts, Tracy Collision Center, Sutter Hospital, Amazon and Shops at Northgate Village. These projects are anticipated to provide employment opportunities, furthering the City's 2013-2015 Economic Development Strategy, thereby resulting in greater internal trip capture and fewer trips leaving the City. Thus, a change in travel patterns as a result of recent land use decisions is already occurring.

The City Transportation Master Plan indicates 64,182 employed persons in the City for year 2035, an increase of 40,078 or 166.3 percent from 24,104 in year 2006. The TMP also indicates that dwelling units will increase from 26,789 in 2006 to 40,506 in 2035, a 51.4 percent increase. The number of jobs are thus forecasted to increase 3 times more compared to the increase in housing. Increased jobs would result in a reduction in the percent of traffic leaving the City on a daily basis. This is clearly reflected in the traffic generation and trip distribution. .

The Tracy Travel Demand Model indicates that the growth in Tracy traffic (from existing conditions to year 2035) would result in the internal trip distribution increasing from the existing 48 percent to 49% percent in the AM peak hour and decrease from 64% percent to 49% percent in the PM peak hour. Tracy Trips headed westbound on I-580 towards Alameda County and beyond, would decrease from 7% percent to 1% percent in the AM peak hour and stay at about 1% percent in the PM peak hour. Trips from Alameda County and beyond to Tracy would remain at about 1% percent during the AM peak hour and decrease from 3.5% percent to 1.3% percent in the PM peak hour.

Economic development data received from the City of Tracy indicates that between 2000 and 2008, the jobs-to-housing ratio remained consistent at approximately 1.19 (approximately 12 jobs for every 10 homes). Between 2008 and 2014, the jobs-to-housing ratio showed a gradual improvement, increasing to 1.46 (approximately 15 jobs for every 10 homes). This increase already results in more trips staying local to Tracy. The City recently approved the Cordes Ranch Specific Plan which includes approximately 1,462 net acres of commercial, office, manufacturing, warehouse, and distribution uses. This increase in employment is forecasted to ultimately decrease traffic onto the regional road system. This increase in employment is forecasted to decrease traffic on the regional road system. FedEx, Cordes Building 1 and Medline are already under construction. The City also recently approved the following development projects that would create local employment opportunities: SuperLube, , Prime Car Wash, McDonalds, Red Robin, WinCo, Bevmo, FasTrak car wash, Arco gas station, new Animal Shelter, St Bernard's Pre-school, CMC Rebar, El Pollo Loco, Dunkin Donuts, Tracy Collision Center, Sutter

Hospital, Amazon and Shops at Northgate Village. These projects are anticipated to provide employment opportunities, furthering the City's 2013-2015 Economic Development Strategy, thereby resulting in greater internal trip capture and fewer trips leaving the City. The City strongly disagrees with the Caltrans statement that less residents will live and work in the City compared to what is presented in the regional and local planning records indicated above. The data presented here also indicates that the trend of increased jobs in Tracy is already occurring with the approval of more employment related development in the past few years.

**Response SA3-2C:** The commenter notes that Phase 1A (near term) trip distribution percentage to I-580 is higher compared to 2035 and Buildout. This is an accurate statement, but not a reflection of inaccuracy in the calculations. In the near term, fewer jobs are available in Tracy and San Joaquin County and the traffic would distribute onto I-580. As the City and the County develop and employment opportunities within the City grow, the road network in Tracy would also expand, additional interchanges would be constructed (e.g. Lammers Road Interchange), and less traffic would distribute to I-580 along Corral Hollow Road. Spine Road will be extended to the future Lammers Road as the THSP builds out and Phase 1A trips would connect to both Lammers Road and Corral Hollow Road. Long term demand would decrease on the southerly leg of Spine Road at Corral Hollow Road.

The General Plan Buildout jobs-to-housing balance within the City of Tracy and the THSP results in changed travel patterns and more trips having origins and destinations within Tracy and within the THSP. The change in THSP traffic volumes from starting with Phase 1A to through Year 2035 (General Plan) and Project Buildout clearly indicates this substantiates the change in travel patterns. Within the THSP Project Area, the development of mixed land uses between Phase 1A, for Year 2035, and for Buildout would also result in an increase in internal trips and a reduction in external trips and overall trip lengths for the Project. Thus, trip reductions on the City and regional road network decrease due to THSP mixed land use development and more employment related development within the City of Tracy. The THSP Project is expected to be implemented over the life span of the General Plan. The analysis accurately reflects this anticipated change in development and distribution of traffic and accurately reflects future conditions, as adopted in the City of Tracy Citywide Roadway and Transportation Master Plan. The shift in the jobs-to-housing balance to accommodate more jobs in Tracy would result in more trips having origins and destinations within Tracy. The re-routing of Project Phase 1A trips away from I-580 as the City road network is expanded and more Project trips stay local, is consistent with the General Plan. This is clearly reflected in the Draft SEIR analysis. The City strongly disagrees with the Caltrans statement that less residents will live and work in the City compared to what is presented in the adopted regional and local planning documentation indicated above. The data presented here also indicates that the trend of increased jobs in Tracy is already occurring with the approval of more employment related development in the past few years.

**Response SA3-2D:** Contrary to the Caltrans comment that the trip distribution is inaccurate, the City believes the traffic model, developed for City General Plan Buildout, tiering off the SJCOG model

for 2035, is accurate. In this Draft SEIR, traffic analysis consistency was also observed between the City model and the Alameda County model, which further supports the finding that the model is indeed accurate.

The model is accurate because it is consistent with the following:

- ◆ Regional land use growth forecasts for both San Joaquin County and Alameda County
- ◆ Regional planned transportation improvements
- ◆ Regional economic historic data and forecasts
- ◆ Local General Plan development forecasts, as adopted by City Council
- ◆ The community and regional governing agencies

Several development projects, that are currently in construction and final map phases and are consistent with local and regional planning efforts. The SJCOG Travel Demand Model forms the basis of the City of Tracy Travel Demand Model. The Buildout of the San Joaquin County cities would result in increased employment in the County and subsequently travel patterns would change. The trip distribution for the THSP was calculated based on the City Travel Demand Model for existing, 2035 conditions, and on anticipated buildout year of Phase 1A. Currently and for buildout of Phase 1A, more trips travel to Alameda County. However, the model and the City General Plan indicates a more balanced jobs-to-housing ratio for General Plan buildout within the City compared to existing conditions. Subsequently, more trips would stay in the City and the San Joaquin County area and future trips would divert to the Stockton area. Thus, the change in travel patterns would result in a lower distribution towards the west along I-580. The assumptions for the distribution are based on the adopted SJCOG model and the Tracy TDM which correlates with the Regional Transportation Plan (RTP). The traffic distribution and assignment reflects this forecast accurately. The analysis is deemed complete and accurately identifies the potential project impacts. The City strongly disagrees with the Caltrans statement that less residents will live and work in the City compared to what is presented in the adopted regional and local planning documentation indicated above. The data presented here also indicates that the trend of increased jobs in Tracy is already occurring with the approval of more employment related development in the past few years.

**Response SA3-3:** The Existing Plus Phase 1a conditions analysis evaluates the Project on the existing roadway network because occupancy of the first phase is expected within the near term (next 4-5 years). Cumulative projects are thus not included in Phase 1a conditions. The location of THSP Phase 1a close to I-580 and the Corral Hollow Road Interchange accurately reflects near term conditions. Cordes Ranch traffic, a project currently in construction utilizes Mountain House Parkway interchanges to I-580 and I-205 and Old Schulte Road to the City.

Interim improvements have been identified for Phase 1a conditions to mitigate short term impacts. These improvements are either non TMP, which will be funded by the developer, or partial TMP improvements for which the developer will receive a fee credit. The Phase 1a improvements shall be implemented at the time development thresholds identified in the traffic analysis are triggered. Longer term improvements that would include

cumulative projects, as accounted for in cumulative conditions analysis, with subsequent mitigation and additional roadway improvements.

All approved projects with the City General Plan are included in the Cumulative Conditions analysis for 2035 conditions. The Cumulative Conditions analysis indicates Tracy TMP improvements and also identifies any additional improvements that may be required beyond the TMP improvements. Phase 1A is expected to start construction within the next couple of years and would be fully developed in the next four to five years. This is considered a near term condition. The additional traffic volume demand for approved projects is identified in the cumulative analysis along with funding strategies for roadway infrastructure. In the immediate vicinity, approved major projects include the Ellis and Cordes Ranch Specific Plans. The analysis adequately addresses the roadway infrastructure needs for all approved projects. Thus, the comment stating that approved projects are not analyzed is plainly incorrect.

**Response SA3-4A:** For the level of service (LOS) and vehicle delay analysis, Synchro traffic engineering software was used to evaluate operating conditions (arriving volume versus capacity) at the study intersections. Synchro's unsignalized intersection delay is based on the methods in the 2010 Highway Capacity Manual (HCM). The City and Caltrans uses the 2010 version of the HCM for analysis of intersection operations. Signalized and unsignalized intersection delay is based on the ability of vehicles to progress through the intersection. The HCM LOS and delay analysis methodology does not include queue delay in the calculation, because the queues are a result of the ability of the vehicle to progress. Thus, if a vehicle cannot pass through the intersection, and arrivals continue to occur, the queues will continue to build up. Queue results are indicated on the output sheets from Synchro and then utilized to make recommendation for increased storage, if required. If queues are observed during field visits or in the analysis they will further be evaluated in a separate analysis (i.e., SimTraffic). Also, if the overall intersection delay is unacceptable (LOS E or F), queues will typically exceed the available storage length and are identified as such. Segments within Synchro were modified to obtain turning movement queue demand for concept design purposes, and does not impact intersection levels of service.

The I-580 westbound and eastbound ramp intersections at Corral Hollow Road have low existing traffic volumes; the level of service is acceptable (LOS B or better on the ramp approaches), and queues are negligible. The ramps widen out at the intersections and have de facto turn lanes (i.e., two vehicles can wait side by side to make turns in different directions). Coding the ramps with only one off-ramp lane versus two makes no difference in the analyzed delay or resulting LOS for the intersection. Having the ability to service two cars at the same time does improve operations, and this is then reflected in the analysis, which correlates with queues observed in the field. The following comparison between one versus two lanes on the ramp segment illustrates this result. The Synchro files were changed to reflect the Caltrans comment. The eastbound and westbound off-ramp geometry at Intersections #1 and #2 were updated to reflect the one-lane ramp geometry but also to accurately depict the widening of the roadway geometry under existing conditions.

The results for the changed layout at Intersection #1 are as follows:

- ◆ The changed delay (LOS) for Existing Conditions at Intersection #1: Corral Hollow Road / I-580 eastbound Ramps for Existing Conditions is 3.0 s/veh (A) and 10.5 s/veh (B), for the AM and PM peak hours respectively, compared to 2.9 s/veh(A) and 10.1 (B), for the AM and PM peak hours, respectively.
- ◆ The changed delay (LOS) for the intersection for Existing Plus Phase 1a Conditions is 8.5 s/veh (A) and 290.1 s/veh (F), for the AM and PM peak hours, respectively, compared to 7.9 s/veh (A) and 280.7 (F) for the AM and PM peak hours, respectively, as in the Draft SEIR.
- ◆ The analysis results indicate that no additional impacts are identified, and thus, no change to the mitigation measures are required at for Intersection #1. The updated analysis shows that the delay and LOS results would have negligible impact from the results identified in the Draft SEIR. It should be noted that the updated results for Intersection #1 are also affected by the change in left-turn signal control to split phasing (See response to comment SA3-7).

The changed results for Intersection #2 are as follows:

- ◆ The changed delay (LOS) for Existing Conditions at Intersection #2: Corral Hollow Road / I-580 westbound Ramps for Existing Conditions is 3.7 s/veh (A) and 1.1 s/veh (A), for the AM and PM peak hours, respectively, compared to 3.6 s/veh (A) and 1.1 s/veh (A), for the AM and PM peak hours, respectively, as stated in the DSEIR
- ◆ The changed delay (LOS) for the intersection for Existing Plus Phase 1a Conditions is 4.3 s/veh (A) and 1.6 s/veh (A), for the AM and PM peak hours, respectively, compared to 4.0 s/veh (A) and 1.6 s/veh (A), for the AM and PM peak hours, respectively, as in the Draft SEIR.

The Draft SEIR previously reported the following delay (LOS) for Intersection #2 in Tables 4.13-16 and 4.13-59, respectively:

- ◆ In Existing Conditions, 3.6 s/veh (A) and 1.1 (A), for the AM and PM peak hours respectively
- ◆ In Existing Plus Phase 1a Conditions, 4.0 s/veh (A) and 1.6 (A) for the AM and PM peak hours, respectively.
- ◆ The analysis results with the changed segment layout indicate that no additional impacts are identified, and thus, no change to the mitigation measures are required at Intersection #2. The updated analysis shows that the delay and LOS results would have a negligible change in operations compared to the results identified in the Draft SEIR. No additional impacts are identified.

**Response SA3-4B:** For the level of service (LOS) and vehicle delay analysis, Synchro traffic engineering software was used to evaluate operating conditions (arriving volume versus capacity) at the study intersections. Synchro's unsignalized intersection delay is based on the methods in the 2010 Highway Capacity Manual (HCM). The City of Tracy and Caltrans use the 2010 version of the HCM for analysis of intersection operations. Signalized and

unsignalized intersection delay is based on the ability of vehicles to progress through the intersection. The HCM LOS and delay analysis methodology does not include queue delay in the calculation, because the queues are a result of the ability of the vehicle to progress. Thus, if a vehicle cannot pass through the intersection, and arrivals continue to occur, the queues will continue to build up. Queue results are indicated on the output sheets from Synchro and then utilized to make recommendation for increased storage, if required. If queues are observed during field visits or in the analysis, they will further be evaluated in a separate analysis i.e. SimTraffic. Also, if the overall intersection delay is unacceptable (LOS E or F), queues will typically exceed the available storage length and are identified as such.

In the case of the I-580 westbound and eastbound ramp approaches at Mountain House Parkway (Patterson Pass Road), existing volumes are low and the LOS at the approaches are acceptable; therefore, the queued vehicles are not considered. Furthermore, at the ramp terminals, the roadway geometry widens to allow two vehicles to progress from the limit line side-by-side, which improves capacity at the intersection. The eastbound and westbound off-ramp geometry at Intersections #13 and #14 has been revised to accurately reflect the one-lane ramp geometry and also to accurately analyze the widening of the roadway geometry in existing conditions.

The results of the analysis are as follows:

For Intersection #13 (Mountain House Parkway/I-580):

- ◆ The changed delay (LOS) for Existing Conditions Intersection #13: Mountain House Parkway / I-580 eastbound ramps for is 3.9 s/veh (A) and 62.6 s/veh (F), for the AM and PM peak hours respectively.
- ◆ The changed delay (LOS) for the intersection for Existing Plus Phase 1a Conditions increases to 4.3 s/veh (A) and 101.3 s/veh (F), for the AM and PM peak hours, respectively.

The Draft SEIR reported the following delay (LOS) for Intersection #13 in Tables 4.13-16 and 4.13-59, respectively:

- ◆ In Existing Conditions, 1.3 s/veh (A) and 59.3 (F), for the AM and PM peak hours respectively
- ◆ In Existing Plus Phase 1a Conditions, 3.7 s/veh (A) and 96.9 (F) for the AM and PM peak hours, respectively.

The results for Intersection #14 are therefore as follows:

- ◆ The changed delay (LOS) for Existing Conditions Intersection #14: Mountain House Parkway / I-580 westbound ramps is 10.1 s/veh (B) and 1.7 s/veh (A), for the AM and PM peak hours respectively.
- ◆ The changed delay (LOS) for the intersection for Existing Plus Phase 1a Conditions is 11.3 s/veh (B) and 2.5 s/veh (A), for the AM and PM peak hours, respectively.

The Draft SEIR reported the following delay (LOS) for Intersection #14 in Tables 4.13-16 and 4.13-59, respectively:

- ◆ In Existing Conditions, 2.1 s/veh (A) and 1.6 (A), for the AM and PM peak hours respectively
- ◆ In Existing Plus Phase 1a Conditions, 9.9 s/veh (A) and 2.3 (A) for the AM and PM peak hours, respectively.
- ◆ The updated analysis shows that the delay and LOS results would have a negligible change compared the operations identified in the Draft SEIR. No additional impacts are identified.

**Response SA3-5:** Coding these off-ramps with only one lane makes no difference in the analyzed delay or resulting level of service (LOS). The following explanation of the methodology applied justifies why:

- ◆ Synchro traffic engineering software evaluates operating conditions (arriving volume versus capacity) at the study intersections. Synchro's unsignalized intersection delay is based on the methods in the 2010 Highway Capacity Manual (HCM), which are used by the City and for the analysis of intersection operations.
- ◆ Signalized and unsignalized intersection delay is based on the ability of vehicles to progress through the intersection. The HCM LOS and delay analysis methodology does not include queue delay in the calculation because the queues are a result of the ability of the vehicle to progress. Thus, if a vehicle cannot pass through the intersection, and arrivals continue to occur, the queues will continue to build up.
- ◆ Queue results are indicated on the output sheets from Synchro, then utilized to make recommendation for increased storage, if required. If queues are observed during field visits or in the analysis they will further be evaluated in a separate analysis i.e. SimTraffic. Also, if the overall intersection delay is unacceptable (LOS E or F), queues will typically exceed the available storage length and are identified as such.

The analysis results will be updated to include the correct lane configurations (one through lane northbound) in the AM peak hour.

The results for Intersection #13 (Corral Hollow Road/I-580) are as follows:

- ◆ The delay (LOS) for Intersection #2: Corral Hollow Road / I-580 westbound Ramps for Existing Conditions is 3.7 s/veh (A) and 1.1 s/veh (A), for the AM and PM peak hours respectively.
- ◆ The delay (LOS) for the intersection for Existing Plus Phase 1a Conditions is 4.3 s/veh (A) and 1.6 s/veh (A), for the AM and PM peak hours, respectively.
- ◆ The resulting delay (LOS) for the intersection for Existing Plus Project 2035 Conditions is 7942.1 s/veh (F) and 238.9 s/veh (F), for the AM and PM peak hours, respectively.

The Draft SEIR previously reported the following delay (LOS) for Intersection #2 in Tables 4.13-16, 4.13-59 and 4.13-19, respectively:

- ◆ In Existing Conditions, 3.6 s/veh (A) and 1.1 (A), for the AM and PM peak hours respectively
- ◆ In Existing Plus Phase 1a Conditions, 4.0 s/veh (A) and 1.6 (A) for the AM and PM peak hours
- ◆ In Existing Plus Project 2035 Conditions, the LOS in F in both the AM and PM peak hours.
- ◆ The updated analysis shows that the delay and LOS results would have a negligible changed compared to the Draft SEIR results. No additional impacts are identified, and thus, no change to the mitigation measures are required.

**Response SA3-6:** Peak Hour Factor (PHF) is a factor that is used in the algorithms to calculate delay and adjust traffic volumes fluctuations (expressed in 15 minute intervals) over the course of the peak hour analyzed. If volumes are consistently the same during each 15 minute increment over the hour, the PHF is at or close to 1. If traffic volumes during one 15 minute interval is high and the others are lower, the PHF decreases. Urban conditions and congested operating conditions are typically characterized by a higher PHF, closer to 1. Many agencies utilizes a PHF of 1 for cumulative analysis, including VTA, SFMTA, and Alameda CTC. The City of Tracy TMP has adopted the use of a Peak Hour Factor 1.0 (PHF) for all future conditions in their TMP, a policy document. As traffic grows in the future, the peak hours are expected to spread out (e.g., from 5-6 AM to 5-9 AM) as hourly volumes will be close to capacity and very consistent when measured over 15 minute intervals over the peak hour. This phenomenon is already occurring on the I-205 freeway as the peak hours are spread out over a longer morning period (e.g. 5-9 AM) and afternoon period. Using existing PHF values for future conditions would overestimate the demand for capacity. For the THSP future conditions the PHF is projected to be at or close to 1.0, the LOS, delays, and queues are not underestimated. Using the existing PHF for cumulative conditions would result in an overestimation of required improvements, and would be inconsistent with the City of Tracy TMP and TIF.

**Response SA3-7:** Installation of signal control at intersections are governed by the 2014 California Manual of Uniform Control Devices (CA MUTCD) which allows for permissive phasing which was used in the Draft SEIR analysis. The phasing was however changed per Caltrans request to split phase; only one approach will have a green signal display while other approaches have a red signal display.

The results, when implementing split phased signal timing indicate that the intersections would continue to operate at acceptable LOS. The resulting delay (LOS) for Intersection #1: Corral Hollow Road / I-580 eastbound Ramps are as follows:

- ◆ for Existing Plus Phase 1A Mitigations, 7.4 s/veh (A) and 15.3 s/veh (B), for the AM and PM peak hours, respectively

The Draft SEIR previously reported the following delay (LOS) for Intersection #1 in Tables 4.13-16 and 4.13-59, respectively:

- ◆ for Existing Plus Phase 1A Mitigations, 6.6 s/veh (A) and 25.2 s/veh (C), for the AM and PM peak hours, respectively

The updated analysis shows that the delay and LOS results would not result in any impacts and that the results are consistent with the Draft SEIR results.

**Response SA3-8:** The updated Synchro files will be provided to Caltrans.

**Response SA3-9:** The Commenter notes that Phase 1a (near term) trip distribution percentage to I-580 is higher compared to 2035 and Buildout conditions. This is an accurate statement, and not a reflection of inaccuracy in the calculations. In the near term, less jobs are available in Tracy and San Joaquin County. As a result of this assumption, the traffic distributes onto I-580 and the traffic distributes into I-580. As the City and the County develop and local jobs increase, the road network in Tracy will also expand, additional interchanges constructed, and less traffic will distribute to I-580 along Corral Hollow Road. Spine Road will have been extended to the future Lammers Road as the THSP builds out. Long -term demand will decrease on the southbound approach of Spine Road to Corral Hollow Road. The General Plan Buildout jobs-to-housing balance within the City of Tracy and the THSP results in changed travel patterns and more trips having origins and destinations within Tracy and within the THSP. The change in THSP traffic volumes between Phase 1a, 2035 and Project Buildout indicates substantiates the change. Within the Project, the development of mixed land uses between Phase 1a, 2035 and Buildout also changes internal reductions and travel patterns. The Project is expected to be implemented over the life span of the General Plan. The analysis accurately reflects this anticipated change in development and distribution of traffic and accurately reflects future conditions, as adopted in the City of Tracy Citywide Roadway and Transportation Master Plan. The shift in the jobs-to-housing to accommodate more jobs will result in more trips having origins and destinations within Tracy and instead traveling north on Lammers road and Corral Hollow Road. In addition, the construction of Lammers Road and the Lammers Road interchange with I-580 will result in traffic traveling north-west on Spine Road. Note that Spine Road is not connected to Lammers Road for Phase 1a conditions. The diversion of Project Phase 1a trips away from I-580 as the City of Tracy road network and land uses areas expanded and more trips stay local, is consistent with the General Plan. This is clearly reflected in the analysis.

**Response SA3-10A:** Table 4.13-27 correctly refers to the widening of the Corral Hollow Road overpass over I-580, as indicated in the City TMP, addition assumes a widened bridge/new bridge to accommodate a southbound left -turn pocket and a northbound left -turn pocket for the I-580 eastbound and westbound ramps, respectively. The addition of a southbound left and a northbound left are continuous across the bridge and presents a “trap lane” in both directions. Widening of the bridge to four lanes is included in the City TMP and identified in the Draft SEIR. No additional widening would be required. This improvements is funded through the City TMP and City Impact Fee Program. The corresponding Synchro files correctly show this lane configuration and thus, does not affect the analysis results. The signal timing changes made to the analysis indicated in Comment SA3-7 do

affect the intersection delay and LOS but it continues to operate at acceptable LOS (see Response to Comment SA3-7). The two dedicated off-ramp lanes on eastbound and westbound I-580 were incorrectly coded and updated to reflect only one off-ramp lane. This change does not affect the intersection delay and LOS result because the ramp terminus would still be widened to accommodate the intersection approach lanes shown in the Synchro files for the respective scenarios.

**Response SA3-10B:** The proposed mitigations in the Draft SEIR are accurate and consistent with the geometric/lane configurations in the Synchro analysis. The analysis in the Draft SEIR and the City TMP indicates that the ramp intersections at the Corral Hollow Road/I-580 interchange have specific movement LOS worse than D as stated by Caltrans. However, the LOS D on these individual movements does not affect queuing adversely and the overall LOS C standard for Caltrans is maintained with the proposed mitigation in Table 4.13-20. Queuing is reported in the individual Synchro output sheets in the Appendix to the Draft SEIR. Signals at the ramp intersections will be coordinated per Caltrans standard requirements.

**Response SA3-10C:** Table 4.13-27 correctly refers to the widening of the Corral Hollow Road overpass, as indicated in the TMP, as the addition of a southbound left turn pocket and a northbound left turn pocket for the I-580 eastbound and westbound ramps, respectively. The addition of a southbound left and a northbound left are continuous across the bridge and presents a “trap lane” in both directions. Widening of the bridge to four lanes will be required. The corresponding Synchro files correctly show this lane configuration. The signal timing changes made to the analysis indicated in Comment SA3- do affect the intersection delay & LOS but it continues to operate at an acceptable LOS (see Response to Comment SA3-7). The two dedicated off-ramp lanes on eastbound and westbound I-580 were incorrectly coded and updated to reflect only one off-ramp lane. This change does not affect the intersection delay & LOS result as the ramp intersection would be widened to accommodate the intersection approach lanes shown in the Synchro files for the respective scenarios. The proposed mitigations are accurate and consistent with the proposed geometric/lane configurations in the Synchro analysis. The indicates specifically for the Corral Hollow Road ramps in the TMP and beyond TMP lane configurations in Table 4.13-27 have movement delay or LOS results worse than LOS D. The queues at these movements do lower not impact overall operations and the overall LOS standard Caltrans require is met.

**Response SA3-11:** The westbound loop onramp is coded correctly as being controlled and not free. The controlled movement would provide improved opportunities for bicycles and pedestrians to cross the bridge and improve mobility for non-automotive modes of transport, consistent with City General Plan Policies and Caltrans Policies.

**Response SA3-12:** Appendix H in the Draft SEIR indicates a conceptual layout of the interchange geometry to accommodate the westbound loop-on ramp and receiving lanes at Corral Hollow Road and I-580. This layout would result in relocating the westbound ramp terminal farther to

the north on Corral Hollow Road. The comment from Caltrans has been adhered to in the analysis.

**Response SA3-13:** The Draft SEIR addresses STAA and other truck routes in detail for the internal Project road network and the City road network in Section 4.13-2. Furthermore, the Tracy TMP does not identify Corral Hollow Road north of Linne Road as an STAA truck route. Between Linne Road and the I-580 interchange it is a STAA route in the TMP. During the design review process and future submittal of tentative maps, truck turning geometric requirements and maneuvers will be adhered to per the City and State (Caltrans) requirements. The Draft SEIR adequately addresses truck and STAA traffic and roadway design requirements to accommodate heavy vehicle traffic. No further analysis is required.

**Response SA3-14:** The Lammers Road interchange at I-580 is a key access location in the future City of Tracy road network. This interchange was previously identified in the 1999 Transportation City of Tracy Master Plan and is again included in the General Plan and in the 2012 City of Tracy Transportation Master Plan. The interchange is also funded in the City TIF program. The City TIF is an AB 1600 mechanism through which the City collects fair share traffic impact fees from all future development to provide funding for expansion and improvements of the existing roadway system to maintain acceptable traffic operating conditions. The Lammers Road interchange is a new interchange and will be constructed to maintain the required City and Caltrans operating conditions. Maintaining acceptable operating conditions on the regional road network is also a requirement of Caltrans and SJCOG. The City TIF includes a collection of funds from all future Citywide development and other grant funding sources to fully fund the construction of the new Lammers Road/I-580 interchange. The Lammers Road interchange is thus an acceptable and feasible mitigation for the Project as identified in the Draft SEIR. If the Lammers Road interchange is not constructed, the Applicant shall improve the Corral Hollow Road interchange to beyond what is identified in the TMP. The traffic analysis indicates the additional improvement that will be needed and installed, refer to Section 3.13, Mitigation 4.13-5a and 4.13-6a.

**Response SA3-15:** Additional analyses has been performed to accommodate and further clarify Caltrans questions and concerns. The additional analysis includes protected signal phasing at the interchange ramp instead of split phasing. Synchro files have been updated and resubmitted to Caltrans for further review. The levels of service at the intersection are indicated in Response SA3-4A and -4B. No additional impacts are identified, and no additional improvements are needed. Thus, the Draft SEIR analysis, inclusive of the responses to comments and revisions included herein, are sufficient. The City strongly disagrees with Caltrans that this traffic analysis is inadequate to evaluate the impacts of the project on the roadway system. The analysis has been purposely extensive and all-inclusive of multiple scenarios through implementation and full occupation of Specific Plan buildout.

\*



Edmund G. Brown Jr.  
Governor

## STATE OF CALIFORNIA

Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Ken Alex  
Director

February 6, 2015

RECEIVED

FEB 09 2015

CITY OF TRACY

Bill Dean  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Subject: Tracy Hills Specific Plan Amendment Project  
SCH#: 2013102053

Dear Bill Dean:

SA4-1

The State Clearinghouse submitted the above named Supplemental EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on February 5, 2015, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

**Document Details Report**  
**State Clearinghouse Data Base**

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**SCH#** 2013102053  
**Project Title** Tracy Hills Specific Plan Amendment Project  
**Lead Agency** Tracy, City of

---

**Type** SIR Supplemental EIR  
**Description** The Project includes a comprehensive update to the previously adopted 1998 Tracy Hills Specific Plan ("THSP"). The 1998 THSP established land use and development standards for approximately 2,732 acres located near the existing interchange around Corral Hollow Road and the proposed Lammers Road interchange on I-580. The current THSP Project Area consists of the incorporated portion of the 1998 THSP, which is the approximately 2,732 acres described here (hereinafter referred to as the "THSP Project Area" or the "Project").

---

**Lead Agency Contact**

<b>Name</b>	Bill Dean		
<b>Agency</b>	City of Tracy		
<b>Phone</b>	209 831 6400		<b>Fax</b>
<b>email</b>			
<b>Address</b>	333 Civic Center Plaza		
<b>City</b>	Tracy	<b>State</b> CA	<b>Zip</b> 95376

---

**Project Location**

<b>County</b>	San Joaquin		
<b>City</b>	Tracy		
<b>Region</b>			
<b>Lat / Long</b>	37° 40' 53.59" N / 121° 28' 40.28" W		
<b>Cross Streets</b>	Corral Hollow Road, Lammers Road, and I-580		
<b>Parcel No.</b>	Multiple		
<b>Township</b>		<b>Range</b>	<b>Section</b>
			<b>Base</b>

---

**Proximity to:**

<b>Highways</b>	I-580
<b>Airports</b>	Tracy Municipal Airport
<b>Railways</b>	Union Pacific
<b>Waterways</b>	Delta Mendota Canal, Corral Hollow Creek
<b>Schools</b>	Anthony Traina ES
<b>Land Use</b>	GPD: Residential Low, Residential Medium, Residential High, Commercial; and Village Center Open Space; Primarily utilized for agricultural and grazing purposes; Aggregate Z: Tracy Hills Specific Plan

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**Project Issues** Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Growth Inducing; Landuse; Cumulative Effects; Other Issues

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**Reviewing Agencies** Resources Agency; Department of Fish and Wildlife, Region 2; Delta Protection Commission; Department of Parks and Recreation; Office of Emergency Services, California; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 10; Department of Housing and Community Development; Air Resources Board, Transportation Projects; Regional Water Quality Control Bd., Region 5 (Sacramento); Department of Toxic Substances Control; Native American Heritage Commission; Public Utilities Commission; Delta Stewardship Council

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**Date Received** 12/23/2014      **Start of Review** 12/23/2014      **End of Review** 02/05/2015

Letter SA4

State of California, Governor's Office of Planning and Research

State Clearinghouse and Planning Unit

Scott Morgan

Director, State Clearinghouse

February 6, 2015

**Response SA4-1:** This is not a comment letter, but an acknowledgement from the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit, (SCH) that the City compiled with the State Clearinghouse review requirements for draft environmental documents pursuant to the requirements of CEQA.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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Edmund G. Brown Jr.  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Ken Alex  
Director

February 10, 2015

Bill Dean  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Subject: Tracy Hills Specific Plan Amendment Project  
SCH#: 2013102053

Dear Bill Dean:

SA5-1

The enclosed comment(s) on your Supplemental EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on February 5, 2015. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2013102053) when contacting this office.

Sincerely,

Scott Morgan  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

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FEB 12 2015  
CITY OF TRACY



Letter SA5

State of California, Governor's Office of Planning and Research

State Clearinghouse and Planning Unit

Scott Morgan

Director, State Clearinghouse

February 10, 2015

**Response SA5-1:** This is not a comment letter, but an acknowledgement from the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit (SCH) that additional comments were received after the close of the state review period on February 5th, 2015. These additional comments are responded to herein.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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STATE OF CALIFORNIA  
**GOVERNOR'S OFFICE of PLANNING AND RESEARCH**  
 STATE CLEARINGHOUSE AND PLANNING UNIT



EDMUND G. BROWN JR.  
 GOVERNOR

KEN ALEX  
 DIRECTOR

March 4, 2015

Bill Dean  
 City of Tracy  
 333 Civic Center Plaza  
 Tracy, CA 95376

Subject: Tracy Hills Specific Plan Amendment Project  
 SCH#: 2013102053

Dear Bill Dean:

SA6-1

The State Clearinghouse submitted the above named Supplemental EIR to selected state agencies for review. The review period closed on March 3, 2015, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan  
 Director, State Clearinghouse

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MAR 09 2015

CITY OF TRACY

**Document Details Report**  
**State Clearinghouse Data Base**

**SCH#** 2013102053  
**Project Title** Tracy Hills Specific Plan Amendment Project  
**Lead Agency** Tracy, City of

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**Type** SIR Supplemental EIR  
**Description** Note: Extended Review per lead

The Project includes a comprehensive update to the previously adopted 1998 Tracy Hills Specific Plan ("THSP"). The 1998 THSP established land use and development standards for approximately 2,732 acres located near the existing interchange around Corral Hollow Road and the proposed Lammers Road interchange on I-580. The current THSP Project Area consists of the incorporated portion of the 1998 THSP, which is the approximately 2,732 acres described here (hereinafter referred to as the "THSP Project Area" or the "Project").

---

**Lead Agency Contact**

**Name** Bill Dean  
**Agency** City of Tracy  
**Phone** 209 831 6400  
**email**  
**Address** 333 Civic Center Plaza  
**City** Tracy **Fax**  
**State** CA **Zip** 95376

---

**Project Location**

**County** San Joaquin  
**City** Tracy  
**Region**  
**Lat / Long** 37° 40' 53.59" N / 121° 28' 40.28" W  
**Cross Streets** Corral Hollow Road, Lammers Road, and I-580  
**Parcel No.** Multiple  
**Township** **Range** **Section** **Base**

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**Proximity to:**

**Highways** I-580  
**Airports** Tracy Municipal Airport  
**Railways** Union Pacific  
**Waterways** Delta Mendota Canal, Corral Hollow Creek  
**Schools** Anthony Traina ES  
**Land Use** GPD: Residential Low, Residential Medium, Residential High, Commercial; and Village Center  
Open Space; Primarily utilized for agricultural and grazing purposes; Aggregate  
Z: Tracy Hills Specific Plan

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**Project Issues** Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Growth Inducing; Landuse; Cumulative Effects; Other Issues

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**Reviewing Agencies** Resources Agency; Department of Fish and Wildlife, Region 2; Delta Protection Commission; Department of Parks and Recreation; Office of Emergency Services, California; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 10; Department of Housing and Community Development; Air Resources Board, Transportation Projects; Regional Water Quality Control Bd., Region 5 (Sacramento); Department of Toxic Substances Control; Native American Heritage Commission; Public Utilities Commission; Delta Stewardship Council

Document Details Report  
State Clearinghouse Data Base

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*Date Received* 12/23/2014    *Start of Review* 12/23/2014    *End of Review* 03/03/2015



Letter SA6

State of California, Governor's Office of Planning and Research

State Clearinghouse and Planning Unit

Scott Morgan

Director, State Clearinghouse

March 4, 2015

**Response SA6-1:** This is not a comment letter, but an acknowledgement from the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit (SCH) that additional comments were received after the close of the state review period on February 5th, 2015. These additional comments are responded to herein.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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## SAN JOAQUIN COUNCIL OF GOVERNMENTS

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[www.sjcog.org](http://www.sjcog.org)

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CITIES OF  
ESCALON,  
LATHROP,  
LODI,  
MANTECA,  
RIPON,  
STOCKTON,  
TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

October 30, 2014

Mr. Bill Dean

Assistant Director

City of Tracy, Developmental Services Department

333 Civic Center Plaza, Tracy CA 95376

### **Re: ALUC Review - Updated Notice of Preparation– Tracy Hills Specific Plan**

Dear Mr. Dean:

The San Joaquin Council of Governments (SJCOG), acting as the Airport Land Use Commission (ALUC), has reviewed the Updated Notice of Preparation for the Tracy Hills Specific Plan (THSP) Amendment. The project would allow the development of 2,732 acres with up to 5,499 residential dwellings, schools parks, commercial, industrial, and other land uses.

RA1-1 The project site is located within Tracy Municipal Airport's Area of Influence (AIA), and pursuant to the State Aeronautics Act (Public Utilities Code Section 21676), the project is subject to a Consistency Determination by the San Joaquin County ALUC. Upon receipt and review of the Draft Final EIR, the designated ALUC will determine the THSP's consistency with the 2009 Airport Land Use Compatibility Plan.

RA1-2 The ALUC requests that the DEIR contain a complete consistency analysis of the proposed land uses relative to the 2009 ALUCP zones for Tracy Municipal Airport as well an analysis of environmental effects.

In particular, the ALUC wishes to draw attention to an area of the proposed specific plan located along Coral Hollow Road directly south of the Delta-Mendota Canal. The specific plan assigns a zoning designation of M-1-TH Light Industrial to this area. A portion of this area lies in the Inner Approach/Departure Zone and Inner Turning Zone as specified in the 2009 ALUCP for Tracy Municipal Airport. Attachment C to this letter lists the uses specifically prohibited in these zones; in particular all business and personal services, manufacturing, and industrial uses are prohibited in these zones.

RA1-3

Additionally, the California Education Code (Section 17215) requires the California Department of Transportation, Division of Aeronautics, to conduct a site investigation for the acquisition of every proposed public and charter school site within two nautical miles of an existing or planned runway. The Division shall evaluate the compatibility of the site with the California Airport Land Use Planning Handbook, the local airport land use compatibility plan, and other factors prior to making its recommendations to the State Department of Education for use in determining whether state funds can be expended on the school.

Thank you for the opportunity to review and comment on this project. Please forward all documents to this office. If you have any questions please call ALUC staff David Ripperda, at (209) 235-0450, or Kim Anderson at (209) 235-0565. We would be pleased to meet with the city to provide any necessary information, support and guidance.

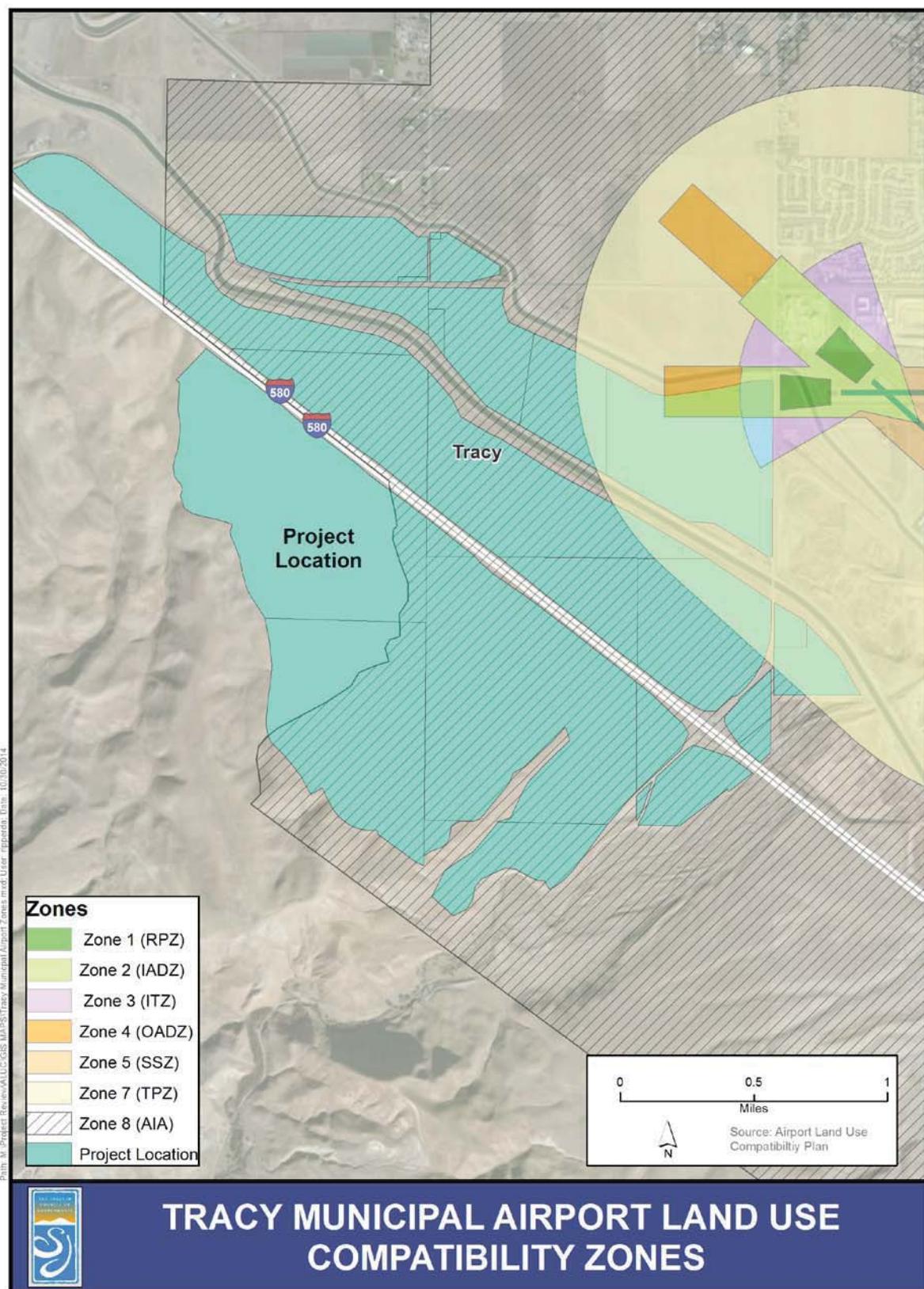
Sincerely,



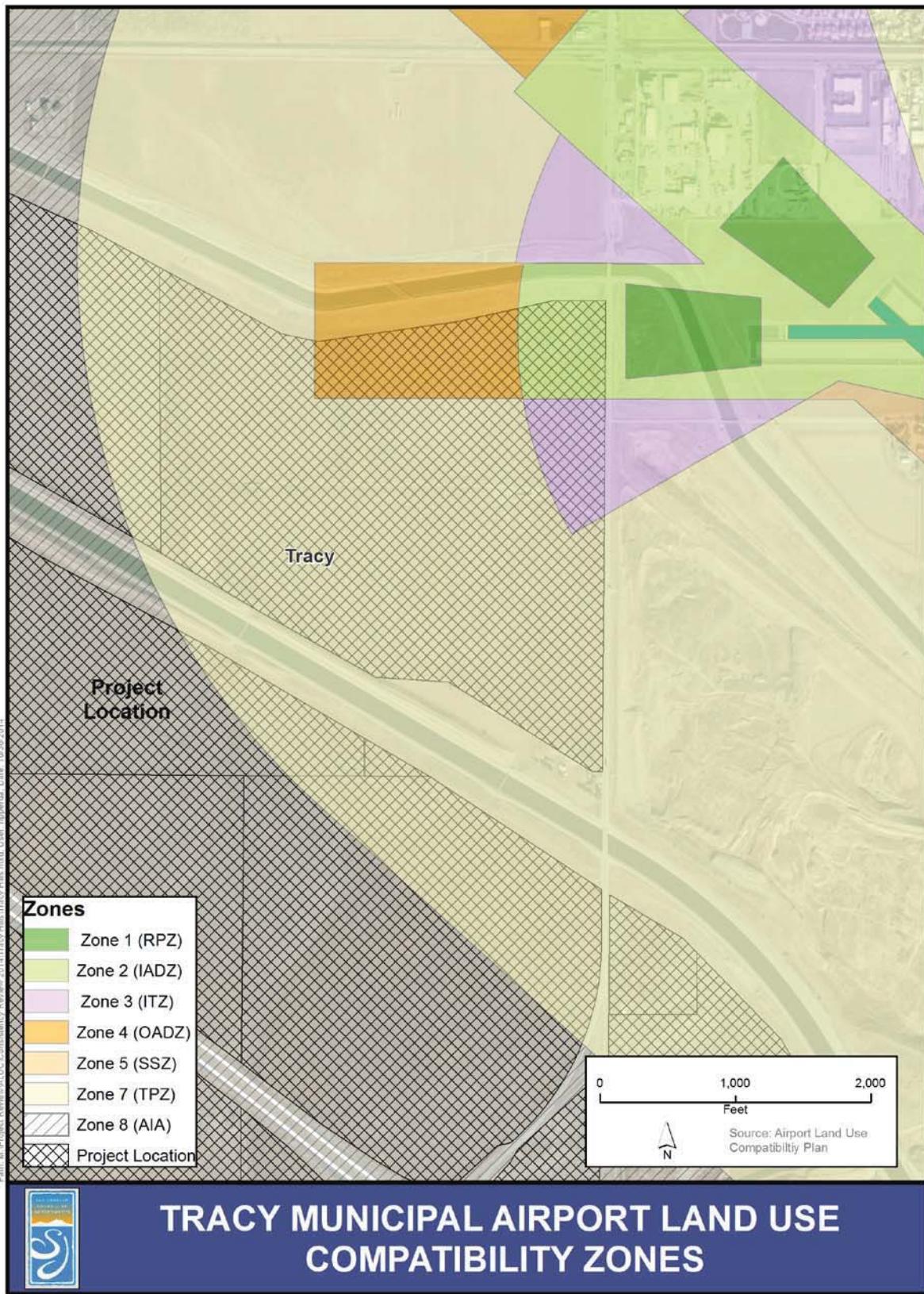
David Ripperda  
SJCOG Regional Planner

Attachments:     Attachment A: Map of Project Location in relation to Tracy Municipal Airport ALUCP Zones  
                    Attachment B: Inset of Project Location Map  
                    Attachment C: Except of 2009 Airport Land Use Plan for Tracy Municipal Airport

Attachment A



Attachment B



Attachment C

**TABLE 3A**  
**Safety Criteria Matrix**

Zone	Maximum Densities/Intensities/Required Open Land			Additional Criteria	
	Dwelling Units per Acre <sup>1</sup>	Maximum Non-residential Intensity <sup>2</sup>	Req'd Open Land <sup>3</sup>	Prohibited Uses <sup>4</sup>	Other Development Conditions <sup>5</sup>
Zone 1 (RPZ)	None	None	All unused	<ul style="list-style-type: none"> <li>• All structures except ones with location set by aeronautical function</li> <li>• Assemblages of people</li> <li>• Public &amp; quasi-public services</li> <li>• Objects exceeding FAR Part 77 height limits</li> <li>• Storage of hazardous materials</li> <li>• Chemicals and allied products &amp; storage</li> <li>• Petroleum refining &amp; storage</li> <li>• Electrical &amp; natural gas generation &amp; switching</li> <li>• Oil &amp; gas extraction</li> <li>• Natural gas &amp; petroleum pipelines<sup>11</sup></li> <li>• Dumps or landfills, other than those consisting entirely of earth &amp; rock.</li> <li>• Hazards to flight<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Avigation easement dedication</li> </ul>
Zone 2 (IADZ)	1 d.u. per 10 acres	50 persons per acre	30%	<ul style="list-style-type: none"> <li>• Residential, except for very low residential</li> <li>• Manufacturing and industrial uses</li> <li>• Chemicals and allied products &amp; storage</li> <li>• Petroleum refining &amp; storage</li> <li>• Rubber &amp; plastics</li> <li>• Passenger terminals &amp; stations</li> <li>• Radio, TV &amp; Telephone centers</li> <li>• Electrical &amp; natural gas generation &amp; switching</li> <li>• Oil &amp; gas extraction</li> <li>• Natural gas &amp; petroleum pipelines<sup>11</sup></li> <li>• Petroleum truck terminals</li> <li>• Businesses &amp; personal services</li> <li>• Hotels, motels, restaurants</li> <li>• Public &amp; quasi-public services</li> <li>• Children's schools, day care centers, libraries</li> <li>• Hospitals, nursing homes</li> <li>• Places of worship</li> <li>• Schools</li> <li>• Recreational uses, athletic fields, playgrounds, &amp; riding stables</li> <li>• Theaters, auditoriums, &amp; stadiums</li> <li>• Dumps or landfills, other than those consisting entirely of earth &amp; rock.</li> <li>• Waterways that create a bird hazard</li> <li>• Hazards to flight<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Avigation easement dedication</li> <li>• Locate structures maximum distance from extended runway centerline</li> <li>• Minimum NLR of 45 dB</li> <li>• residences (including mobile homes) and office buildings<sup>8</sup></li> <li>• Airspace review required for objects &gt; 35 feet tall<sup>9</sup></li> </ul>
Zone 3 (ITZ)	1 d.u. per 5 acres	120 persons per acre	20%	Same as Zone 2	<ul style="list-style-type: none"> <li>• Same as zone 2</li> </ul>
Zone 4 (OADZ)	1 d.u. per 5 acres	180 persons per acre	20%	<ul style="list-style-type: none"> <li>• Children's schools, day care centers, libraries</li> <li>• Hospitals, nursing homes</li> <li>• Bldgs. with &gt;3 aboveground habitable floors</li> <li>• Highly noise-sensitive outdoor non-residential uses<sup>7</sup></li> <li>• Hazards to flight<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Minimum NLR of 25 dB</li> <li>• in residences (including mobile homes) and office buildings<sup>8</sup></li> <li>• Airspace review required for objects &gt;70 feet tall<sup>10</sup></li> </ul>

**TABLE 3A (Continued)**  
**Safety Criteria Matrix**

Zone	Maximum Densities/Intensities/Required Open Land			Additional Criteria	
	Dwelling Units per Acre <sup>1</sup>	Maximum Non-residential Intensity <sup>2</sup>	Req'd Open Land <sup>3</sup>	Prohibited Uses <sup>4</sup>	Other Development Conditions <sup>5</sup>
Zone 5 (SSZ)	1 d.u. per 2 acres	160 persons per acre	25%	Same as Zone 2	Same as Zone 2
Zone 6 (AP)	None	No Limit	No Requirement	• Hazards to flight <sup>6</sup>	• Airspace review required for objects >70 feet tall <sup>10</sup>
Zone 7 (TPZ)	No Limit	450 persons per acre	10%	• Hazards to flight <sup>6</sup> • Outdoor stadiums	• Airspace review required for objects >100 feet tall <sup>10</sup>
Zone 8 (AIA)	No Limit	No Limit	No Requirement	• Hazards to flight <sup>6</sup>	• Airspace review required for objects >100 feet tall <sup>10</sup>

**Notes:**

- 1 Residential development must not contain more than the indicated number of dwelling units (excluding secondary units) per gross acre (d.u./ac). Clustering of units is encouraged. Gross acreage includes the property at issue plus a share of adjacent roads and any adjacent, permanently dedicated, open lands.
- 2 Usage intensity calculations shall include all people (e.g., employees, customers/visitors, etc.) who may be on the property at a single point in time, whether indoors or outside. Multiplier bonus for Special Risk-Reduction Bldg. Design is 1.5 for Zone 2 and 2.0 for Zones 3, 4, 5, and 7. (Appropriate risk reduction measures are specified in the California Code of Regulations, Title 24, Part 2.)
- 3 Open land requirements are intended to be applied with respect to an entire zone. This is typically accomplished as part of a community general plan or a specific plan, but may also apply to large (10 acres or more) development projects.
- 4 The uses listed here are ones that are explicitly prohibited regardless of whether they meet the intensity criteria. In addition to these explicitly prohibited uses, other uses will normally not be permitted in the respective compatibility zones because they do not meet the usage intensity criteria.
- 5 As part of certain real estate transactions involving residential property within any compatibility zone (that is, anywhere within an airport influence area), information regarding airport proximity and the existence of aircraft overflights must be disclosed. This requirement is set by state law. Easement dedication and deed notice requirements indicated for specific compatibility zones apply only to new development and to reuse if discretionary approval is required.
- 6 Hazards to flight include physical (e.g., tall objects), visual, and electronic forms of interference with the safety of aircraft operations. Land use development that may cause the attraction of birds to increase is also prohibited.
- 7 Examples of highly noise-sensitive outdoor nonresidential uses that should be prohibited include amphitheaters and drive-in theaters. Caution should be exercised with respect to uses such as poultry farms and nature preserves.
8. NLR = Noise Level Reduction, the outside-to-inside sound level attenuation that the structure provides.
- 9 Objects up to 35 feet in height are permitted. However, the Federal Aviation Administration may require marking and lighting of certain objects.
- 10 This height criterion is for general guidance. Shorter objects normally will not be airspace obstructions unless situated at a ground elevation well above that of the airport. Taller objects may be acceptable if determined not to be obstructions.
- 11 Natural gas & petroleum pipelines less than 36 inches below the surface.

RPZ Runway Protection Zone  
 IADZ Inner Approach/Departure Zone  
 ITZ Inner Turning Zone  
 OADZ Outer Approach/Departure Zone

SSZ - Sideline Safety Zone  
 AP - Airport Property  
 TPZ - Traffic Pattern Zone  
 AIA - Airport Influence Area

## RESPONSES TO COMMENT LETTERS FROM REGIONAL AGENCIES

### Letter RA1

San Joaquin Council of Governments  
David Ripperda  
SJCOG Regional Planner  
October 30, 2014

**Response RA1-1:** Comment noted.

**Response RA1-2:** Pages 4.10-14 to 4.10-17 of Section 4.10, Land Use, of the DSEIR address the proposed Project in relationship with the Tracy Municipal Airport. The DSEIR finds that the proposed locations of THSP Project land uses in the Outer Approach/Departure Zone 4 and Traffic Pattern Zone 7 are in conformance with the Airport Land Use Commission's (ALUC) Airport Land Use Compatibility Plan (ALUCP). The DSEIR identifies a conflict of allowable land uses within the M-1 Light Industrial designation, the Inner Approach/Departure Zone 2, and the Inner Turning Zone 3; this is identified as a potentially significant impact. Because of the potential conflict with the San Joaquin Airport Land Use Compatibility Plan or the ALUCP, Mitigation Measure 4.10-1 requires that all tentative and final maps within the THSP Project Area conform to the provisions of the 2009 ALUCP (or the ALUCP in effect at the time of Project submissions) and that all proposed schools within a two-mile radius of the airport runway must obtain approval from the State Department of Transportation Division of Aeronautics. The DSEIR concludes that implementation of this mitigation measure would ensure that potential impacts regarding compatibility with the Tracy Municipal Airport are mitigated to a less than significant level.

**Response RA1-3:** As noted in the response to Comment RA1-2, Mitigation Measure 4.10-1 identifies that all proposed schools within a two-mile radius of the airport runway must obtain approval from the State Department of Transportation Division of Aeronautics

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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## SAN JOAQUIN COUNCIL OF GOVERNMENTS

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[www.sjcog.org](http://www.sjcog.org)

October 30, 2014

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CITIES OF

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LATHROP,

LODI,

MANTECA,

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STOCKTON,

TRACY,

AND

THE COUNTY OF  
SAN JOAQUIN

Mr. Bill Dean

Assistant Director

City of Tracy, Developmental Services Department

333 Civic Center Plaza, Tracy CA 95376

### **Re: Updated Notice of Preparation (NOP) – Tracy Hills Specific Plan**

Dear Mr. Dean:

Thank you for the opportunity to comment on the NOP for the Tracy Hills Specific Plan (THSP) project. As the County's designated Regional Transportation Planning Agency (RTPA), the Congestion Management Agency (CMA), and the Metropolitan Planning Organization (MPO), the San Joaquin Council of Governments (SJCOC) has reviewed the above-referenced document.

State Govt. Code, Section 65088 – 65089.10, the County's Measure K Renewal Ordinance, and federal congestion management process planning requirements require maintaining a Regional Congestion Management Program/Process. The primary purpose of the RCMP is to monitor the cumulative transportation impacts of growth of the regional roadway system, establish operational standards, identify deficient regional roadways, develop plans to mitigate or correct the deficiencies, and to facilitate travel demand management and operational preservation strategies for existing and planned development.

On November 15, 2012 the SJCOC Board of Directors adopted the 2012 update to the Regional Congestion Management Program. Chapter 6 of the 2012 RCMP describes the updated Land Use Analysis Program, including Tier 1 and Tier 2 review/analysis requirements, analysis methods, impact significance criteria, and mitigation. The program plan is available at the following link: <http://www.sjcog-rcmp.org/>.

**RA2-1**

The trip generation for this project is expected to trigger a "Tier 2 Review". A Tier 2 review will entail addressing the Tier 1 consistency review as well as a quantitative analysis of RCMP impacts – project specific and cumulative plus project conditions. Please refer to Chapter 6 of the 2012 RCMP for details regarding analysis/mitigation requirements for land development projects.

**RA2-1**  
**Cont.**

The DEIR should contain a section that specifically addresses requirements and standards of the RCMP, which includes the Regional Travel Demand Management Action Plan.

**RA2-2**

Travel Demand Management

Travel demand management is an integral part of San Joaquin's congestion management program. To show consistency with the Regional Travel Demand Management Plan, the DEIR should include a detailed look at options that will provide support for trip reduction planning.

The THSP should be conditioned to ensure that, as development plans are processed, they include provisions to promote participation in San Joaquin COG's Commute Connection program ([www.commuteconnection.com](http://www.commuteconnection.com)). Commute Connection is the regional rideshare program operated by the San Joaquin Council of Governments whose mission is to reduce traffic congestion and improve air quality. The program is designed to help commuters make the transition from driving alone to a convenient ridesharing option such as carpooling, vanpooling, bicycling/walking or riding transit. The program serves San Joaquin, Stanislaus, and Merced Counties. The program includes free services such as commuter ride-matching, Guaranteed Ride Home and Employer Services.

The following development types require coordination with Commute Connection services/programs:

- All business or industrial parks
- All event centers or stadiums
- Schools with greater than 150 students
- All commercial, industrial, and retail offices with greater than 50 full-time equivalent employees

As a means of mitigating any potential significant effect regarding a conflict with adopted policies, plans, or programs supporting alternative transportation SJCOG requests that measures be added that will ensure that future development per the THSP will include provisions for alternative travel and that the land uses listed above will participate in SJCOG's Commute Connection Program.

**RA2-3**

Surface Transportation Assistance Act (STAA) Terminal Access Routes

The proposed project includes a variety on non-residential development that may depend on large trucks for the movement of goods. If these operations will depend on STAA rated trucks to serve their needs the roadways must be designed and built to accommodate STAA rated trucks.

**RA2-4**

Regional Transportation Impact Fees as Mitigation

For projects subject to RCMP review, the Regional Traffic Impact Fee (RTIF) program establishes a specific mitigation fee program relative to cumulative regional impacts. To satisfy these requirements, project applicants are required to pay their fair share contribution into the RTIF program. These "fair share" contributions must be committed to funding priorities established in the CIP of the RCMP, the RTP, or the Federal TIP.

However, to better inform the public and stakeholders, the environmental document's mitigation language must convey that payment into the RTIF program does not guarantee that the lead agency (local agency) will necessarily spend these developer fees on the identified mitigation improvement. SJCOG will administer the RCMP/RTIF

**RA2-4** Mitigation Monitoring Program to track the “actual” funding/implementation of identified mitigation improvements (i.e., conditions of approval) identified as part of environmental documents. SJCOG will periodically report each local agency’s implementation progress of identified mitigation measures as part of mandated RCMP and RTIF program compliance hearings to the SJCOG Board. SJCOG will also provide this status update mitigation improvement information to local agencies as part SJCOG’s state and federal flexible funding cycle “call for projects”.

## **RA2-5** Consistency with other Regional Plans

As stipulated within the RCMP Project Review Criteria in Chapter 6 of the 2012 RCMP, the DEIR is required to show consistency with all applicable regional transportation planning documents, such as:

- Regional Transportation Demand Management Plan
- Park-and-Ride Master Plan
- Regional Bicycle, Pedestrian, and Safe Routes to School Master Plan
- Regional Smart Growth Transit Oriented Development Plan
- Regional Transit Systems Plan
- Regional Transportation Impact Fee Program
- Regional Transportation Plan
- Interregional STAA Study for I-5 and SR-99

SJCOG staff is available to assist with project specific guidance and narrowing the scope of the relevant regional plans that need to be included within the EIR.

**RA2-6** Lastly, if any new principal arterials will be built to serve this planning area, Govt. Code Section 65089 requires that the arterial(s) be designated as part of the state RCMP system.

Thank you for the opportunity to review and comment on this project. Please forward all documents to this office. If you have any questions please call RCMP staff David Ripperda, at (209) 235-0450, or Kim Anderson at (209) 235-0565. We would be pleased to meet with the city to provide any necessary information, support and guidance.

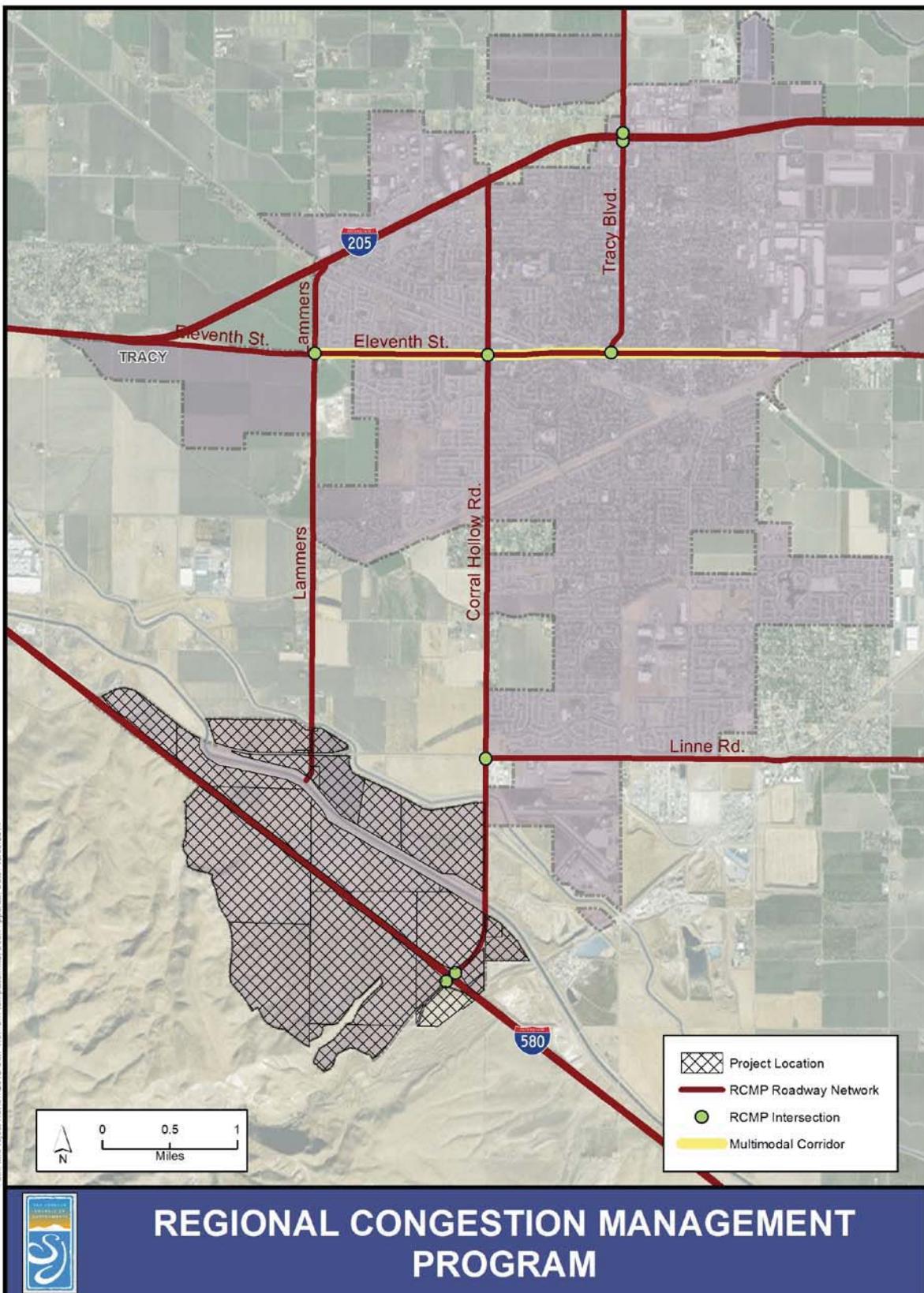
Sincerely,

David Kipen

David Ripperda  
SJCOC Regional Planner

Attachments: Attachment A: Project Location in relation to 2012 RCMP Network  
Attachment B: 2012 RCMP, Chapter 6 Land Use Analysis Program

## Attachment A



# **CHAPTER 6**

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## **Land Use Impact Analysis Program**

## CHAPTER 6 LAND USE IMPACT ANALYSIS PROGRAM

### 6.1 INTRODUCTION

A CMP must contain a program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems. The program must generally be able to estimate the costs associated with mitigating those impacts, as well as provide credits for local public and private contributions to improving regional transportation systems. The program described in this chapter meets this requirement. To comply with this state mandate, SJCOG and its member agencies have integrated a “regional layer” of review within the CEQA review process. Extending the scope of CEQA EIR traffic studies to include impacts to the CMP system has been considered by all the State’s CMA’s as the most expeditious way to implement the CMP Land Use Analysis element.

The legislative intent of the CMP Land Use Analysis Program (LUAP) is to improve the linkage between local land-use decisions with regional transportation facility improvement needs; to better address the impacts of development in one community on another; and, to promote information sharing between local governments when the decisions made by one jurisdiction have an impact on another. As part of the annual Measure K and biennial state CMP reporting requirements, SJCOG is required to evaluate the efforts made by each local jurisdiction within San Joaquin County to ensure compliance with this state program statute (see Chapter 10). Hence, SJCOG must evaluate the efforts made by each jurisdiction to ensure that proposed land use projects comply with the established RCMP Land Use Analysis requirements.

Given that the RCMP Land Use Analysis Program directly interfaces with established local agency land use review programs, it is important that the following components of the program are clearly described, measurable, and understandable:

- RCMP Traffic Impact Criteria
- RCMP Traffic Impact Significance Criteria
- RCMP Traffic Mitigation Measures
- RCMP Analysis Methods

### 6.2 LAND USE PROJECTS REVIEW CRITERIA

The following describes the types of proposed projects that trigger RCMP review. RCMP land use category summary descriptions are provided in Appendix D. It should be noted that SJCOG is not a land use authority, and as such it will not seek to approve or disapprove land use projects. All land use development projects are subject to RCMP review unless the project meets the following criteria:

1. The project is statutorily or categorically exempt from the California Environmental Quality Act (CEQA), as detailed in Guidelines for Implementation of the California Environmental Quality Act, Articles 18 and 19.
2. The project is subsequent to the land uses approved within a Master EIR, Negative Declaration, or other environmental analysis and the land use agency determines that the project is within the scope of the previously

approved project per CEQA Guidelines 15177-15179.5. This criteria does not apply to projects subsequent to Program EIRs (such as General Plans), unless exempt otherwise from CEQA.

Project referral should be submitted as soon as the jurisdiction receives the application. Within 30 days of receipt, SJCOG staff will provide preliminary comments and determine the level of review to be completed as part of the CEQA process (Tier 1 or Tier 2) per the guidelines given below. For most Tier 1 projects, the CMA review will be complete at this stage.

The purpose of the review will be to ensure that proposed projects are consistent with regional planning documents (Tier 1 Review) and that their effects on the regional transportation system are analyzed (Tier 2 Review), as described in further detail below.

#### Tier 1 Review

All development projects will be qualitatively reviewed for consistency with SJCOG’s regional planning documents, including one of more of the following, as appropriate:

- Regional Transportation Demand Management Plan
- Regional Expressway System Plan (System Management and TDM components)
- Park-and-Ride Master Plan
- Regional Bikeway Plan
- Smart Growth Infill Opportunity Zone Plan
- Regional Transit Systems Plan
- Regional Transportation Impact Fee Program
- Regional Transportation Plan
- Interregional STAA Study for I-5 and SR-99

#### Tier 2 Review

Projects that trigger the one or both of the following thresholds will be subject:

1. 125 or more vehicle trips during weekday AM or PM peak-hours; or,
2. 500 or more total daily vehicle trips on any day of the week.

As defined above, all development projects regardless of trip generation characteristics will be at a minimum reviewed for consistency with applicable regional planning documents. Triggering a quantitative Tier 2 review will entail addressing the Tier 1 consistency review as well as a quantitative analysis of RCMP impacts – project specific and cumulative plus project conditions.

It should be noted that SJCOG’s ability to comment should not be interpreted as an authority to reject development applications.

### 6.3 RCMP IMPACT SIGNIFICANCE CRITERIA

To determine whether project added traffic constitutes a significant impact to the RCMP network, the following significance criterion is established.

### Tier 1 Development Projects

Projects subject to Tier 1 reviews will be not subject to specific “significance criteria”. SJCOG will notify a project sponsor of any recommended design consideration, mitigation measures and/or conditions that should be carried forward in the final approval. After project approval, the lead agency will submit the Mitigation Monitoring and Reporting Plan (MMRP) and/or final project conditions to SJCOG. The Project and applicable elements of the MMRP/Final Project Conditions will be recorded for reference when preparing the annual Measure K and biennial State CMP reports, which require disclosure of jurisdictional compliance.

### Tier 2 Review

A proposed development will have a significant impact to the RCMP network if any one of the following criteria is met during the AM or PM peak hours:

1. For any RCMP roadway or intersection currently operating or expected to operate at LOS D or better under No Project conditions, the project-added traffic results in LOS E or F operating conditions
2. For RCMP intersections or roadways currently operating or expected to operate at LOS E or F under No Project conditions, the project results in increases to:
  - average delay by 4 seconds or more; or,
  - the volume-to-capacity (v/c) ratio by 1.0 or more
3. Conflicts with SJCOG adopted/approved Regional Plans applicable to the project. During the project review period, SJCOG staff will identify any inconsistencies with regional planning documents, such as:
  - Regional Transportation Demand Management Plan
  - Regional Expressway System Plan (System Management and TDM components)
  - Park-and-Ride Master Plan
  - Regional Bikeway Plan
  - Smart Growth Infill Opportunity Zone Plan
  - Regional Transit Systems Plan
  - Regional Transportation Impact Fee Program
  - Regional Transportation Plan
  - Interregional STAA Study for I-5 and SR-99

State and local agency significance criteria may be more or less stringent than the RCMP significance criteria described above. Note that the RCMP significance criteria will not require additional analysis work performed for TIAs but will require RCMP impacts, as well as their significance after mitigation, to be explicitly identified in the TIA and environmental documentation.

## 6.4 MITIGATION MEASURES

State law places responsibility for the RCMP Land Use Analysis Program on local jurisdictions, since they retain the power to approve or deny land development applications. SJCOG can assist cities and the County in determining regional traffic impacts, but the Lead Agency is responsible for determining how to mitigate these impacts and what the cost will be to do so. SJCOG encourages local agencies to require development proj-

ects to cover the costs of mitigating transportation impacts, but the decision to do so rests with the city or County.

If the RCMP significance criteria are exceeded and feasible mitigation is not identified to mitigate the impact to less than significant levels, the impact must be identified as significant and unavoidable.

1. SJCOG's policy regarding mitigation measures for capital improvement projects is:
  - RCMP mitigation measures must be adequate to allow the RCMP roadway to meet the RCMP LOS standard
  - RCMP mitigation measures for project specific impacts must be fully funded to be considered adequate;
  - RCMP mitigation measures that rely on state or federal funds directed by or influenced by SJCOG must be consistent with project funding priorities established in the CIP of the RCMP and the RTP, or the Federal TIP; and,
  - For RCMP mitigation measures that involve a local or regional “fair share” contribution for mitigating RCMP cumulative impacts, the fee must be committed to funding priorities established in the CIP of the RCMP, the RTP, or the Federal TIP. The SJCOG Regional Traffic Impact Fee (RTIF) program establishes a RCMP specific mitigation fee program relative to cumulative regional impacts. To satisfy these requirements, project applicants are required to pay their fair share contribution into the RTIF program. However, to better inform the public and stakeholders, the environmental document (i.e., mitigation language) must convey that payment into the RTIF program does not guarantee that the lead agency (local agency) will necessarily spend these developer fees on the identified mitigation improvement. SJCOG will administer the RCMP/RTIF Mitigation Monitoring Program to track the “actual” funding/implementation of identified mitigation improvements (i.e., conditions of approval) identified as part of environmental documents. SJCOG will periodically report each local agency's implementation progress of identified mitigation measures as part of mandated RCMP and RTIF program compliance hearings to the SJCOG Board. SJCOG will also provide this status update mitigation improvement information to local agencies as part SJCOG's state and federal flexible funding cycle “call for projects”.
  - 2. The RCMP also requires cumulative impacts to the RCMP network be addressed through the CEQA analysis process. The project analysis of traffic impacts to the RCMP network must reflect the most recently approved development projects from the lead agency as well as from adjacent jurisdictions. It should also include currently programmed infrastructure improvements.
  - 3. As part of the RCMP Land Use Analysis Program, if a

RCMP intersection is projected to operate at LOS E or F (CEQA Cumulative and/or Cumulative Plus Project analyses) after trip exemptions have been accounted for, the affected jurisdiction can choose to proactively prepare a Deficiency Plan in lieu of waiting for the facility to possibly fail after the development is implemented. The benefit of preparing and adopting a RCMP deficiency plan based on a future year deficiency finding is that the identified improvements can be submitted/proposed for flexible funding cycle sooner (i.e., "call for projects"). Given the typical 7-10 year lag between the time a project is programmed till it is actually constructed/implemented, this proactive approach better ensures that identified improvements are implemented in a more timely manner – rather than long after a congestion problem becomes evident i.e., reactive.

### Inter-Jurisdictional Impacts

A regional analysis based on local land use decisions will often involve more than one jurisdiction. For example, a large project approved by City A (Lead Agency) may affect traffic on a nearby principal arterial in City B (affected city). The RCMP places the responsibility for addressing the significant traffic impacts with the approving jurisdiction. However, SJCOG also recognizes that City A will need to work with City B in order to properly mitigate the traffic impacts on the affected segment. It is the preference of SJCOG that the lead agency work with any affected jurisdiction to arrive at a mutually agreeable plan for addressing the inter-jurisdictional impacts of a given project. If a dispute arises, or at the request of either party, SJCOG will assist both localities in preparing a mitigation plan that meets the requirements of this land use program.

### 6.5 REGIONAL TRAFFIC IMPACT FEES

The RCMP Land Use Program is intended to ensure that new development contributes a fair share and provides transportation improvements at the time of new construction. The SJCOG Regional Traffic Impact Fee (RTIF) program establishes a RCMP cumulative impact mitigation fee that serves to streamline the CEQA process as it relates to regional impacts.

All jurisdictions adopted and began implementation of the RTIF program by July 1, 2006. SJCOG monitors the local jurisdictions' collection and disbursement of the fee to ensure that the RTIF is being applied toward traffic mitigation projects that were identified in the development of the fee or towards regional impacts identified as part of the RCMP Land Use Analysis Program. Compliance monitoring is performed through SJCOG's annual audit process of local agency transportation funds.

A flow chart of the Land Use Analysis Program is provided in **Figure 6-1** on the following page. As alluded to at the bottom of the flow chart, RCMP compliance findings are in part determined based on local agency compliance with the RCMP Land Use Analysis Program. A detailed description of the SJCOG's RCMP conformance assessment process is provided in

Chapter 10. RCMP impacts and identified mitigations will be recorded for reference and disclosed as part SJCOG's annual Measure K and biennial State CMP compliance reports.

### 6.6 ANALYSIS METHODS

All RCMP analysis procedures will be based on the most recent HCM methodology (i.e., 2010 HCM) when reliable software implementations are available. This includes basic freeway, multi-lane highway, two-lane highway and intersections.

Generally, vehicle trip generation should be based on the most current Trip Generation informational report published by the Institute of Transportation Engineers (ITE). The published trip generation estimates are often described for both the peak hour of the land use (generator) and for the peak hour of adjacent street traffic. For analyzing the study threshold criteria, trip generation for the peak hour of adjacent street traffic should be used if available. If not available, trip generation for the peak hour of the generator can be substituted. If the land use is not specifically represented in the ITE trip generation rates, then an estimate of the project's trip generation should be conducted and fully documented using estimation methodologies normally accepted in the fields of traffic engineering and transportation planning. Use of specific trip generation studies or other trip generation information sources (e.g., San Diego Association of Governments trip rates) will be considered on a case by case basis.

### 6.7 REGIONAL TRAFFIC MODEL

SJCOG's regional traffic model is an integral component of the Land Use Analysis Program, and its maintenance is a requirement of both the State CMP legislation and the Measure K Ordinance.

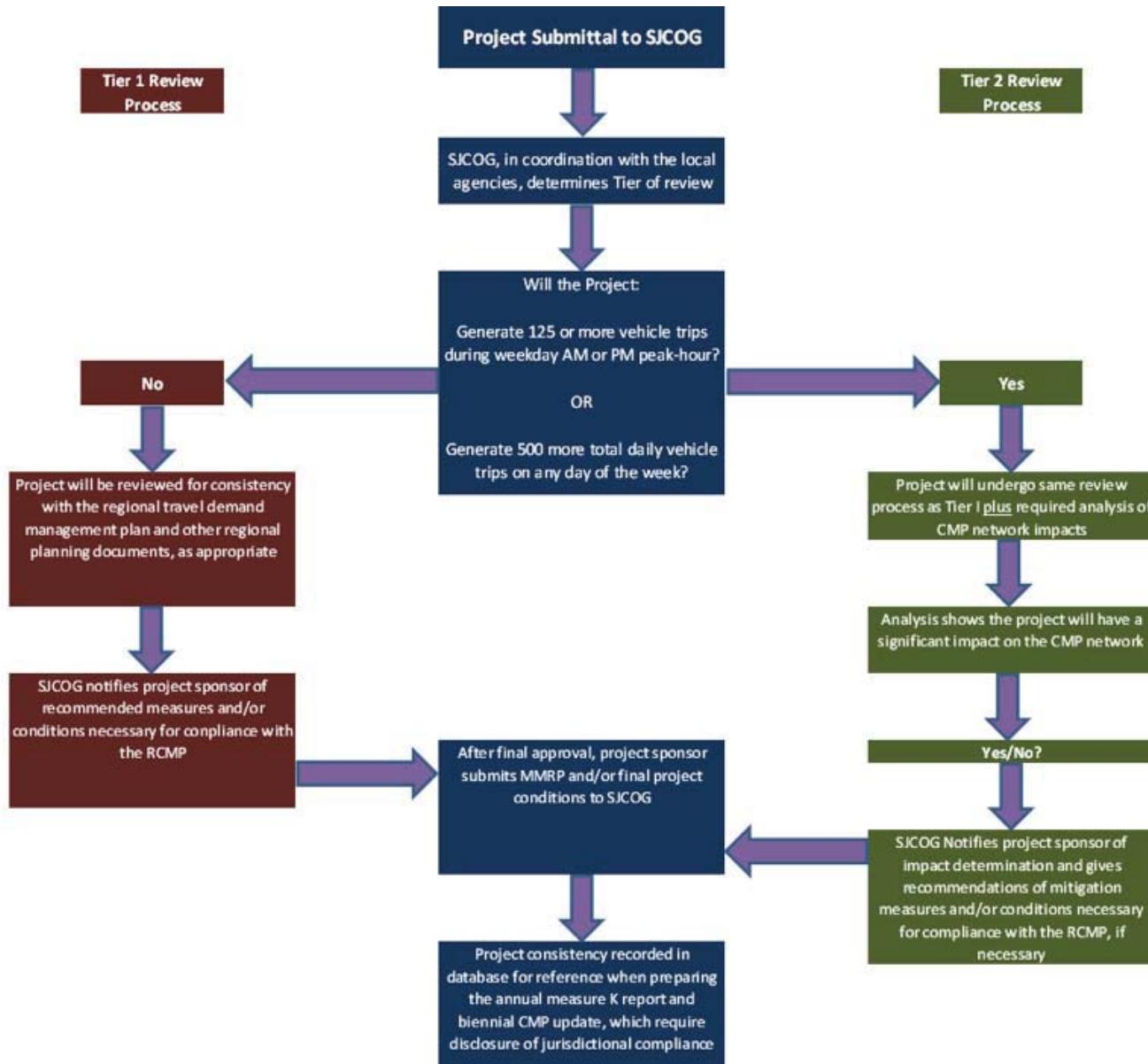
The following model applications are used to assist in the implementation of the RCMP Land Use Analysis Program.

#### Regional Traffic Model Details

- Helping to determine a development project's trip distribution (select zone analysis)
- Per California Code Section 65089.4, interregional trips are exempt from triggering the need for RCMP Deficiency Plans. SJCOG's model is used for estimating the extent of interregional trips from outside the San Joaquin County i.e., Stanislaus County, the Sacramento region, the entire Bay Area, Calaveras County, and Amador County (see Chapter 7).

These analyses can be deferred to or used in combination with local jurisdiction travel models that can demonstrate to meet state/federal guidelines for model calibration/validation.

Figure 6-1. RCMP Land Use Analysis Program





**Letter RA2**

San Joaquin Council of Governments

David Ripperda

SJCOG Regional Planner

October 30, 2014 (Also sent as attachment to letter dated 2/10/15)

**Response RA2-1:** The traffic analysis prepared for the Tracy Hills Specific Plan (THSP) includes both a Tier 1 and Tier 2 analysis as required by SJCOG. It also includes a consistency review using SJCOG requirements consistent with the 2012 Regional Congestion Management Program (RCMC) and the 2014 Regional Transportation Plan (RTP). The CMP network has been identified in Section 4.13-2 for both Project and Cumulative Plus Project conditions. These road networks are analyzed per the CMP requirements. The road network includes intersections and segments along Interstate 580, Eleventh Street (Multimodal Corridor), Lammers Road, Corral Hollow Road, Linne Road, and Tracy Boulevard. The THSP identifies TDM measures on page 4-18 of the THSP. These measures are also indicated in Impact 4.13-4b. As tentative maps are approved, these TDM measures will be identified in a TDM Action Plan consistent with the tentative map land use. The DSEIR fully complies with the SJCOG requirements for CMP analysis and has identified TDM measures consistent with the SJCOG requirements.

**Response RA2-2:** TDM measures are identified on page 4-18 of the THSP and in Impact 4.13-4b. As tentative maps are approved, the specific TDM requirements will be identified in a TDM Action Plan consistent with the tentative map land use. These measures are consistent with SJCOG's Commute Connection Program, which includes rideshare programs, carpooling, vanpooling, commuter ride-matching, guaranteed ride home and employer services. The Project also proposes to construct a park-and-ride facility at the proposed Lammers Road interchange to further promote TDM measures, as required by the City of Tracy and the SJCOG. The TDM Action Plan that would be developed with each tentative map application, would be consistent with the SJCOG RCMP TDM Program (as indicated in Impact 4.13-4b), which also includes adherence to the Commute Connection programs (Rule 9410), which services San Joaquin, Merced and Stanislaus Counties.

**Response RA2-3:** The City of Tracy Transportation Master Plan (TMP) has identified future Surface Transportation Assistance Act (STAA) routes and Local Truck Routes to serve the THSP area and connect to both the regional and City road network. Figure 4.13-2 on page 4.13-15 of the DSEIR depicts the location of the City of Tracy truck routes. The THSP is consistent with the TMP. These roads will serve the truck trip related land use designations in the THSP efficiently and will be designed and constructed to accommodate STAA and/or other truck traffic per the designated classification.

**Response RA2-4:** The Applicant would be required to pay fees per the RTIF program. This program establishes a mitigation fee program relative to cumulative impacts and constitutes a fair share payment per AB1600 requirements for regional impacts resulting from development within the THSP. As the primary regional planning organization in San Joaquin County,

the San Joaquin Council of Governments (SJCOC) established the Regional Traffic Impact Fee (RTIF) to help in funding major transportation projects countywide. All County jurisdictions have adopted the fee. The funds will be paid with issuance of each building permit for each phase of the Project.

Projects include:

- ◆ I-205 Wideing HOV
- ◆ I-205/Chrisman Road Interchange
- ◆ I-205/11th Street Interchange
- ◆ I-205/Grant Line Road Interchange
- ◆ Corral Hollow Road widening
- ◆ Lammers Road construction
- ◆ Linne Road constriction
- ◆ ACE corridor improvements

**Response RA2-5:** The THSP is consistent with the following regional transportation planning documents:

1. Regional Transportation Demand Management Program: The THSP has identified TDM strategies on page 4-18 of the THSP and on page 4.13-168 and Impact4.13-4b of the DSEIR. As tentative maps are approved, these TDM measures will be identified in a TDM Action Plan, consistent with the tentative map land use.
2. Park-and Ride Master Plan: The THSP will construct a park-and -ride facility at the Lammers Road interchange with I-580 and will participate in the SCJOG Commute Connection Program to promote carpooling and vanpooling.
3. Regional Bicycle, Pedestrian, and Safe Routes to School Program: As identified in Chapter 3, Project Description of the DSEIR, the THSP will include an internal bicycle and pedestrian network and connections to the City pedestrian and bicycle system, consistent with the City TMP, which also supports the SJCOC policies and goals. The development of a school site in Phase 1a of the Project is required to develop a SRTS program for the school.
4. Regional Smart Growth Transit Oriented Development Plan and Regional Transit Systems Plan: The THSP is located approximately 2-3 miles from the ACE station in the City of Tracy. Access to the station would be along Corral Hollow Road and Linne Road from the Project site. The driveway to the parking lot is located on Tracy Boulevard. In addition, the THSP would accommodate the extension of transit routes and bus stops/pullouts throughout the Project site, based on demand, along all major roadways (Spine Road and Lammers Road, which will be extended to the south from its current location). As identified in the Project Description and Section 4.13, Transportation, of the DSEIR, these roads would accommodate the local TRACER bus service. As tentative maps are reviewed and specific land use access locations are known, more transit stops and routes will be identified in collaboration with TRACER staff.
5. San Joaquin Regional Transportation Impact Fee (RTIF) Program: The THSP will pay fees per the RTIF program. This program establishes a mitigation fee program relative to cumulative impacts and constitutes a fair share payment per

AB 1600 requirements. The funds will be paid with the application of each phase of the Project.

6. Interregional STAA Study for I-5 and SR-99: The Project would generate STAA traffic to and from the THSP area and would connect to the regional freeway system at the proposed Lammers Road Interchange on I-580, which connects southward to I-5 and to SR 99 via SR 132. The growth in the THSP is included in the SJCOG model and subsequently traffic to the I-5 and I-99 is incorporated in the interregional analysis for both routes.

**Response RA2-6:** Several expressways, arterials and supporting road network grid would be newly constructed or improved as part of the THSP Project. Specific arterials include Lammers Road, Linne Road and Corral Hollow Road. The City has identified these future CMP routes in their TMP, consistent with Government Code Section 65089 and the construction and/or widening is included in the City of Tracy Transportation Impact Fee Program.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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JAN 20 2015

CITY OF TRACY



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

RA3

## Central Valley Regional Water Quality Control Board

16 January 2015

Bill Dean  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

CERTIFIED MAIL  
7014 2120 0001 3978 4221

### **COMMENTS TO REQUEST FOR REVIEW FOR THE DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT, TRACY HILLS SPECIFIC PLAN PROJECT, SAN JOAQUIN COUNTY**

Pursuant to the City of Tracy's 23 December 2014 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Draft Subsequent Environment Impact Report* for the Tracy Hills Specific Plan Project, located in San Joaquin County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

RA3-1

#### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml)

RA3-2

**Phase I and II Municipal Separate Storm Sewer System (MS4) Permits<sup>1</sup>**

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/municipal\\_permits/](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/).

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phase\\_ii\\_municipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml)

RA3-3

**Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 97-03-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/industrial\\_general\\_permits/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml).

RA3-4

**Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

<sup>1</sup> Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

RA3-5

**Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

RA3-6

**Waste Discharge Requirements**

If USACOE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project will require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit2.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml).

RA3-7

**Regulatory Compliance for Commercially Irrigated Agriculture**

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program.

There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at:  
[http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/app\\_approval/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/app_approval/index.shtml); or contact water board staff at (916) 464-4611 or via email at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory

RA3-7  
Cont. Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).

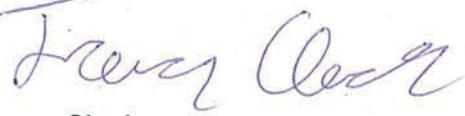
RA3-8 **Low or Limited Threat General NPDES Permit**

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the *General Order for Dewatering and Other Low Threat Discharges to Surface Waters (Low Threat General Order)* or the *General Order for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water (Limited Threat General Order)*. A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0074.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf)

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If you have questions regarding these comments, please contact me at (916) 464-4684 or [tcleak@waterboards.ca.gov](mailto:tcleak@waterboards.ca.gov).

  
Trevor Cleak  
Environmental Scientist



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Central Valley Regional Water Quality Control Board

27 January 2015

RECEIVED  
01/27/2015  
RECEIVED

RECEIVED

JAN 30 2015

CITY OF TRACY

Bill Dean  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

CERTIFIED MAIL  
7014 2120 0001 3978 4450

### **COMMENTS TO REQUEST FOR REVIEW FOR THE DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT, TRACY HILLS SPECIFIC PLAN PROJECT, SCH# 2013102053, SAN JOAQUIN COUNTY**

Pursuant to the State Clearinghouse's 23 December 2014 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Draft Subsequent Environment Impact Report* for the Tracy Hills Specific Plan Project, located in San Joaquin County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

RA4-1

#### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml).

RA4-2

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RA4-4

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RA4-5

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RA4-6

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RA4-7

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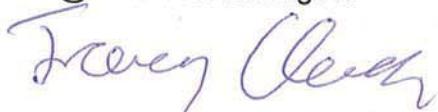
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Trevor Cleak  
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

**Letter RA3/Letter RA4**

**California Water Boards**

**Central Valley Regional Water Quality Control Board**

**Trevor Cleak**

**Environmental Scientist**

**January 16, 2015 & January 27, 2015**

Note: The responses to these two letters are combined. Although the letters have different dates, all of the comments are the same.

**Response RA3/4-1:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers.

As stated in Section 4.9, Hydrology/Water Quality, of the DSEIR, pages 4.9-25 and 4.9-26, construction activities for all lots, infrastructure and the storm drain system would require compliance with the NPDES General Permit for Storm Water Discharges Associated with Construction Activity and implement BMPs to the maximum extent practicable. Prior to the issuance of an NPDES permit, the approved SWPPP would need to be prepared for the THSP Project Area. The SWPPP would incorporate BMPs such as sedimentation basins, silt fence, and fiber rolls, which would minimize storm water runoff during construction. Individual lot developments within the THSP Project Area would also require NPDES permits. Thus, future development would be responsible for obtaining and complying with NPDES permit requirements, which will require preparation of SWPPPs specifying BMPs which would reduce construction storm water flows.

Mitigation Measures 4.9-1a and 1b on page 4.9-30 of the DSEIR require Applicants to demonstrate compliance with the provisions of the Construction General Permit prior to issuance of a grading or building permit, whichever occurs first, following the preparation of the Notice of Intent (NOI) and SWPPP submitted to the City Engineer for review.

**Response RA3/4-2:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers.

Refer to response to comment RA3/4-1 above. Section 4.9, Hydrology/Water Quality, of the DSEIR acknowledges that the construction activities for all lots, infrastructure, and the storm drain system would require compliance with the NPDES General Permit for Storm Water Discharges Associated with Construction Activity and implement BMPs to the maximum extent practicable.

**Response RA3/4-3:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers.

As future THSP site-specific projects are proposed, they would be required to comply with the regulations contained in the Industrial Storm Water General Permit Order 97-03-DWQ as a standard condition of project approval, consistent with City requirements.

**Response RA3/4-4:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers.

Section 4.4, Biological Resources, of the DSEIR describes the U.S. Army Corps (Corps) jurisdictional assessment that was prepared for the THSP. The jurisdictional assessment identified approximately 2.33 acres of wetlands and approximately 2.68 acres of drainage channels. In total, 5.01 acres of wetlands/water were identified within the boundary of the THSP area. The 2013 jurisdictional assessment concluded that all wetland and water features occurring on the THSP property are considered isolated since surface flow does not have “significant nexus” or pathway to the ocean or any Traditional Navigable Water. Therefore, no Corps jurisdictional Waters of the United State are located on site. However, the DSEIR noted that these wetlands and waters would continue to be regulated by the Regional Water Quality Control Board (RWQCB) and California Department of Fish and Wildlife (CDFW). Section 4.4 identifies that the Project Applicant would be required to obtain the following regulatory approvals: Jurisdictional Determination from the Corps documenting isolated conditions and lack of jurisdictional authority on the Project site; a RWQCB Report of Waste Discharge (ROWD) pursuant to California Water Code Section 13260; and, CDFW Section 1602 Streambed Alteration Agreement.

**Response RA3/4-5:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers.

Please refer to response to comment RA3/4-4 above. The 2013 jurisdictional assessment concluded that all wetland and water features occurring on the THSP Project Area are considered isolated since surface flow does not have “significant nexus” or pathway to the ocean or any Traditional Navigable Water. Therefore, no Corps jurisdictional Waters of the United State are located on site. However, the Draft Subsequent EIR noted that these wetlands and waters would continue to be regulated by the RWQCB and CDFW and identifies that a Corps Jurisdictional Determination will be required for the Project Site.

**Response RA3/4-6:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers. Please refer to response to comment RA 3/4-4 above.

**Response RA3/4-7:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers.

As described in Chapter 3, Project Description, of the DSEIR, proposed development and uses within the THSP do not include commercial irrigated agricultural uses. Therefore, the provisions outlined in comment RA3/4-7 would not be applicable to the proposed Project.

**Response RA3/4-8:** Although the comment does not address the adequacy of the DSEIR, it is noted and included in the record for consideration by the public and decision makers.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

Refer to response to comment RA 3/4-1 above. As noted in Section 4.9 (Hydrology/Water Quality), the Draft SEIR acknowledges that the construction activities for all lots, infrastructure and the storm drain system would require compliance with the NPDES General Permit for Storm Water Discharges Associated with Construction Activity and implement BMPs to the maximum extent practicable. Similarly, the applicant will seek coverage under the NPDES General Order for Dewatering and Other Low Threat Discharges to Surface Water or other applicable General NPDES permits in the event that construction dewatering is necessary.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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## SAN JOAQUIN COUNCIL OF GOVERNMENTS

555 E. Weber Avenue • Stockton, California 95202

209.235.0600 • 209.235.0438 (fax)

[www.sjcog.org](http://www.sjcog.org)

*Steve Dresser* February 10, 2015

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*Member Agencies*

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LATHROP,

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RIPON,

STOCKTON,

TRACY,

AND

THE COUNTY OF  
SAN JOAQUIN

Mr. Bill Dean  
Assistant Director  
City of Tracy, Developmental Services Department  
333 Civic Center Plaza, Tracy CA 95376

### **Re: Notice of Availability – Draft Tracy Hills Specific Plan & Draft Subsequent EIR**

Dear Mr. Dean:

Thank you for the opportunity to comment on the draft Tracy Hills Specific Plan and associated Draft Subsequent EIR. As the County's designated Regional Transportation Planning Agency (RTPA), the Congestion Management Agency (CMA), the Metropolitan Planning Organization (MPO), and the Airport Land Use Commission (ALUC), the San Joaquin Council of Governments (SJCOC) has the following comments:

### **Draft Specific Plan Comments**

RA5-1A

In Section 4.2.7 of the Draft Tracy Hills Specific Plan on pages 4-18 and 4-19, multiple references are made to SJVAPCD Rule 9510; SJCOC requests that these references be corrected to refer to Rule 9410 instead.

RA5-1B

The Specific Plan also refers to a threshold of 50 or more employees for multiple TDM measures to be included as part of the project. In our comment letter in reply to the Notice of Preparation for the DSEIR, SJCOC staff may have provided the City with incorrect information regarding this threshold; according to Rule 9410 the correct threshold should be 100 or more employees, unless the City would prefer to specify a lower threshold for this project.

RA5-1C

SJCOC also requests that subsection 11 be reworded as follows:

*“The Developer and businesses shall work with the SJCOC Commute Connection program to implement employer based transportation demand management strategies to include but not limited to, ridesharing, transit, bicycling/walking, telecommuting, trip planning, preferred parking for carpools, and event planning.”*

## **ALUC EIR Comments**

RA5-2A

In its response letter to the NOP dated October 30 2014, SJCOG staff requested that the DSEIR “contain a completed consistency analysis of the proposed land uses relative to the 2009 ALUCP zones for Tracy Municipal Airport”. A copy of this letter is included as an attachment. As requested, the DSEIR contains a detailed analysis of the proposed project’s impacts on Tracy Municipal Airport.

RA5-2B

The ALUC examined the project’s proposed uses as stated in the draft Specific Plan and DSEIR. Insufficient detail is available at this time concerning the developer’s proposed uses for the portion of the project noted in the DSEIR as located in the Inner Approach/Departure Zone and the Inner Turning Zone that is zoned M-1 Light Industrial to make a consistency determination. These uses will require a full airport land use compatibility evaluation at the time that these parcels are planned to be developed. The ALUC requests that the City route all future tentative and final maps, site plans, and use permits for the project for ALUC review to ensure consistency with the land use compatibility criteria of the 2009 ALUCP and Mitigation Measures 4.8-6 and 4.10-1 as proposed by the DSEIR.

## **CMA EIR Comments**

RA5-3

Mitigation Measure 4.7-1 identifies a list of Transportation Demand Management mitigation measures that the project will incorporate “*... to ensure consistency with adopted statewide plans and programs to the extent feasible.*” SJCOG requests that the third bullet of Mitigation Measure 4.7-1 be revised to:

*“Coordinate with and promote SJCOG’s Commute Connection program, for which all employees shall be eligible to participate (occupancy permit).”*

RA5-4

Page 4.13-1 of the DSEIR states that “*...regional travel demand is currently not forecasted to go beyond 2035 by either the City of Tracy or the SJCOG.*” However, SJCOG’s current 2014 Regional Transportation Plan has a horizon year of 2040, and incorporates a traffic model that forecasts travel demand out to that date for air quality conformity.

RA5-5

Page 4.13-4 of the DSEIR lists the SJCOG RCMP roadway segments that are relevant in the project area, though it omits Interstate 205. In addition, the DSEIR does not identify CMP intersections in the project area. SJCOG requests that the DSEIR list the following intersections as part of the CMP network:

Tracy Blvd and I-205 Ramps (WB)  
Tracy Blvd and I-205 Ramps (EB)  
Tracy Blvd and Eleventh Street  
Eleventh Street and Lammers Road  
Eleventh Street and Coral Hollow Road  
Coral Hollow Rd and Linne Road  
Coral Hollow Rd and I-580 Ramps (WB)  
Coral Hollow Rd and I-580 Ramps (EB)

RA5-5  
Cont.

With the exception of the Tracy Blvd and I-205 Ramp intersections, the DSEIR already satisfactorily analyzes these intersections. SJCOG requests that the Tracy Blvd and I-205 ramp intersections be included in the traffic analysis for the project to fully address the project's impacts on the RCMP network.

RA5-6

Additionally, the DSEIR does not address the designated CMP Multimodal Corridor in the project vicinity, Eleventh Street between Lammers Road and MacArthur Drive. In the 2012 RCMP this segment was designated as one of the CMP multimodal level of service (MMLOS) corridors, which are characterized by a predominance of shared roadway users (pedestrian, bicyclists, transit passengers, and motorists). Baseline MMLOS calculations were completed in the 2014 RCMP Monitoring and Technical Analysis. This document is available for review on the RCMP website located at <http://www.sjcoh-rcmp.org/>.

RA5-7

SJCOG suggests that the traffic analysis for the project include pedestrian, bicycle, and transit level of service in the Eleventh Street multimodal corridor under cumulative conditions. The concepts and method to compute MMLOS is documented in the 2010 Highway Capacity Manual.

Thank you again for the opportunity to comment. If you have any questions pertaining to the ALUC or RCMP program please call David Ripperda at (209) 235-0450 or Kim Anderson at (209) 235-0565. For questions pertaining to the Commute Connection program please call Yvette Davis at (209) 235- 1092. SJCOG staff would be pleased to meet with the City and the Developer to provide any necessary information, support and guidance, if needed.

Sincerely,



David Ripperda  
SJCOG Regional Planner

Attachments:    ALUC Comment Letter on Notice of Preparation    **–See Comment Letter RA-1**  
                          CMA Comment Letter on Notice of Preparation    **–See Comment Letter RA-2**



Letter RA5

San Joaquin Council of Governments

David Ripperda

SJCOG Regional Planner

February 10, 2015

**Response RA5-1A:** The THSP will be updated to reflect the correct reference from SJVAPCD Rule 9510 to Rule 9410. A full airport land use compatibility evaluation will be required for the portion of the Specific Plan area noted in the DSEIR as located in the Inner Approach/Departure Zone 2, and Inner Turning Zone at the time that these parcels are developed. Refer to Mitigation Measure 4.10-1 on page 4.10-20 of the DSEIR.

**Response RA5-1B:** The THSP will be updated to reflect the correct reference from 50 or more employees to 100 or more employees with respect to TDM measures.

**Response RA5-1C:** It is agreed to that Subsection 11 of the THSP will be reworded as requested by SJCOG to promote non-automotive transportation alternatives and to read: "The Developer and businesses shall work with the SJCOG Commute Connection program to implement employer based transportation demand management strategies to include, but not limited to, ridesharing, transit, bicycling/walking, telecommuting, trip planning, preferred parking for carpools, and event planning.

**Response RA5-2A:** Comment noted.

**Response RA5-2B:** Comment noted. Please refer to the response to Comment RA5-1A.

**Response RA5-3:** The request from SJCOG will be adhered to and the following bullet added to Mitigation Measure 4.7-1 and will read: Coordinate with and promote SJCOG's Commute Connection Program, for which all employees shall be eligible to participate (occupancy permit)."

**Response RA5-4:** The RTP 2014 travel demand model with horizon year 2035, was adopted and used in the traffic analysis before the new 2040 model was adopted by the Board. In additionn the City Travel Demand Model, which has been updated per the General Plan and the TMP, which goes beyond 2025 for buildout, is consistent with the THSP development and more accurately reflects City street network conditions.

**Response RA5-5:** The text will be amended to identify the following CMP intersections.

- ◆ Tracy Boulevard/11<sup>th</sup> Street
- ◆ Eleventh Street/Lammers Road
- ◆ Eleventh Street/ Corral Hollow Road
- ◆ Linne Road/Corral Hollow Road

All these intersections would operate at an acceptable LOS per the Congestion Management Program as indicated in Section 4.13.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

It should be noted that the Project does not generate sufficient traffic to the Tracy Boulevard/

I-205 interchange to warrant analysis per the City criteria. The Project is expected to generate less than 1 percent of the traffic forecasted to use this interchange in 2035.

**Response RA5-6:** Additional analysis was performed to evaluate Multimodal operations along the corridor. The HCM 2010 Multimodal Analyses indicate that the corridor would operate at LOS C for both the pedestrian and bicycle modes for Existing Plus Project 2035 conditions, and at LOS D a for both pedestrian and bicycle modes att Cumulative Plus Project conditions.

**Response RA5-7:** Additional analysis was performed to evaluate Multimodal operations along the corridor. The HCM 2010 Multimodal Analyses indicate that the corridor would operate at LOS C for both the pedestrian and bicycle modes for Existing Plus Project 2035 conditions, and at LOS D for both pedestrian and bicycle modes at Cumulative Plus Project conditions.



February 10, 2015

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CITY OF TRACY

Bill Dean  
City of Tracy  
Development Services Department  
333 Civic Center Plaza  
Tracy, CA 95376

**Project: Draft Subsequent Environmental Impact Report (DSEIR) for Tracy Hills Specific Plan**

**District CEQA Reference No: 20140980**

Dear Mr. Dean:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the Draft Subsequent Environmental Impact Report (DSEIR) for the Tracy Hills Specific Plan consisting of up to 5,499 dwelling units and 5.7 million square feet of mixed-use development located in Tracy, CA. The District offers the following comments:

RA6-1

- 1) As presented in the DSEIR, after implementation of all feasible mitigation, the project would have a significant and unavoidable impact on air quality. However, the environmental document does not discuss the feasibility of implementing a Voluntary Emission Reduction Agreement (VERA). As discussed below, the District believes that mitigation through a VERA is feasible in many cases, and recommends the DSEIR be revised to include a discussion of the feasibility of implementing a VERA to mitigate project specific impacts to less than significant levels.

A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of emissions increases through a process that develops, funds, and implements emission reduction projects, with the District serving a role of administrator of the emissions reduction projects and verifier of the successful mitigation effort. To implement a VERA, the project proponent and the District enter into a contractual agreement in which the project proponent agrees to mitigate project specific emissions by providing funds for the District's Incentive Program.

Seyed Sadredin  
Executive Director/Air Pollution Control Officer

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RA6-1  
Cont. The funds are disbursed by the District in the form of grants for projects that achieve emission reductions. Thus, project specific impacts on air quality can be fully mitigated. Types of emission reduction projects that have been funded in the past include electrification of stationary internal combustion engines (such as agricultural irrigation pumps), replacing old heavy-duty trucks with new, cleaner, more efficient heavy-duty trucks, and replacement of old farm tractors.

In implementing a VERA, the District verifies the actual emission reductions that have been achieved as a result of completed grant contracts, monitors the emission reduction projects, and ensures the enforceability of achieved reductions. The initial agreement is generally based on the projected maximum emissions increases as calculated by a District approved air quality impact assessment, and contains the corresponding maximum fiscal obligation. However, because the goal is to mitigate actual emissions, the District has designed flexibility into the VERA such that the final mitigation is based on actual emissions related to the project as determined by actual equipment used, hours of operation, etc., and as calculated by the District. After the project is mitigated, the District certifies to the lead agency that the mitigation is completed, providing the lead agency with an enforceable mitigation measure demonstrating that project specific emissions have been mitigated to less than significant.

The District has been developing and implementing VERA contracts with project developers to mitigate project specific emissions since 2005. It is the District's experience that implementation of a VERA is a feasible mitigation measure, and effectively achieves the emission reductions required by a lead agency, by mitigating project related impacts on air quality to a net zero level by supplying real and contemporaneous emissions reductions. To assist the Lead Agency and project proponent in ensuring that the environmental document is compliant with CEQA, the District recommends the DSEIR be amended to include an assessment of the feasibility of implementing a VERA.

Additional information on implementing a VERA can be obtained by contacting District CEQA staff at (559) 230-6000.

2) The following are comments on the Health Risk Assessment (HRA):

RA6-2 2a) The project includes sources with potential emissions of toxic air contaminants that may cause risk to residents of the development and existing residents outside of the development. There will be approximately 5.7 million square feet of mixed use business park, light industrial, and commercial space. Some of the facilities that locate within the project may generate substantial diesel truck traffic and idling emissions of diesel particulate matter (DPM) other sources such as surface coating operations may locate within the development that emit other toxic air contaminants. Therefore, the District recommends that the risk from sources that may be built as part of this project upon nearby residents, schools, etc. within the project be estimated. There are two approaches that

RA6-2  
Cont. could be used to assess the risk from the project. One approach is to address this issue by assessing risk based upon worst-case development assumptions. An alternative approach is to include a mitigation measure that requires future commercial and industrial development projects to conduct a HRA before being issued a building permit.

RA6-3 2b) The DSEIR does include an assessment of the risk from the existing I-580 upon some of the residential sites in the project. There is also a partial Ambient Air Quality Analysis (AAQA). However, the District recommends that the AAQA be conducted for the entire project or provide clarification as to why the AAQA was conducted for only a portion of the project.

RA6-4 2c) Receptors only in the northern portion of the project were modeled for the HRA and the partial AAQA. No receptors were modeled in the area south of I-580. Yet, that area is to be zoned predominately residential. This decision may have been based on phasing decision, but there is no discussion of the southern portion of the project. Although residential and other sensitive receptors are likely to be the primary receptors for which risk is estimated in a HRA, the risk to workers should also be determined. The District recommends revising the HRA to include those sensitive receptors.

RA6-5 2d) The maximum DPM concentration predicted in the DSEIR was 0.047 micrograms per cubic meter. The District's unit risk for DPM is 4.1453E-04. Using the District's unit risk, the risk from I-580 was predicted to be 19.6 cancers in a million rather than the 17.2 in a million risk reported in the DSEIR. The District recommends revising the DSEIR to reflect the correct DPM concentration and risk.

RA6-6 2e) The District has no significance thresholds for cancer risk other than for a 70 year exposure period.

RA6-7 2f) While the HRA could be limited to the projected actual residential sites, an AAQA should predict criteria pollutant concentrations anywhere that can be considered ambient air. Therefore, the District recommends that receptors in the areas of the project that were not zoned residential be modeled as well.

RA6-8 2g) Consideration was not given to compliance with federal air quality standards (AAQA) particularly the one-hour ozone standard for nitrogen dioxide.

RA6-9 2h) While the use of air filtration systems in residences near I-580 may reduce DPM concentrations in the houses, they would have no effect on DPM concentrations outside the homes. People do not stay inside their homes all the time.

RA6-10 2i) There are other sources near Tracy Hills that might cause risk to inhabitants of Tracy Hills besides I-580. These sources include the airport and material processing facilities east of the project. No discussion of these other sources was included in the analysis. Therefore, the District recommends a discussion on these sources as well as including them in the analysis.

RA6-11 3) The *Tracy Hills Specific Plan Supplemental Air Quality Assessment* (dated October 7, 2014) was prepared in support of the DSEIR. The new assessment consisted of a modeling analysis using the SCREEN3 model with a very large area source from which all criteria pollutant emissions for the project were assumed to be emitted. The results were compared to ambient air quality standards and the District's interim significant impact levels (SILs) for fugitive PM10 emissions. The following are specific comments on this supplemental assessment:

- 3a) The District has very specific procedures for conducting an AAQA. Those procedures were not followed for this assessment. The District's guidance documents for conducting an AAQA can be found on the District's website at: [http://www.valleyair.org/busind/pto/Tox\\_Resources/AirQualityMonitoring.htm#modeling\\_guidance](http://www.valleyair.org/busind/pto/Tox_Resources/AirQualityMonitoring.htm#modeling_guidance)
- 3b) The SCREEN3 model is not an approved U.S. Environmental Protection Agency (EPA) dispersion model. If the SCREEN3 model is to be used, approval must be obtained after a demonstration that it is the most appropriate model for a given application.
- 3c) The AERSCREEN model is the EPA-approved model for single-source, worst-case meteorology modeling exercises. Therefore, this model should be used to conduct a more complete analysis. Using a single large area source would likely dilute the emissions so much that the results of such an analysis would not be useful.

RA6-12 4) Based on information provided to the District, the proposed project is subject to District Rule 9510 (Indirect Source Review).

District Rule 9510 is intended to mitigate a project's impact on air quality through project design elements or by payment of applicable off-site mitigation fees. Any applicant subject to District Rule 9510 is required to submit an Air Impact Assessment (AIA) application to the District no later than applying for final discretionary approval, and to pay any applicable off-site mitigation fees before issuance of the first building permit. If approval of the subject project constitutes the last discretionary approval by your agency, the District recommends that demonstration of compliance with District Rule 9510, including payment of all applicable fees before issuance of the first building permit, be made a condition of project approval. Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>.

RA6-13 [5) The proposed project may require District permits. Prior to the start of construction the project proponent should contact the District's Small Business Assistance Office at (559) 230-5888 to determine if an Authority to Construct (ATC) is required.

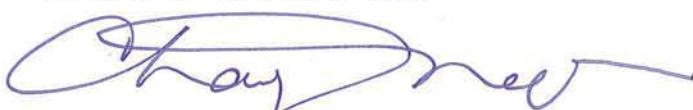
RA6-14 [6) The proposed project may be subject to the following District rules: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants). The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules can be found online at: [www.valleyair.org/rules/1ruleslist.htm](http://www.valleyair.org/rules/1ruleslist.htm).

RA6-15 [7) The District recommends that a copy of the District's comments be provided to the project proponent.

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call Sharla Yang at (559) 230-5934.

Sincerely,

Arnaud Marjollet  
Director of Permit Services



Chay Thao  
Program Manager

AM: sy



Letter RA6

San Joaquin Valley Air Pollution Control District

Arnaud Marjollet

Director of Permit Services

Chay Thao

Program Manager

February 10, 2015

**Response RA6-1:** The SJVAPCD Voluntary Emission Reduction Agreement (VERA) is an agreement between developers and the SJVAPCD to mitigate projected related air emissions to a net zero level and includes a fiscal obligation. As described in the DSEIR, the proposed Project would result in significant and unavoidable operational air quality impacts, despite the implementation of Mitigation Measures 4.3-1a through 4.3-1c and 4.3-2. Mitigation Measures 4.3-1c and 4.3-2 require the Project to comply with SJVAPCD Rule 9510 (ISR), which includes the payment of off-site mitigation fees for both construction and operations.

Mitigation Measure 4.7-1 includes various measures to improve energy efficiency. The DSEIR determined that these were feasible mitigation measures available to reduce Project-related impacts. Additionally, pursuant to *CEQA Guidelines* Section 15126.4, mitigation measures must be roughly proportional to the impact. Mitigation Measures 4.3-1c requires a 20 percent reduction of construction-exhaust NO<sub>x</sub> and a 45 percent reduction of construction-exhaust PM<sub>10</sub>. Additionally, Mitigation Measure 4.3-2 (consistent with SJVAPCD Rule 9510/ISR requirements) requires a reduction of operational NO<sub>x</sub> emissions by 33 percent and operational PM<sub>10</sub> emissions by 50 percent over 10 years and includes payment of off-site mitigation fees.

The SJVAPCD's ISR is a proven and effective mitigation tool that achieves quantified reductions in air quality emissions in the air basin. Since its inception in 2006 (through 2014), ISR has resulted in combined reductions totaling 9,841.7 tons of NO<sub>x</sub> and 7,256.6 tons of PM<sub>10</sub> which has contributed to the improved air quality conditions since implementation of ISR (see *Staff Report: Five-Year Evaluation of Indirect Source Review Program (2006-2010)*, *2011 ISR Annual Report*, *2012 ISR Annual Report*, *2013 ISR Annual Report*, and *2014 ISR Annual Report*).

Figure 1 and Figure 2 illustrate the NO<sub>x</sub> and PM<sub>10</sub> emissions trends for the SJVAB based on information compiled by the California Air Resources Board (CARB). These reductions in emissions are due, in part to the successful implementation of the SJVAPCD's Rule 9510 (ISR) program.

Figure 1: NO<sub>x</sub> Emissions Trends

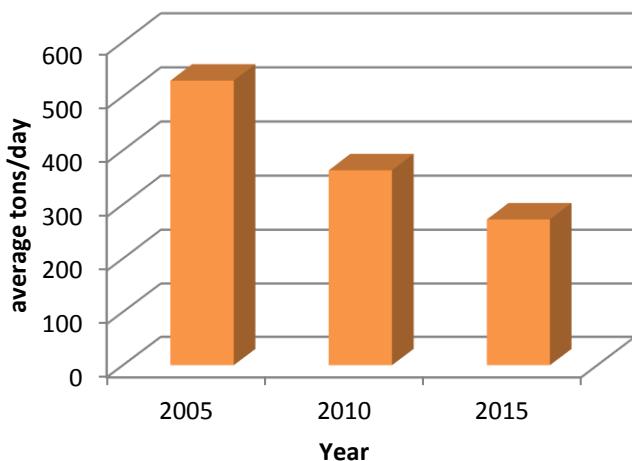
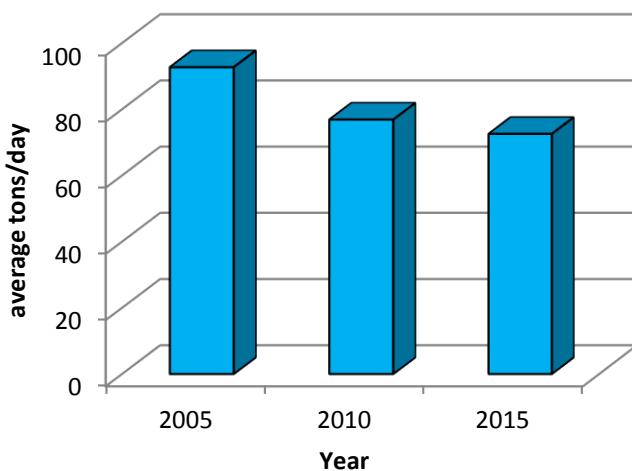


Figure 1: PM<sub>10</sub> Emissions Trends



A VERA is just one of the tools available to help achieve the mitigation required by the lead agency.

By its definition, the voluntary emission reduction agreement or VERA is a voluntary program initiated by the SJVAPCD to help reduce project-related emissions. The option for a VERA has been added to DSEIR Mitigation Measures 4.3-1c and 4.3-2. However, as a voluntary program VERA is not considered a feasible mitigation measure as its details are not specific and cannot be mandated at this point in time. The comment does not identify any specific feasible mitigation measures that are not being imposed.

As stated above, land use developments constructed as part of this Project would be subject to the requirements of the ISR/Rule 9510. As discussed on page 4.3-20 of the DSEIR, ISR would require substantial reductions of construction and operational period emissions from the land use activities. This is in addition to SJVAPCD requirements to

control emissions from construction activities, requirements to reduce worker commute emissions (Rule 9410, described on page 4.7-19 of the DSEIR), SJVAPCD rules and regulations regarding new sources of air pollutants emissions (i.e., those that apply to SJVAPCD regulated sources), and CARB requirements that apply to construction equipment fleets, truck fleets and portable equipment. As a result, the proposed Project would be required to reduce emissions at a level likely greater than other similar Projects in the State or perhaps the country. The large quantity of the emissions predicted in the DSEIR is related to the type and large size of the Project. The Project is actually an accumulation of projects that have been envisioned in the planning process conducted by the City (i.e., beginning with the underlying Specific Plan). As a result, the emissions of over 2,731.6 acres of future developed land uses were analyzed and found to be well above SJVAPCD's quantitative emissions thresholds. Smaller land use projects that, together, make up the entire THSP Project could be proposed. This would certainly result in much lower, and perhaps, insignificant emissions. However, as a Specific Plan project, it is appropriate to evaluate all of these land uses as one project so that mitigation measures to reduce all environmental impacts can be consistently applied to fairly and effectively reduce significant impacts. The City would anticipate that SJVAPCD and CARB requirements along with the City's requirements, such as meeting the goals and policies of the Sustainability Plan, would effectively reduce Project air pollutant emissions to the extent feasible.

**Response RA6-2:** An addendum to the Health Risk Assessment (HRA) included in the DSEIR has been conducted and identifies the impact to all prospective on-site residential uses for the entire Project as a function of exposure to pollutants from I-580, Union Pacific Railroad, and from activity associated with proposed industrial facilities within the THSP.

Additionally, the HRA addendum also evaluates impacts to off-site residential, workers, and schools as a function of exposure to diesel particulate matter (DPM) associated with trucking activity that would serve the industrial uses of the THSP (mixed use business park and light industrial).

As previously identified in the DSEIR, CEQA case law has held that CEQA requires the lead agency to analyze the impacts of a project on the environment, not the impacts of the environment on the project<sup>1</sup>. Although not required by CEQA, in an abundance of caution, the City of Tracy, as lead agency, requested the preparation of this assessment. Therefore, for the proposed Project, adjoining freeway and rail line emissions are a potential concern and relevant thresholds and standards exist to determine the impact of vehicular emissions on an exposed population. As such, the HRA and HRA Addendum were prepared to assess the impact of these emissions on individuals residing at the proposed THSP. The results of the analysis find that the impact to on-site residents associated with the adjoining I-580, rail line, and proposed industrial uses after implementation of Mitigation Measures 4.3-4a and 4.3-4b will be less than significant.

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<sup>1</sup> CEQA's role is not to evaluate the impacts of the environment on the Project, but to analyze the Project's impacts on the environment. (Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455; South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1617.) Thus, proximity to the freeway is not a CEQA consideration, in this case assessment is concerned with protecting the future inhabitants of the project from health impacts as a result of proximity to the freeway—that consideration was expressly rejected in the aforementioned cases.

The results of the HRA addendum indicate that the impact to off-site residents, schools, and workers associated with diesel trucks and associated DPM emissions resulting from ongoing operations of industrial land uses proposed by the Project will be less than significant and no mitigation is required. The supplemental assessment serves the SJVAPCDs request to assess potential risks based upon worst-case development assumptions.

Notwithstanding, future phases will be required to prepare site-specific HRA reports to ensure that the potential impacts are consistent with those identified in the DSEIR.

**Response RA6-3:** An addendum to the criteria pollutant assessment portion of the DSEIR HRA has been conducted and identifies the impact to all prospective on-site residential uses for the entire THSP as a function of exposure to pollutants from I-580, as recommended by SJVAPCD.

As a matter of clarification, SJVAPCD appears to confuse their request for an AAQA for project-related emissions and the criteria pollutant assessment for on-site residents included in the HRA. These are two separate issue areas. The purpose of the criteria pollutant assessment is to determine the potential impact of exposure to pollutants from I-580 to prospective residential land uses throughout the THSP Project site. The purpose and function of a typical AAQA is to determine the Project's potential ambient air quality impacts on the surrounding environment. However as set forth in response to comment RA6-11, an AAQA is not warranted and has not been prepared for the Project.

As noted in response to comment RA6-11, the *Tracy Hills Specific Plan Supplemental Air Quality Assessment* (dated October 7, 2014) was prepared in response to a recent legal challenge for a CEQA project. Specifically, a Court of Appeal decision, *Sierra Club v. County of Fresno* (2014) 226 Cal.App.4<sup>th</sup> 704 (*Friant Ranch*), found an EIR inadequate for failing to "correlate the additional tons per year of emissions that would be generated by the project (i.e., the adverse air quality impacts) to adverse human health impacts that could be expected to result from those emissions." As described in the DSEIR, the Project's emissions would have no discernible health impact on human beings either in the local or regional vicinity of the Project. As such no further analysis is required. This assessment is not intended to meet the SJVAPCD's request for preparation of an AAQA.

It should be noted that the SJVAPCD guidance and requirements for an AAQA primarily pertains to emissions from new and/or modified stationary sources and not to land use development projects. Additionally, although the SJVAPCD provides guidance toward preparing an AAQA for stationary sources and does not address modeling for large specific plans, it does not provide specific guidance on preparation of an AAQA for the programmatic analysis of a large specific plan. As noted above, the analysis of pollutant concentrations associated with project emissions is intended to depict the adverse health impacts in response to the Friant Ranch decision, and is not intended as an AAQA.

**Response RA6-4:** As previously noted, an addendum to the criteria pollutant assessment portion of HRA has been conducted and identifies the impact to all prospective on-site residential uses for the entire Project as a function of exposure to pollutants from I-580, Union Pacific Railroad, and from activity associated with proposed industrial facilities within the THSP. As recommended, receptors are not just limited to the northern portion of the site, and receptors are included for all Project-areas zoned or planned for residential uses (see Exhibit 1: Modeled Sources and Receptor Locations for On-Site Residential Exposure in the *Tracy Hills Specific Plan Health Risk Assessment Addendum*, dated May 29, 2015).

Additionally, the HRA addendum evaluates impacts to off-site residential, workers, and schools as a function of exposure to diesel particulate matter (DPM) associated with trucking activity that would serve the proposed industrial uses of the THSP (mixed use business park and light industrial).

**Response RA6-5:** The unit risk factor has been adjusted to reflect the SJVAPCD's recommended unit risk factor for DPM of 4.1453E-04. This change does not result in any new or substantially different findings from the DSEIR.

Without mitigation, the health risks are 35.8 in a million for the maximally impacted on-site residential receptor, 1.49 in a million for the maximally impacted off-site residential receptor, 1.02 in a million for the maximally impacted off-site worker receptor, and 0.19 in a million for the maximally impacted off-site school receptor.

With implementation of Mitigation Measure 4.3-4a and 4.3-4b, the health risks are 9.85 in a million for the maximally impacted on-site residential receptor, 1.49 in a million for the maximally impacted off-site residential receptor, 1.02 in a million for the maximally impacted off-site worker receptor, and 0.19 in a million for the maximally impacted off-site school receptor. After implementation of the applicable mitigation measures, all impacts are less than significant.

**Response RA6-6:** The SJVAPCD is commenting that they only have a threshold of significance for a 70-year exposure period. We concur with this comment and would also like to clarify that the findings in the DSEIR are all based on an exposure period of 70 years as requested by SJVAPCD.

**Response RA6-7:** Please refer to the response to Comment RA6-3.

**Response RA6-8:** Nitrogen dioxide was considered in the DSEIR for both impacts to on-site residents as well as the potential impacts to off-site receptors associated with full buildup of the THSP Project (see page 4.3-33 and Appendix B of the DSEIR).

Further, as set forth in the *Tracy Hills Specific Plan Health Risk Assessment Addendum*, Table 1 summarizes the predicted exposure for on-site residents to nitrogen dioxide as a function of the Project's proximity to I-580. As shown on Table 1 in the THSP HRA Addendum, the total concentration for the 1-hour nitrogen dioxide standard is 0.0488

parts per million (ppm) which is less than the applicable threshold of 0.18 ppm. As such, no significant impacts are identified with respect to the one-hour ozone standard for nitrogen dioxide.

**Response RA6-9:** A consideration of time spent in or outdoors need not be considered in the HRA. Regulatory guidance from SJVAPCD, OEHHA, and USEPA assumes that source-receptor locations are static, whereby exposures are assumed to be continuous based on the averaging time under consideration. It is important to note that the analysis assumes a “static” exposure scenario of constant exposure 24 hours per day, 7 days per week for a long-term duration (70 years). Notwithstanding, the time spent indoors at residences is over 90 percent of the 24 hour day. The latest version of the U.S. EPA’s Exposure Factor Handbook: 2011 Edition includes empirical data that suggests on average over 21 hours per day are spent indoors at the residence for all age groups (See Table ES-1 Page xx of the document). A link to the full document is as follows: <http://www.epa.gov/ncea/efh/pdfs/efh-complete.pdf>.

As such, there is substantial evidence that supports that people do in fact spend the vast majority of time inside their homes. Lastly, the SJVAPCD provides no evidence to refute this claim and support their generalized statement that people do not stay inside their home all the time. Based on the aforementioned discussion the use of an air filtration system is an effective mitigation measure to reduce residential exposure to DPM concentrations to which prospective residents may be subject.

**Response RA6-10:** Proximity to sources of toxics is critical to determining the impact. In traffic-related studies, the additional non-cancer health risk attributable to proximity was seen within 1,000 feet and was strongest within 300 feet. California freeway studies show about a 70 percent drop-off in particulate pollution levels at 500 feet. Based on ARB and South Coast District emissions and modeling analyses, an 80 percent drop-off in pollutant concentrations is estimated at approximately 1,000 feet from a distribution center (*Air Quality and Land Use Handbook: A Community Health Perspective*. 2005.)

The 1,000-foot evaluation distance is supported by research-based findings concerning TAC emission dispersion rates from roadways and large sources showing that emissions diminish substantially between 500 and 1,000 feet from emission sources.

For assessing the cumulative impacts of a new source of TAC emissions associated with a project in combination with existing sources and probable future sources, a project radius is necessary. Assessment of impacts from existing sources within 1,000 feet of the new source in combination with risks and hazards from the new source is recommended. Then, once the location of the maximally impacted receptor is identified for the project, cumulative impacts from other sources within the radius of the project (i.e., not the receptor) are assessed at that location. Assessments should sum individual hazards or risks to find the cumulative impact at the location of the maximally impacted receptor from the new source.

Lastly, the Waters Bill (AB 3205) (H&SC Section, 42301.6 through 42301.9) (see: <http://codes.lp.findlaw.com/cacode/HSC/1/d26/4/4/1/s42301.6>) addresses sources of hazardous air pollutants near schools. It requires new or modified sources of hazardous air emissions located within 1,000 feet from the outer boundary of a school to give public notice to the parents or guardians of children enrolled in any school located within one-quarter mile of the source and to each address within a 1,000 foot radius.

For purposes of this assessment, a one-quarter mile radius or 1,320 feet geographic scope is used for determining potential cumulative impacts. This radius is more robust than, and provides a more health protective scenario for evaluation than, the 1,000 feet buffer identified above.

The distance between prospective sensitive receptors at the Project site and the Tracy Hills Municipal Airport is over 3,800 feet. This is well beyond the generally accepted 1,420 feet (on-quarter mile) domain of consideration of cumulative projects, specifically for toxic air contaminants. Similarly, the material processing facility the SJVAPCD appears to be referencing is located more than 4,500 feet from prospective sensitive receptors at the Project site and well outside the one-quarter mile domain of consideration. No further analysis is required.

**Response RA6-11:** The *Tracy Hills Specific Plan Supplemental Air Quality Assessment* (October 7, 2014) was not prepared to satisfy the SJVAPCDs request for preparing an AAQA.

In fact, the *Tracy Hills Specific Plan Supplemental Air Quality Assessment* (dated October 7, 2014) explicitly states the reasoning as to why the supplemental assessment was being prepared – in order to provide a response to a recent legal challenge for a CEQA project. A Court of Appeal decision, *Sierra Club v. County of Fresno* (2014) 226 Cal.App.4<sup>th</sup> 704 (*Friant Ranch*), found an EIR inadequate for failing to “correlate the additional tons per year of emissions that would be generated by the project (i.e., the adverse air quality impacts) to adverse human health impacts that could be expected to result from those emissions.” As described in the DSEIR, the Project’s emissions would have no discernible health impact on human beings either in the local or regional vicinity of the Project. As such no further analysis is required. As such, the assessment served to respond to this specific request in the *Friant Ranch* decision. This assessment is not intended to meet the SJVAPCD’s request for preparation of an AAQA. It should be noted that the SJVAPCD guidance and requirements for an AAQA primarily pertains to emissions from new and/or modified stationary sources and not to land use development projects.

SJVAPCD notes that the District has specific guidelines for preparation of an AAQA. However, the link provided by SJVAPD provides no specific guidance on preparation of an AAQA for a large specific plan. In fact, the information provided by SJVAPCD on its webpage is directed mainly toward stationary sources and does not address modeling for large specific plans. As such, based on our professional expertise we do not believe an AAQA is necessary or warranted. Furthermore, the DSEIR air quality analysis predicted significant air quality impacts to the region resulting from both construction and operation of the Project (see Impacts 4.3-1, 4.3-2, 4.3-3, and 4.3-5). These findings are based on

predicted emissions that exceed significance thresholds identified by SJVAPCD. Emissions of volatile organic compounds (VOCs), nitrogen oxides (NOx), carbon monoxide (CO), particulate matter less than 10 microns (PM<sub>10</sub>), and particulate matter less than 2.5 microns (PM<sub>2.5</sub>) could cause or contribute to violations of ozone ambient air quality standards in the San Joaquin Valley air basin. Significant particulate matter emissions (i.e., those in excess of the significance thresholds) would contribute to or cause new violations of PM<sub>10</sub> and PM<sub>2.5</sub> ambient air quality standards. In addition, NOx emissions could contribute to nitrogen dioxide levels in the region that could lead to exceedances of the nitrogen dioxide ambient air quality standards. Emissions of ROG and NOx also lead to secondary formation of PM<sub>10</sub> and PM<sub>2.5</sub> in the region, causing or contributing to violations of ambient air quality standards for those pollutants. The formation of ozone, nitrogen dioxide and secondary particulate matter formation occur under a complex set of chemical reactions in the atmosphere downwind of the sources, which are beyond the ability of the DSEIR to predict. Therefore, the significance of these emissions is based on the level of emissions caused by the Project. Those emissions are compared to significance thresholds recommended by SJVAPCD. Carbon monoxide is a relatively inert air pollutant, where the highest concentrations are found near the source. The primary sources of these emissions from the Project would be traffic, and the effects to ambient air quality can be predicted. This was conducted by modeling emissions from traffic at intersections substantially affected by the Project that have a combination of high traffic volumes and traffic congestions (i.e., slow moving or idling vehicles at intersections with LOS D, E or F). Localized, or “hot spot” emissions of carbon monoxide resulting from the Project were predicted and the resulting concentrations added to background levels were below ambient air quality standards (see page 4.3-29 of the DSEIR).

**Response RA6-12:** The DSEIR found that construction and operational Project emissions would exceed SJVAPCD thresholds and would result in a significant impact. As a result, the DSEIR includes Mitigation Measures 4.3-1c and 4.3-2, which require the Applicant to comply with SJVAPCD Rule 9510, Indirect Source Review (ISR). Mitigation Measures 4.3-1c and 4.3-2 require compliance with Rule 9510 prior to the issuance of building permits. As noted in the comment, compliance with Rule 9510 entails submission of an Air Impact Assessment (AIA) and payment of any applicable off-site mitigation fees as determined in the AIA.

**Response RA6-13:** The comment notes that the Project may require SJVAPCD permits. The Project would be required to comply with SJVAPCD Regulation II (Permits) and obtain all necessary permits. The comment does not raise any issue with respect to the contents of the DSEIR, or any environmental issue regarding the proposed Project. No further response is necessary.

**Response RA6-14:** As noted in the DSEIR, the Project would be required to comply with all applicable SJVAPCD rules and regulations, including Regulation VIII (required as Mitigation Measures 4.3-1a through 4.3-1c). Additionally, Mitigation Measure 4.3-2 requires compliance with Rule 9510 prior to the issuance of building permits.

Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR

**Response RA6-15:** The comment requests that a copy of the comments be provided to the Project proponents. The City will comply with the commenter's request. The comment does not raise any issue with respect to the contents of the DSEIR, or any environmental issue regarding the proposed Project. No further response is necessary.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT

Chris Bazar  
Agency Director

Albert Lopez  
Planning Director

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March 3, 2015

Mr. William Dean, Assistant Director  
Development Services Department  
City of Tracy  
333 Civic Center Plaza  
Tracy CA 95376

Subj: Alameda County Planning Department comments on the Tracy Hills Specific Plan (THSP) and Draft Subsequent EIR (SCH No. 2013102053)

Dear Mr. Dean,

Thank you for the opportunity to review the documents associated with the comprehensive update to the City's 1998 Tracy Hills Specific Plan (THSP). The 1998 THSP established land use and development standards for approximately 2,732 acres located near the existing interchange around Corral Hollow Road and the proposed Lammers Road interchange on Interstate 580. The current THSP project area consists of the incorporated portion of the 1998 THSP, which is approximately 2,732 acres.

LA1-1

We have reviewed these and offer the following comments for consideration as this project moves forward.

1. The DEIR analyzes expected traffic impacts for a variety of alternatives to the proposed project, as well as the Preferred Alternative i.e., the THSP currently under review. For all alternatives, increases in traffic on Alameda County roadways are identified as a *Significant Impact (SI)*. Mitigation measures proposed cite the provisions in the Settlement Agreement between Alameda County, City of Livermore, and the City of Tracy. Specifically, Impacts 4.13-9a through 4.13-10c which includes both Alameda County and City of Livermore road segments and intersections, repeat the same proposed mitigation:

"Per the Settlement Agreement, as referred to on pages 6-9, the Applicant shall pay \$1,000 per residential unit to the JPA TIF to mitigate its impact. In addition, the Applicant shall pay \$500 per residential dwelling unit paid at building permit issuance, said fee to be adjusted by not more than 2.5% per annum for increases in the cost of living as determined annually by the Engineering News Record (ENR) index for road construction costs. A dollar for dollar credit up to \$500 for payment of the SJCOG fee and up to \$500 for implementation of TDM measures will apply to these fees per the Settlement Agreement. The fee credit portion for TDM measures, shall be calculated at the time each building permit is issued as the project is constructed. The calculation of this fee credit shall be overseen by the City Engineer.

**LA1-1  
Cont.**

Further, the DEIR states that with once implemented, these mitigation measures will result in *Less than Significant (LTS)* impacts. We are concerned that relying solely on the proposed mitigations will not be adequate to successfully mitigate to a LTS impact for the identified segments and intersections.

To be clear, Alameda County is not in any way recommending revisiting the provisions set forth in the Settlement Agreement between the parties. However, we request that additional mitigations be developed to address the concerns identified in this letter.

**LA1-2**

2. Rural roadways in Alameda County were originally designed as one-lane country roads able to carry far fewer vehicles than they currently do. Over the years of increased traffic volumes, these roads have become less safe due to the heavy demand they were not designed to accommodate. Any increase in traffic will degrade these roads even further. Specific safety improvements should be identified in the mitigation measures.

**LA1-3**

3. Bicycle and pedestrian traffic on county roadways in eastern Alameda County has also increased steadily over the years. Any increase in vehicle traffic expected from the project on these roads will be a potential safety concern. It is not clear that bicycle counts were included in the DEIR analysis. Specific bicycle safety improvements should be identified in the DEIR analysis.

**LA1-4**

4. Policy 164A of the East County Area Plan (ECAP), a portion of the Alameda County General Plan as amended, contains a “gateway policy” that prohibits any projects that would increase roadway capacity into Alameda County:

“The county shall assign priority in funding decisions to arterial and transit improvements that would improve local circulation, and to improvements that would facilitate movement of commercial goods. Improvements that would expand the capacity of the Altamont Pass and Vasco Road gateways leading into the planning area from San Joaquin and Contra Costa Counties would be inconsistent with the policies of this plan. This policy shall not preclude the County from supporting or approving any rail projects or improvements required for roadway safety.”

All roadway projects planned for this project should be evaluated for compliance with this policy.

**LA1-5**

5. The DEIR for the updated THSP concludes that peak hour traffic through Alameda County will *decrease* over the 1998 traffic by approximately 500 AM and PM peak trips. We presume this is due to several factors: the shift of approximately 300 units from High Density to Low/Medium Residential units, the

Mr. William Dean, Assistant Director  
Development Services Department  
City of Tracy  
March 3, 2015  
Page 3

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**LA1-5**  
**Cont.**

implementation of TDM programs that were not in place in 1998, and completion of transit improvements. Even with these factors, it is unclear why traffic volumes would actually decrease in the 2014 THSP.

We look forward to continued collaboration with the City of Tracy as this project moves forward. Please contact Cindy Horvath of my staff at 510-670-6511 if you have questions regarding this letter.

Very truly yours,



Albert Lopez, Planning Director, Alameda County

c: Honorable Scott Haggerty, Alameda County Board of Supervisors  
Honorable John Marchand, Mayor, City of Livermore  
Honorable Michael Maciel, Mayor, City of Tracy



## RESPONSES TO COMMENT LETTERS FROM LOCAL AGENCIES

### Letter LA1

Alameda County Community Development Agency  
Planning Department  
Albert Lopez  
Planning Director, Alameda County  
March 3, 2015

**Response LA1-1:** The City has reviewed the concerns addressed in the body of this letter. No further mitigation measures outside of the SA are warranted for the following reasons. The DSEIR analyzed potential BART service and parking, the I-205 freeway, County roadways, and Livermore intersections, based on roadway and intersection selection criteria of the individual agencies, NOP comment letters, and discussion with the JPA agencies. The analysis indicates planned improvements to the City of Livermore intersections, to which the project will pay fees per the JPA Settlement agreement. Alameda County is currently making safety/widening improvements on Patterson Pass Road. The JPA agencies have also identified the following regional projects in the area to reduce automotive trips through transit service and facility enhancement, and improve capacity on the roadways. The JPA may decide on how to distribute fees to the individual agencies to assist in funding these improvements.

Activity	Status
1. Expand Altamont Commute Express (ACE) facilities.	More trains are operational; track improvements are funded.
2. Expand parking at Dublin/Pleasanton BART station	Already implemented
3. Develop planning and engineering support for BART extension to Livermore.	Planning study is in progress.
4. Provide financial support for increased Altamont subscription.	Will be expanded
5. Provide financial support for multi-modal transportation hub in Livermore.	Included in BART extension study.
6. Support I-580 corridor express bus operations.	Will be implemented once HOV lanes are constructed.

The analysis for the City of Livermore, Alameda County, Caltrans, BART and ACE has clearly identified potential impacts, identified improvements and TDM programs and projects to improve roadway and transit ridership across the travel modes for potential THSP users. The analysis in the City of Livermore unambiguously indicates that with implementation of the planned improvements per the City CIP, the project will have no

impacts for Existing plus Project Buildout conditions, as illustrated in Table 4.13-28. For Cumulative conditions the intersections would operate at deficient conditions without project traffic and the addition of the project traffic will exacerbate the conditions, even with implementation of the planned improvements. The addition of the project traffic will result in a cumulative significant impact. The Project adds 1.1% to cumulative traffic growth at all the intersections analyzed in Livermore and 4.4% traffic to Patter Pass Road, Tesla Road and Altamont Pass. The additional of traffic to cumulative conditions at individual intersections vary between 0.2% and 6.8%. Parking at the BART stations are at capacity and BART has identified a mitigation program whereby discussions will occur with the local agencies to improve parking at the stations. Tesla Road and Patterson Pass Road is currently operating at a deficient Level of service and the addition of traffic will further impact operations and safety on the roadways. The County is currently in the process of implementing localized safety and road widening improvements. The JPA Settlement Agreement was established to mitigate project impacts. Payment of the agreed upon JPA fees represents a contribution to potential project impacts for regional transit, TDM and roadway improvements to the Alameda County street system, as agreed to by the signatories to the agreement. The JPA fee was thus established to partially mitigate potential impacts. The JPA fees are not included in any of the existing AB1600 fee programs in Alameda County and is thus an additional fee that will contribute towards existing AB1600 fee programs. Please refer to the following responses to the County's request for additional traffic mitigation. While the Settlement Agreement states that payment of the JPA Settlement Agreement fees represents the projects' full mitigation towards potential impacts, it is recognized that the timing and implementation of these improvements are not within the control of the either the Applicant, nor the City of Tracy, and thus the impacts would remain significant and unavoidable. Implementation of the measures identified in Section 4.13 and in table 4.13-28 would partially mitigate project impacts. In addition, subsequent to the publication of this letter the City of Tracy, Alameda County and the City of Livermore have met to discuss ongoing assessment of the JPA identified projects, and have determined that the implementation of the JPA projects would be funded through the JPA fees.

**Response LA1-2:** The JPA Settlement Agreement was established to mitigate both operational and safety impacts to the Alameda County street system. In its comment, the County has not identified which roadways require specific safety improvements. Roadway improvements would be constructed to improve the operations, capacity, and safety of intersections identified in the DSEIR. During the engineering design process of these improvement projects, safety practices and geometric design standards will be incorporated to adhere to City/County/Caltrans and industry requirements. Alameda County can utilize and/or dedicate the fees it receives (as mitigation) appropriately to implement safety improvements on its rural roadways. The JPA fee was established to partially mitigate potential impacts. The JPA fees are not included in any of the existing AB1600 fee programs in Alameda County and is thus an additional fee that will contribute towards existing AB1600 fee programs. Please refer to the following responses to the County's request for additional traffic mitigation. While the Settlement Agreement states that payment of the JPA Settlement Agreement fees represents the projects' full mitigation

towards potential impacts, it is recognized that the timing and implementation of these improvements are not within the control of the either the Applicant, nor the City of Tracy, and thus the impacts would remain significant and unavoidable. Implementation of the measures identified in Section 4.13 and in table 4.13-28 would partially mitigate project impacts. In addition, subsequent to the publication of this letter the City of Tracy, Alameda County and the City of Livermore have met to discuss ongoing assessment of the JPA identified projects, and have determined that the implementation of JPA projects would be funded through the JPA fees.

**Response LA1-3:** Bicycle and pedestrian counts are included in the Synchro intersection level of service (LOS) analysis worksheets. These are included in Appendix H2 in the DSEIR. Planned improvements have already been identified by Livermore staff for the study intersections where mitigation is required; see Section 4.13 of the DSEIR. During the engineering design process of these improvement projects, safety practices and geometric design standards for pedestrians and bicycles will be incorporated to adhere to City/County/Caltrans and industry requirements.

**Response LA1-4:** All improvement projects included for cumulative conditions analysis are either in the City of Livermore Capital Improvement Project list or in the Alameda County Transportation Commission Regional Transportation Plan, and these projects are included in the travel demand model. No additional mitigation has been identified

The following JPA project solutions, to which the THSP will contribute through the JPA Settlement Agreement, have been identified for the Altamont Corridor (source: Altamont Corridor Strategies Study, 2001 and 2007). The JPA fee was established to partially mitigate potential impacts. The JPA fees are not included in any of the existing AB1600 fee programs in Alameda County and is thus an additional fee that will contribute towards existing AB1600 fee programs. Please refer to the following responses to the County's request for additional traffic mitigation. While the Settlement Agreement states that payment of the JPA Settlement Agreement fees represents the projects' full mitigation towards potential impacts, it is recognized that the timing and implementation of these improvements are not within the control of the either the Applicant, nor the City of Tracy, and thus the impacts would remain significant and unavoidable. Implementation of the measures identified in Section 4.13 and in table 4.13-28 would partially mitigate project impacts. In addition, subsequent to the publication of this letter the City of Tracy, Alameda County and the City of Livermore have met to discuss ongoing assessment of the JPA identified projects, and have determined that the implementation of the JPA projects and the improvement projects in Livermore would be funded through the JPA fees.

Activity	Status
1. Expand Altamont Commute Express (ACE) facilities.	More trains are operational; track improvements are funded.
2. Expand parking at Dublin/Pleasanton BART station	Already implemented
3. Develop planning and engineering support for BART extension to Livermore.	Planning study is in progress.
4. Provide financial support for increased Altamont subscription.	Will be expanded
5. Provide financial support for multi-modal transportation hub in Livermore.	Included in BART extension study.
6. Support I-580 corridor express bus operations.	Will be implemented once HOV lanes are constructed.

**Response LA1-5:** As a result of both buildout of the General Plan and implementation of the THSP, the jobs-to-housing balance within the City of Tracy would shift over time, resulting in changed travel patterns and more trips having origins and destinations within Tracy and within the THSP. The THSP Project is expected to be implemented over the life span of the General Plan. The change in THSP traffic volumes starting with Phase 1A through 2035 (General Plan buildout) and Project buildout substantiates this finding. Within the THSP Project Area, the ongoing development of a mix of land uses would also increase internal trips and modify travel patterns. The analysis accurately reflects this anticipated increase in development and rerouting of traffic, and it accurately reflects future conditions, as adopted in the City of Tracy Citywide Roadway and Transportation Master Plan. The shift in the jobs-to-housing ratio to accommodate more jobs in Tracy would result in more trips having origins and destinations within Tracy. In addition, the construction of Lammers Road and the Lammers Road interchange with I-580 would reroute traffic traveling north on Spine Road to Lammers Road, compared to these trips traveling to Corral Hollow Road. Note that Spine Road is not connected to Lammers Road for Phase 1A conditions. A more balanced jobs-to-housing ratio would result in more trips having origins and destinations within the City of Tracy. The rerouting of trips onto other roads is consistent with the City of Tracy General Plan and the THSP. This rerouting of traffic is clearly reflected in the analysis.

Within the THSP, as more employment-related land uses develop, internal Project trips would increase and less trips would leave the area, which also results in less regional trips onto the freeway system.

The City recently approved the Cordes Ranch Specific Plan which includes approximately 1,462 net acres of commercial, office, manufacturing, warehouse, and distribution uses. This increase in employment is forecasted to ultimately decrease traffic onto the regional road system. FedEx, Cordes Building 1 and Medline are already under construction. The City also recently approved the following development projects that would create local employment opportunities: SuperLube, , Prime Car Wash, McDonalds, Red Robin,

WinCo, Bevmo,,FasTrak car wash, Arco gas station, new Animal Shelter, St Bernard's Pre-school, CMC Rebar, El Pollo Loco, Dunkin Donuts, Tracy Collision Center, Sutter Hospital, Amazon and Shops at Northgate Village. These projects are anticipated to provide employment opportunities, furthering the City's 2013-2015 Economic Development Strategy, thereby resulting in greater internal trip capture and fewer trips leaving the City.

The City of Tracy Transportation Master Plan forecasts 64,182 employed persons for year 2035, an increase of 40,078 (or 166.3 percent) from 24,104 employed persons in 2006. Dwelling units are forecast to increase by 51.4 percent from 26,789 in 2006 to 40,506 residences in 2035. The Tracy Travel Demand Model indicates that the growth in Tracy (from existing conditions to year 2035) would result in the internal trip distribution increasing from the existing 48 percent to 49 percent in the AM peak hour and decrease from 64 percent to 49 percent in the PM peak hour as a percentage of total Tracy trips. Westbound trips on I-580 towards Alameda County and beyond, would decrease from 7 percent to 1 percent in the AM peak hour and stay at about 1 percent in the PM peak hour. Trips from Alameda County and beyond to Tracy would remain at about 1 percent during the AM peak hour and decrease from 3.5 percent to 1.3 percent in the PM peak hour.

Economic development data received from the City of Tracy indicates that between 2000 and 2008, the jobs-to-housing ratio remained consistent at approximately 1.19. Between 2008 and 2014, the jobs-to-housing ratio showed a gradual improvement, increasing to 1.46, an increase of 22.7 percent. This increase already results in more trips staying local to Tracy.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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March 10, 2015

William Dean  
Assistant Development Services Director,  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

**SUBJECT: Response to Notice of Availability of the Tracy Hills Specific Plan Draft Subsequent Environmental Impact Report**

Dear Mr. Dean,

Thank you for the opportunity to comment on the Draft Subsequent Environmental Impact Report (DSEIR) for the Tracy Hills Specific Plan (THSP). The 1998 THSP established land use and development standards for approximately 2,732 acres located near the existing interchange around the existing interchange at Corral Hollow Road and the proposed Lammers Road interchange on I-580. The current Project Area consists of the incorporated portion of the 1998 THSP and encompasses approximately 2,732 acres within the southern portion of the City of Tracy surrounding. The Specific Plan consists of three areas:

- Northern portion between Delta Mendota Canal and the California Aqueduct will include a mix of low and medium density residential areas adjacent to light industrial uses;
- Central portion, south of the California Aqueduct and north of I-580 is planned predominately for single-family homes, open space conservation corridors, mixed use business park, and commercial retail areas; and
- Project area south of I-580 will be primarily residential neighborhoods with parks and school sites, and will abut approximately 3,500 acres of open space under a conservation easement.

THSP is estimated to have 5,499 dwelling units and 5.7 million square feet of business park, commercial and industrial land use at build out.

The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments:

- General comments for Section 4.13:

LA2-1  Tables throughout Section 4.13 need to have "ACCMA" updated to Alameda CTC.

LA2-2  Bolding of Alameda County segments below LOS performance threshold (E) are inconsistent. For instance, Table 4.13-15 should have segments with Level of Service (LOS) F bolded.

LA2-3  There are instances throughout the section where the Alameda CTC travel model is identified as "ACTA" model." Please correct "ACTA" to "Alameda CTC."

LA2-4

- The DSEIR should clarify whether it used 2040 BART mode share (from the Alameda CTC model) to estimate the number of BART riders from the project area at project build out.

LA2-5

- Alameda CTC acknowledged that the DSEIR proposed that the project applicant will pay the JPA fees as mitigation for potential impacts to the roadways, transit systems and parking.

LA2-6

- The DSEIR stated (on page 4.13-112) that the City of Tracy's demand model does not have transit assignment to ACE. The Alameda CTC travel model has transit assignment for San Joaquin County TAZs. The DSEIR should clarify why the Alameda CTC travel model was not used to estimate ACE trips from Tracy to the Bay Area.

LA2-7

- Since 2010, the Alameda CTC's bi-annual LOS Reports have shown that the westbound I-580 segment from Greenville Road to Isabel Avenue (SR-84) has performed at LOS F in the morning peak period, whereas the DESIR's existing conditions analysis has shown a better LOS grade for this segment. In 2013, the Metropolitan Transportation Commission (MTC) identified this segment as one of the top 10 congested corridors in the region. In this context, we request that the traffic impacts on I-580 westbound in the morning period be represented appropriately. You may find:
  - the Alameda CTC LOS Reports on this webpage:  
[http://www.alamedactc.org/app\\_pages/view/8091](http://www.alamedactc.org/app_pages/view/8091)
  - MTC's Top 10 Congested Corridors on this web page:  
[http://files.mtc.ca.gov/pdf/congestion/BayArea\\_Top-10\\_Congestion\\_Hotspots\\_2013.pdf](http://files.mtc.ca.gov/pdf/congestion/BayArea_Top-10_Congestion_Hotspots_2013.pdf)

Thank you for the opportunity to comment on this DSEIR. Please contact me at (510) 208-7405 or Daniel Wu of my staff at (510) 208-7453 if you have any questions.

Sincerely,



Tess Lengyel  
Deputy Director of Planning and Policy

cc: Daniel Wu, Assistant Transportation Planner  
file: CMP/Environmental Review Opinions/2015

Letter LA2

Alameda County Transportation Commission  
Deputy Director of Planning and Policy  
Tess Lengyel  
March 10, 2015

**Response LA2-1:** The Tables in Section 4.13 have been updated to indicate Alameda CTC instead of ACCMA.

**Response LA2-2:** The LOS F segments have been bolded in Table 4.13-15

**Response LA2-3:** The text in Section 4.13 has been updated to indicate Alameda CTC instead of ACTA.

**Response LA2-4:** Section 4.13 indicates that the Alameda CTC 2040 Travel Demand model was used in the analysis of travel to and from Alameda County. Page 4.13-111 indicates that the transit assignment in the model was used to estimate travel demand to the two BART stations along I-580 in the County. The proportionate trips from the model were assigned to the THSP. The analysis fully indicates how the calculations were extracted from the model and calculated. Thus, the analysis fully complies with the Alameda CTC request to estimate the number of BART riders from the THSP at build out.

**Response LA2-5:** This comment is correct and noted and is identified in Section 4.13.

**Response LA2-6:** The Alameda CTC Travel Demand model does not have an assignment to the ACE station in Tracy, where the Project transit riders would embark the train and thus the model cannot be used to estimate ridership at the Tracy ACE station. The model only has an assignment at the Livermore ACE station, the next stop on the system going westwards. It is highly doubtful that any transit riders would utilize the Alameda County stations to embark the train, when the ACE station is only 2-3 miles from the THSP site. To accurately reflect the impact of project buildout at the ACE station in Tracy, current ridership, boardings and parking were evaluated in Section 4.13. This represents an accurate analysis of the project transit trips on the ACE train.

**Response LA2-7:** Most recent counts on the I-580 were used for the existing conditions analysis and the LOS analysis methodology are consistent with Caltrans criteria (vehicle density per mile per lane) and does indicate congested LOS conditions, consistent with the MTC report and the Alameda CTC LOS report. The Alameda CTC LOS report uses speed as the measure of effectiveness and also finds that the roadway is congested. No additional analysis is required.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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**San Joaquin County  
Environmental Health Department  
1868 East Hazelton Avenue  
Stockton, California 95205-6232**

**Website:** [www.sjgov.org/ehd](http://www.sjgov.org/ehd)  
**Phone:** (209) 468-3420  
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**DIRECTOR**  
Linda Turkatte, REHS

**PROGRAM COORDINATORS**  
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Rodney Estrada, REHS  
Adrienne Ellsaesser, REHS

March 12, 2015

Bill Dean  
Assistant Director  
Department of Development and Engineering Services  
City of Tracy  
Planning Division  
333 Civic Center Plaza  
Tracy, California 95376

**TITLE: Tracy Hills Specific Plan, Draft Subsequent Environmental Impact Report**

LA3-1 The San Joaquin County Environmental Health Department (EHD) is supportive of this project in regards to the provision of full public services.

If you have any questions, please call Rodney Estrada, REHS, Program Coordinator, at (209) 468-0331.

A handwritten signature in blue ink, appearing to read "Rodney Estrada".

Rodney Estrada, REHS  
Program Coordinator

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MAR 18 2015

CITY OF TRACY

11-125



Letter LA3  
San Joaquin County Environmental Health Department  
Rodney Estrada, REHS  
Program Coordinator  
March 12, 2015

**Response LA3-1:** The letter is in support of the proposed project. Comment noted.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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Delta-Sierra Group  
Mother Lode Chapter  
P.O. Box 9258, Stockton CA 95208

February 10, 2015

Bill Dean, Asst Devmt Svs. Director  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

RE: Tracy Hills DSEIR

via e-mail to [william.dean@@ci.tracy.ca.us](mailto:william.dean@@ci.tracy.ca.us); [desdirector@ci.tracy.ca.us](mailto:desdirector@ci.tracy.ca.us)

Mr. Dean:

The following are comments from the Sierra Club regarding the Draft Subsequent EIR for the Tracy Hills Specific Plan. Please send the response to these comments to my e-mail address at [parfrey@sbcglobal.net](mailto:parfrey@sbcglobal.net), not to the address on this letterhead.

OR1-1 [1. The Sierra Club is party to the legal Settlement Agreement signed between the original applicant, the City of Tracy, the City of Livermore, and Alameda County in late 1998. We will be monitoring this project very closely to ensure that the terms of the Settlement Agreement are implemented if and when the project builds out.]

OR1-2 [2. We appreciate that the DSEIR includes information about the Settlement Agreement and notes the Agreement in the transportation mitigation measures.]

OR1-3 [3. The payments for transportation and transit improvements required by the Settlement Agreement will help to fund some of the mitigation required by construction of 5,500 housing units and 5.7 million square feet of commercial and industrial development. However, under the California Environmental Quality Act (CEQA) the City of Tracy as lead agency is responsible for identifying and implementing all feasible mitigation measures to lessen the impacts to regional and local transportation facilities. In addition, the City is required to adopt all feasible programs to meet greenhouse gas reduction goals. Some of the mitigation measures recommended in the Greenhouse Emissions and Transportation sections fail to do this, as noted below.]

OR1-4A [4. According to the Tracy Hills Traffic Impact Analysis (prepared by Kimley-Horn and Associates, dated October 2014), Phase 1a of the Project would generate 25,433 daily vehicle trips. The THSP would also generate 122,836 daily trips in 2035, and 152,985 daily trips at full buildout (post-2035). (p. 4.3-16). This amount of traffic plus added emissions from other uses would generate an estimated 150,580.59 metric tons of CO2 equivalent each year (after mitigations are implemented).]

OR1-4B The DEIR mitigation measures in both the Greenhouse Emissions and Transportation sections fail to include substantive programs that could significantly reduce these impacts, e.g., providing direct subsidies to public transit systems such as the ACE train, which runs almost through the site. Such an omission is unconscionable in light of today's climate change requirements.

OR1-5 5. Indeed, the Greenhouse Emissions and Transportation sections of the DEIR read like some bad dream from the 1970's or 1980's. There are reams of detailed graphics, text, and mitigation measures that are devoted overwhelmingly to accommodating the immense amount of private auto trips that will be generated by the project. However, when it comes time to require the project to provide specific and enforceable programs to support non-auto alternatives, the DEIR analysis becomes vague, timid, and mealy-mouthed.

OR1-6 6. The DEIR's pro-auto bias is readily apparent when attempts are made to justify the project in light of regional and local plans which it fails to comply with.

For example, the DEIR notes in passing that "the Project would not meet SJVAPCD [air district] reduction requirements and impacts would be significant and unavoidable." Then, a few pages later the DEIR states blithely, with no empirical justification, that this is OK because "The Project, at buildout, would provide employment opportunities for 7,820 people. By providing employment opportunities and residential uses, the Project would reduce commute trip lengths" (p. 4-7.19).

If the DEIR includes this claim as a reason to approve the project the DEIR analysis should be augmented to quantify the reduction in commute trip lengths. More importantly, the DEIR must include a mitigation measure that would require monitoring of a jobs/housing balance program by year or phase to ensure that all the promised jobs actually show up before all the new housing and commuters do. The failure of the Specific Plan to include a credible jobs/housing program that would slow or stop housing approvals if jobs goals are not realized at various points during buildout is state of the art smart planning, and should be rectified in the DEIR.

OR1-7A 7. Mitigation Measure 4.7-1 (p. 4.7-21) fails to include key mitigation programs such as funding of real transit improvements (other than bus shelters) or operating expenses, and compliance with CalGreen

OR1-7B building standards that go beyond Title 24 to "Tier 1" or "Tier 2". The measure includes vague promises of "trip reduction programs" which are unspecified as to the goals to be met or required on individual commercial users. The measure includes transit shelters but no support for transit to actually get there.

OR1-7C The measure requires design buildings to "meet or exceed" Title 24 requirements, which is already required by the State Building Code.

OR1-8 8. This inadequate Mitigation Measure 4.7-1 is inconsistent with relevant City General Plan and Sustainability Action Plan policies and the DEIR analysis should note that inconsistency.

For example, Objective CIR-421 states "P3. The City shall encourage the expansion of transit services through consultation and cooperation with the Bay Area Rapid Transit District (BART), San Joaquin Regional Rail Commission, San Joaquin Regional Transit District, the Altamont Commuter Express (ACE), on services that expand the mobility and accessibility of transporting people, goods and services in and through Tracy and the region."

OR1-8 The DEIR requires no such “cooperation” with ACE or BART. In fact, the notable absence of any meaningful discussion of how to use and expand the ACE trains to mitigate transportation impacts of the project is a glaring deficiency of the entire document.

Cont.

OR1-9 9. The City’s Sustainability Action Plan includes laudable goals that are being ignored by this project. The Plan sets goals for a “20 percent increase in the percentage of non-City employees who participate in travel demand management programs from 2006 baseline levels” and “20 percent reduction in the community vehicle miles travelled (VMT) per capita from current (2006) levels.” The Plan calls for measures that “Support for transit,” “Smart growth, urban design, and planning,” and “Reduce commute trips.”

OR1-10 This project does not meet any of these Sustainability Action Plan goals or measures. Instead, this disastrous 1980’s-era sprawl development will generate over 150,000 daily auto trips and over 150,000 metric tons of CO2 equivalent each year. Surely, the City of Tracy can do better than this

Sincerely,

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cc: Tracy Planning Commission  
Tracy City Council  
City Manager and Planning Director, City of Livermore  
County Administrator and Planning Director, Alameda County  
Mark Connolly, Esq.

## RESPONSES TO COMMENT LETTERS FROM ORGANIZATIONS

### Letter OR1

Sierra Club

Delta-Sierra Group, Mother Lode Chapter

Mother Lode Chapter Executive Committee

February 10, 2015

**Response OR1-1:** The commenter references the Settlement Agreement and notes that the Project will be monitored closely by the Sierra Club. The Settlement Agreement is discussed in detail in Section 4.13 of the DSEIR (page 4.13-17). The terms of the Settlement Agreement, as described in this Section will be implemented as part of the Project. The Settlement Agreement is included as Appendix J of the Recirculated DSEIR. The comment does not raise any issue with respect to the contents of the DSEIR, or any environmental issue regarding the proposed Project. Because the commentator does not specifically comment of the DSEIR or raise any other CEQA issue, no further response is necessary.

**Response OR1-2:** Refer to Response OR1-1 and note that the Settlement Agreement is indeed described in Section 4.13 (Traffic and Circulation) of the DSEIR.

**Response OR1-3:** Section 4.7, Greenhouse Emissions, identifies feasible mitigation measures that would ensure project consistency with the City's Sustainability Action Plan and reduce project-related GHG emissions. For example, Mitigation Measure 4.7-1 would require the Project to increase transit usage and opportunities, improve pedestrian accessibility, provide mixed-use, improve destination accessibility, provide traffic calming measures, install high efficiency lighting, and install energy efficient appliances. Mitigation Measure 4.7-1 also requires the implementation of feasible SAP measures and other measures to reduce GHG emissions.

The proposed Tracy Hills Specific Plan establishes a mix of uses that includes a range of residential housing types, a limited amount of local-serving retail commercial with some office uses a range of active and passive parks, and open space; and includes new infrastructure and utilities to serve the new uses. The proposed mix of land uses would include pedestrian-friendly streets that would provide connections from housing to the retail areas and the various parks throughout the Project. All amenities would be located in proximity to residences, which would reduce the number and length of vehicle trips, thereby reducing emissions of criteria pollutants and GHGs. The proposed Project accommodates pedestrians, bicyclists, and automobiles.

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The analysis and significance determination in the DSEIR is based on the SJVAPCD's adopted GHG threshold requiring projects to achieve a 29 percent reduction below business as usual levels (Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects Under CEQA [adopted by the SJVAPCD on December 17, 2009]). When developing this guidance, the SJVAPCD investigated whether mass-based numerical limits (i.e., a non-business as usual standard) should be part of its GHG significance threshold. In their Final Staff Report – Climate Change Action Plan: Addressing GHG Emissions Impacts Under CEQA (December 2009), the SJVAPCD rejected such an approach due to a lack of scientific support for any particular numerical threshold. The SJVAPCD was not able to determine a specific quantitative level of GHG emissions increase, above which the project would have a significant impact on the environment, and below which would have an insignificant impact. The SJVAPCD concluded that impacts of project specific emissions on global climatic change are cumulative in nature, and the significance thereof should be examined in that context. Additionally, it should be noted that the California Court of Appeals upheld the BAU method in 2011 in *Citizens for Responsible Equitable Environmental Development (CREED) v. City of Chula Vista* 197 Cal. App. 4th 327, 335-37 (2011).

Mitigation Measure 4.7-1 would result in a decrease in GHG emissions of 29,566.80 MTCO<sub>2</sub>eq/yr, which would equate to a 16.41 percent reduction from the “business as usual” condition. However, buildup of the Project would not achieve the SJVAPCD’s 29 percent GHG significance threshold and impacts would remain significant, despite the implementation of Mitigation Measure 4.7-1.

**Response OR1-4A:** The Transportation Section of the DSEIR identifies mitigation measures, which includes both road geometric improvements and Travel Demand management measures, as required by the City General Plan, the City of Tracy Transportation Master Plan, the SJCOG Congestion Management Program and the Settlement Agreement to mitigate potential transportation impacts with regards to traffic operations and safety. With implementation of the mitigation measures, the Project will reduce the BAU GHG emissions from 180,147.39 to 150,580.59 metric tons per annum, a 16.41 % percent reduction. The letter incorrectly states that the ACE train "practically runs through the site". The train station is approximately 2 miles from Phase 1A and between 3 and 4 miles from future phases, which would be located on the north and south side of I-580. Payment of the JPA Settlement Agreement fees will occur as permits are obtained from the City of Tracy. These fees would be used to develop regional CIP and TDM projects to mitigate the Project's impacts to the road system. In addition, the THSP Project would provide pullout bus stops to facilitate a future local bus service. The THSP would also provide sidewalks and bicycle facilities consistent with the City of Tracy and State of California requirements for Complete Streets. The THSP fully complies with this requirement.

The comment summarizes trips and emissions generated by the proposed Project, but does not raise any specific issue with respect to the contents of the DSEIR, or any environmental issue regarding the proposed project. No further response is necessary.

**Response OR1-4B:** DSEIR Mitigation Measure 4.7-1 requires various transportation measures to reduce vehicle trips. For example, Mitigation Measure 4.7-1 requires the commercial uses to implement a trip reduction program and a ride sharing program for future employees. Additionally, Mitigation Measure 4.7-1 would be required to provide pedestrian connections and amenities to facilitate alternative transportation options. The parking cash out program required by Mitigation Measure 4.7-1 would provide a financial incentive for employees not to drive to work. As documented in Table 4.7-7 of the DSEIR, the proposed Project would be consistent with the applicable measures in the City's Sustainability Action Plan. In addition to being consistent with the Sustainability Action Plan's various energy and water efficiency measures, the Project would also be consistent with the transportation measures such as providing support for bicycling and transit, and reducing commute trips. As noted in the DSEIR and response OR1-3, implementation of the project's design features and Mitigation Measure 4.7-1 would reduce BAU emissions by 16.41 percent (a 12.5 percent reduction in the transportation sector).

**Response OR1-5:** The THSP has identified TDM measures on page 4-18. As tentative maps are approved, these TDM measures in section 4.2.7 will be included in a TDM Action Plan, consistent with the tentative map land use. The TDM Action Plan will be developed in collaboration with the City once the first permit application is submitted. These measures include actions that are consistent with SJCOG's Commute Connection Program, which includes rideshare programs, carpooling, vanpooling, commuter ride-matching, guaranteed ride home and employer services. The City of Tracy TMP and the THSP Project also proposes to construct a park-and ride facility at the proposed Lammers Road interchange to further promote TDM measures, as required by the City of Tracy and the SJCOG. The TDM Action Plan that would be developed with each tentative map application, will be consistent with the SJCOG RCMP TDM program as indicated in Impact 4.13-4b, which also include adherence to the Commute Connection programs which services San Joaquin, Merced and Stanislaus Counties and are consistent with the SJCOG Regional Transportation Plan.

Please also refer to the response to Comment OR1-4b, above. The DSEIR Section 4.7-1 identifies feasible mitigation for the Project; see Mitigation Measure 4.7-1. The proposed Project acknowledges that the Project would generate vehicular traffic and therefore identifies a mitigation program to mitigate for significant impacts. However, it is not an objective of the Project to accommodate private automobiles. Further, as addressed in prior responses the Project would provide sidewalks and bicycle facilities consistent with the City of Tracy and State of California requirements for Complete Streets. As described in DSEIR Section 4.7-1, feasible improvements are identified in Mitigation Measure 4.7-1 and Implementation of Mitigation Measure 4.7-1 would result in a 16.41 percent reduction in the Project's GHG emissions. Despite the implementation of the feasible mitigation measures, Project impacts would not be reduced to a less than significant level. Refer to DSEIR Section 7, Alternatives, for a discussion of Project alternatives that would meet the Project objectives and reduce the Project's significant impacts.

**Response OR1-6:** Many comments have been submitted regarding the reduction of Project trips to the San Francisco Bay Area. In the near term, there are fewer jobs assumed to be available in the City of Tracy and San Joaquin County as a whole. As a result of this assumption, the Project traffic distributes onto I-580. As the City and the County develop and local employment opportunities increase, the road network in Tracy would also expand, additional interchanges would be constructed, and less traffic would distribute to I-580 along Corral Hollow Road. Spine Road would have been extended to the future Lammers Road as the THSP builds out, and the travel demand would decrease on the southbound approach of Spine Road to Corral Hollow Road.

As a result of both buildup of the General Plan and implementation of the THSP, the jobs-to-housing balance within the City of Tracy would shift over time, resulting in changed travel patterns and more trips with origins and destinations within Tracy and also within the THSP.. The change in THSP traffic volumes starting with Phase 1A (near-term conditions) through 2035 (General Plan buildup) and Project buildup substantiates the shift in the jobs-to-housing ratio. The analysis accurately reflects this anticipated change in development and rerouting of traffic and accurately reflects future conditions, as adopted in the City of Tracy Citywide Roadway and Transportation Master Plan. The shift in the jobs-to-housing ratio to accommodate more jobs in Tracy would result in more trips having origins and destinations within Tracy and instead traveling onto Lammers Road and Corral Hollow Road and leaving the City. In addition, the construction of Lammers Road and the Lammers Road interchange with I-580 would reroute Project Phase 1A traffic traveling north on Spine Road to Lammers Road, compared to these trips traveling to Corral Hollow Road in the near term. Note that Spine Road is not connected to Lammers Road for Phase 1A conditions. Within the THSP, as more employment related land uses develop, internal trips would increase and less trips would leave the site, which results in less regional trips.

The City just approved the Cordes Ranch Specific Plan which includes approximately 1,462 net acres of commercial, office, manufacturing, warehouse, and distribution uses. This increase in employment is forecasted to decrease traffic on the regional road system. FedEx, Cordes Building 1 and Medline are already under construction. The City also recently approved the following development projects that would create local employment opportunities: SuperLube, Prime Car Wash, McDonalds, Red Robin, WinCo, Bevmo, FasTrak car wash, Arco gas station, new Animal Shelter, St Bernard's Pre-school, CMC Rebar, El Pollo Loco, Dunkin Donuts, Tracy Collision Center, Sutter Hospital, Amazon and Shops at Northgate Village. These projects are anticipated to provide employment opportunities, furthering the City's 2013-2015 Economic Development Strategy, thereby resulting in greater internal trip capture and fewer trips leaving the City.

The City of Tracy Transportation Master Plan forecasts 64,182 employed persons in year 2035, which is an increase of 40,078 (or 166.3 percent) from 24,104 employed persons in 2006. Dwelling units are forecast to increase by 51.4 percent from 26,789 in 2006 to 40,506 residences in 2035. The Tracy Travel Demand Model indicates that the growth in Tracy (from existing conditions to year 2035) would result in the internal trip distribution

increasing from the existing 48 percent to 49 percent in the AM peak hour and decrease from 64 percent to 49 percent in the PM peak hour as a percentage of total Tracy trips. Westbound trips on I-580 towards Alameda County and beyond, would decrease from 7 percent to 1 percent in the AM peak hour and remain at about 1 percent in the PM peak hour. Trips from Alameda County and beyond to Tracy would remain at about 1 percent during the AM peak hour and decrease from 3.5 percent to 1.3 percent in the PM peak hour.

Economic development data collected by the City of Tracy indicates that between 2000 and 2008, the jobs-to-housing ratio remained consistent at approximately 1.19. Between 2008 and 2014, the jobs-to-housing ratio showed an increase of 22.7 percent in local jobs at a ratio of 1.46. This increase already results in more trips staying local to Tracy.

As described in DSEIR Section 4.7, the Project would be consistent with the City's Sustainability Action Plan with implementation of Mitigation Measure 4.7-1. Mitigation Measure 4.7-1 would require the THSP Project to increase transit usage and opportunities, improve pedestrian accessibility, provide mixed-use, improve destination accessibility, provide traffic calming measures, install high efficiency lighting, and install energy efficient appliances. Mitigation Measure 4.7-1 also requires the implementation of feasible Sustainable Action Plan measures and other measures aimed at reducing GHG emissions.

Table 4.7-7 of the DSEIR provides a consistency analysis between applicable Sustainable Action Plan measures and the THSP Project and demonstrates how the THSP Project would be consistent with the Sustainable Action Plan and would not hinder its implementation or effectiveness.

Additionally, as described in the DSEIR, the THSP project is identified in the City of Tracy General Plan and the TMP.

As noted by the commenter, the DSEIR finds that the Project would not meet SJVAPCD reduction requirements. This statement is made in regards to the SJVAPCD's 29 percent reduction from the "business as usual" threshold. However, the statement regarding the employment opportunities generated by the Project was made in order to describe the Project's consistency with a specific Sustainability Action Plan measure (Measure T-13a). The two statements in the DSEIR occur under two different impact statement analyses and are not linked together as purported by the commenter.

The reduction in commute trip lengths are quantified in the DSEIR. This reduction is identified in Tables 4.7-3 and 4.7-6 which show the reduced GHG emissions after implementation of the Project Design Features and Mitigation Measures. These reductions were quantified in the California Emissions Estimator Model (CalEEMod) as recommended by the SJVAPCD. The reductions used by CalEEMod are based on research and data within the California Air Pollution Control Officers Association report *Quantifying Greenhouse Gas Mitigation Measures*.

As discussed in the City's Transportation Master Plan (TMP), which assumes the THSP Project, the City is forecasted to experience growth in jobs by the TMP horizon year of 2035 and buildout in City buildout. For example in 2035, the TMP forecasts 40,506 houses and 64,182 jobs (a jobs-to-housing ratio of 1.58). By City Buildout, the TMP forecasts 43,557 houses and 184,003 jobs (a jobs-to-housing ratio of 4.22). The City's projected job growth is anticipated to outpace available housing, and additional housing units would be needed. As evidenced by the data in the TMP (which is based on and supported by the data in the City's General Plan), a jobs-to-housing program that would slow or stop housing approvals (as suggested in the commenter) is not necessary or appropriate. This increase in employment is forecasted to decrease traffic on the regional road system. FedEx, Cordes Building 1 and Medline are already under construction. The City also recently approved the following development projects that would create local employment opportunities: SuperLube, Prime Car Wash, McDonalds, Red Robin, WinCo, Bevmo, FasTrak car wash, Arco gas station, new Animal Shelter, St Bernard's Pre-school, CMC Rebar, El Pollo Loco, Dunkin Donuts, Tracy Collision Center, Sutter Hospital, Amazon and Shops at Northgate Village. These projects are anticipated to provide employment opportunities, furthering the City's 2013-2015 Economic Development Strategy, thereby resulting in greater internal trip capture and fewer trips leaving the City.

**Response OR1-7A:** The THSP has identified TDM measures on page 4-18. As tentative maps are approved, these TDM measures would be identified in a TDM Action Plan consistent with the tentative map land use. These measures include actions that are consistent with SJCOG's Commute Connection Program, which includes rideshare programs, carpooling, vanpooling, commuter ride-matching, guaranteed ride home and employer services. The project also proposes to construct a park-and-ride facility at the proposed Lammers Road interchange, to further promote TDM measures, as required by the City of Tracy and the SJCOG. The TDM Action Plan that would be developed with each tentative map application, would be consistent with the SJCOG RCMP TDM program, which also includes adherence to the Commute Connection programs, which services San Joaquin, Merced and Stanislaus Counties. Through these TDM measures, transit and non-automotive transportation alternatives will be promoted. The development of a TDM action plan for each tentative map application as indicated in Impact 4.13-b, provides the City with the opportunity to monitor success of the measures and change the program for the next phase of development as may be determined necessary. Rule 9510 also provides the City with a tool to monitor TDM measures.

Refer to response OR1-4b, above. DSEIR Mitigation Measure 4.7-1 requires various transportation measures to reduce vehicle trips such as trip reduction programs, ride sharing programs, pedestrian connections and amenities to facilitate alternative transportation options, and parking cash out programs. As documented in Table 4.7-7 of the DSEIR, the proposed Project would be consistent with the applicable measures in the City's Sustainability Action Plan.

**Response OR1-7B:** The THSP has identified TDM measures on page 4-18. As tentative maps are approved, these TDM measures would be identified in a TDM Action Plan consistent with the tentative map land use. These measures include actions that are consistent with SJCOG's Commute Connection Program, which includes rideshare programs, carpooling, vanpooling, commuter ride-matching, guaranteed ride home and employer services. The project also proposes to construct a park-and-ride facility at the proposed Lammers Road interchange, to further promote TDM measures, as required by the City of Tracy and the SJCOG. The TDM Action Plan that would be developed with each tentative map application, would be consistent with the SJCOG RCMP TDM program as indicated in Impact 4.13-4b, which also includes adherence to the Commute Connection programs, which services San Joaquin, Merced and Stanislaus Counties. Through these TDM measures, transit and non-automotive trips will be promoted. The development of a plan a TDM action plan for each Tentative Map application, provides the City with the opportunity to monitor success of the measures and change the program for the next phase of development.

**Response OR1-7C:** The comment is noted but does not identify any issue with respect to the contents of the DSEIR, or any environmental issue regarding the proposed Project. The THSP has identified TDM measures on page 4-18 R. As tentative maps are approved, these TDM measures would be identified in a TDM Action Plan consistent with the tentative map land use. These measures include actions that are consistent with SJCOG's Commute Connection Program, which includes rideshare programs, carpooling, vanpooling, commuter ride-matching, guaranteed ride home and employer services. The project also proposes to construct a park-and-ride facility at the proposed Lammers Road interchange, to further promote TDM measures, as required by the City of Tracy and the SJCOG. The TDM Action Plan that would be developed with each tentative map application, would be consistent with the SJCOG RCMP TDM program as indicated in Impact 4.13-4b, which also includes adherence to the Commute Connection programs, which services San Joaquin, Merced and Stanislaus Counties. Through these TDM measures, transit and non-automotive trips will be promoted. The development of an TDM action plan for each Tentative Map application, provides the City with the opportunity to monitor success of the measures and change the program for the next phase of development. Because the commentator does not specifically comment of the DSEIR or raise any other CEQA issue, no further response is necessary.

**Response OR1-8:** The THSP has identified TDM measures on page 4-18. As tentative maps are approved, these TDM measures would be identified in a TDM Action Plan consistent with the tentative map land use. These measures include actions that are consistent with SJCOG's Commute Connection Program, which includes rideshare programs, carpooling, vanpooling, commuter ride-matching, guaranteed ride home and employer services. The project also proposes to construct a park-and-ride facility at the proposed Lammers Road interchange, to further promote TDM measures, as required by the City of Tracy and the SJCOG. The TDM Action Plan that would be developed with each tentative map application, would be consistent with the SJCOG RCMP TDM program as indicated in Impact 4.13-4b, which also includes adherence to the Commute Connection programs,

which services San Joaquin, Merced and Stanislaus Counties. Through these TDM measures, transit and non-automotive trips will be promoted. The development of a TDM action plan for each Tentative Map application, provides the City with the opportunity to monitor success of the measures and change the program for the next phase of development. Refer to Response OR1-4b, above. The DSEIR analyzed the Project's consistency with City policies including the Sustainability Policies in Table 4.7-7 of the DSEIR. Furthermore, Objective CIR-421, as noted in the comment, encourages the City to consult and cooperate with the Bay Area Rapid Transit (BART) District, San Joaquin Regional Rail Commission, San Joaquin Regional Transit District, the Altamont Commuter Express (ACE) to expand the mobility and accessibility of transporting people, goods, and services throughout the region. This objective does not include requirements for future projects or project applicants.

**Response OR1-9:** The comment is noted. The Transportation Section of the DSEIR identifies mitigation measures that include geometric road improvements and Travel Demand Management measures as required by the City General Plan, the City of Tracy Transportation Master Plan, the SJCOG Congestion Management Program and the JPA Settlement Agreement. Implementing these mitigation measures would lessen impacts to regional and local transportation facilities with regards to both traffic operations and safety, and thus would fulfill the City of Tracy's compliance with CEQA as the lead agency for the Project.

Section 4.7, Greenhouse Emissions, identifies feasible mitigation measures that would ensure Project consistency with the City's Sustainability Action Plan and reduce Project-related greenhouse gas (GHG) emissions. For example, Mitigation Measure 4.7-1 would require the Project to increase transit usage and opportunities, improve pedestrian accessibility, provide mixed-use development, improve destination accessibility, provide traffic calming measures, install high efficiency lighting, and install energy efficient appliances. Mitigation Measure 4.7-1 also requires the implementation of feasible Sustainable Action Plan measures and other measures to reduce GHG emissions. Mitigation Measure 4.7-1 requires various transportation improvement measures to reduce vehicle trips. For example, Mitigation Measure 4.7-1 requires commercial uses to implement a trip reduction program and a ride sharing program for future employees. Additionally, Mitigation Measure 4.7-1 requires pedestrian connections and amenities to facilitate alternative transportation options. The parking cash-out program required by Mitigation Measure 4.7-1 would provide a financial incentive for employees not to drive to work.

The proposed Tracy Hills Specific Plan establishes a mix of uses that includes a range of residential housing types, a limited amount of local-serving retail commercial with some office uses, a range of active and passive parks, and open space; the Project also includes new infrastructure and utilities to serve the new uses. The proposed mix of land uses would include pedestrian-friendly streets that would provide connections from housing to the retail areas and the various parks throughout the Project. All amenities would be located in proximity to residences, which would reduce the number and length of vehicle trips, thereby reducing emissions of criteria pollutants and GHGs. The proposed Project accommodates pedestrians, bicyclists, and automobiles.

Implementation of Mitigation Measure 4.7-1 would result in a decrease in GHG emissions of 29,566.80 MTCO<sub>2</sub>eq/yr, which would equate to a 16.41 percent reduction from the “business as usual” condition. However, buildup of the Project would not achieve the SJVAPCD’s 29 percent GHG significance threshold and impacts would remain significant.

As documented in Table 4.7-7 of the DSEIR, the Project would be consistent with the applicable measures in the City’s Sustainability Action Plan. In addition to being consistent with the Sustainability Action Plan’s various energy and water efficiency measures, the Project would also be consistent with the transportation measures such as providing support for bicycling and transit, and reducing commute trips. As noted in the DSEIR and response to Comment OR1-3, implementation of Project Design Features and Mitigation Measure 4.7-1 would reduce emissions by 16.41 percent (a 12.5 percent reduction in the transportation sector).

**Response OR1-10:** The comment is noted. The Transportation Section of the DSEIR identifies mitigation measures that include geometric road improvements and Travel Demand Management measures as required by the City General Plan, the City of Tracy Transportation Master Plan, the SJCOG Congestion Management Program and the JPA Settlement Agreement. Implementing these mitigation measures would lessen impacts to regional and local transportation facilities with regards to both traffic operations and safety, and thus would fulfill the City of Tracy’s compliance with CEQA as the lead agency for the Project.

Section 4.7, Greenhouse Emissions, identifies feasible mitigation measures that would ensure Project consistency with the City’s Sustainability Action Plan and reduce Project-related greenhouse gas (GHG) emissions. For example, Mitigation Measure 4.7-1 would require the Project to increase transit usage and opportunities, improve pedestrian accessibility, provide mixed-use development, improve destination accessibility, provide traffic calming measures, install high efficiency lighting, and install energy efficient appliances. Mitigation Measure 4.7-1 also requires the implementation of feasible Sustainable Action Plan measures and other measures to reduce GHG emissions. Mitigation Measure 4.7-1 requires various transportation improvement measures to reduce vehicle trips. For example, Mitigation Measure 4.7-1 requires commercial uses to implement a trip reduction program and a ride sharing program for future employees. Additionally, Mitigation Measure 4.7-1 requires pedestrian connections and amenities to facilitate alternative transportation options. The parking cash-out program required by Mitigation Measure 4.7-1 would provide a financial incentive for employees not to drive to work.

The proposed Tracy Hills Specific Plan establishes a mix of uses that includes a range of residential housing types, a limited amount of local-serving retail commercial with some office uses, a range of active and passive parks, and open space; the Project also includes new infrastructure and utilities to serve the new uses. The proposed mix of land uses would include pedestrian-friendly streets that would provide connections from housing to the retail areas and the various parks throughout the Project. All amenities would be

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located in proximity to residences, which would reduce the number and length of vehicle trips, thereby reducing emissions of criteria pollutants and GHGs. The proposed Project accommodates pedestrians, bicyclists, and automobiles.

Implementation of Mitigation Measure 4.7-1 would result in a decrease in GHG emissions of 29,566.80 MTCO<sub>2</sub>eq/yr, which would equate to a 16.41 percent reduction from the “business as usual” condition. However, buildup of the Project would not achieve the SJVAPCD’s 29 percent GHG significance threshold and impacts would remain significant.

As documented in Table 4.7-7 of the DSEIR, the Project would be consistent with the applicable measures in the City’s Sustainability Action Plan. In addition to being consistent with the Sustainability Action Plan’s various energy and water efficiency measures, the Project would also be consistent with the transportation measures such as providing support for bicycling and transit, and reducing commute trips. As noted in the DSEIR and response to Comment OR1-3, implementation of Project Design Features and Mitigation Measure 4.7-1 would reduce emissions by 16.41 percent (a 12.5 percent reduction in the transportation sector).

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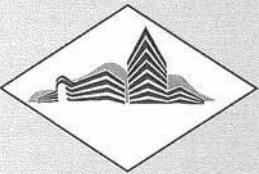
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March 3, 2015



OR2

***VIA HAND DELIVERY***

Bill Dean, Assistant Director  
Development Services Department  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

**RECEIVED**

**MAR 03 2015**

**CITY OF TRACY**

Re: Tracy Hills Specific Plan Project Subsequent Draft  
Environmental Impact Report

Dear Mr. Dean:

This comment letter is submitted on behalf of Horizon Planet, an environmental advocacy group dedicated to protecting, preserving, and conserving agricultural and open space lands throughout the State of California for future generations and seeking to affect changes in proposed urban projects so that such projects are designed to minimize potential ecological impacts (“Horizon”). Consistent with its mission, Horizon has reviewed the 2014 Subsequent Draft Environmental Impact Report (“DEIR”) for the Tracy Hills Specific Plan (“THSP” or “Project”) which addresses many topics involved with Horizon’s overarching mission, and has attended two public Planning Commission sessions.

Horizon detects multiple significant deficiencies. The Project DEIR fails to adequately disclose the environmental impacts of the Project and fails to comply with California environmental protection laws in several material ways:

1. The DEIR fails to provide a clear and consistently defined project description.
2. The DEIR relies in part upon an outdated and invalid specific plan and outdated environmental assessments.

3. The DEIR improperly and incorrectly identifies a “preserve easement” as mitigation that was never dedicated, does not exist, has no funding mechanism, and is not a part of the Project.
4. The DEIR fails to provide adequate, certain, and enforceable mitigation for impacts relating to the protection and preservation of federally endangered and state threatened special-status species and habitat.
5. The DEIR provides no mitigation for special-status species.
6. The DEIR fails to provide adequate, certain, and enforceable mitigation for impacts relating to interference with wildlife movement.
7. The DEIR defers analysis of impacts to sensitive plant species and fails to provide adequate, certain, and enforceable mitigation.
8. The DEIR fails to adequately address potential impacts to Corral Hollow Creek and riparian woodlands, habitat for several protected special-status species.
9. The THSP DEIR identifies improper mitigation for conversion of agricultural farmland.
10. The DEIR does not disclose and evaluate the energy impacts of the Project.
11. The DEIR fails to adequately disclose and evaluate the Project’s provision of water and impacts to existing water supply.

12. The DEIR does not evaluate, disclose, and mitigate the GHG emissions of the Project in compliance with recent case law clarifying the standards for a project level GHG analysis.

These identified material defects are explained in greater detail below.

1. **THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW BECAUSE IT FAILS TO PROVIDE A CLEAR AND CONSISTENTLY DEFINED PROJECT DESCRIPTION**

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CEQA's purpose is to ensure an informed public and informed decision making. (Public Res. Code §21000 et seq.; *Laurel Heights II v. U.C. Regents* (1993) 6 Cal.4<sup>th</sup> at 1123.) An unstable and misleading project description is a failure to proceed as required by law. (*San Joaquin Raptor Rescue v. County of Merced* (2007) 149 Cal.App.4<sup>th</sup> 645, 655.) “An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*San Joaquin Raptor Rescue, supra*, at 672; citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) However, “a curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” (*Id.* At pp. 197-198.)

Based on inconsistent descriptions in planning documents, it is unclear what “Project” the DEIR is evaluating. The Project description varies in a meaningful way from the Notice of Preparation, the Specific Plan, and the DEIR, and is described inconsistently throughout the DEIR. Horizon cannot ascertain whether the Project updates the 1998 THSP or replaces the 1998 THSP, as these terms (update vs. replacement) are not defined and are used haphazardly and without logic throughout the documents.

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Here the City's failure to construct and then consistently apply a single consistent project description runs afoul of the rule requiring stable project descriptions and disables the ability

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of this DEIR to satisfy CEQA's information requirements. Akin to *San Joaquin Raptor Rescue*, this DEIR's Project Description is so internally inconsistent that it deprives the public and decision makers of any meaningful insight into the Project, or opportunity to make an informed decision. This amounts to a failure to proceed in a manner required by law.

Failure to supply and apply a consistent and stable project description contaminates studies of environmental impacts and "the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4<sup>th</sup> at p. 1198.) Simply stated, without a stable and consistent project description it is impossible for the public to ascertain whether a particular study studied the "right" project and correctly quantified the environmental effects and properly determined whether mitigation measures would lessen the projected impact.

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Under CEQA, a "project" means "*the whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." (Guidelines § 15378, subd. (a), § 21065.) It refers to the underlying "activity" for which approval is sought (Guidelines, § 15378, subd. (c)); therefore, the entire project must be fully described and disclosed, and not a smaller or truncated portion of it, so that all impacts are meaningfully disclosed and evaluated. (*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829-831.) The Guidelines specify that every EIR must set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact. (Guidelines § 15124.) The project description must also include "[a] general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals, if any, and supporting public service facilities." (Guidelines § 15124, subd. (c).) This DEIR does not accomplish this statutory objective.

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Cont.

Starting with the language of the April 15, 2014 Updated Notice of Preparation (“Updated NOP”), it is unclear whether the Project is an update/amendment/re-write/new project/substantially the same/substantially different/based on the 1998 THSP/an entirely new Specific Plan, as these terms and concepts are used inconsistently throughout the document. The Updated NOP variously and inconsistently describes the Project as:

- “....2,732 acres with up to 5,499 residential dwellings, schools, parks, commercial, and other land uses...”
- “[The Project]....includes a comprehensive **update** to the previously adopted 1998 Tracy Hills Specific Plan... [which] covered approximately covered 6,175 acres...and designated the remaining 3,443 acres as conservation open space...(emphasis added.)”
- The Updated NOP labels the Project Specific Plan that is the subject of the NOP/DEIR a “**re-written**” version of the 1998 THSP.
- According to the Updated NOP, the requested modifications to the 1998 THSP are both “substantial” (p. 1, final ¶) and yet largely the same “[the Project]...development remains largely the same as authorized by the 1998 THSP....” (p. 2, first ¶.)
- According to the Updated NOP, the Project DEIR is to “....bring the 1998 THSP into consistency and compliance with the City’s...General Plan.”<sup>1</sup>
- Lastly, the NOP provides that the Project, “...would involve **amendments** to the 1998 THSP in the form of the comprehensive **update** described above...(bold added.)” (The Updated NOP is attached as **Exhibit A** without all quoted text highlighted for reference.)

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The 2014 DEIR inconsistently defines the Project subject to CEQA analysis in the following ways:

<sup>1</sup> The 1998 THSP was processed under an entirely different General Plan.

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Cont.

- The DEIR initially defines the “Project” as the 1998 Tracy Hills Specific Plan and states approving the 1998 Project resulted in permanently dedicating 3,500 acres of open space.<sup>2</sup> (Section 1.2, Project History, p. 1-1.)
- The 1998 Project is defined to include 2,732 acres of developable project in addition to the purported dedication of the 3,500-acre “open space”. The 1998 Project encompassed approximately 6,232 acres. (Section 1.2, Project History, p. 1-1.)
- The DEIR describes the Project as a “....comprehensive **update** to the previously adopted 1998 Tracy Hills Specific Plan.” (Section 1.2, Project History, p. 1-1., (bold added).)
- The DEIR defines the “Project Area” (the project under review of this DEIR) as “....2,731.6 acres within the southern portion of the City of Tracy...” and divides the “Project Area” into three zones, the Northern, Central, and Southern portion. The DEIR states the Southern portion “...abuts approximately 3,500 acres open space under a conservation easement.”<sup>3</sup> (Section 1.3, Project Under Review, p. 1-2.)
- The DEIR refers to the Specific Plan as “**re-written**” Specific Plan. (Section 1.4, Project Background, p. 1-3.) (All relevant portions of the DEIR cited above are attached as **Exhibit B** with the quoted text highlighted for reference.)

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In contrast to the Updated NOP and DEIR, referring to the Project alternatively as an update/amendment/re-write to the 1998 THSP, the 2014 THSP document indicates that the new Specific Plan operates as a “replacement” for the 1998 THSP:

- “The Tracy Hills Specific Plan was originally adopted in 1998 (the 1998 THSP). Since then, city policies and developer plans have changed. Due to these changes, the developer submitted and the City approved this new THSP to **replace** the former 1998 THSP.” (2014 Draft Specific Plan, p.1-1 (bold added), attached as **Exhibit C**, cited text highlighted for reference.)

<sup>2</sup> Horizon could find no reference to any permanent dedication occurring in 1998. The only available record is an easement granted in 2012 for a “future preserve” area not associated with the 1998 THSP.

<sup>3</sup> Yet, this “conservation easement” - to the extent it exists - is not a part of the “Project Area”, and there have been no documents made available to Horizon demonstrating how this area is an easement, open space, or mitigation of any type for the “Project Area”.

OR2-1E      None of the explanations above in the NOP, DEIR, and Specific Plan adequately identify the “Project” or “Project Area” that is being evaluated by the DEIR. Is the new Project a rewrite/amendment/update/replacement of the 1998 Project? Is the 2014 DEIR relying on “old studies contained in the 1998 EIR” or some of the “old studies? To add to this troubling definitional confusion, at the January 28, 2015 Planning Commission Hearing, Tracy Planning Staff referred to the Project as an entirely “new” Specific Plan – which completely contradicts the written Project documents referenced earlier. This lack of clarity fails to inform the public as to the actual Project under review as required by law, and results in thwarting meaningful public participation in the public hearing process and meaningful public comments about the Project’s significant environmental effects.

“[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.)

In *City of Santee, supra*, 214 Cal.App.3d 1438, the Court of Appeal rejected an EIR for applying an inconsistent project description. There the EIR evaluated a prison project using variable figures to determine a temporary facility’s duration – i.e., from three years to seven years to an indefinite length. Concluding that the EIR omitted an accurate, stable, and finite project description, the court held the EIR could not “adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences.” (*Id.* at pp. 1454-1455.) The same omission of relevant data and information is true in the present case.

OR2-1F      This DEIR must be rewritten and recirculated to clarify and apply a consistent and complete project description. Currently there is too much confusion in what precise modifications to

OR2-1F Cont. the 1998 Tracy Hills Specific Plan are intended to be analyzed,<sup>4</sup> that the impacts anticipated to result from these revisions will necessarily be incomplete or confused, as will the efficacy of any proposed mitigation.

OR2-2A 2. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW BECAUSE IT RELIES IN PART UPON AN OUTDATED AND INVALID SPECIFIC PLAN AND OUTDATED ENVIRONMENTAL ASSESSMENTS

An EIR must reflect current site conditions. (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4<sup>th</sup> 683, 709.) As explained in Section 1, the Project NOP and DEIR at times define the Project/Project Area as an *update* to the prior 1998 THSP. However, the 1998 THSP DEIR is itself invalid because the identified mitigation measures and habitat management plan *were never implemented*. For example, the 1998 THSP EIR Mitigation Measures 21.2-4, and 21.2-7, all involving Kit Fox Habitat and Federal and State take permits, were never implemented, and the Habitat Conservation Plan identified as mitigation in the 1998 EIR was never established. A project EIR is invalid if mitigation measures depend upon management plans that have not been fully formulated or the plan has become stale from the passage of time. (Public Res. Code § 21000 et seq.; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 92; formal adoption of proposed mitigation is a necessary precondition of use for subsequent EIR.)

OR2-2B For example, the following prior studies are referenced and incorporated into the 2014 DEIR:

- 1988 and 1990 Sensitive Plant Surveys conducted by LSA and reviewed in 1996 by H.T. Harvey and Associates. (Biological Resources Section 4.4, pp. 4.4-7 & 4.4-13.)

<sup>4</sup> Horizon prepared a chart demonstrating the proposed land use changes from the 1998 THSP to the current Project, in **Exhibit I** hereto. Horizon prepared this chart in the absence of a clear explanation from the Project documents as to the proposed changes between the two old and new Projects.

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Cont.

- 1998, 1989, and 1991 Habitat Assessment of Project Area. These habitat studies focused on the presence of the San Joaquin County Kit Fox and the suitability of the habitat for sensitive plant and wildlife species. (Biological Resources Section 4.4, pp. 4.4-3 & 4.4-9.)
- 1993 Kit Fox Survey by Jones and Stokes, “succeeded” by the 1996 Multi-Species Habitat Management Plan prepared by LSA. (Biological Resources Section 4.4, pp. 4.4-7 & 4.4-9.)
- 2003 Jurisdictional Delineation for state and federal jurisdictional waters. (Biological Resources Section 4.4, p. 4.4-9.)

(All relevant portions of the Biological Resources Section are collectively attached as **Exhibit E** with the cited text highlighted for reference.)

It is unclear why these reports are referenced, or if the current Project relies on these reports as part of the current Project analysis. These reports referenced in the Project DEIR do not reflect current site conditions, and any reliance on the replaced Project is unreasonable without additional analysis and constitutes a failure to disclose environmental impacts of the Project. Further, it is not clear if *any* of the Project environmental reports analyzed the old or current Project, or some combination thereof, since the Project is so ill-defined throughout.

OR2-3A

3. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW BECAUSE IT IMPROPERLY AND INCORRECTLY IDENTIFIES A “PRESERVE EASEMENT” AS MITIGATION THAT WAS NEVER DEDICATED, DOES NOT EXIST, HAS NO FUNDING MECHANISM, AND IS NOT A PART OF THE PROJECT

The Project DEIR opens with a material error which is relied upon and repeated throughout the document. Page 1 of the DEIR Executive Summary states that, “**The City’s previous approval of the THSP also resulted in the permanent dedication of 3,500 acres for open**

OR2-3A Cont. **space uses west of I-580.”** (Section 1.2, Project History, p. 1-1, bold added.) Setting aside the fact the statement omits explaining the designated impact that this land is intended to mitigate, there was *never a set aside* of this property for open space with the 1998 THSP. The EIR for the 1998 THSP merely provides that, “....3,552 acres on site is *proposed* to be permanent open space....” (1997 DEIR p. 4.8-2, first ¶, italics added, for grazing; see attached **Exhibit D.**)

OR2-3B This *proposed* open space easement was never committed to impacts of the 1998 THSP. When the purported set-aside occurred in July 2012, the conveyance was not tied to any specific development, property, or impact. The land is not preserved in perpetuity, and there is no funding mechanism for this property. A mitigation measure cannot depend upon an unformulated and unfunded management plan. (*Communities for a Better Environment, supra*, at p. 92.) Nonetheless, the DEIR refers to this 3,500-acre area as the “conservation” easement throughout and uses it to support alternative and sometimes inconsistent mitigation. (See for example, Section 4.4, Biological Resources, p. 4.4-9, ¶3: “Area C extends into the undeveloped hillside to the west and abuts an approximately 3,500-acre open space area under a conservation easement.”) (The relevant cited pages from the 2014 DEIR are attached collectively as **Exhibit E**, with the cited text highlighted for reference.) Horizon believes, based on all available information, that the developer has not established an HCP or other agency accepted plan for the benefit of any portion of the Tracy Hills Specific Plan, except that portion of the prior Project previously described as Business 580. Thus, the area may or may not be committed as permanently enforceable open space land, but it does not satisfy the criteria as habitat land and cannot presently serve as proposed mitigation for Area C.

OR2-3C Despite the lack of reliable documentation confirming a designation of any easement for the benefit of property covered by the DEIR, Staff alternatively refers to an “open space easement” and an “open space and habitat easement”, presumably in reference to the 3,500-

OR2-3C acre property.<sup>5</sup> Staff offered no explanation for how they were using these technical terms, Cont. nor did Staff offer any explanation about how this property had the physical and legal attributes to qualify as some form of recognized mitigation plan, whether as “open space”, “habitat”, or any other unidentified type of mitigation.

OR2-3D The DEIR also fails to explain and distinguish the purported 3,500-acre grant, which actually combines three easement grants - all occurring in July 2012. These easement grants are attached as **Exhibits F, G, and H**, summarized below.

- Easement No. 1 (**Exhibit F**) consists of approximately 688 acres and provides mitigation for the Tracy 580 Business Park only. Only Easement No. 1 is dedicated as mitigation property to the San Joaquin Council of Governments (“SJCOCG”) and has been incorporated as a part of the San Joaquin Multi Species Habitat Conservation Plan (“SJMSHCP”). Easement No. 1 appears to be the only easement permanently and irrevocably committed to habitat mitigation.
- Easement No. 2 (**Exhibit G**) is a “Future Preserve Area” consisting of approximately 2,439 acres. This easement is held by SJCOCG as a “Future Preserve” area only. It is not a part of the SJMSHCP, it is not tied to any property or development, it has no funding mechanisms, it is not a part of the Project, and this easement area is not annexed into the City.
- Easement No. 3 (**Exhibit H**) is identified as “Potential Slope Stabilization Area” of approximately 273 acres, and likewise is held by SJCOCG as a “Future Preserve” area only. It is not a part of the SJMSHCP, it is not tied to

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<sup>5</sup> January 28, 2015 Planning Commission meeting.

OR2-3D Cont. any specific project, it has no funding mechanism, it is not a part of the Project, and it is not within the City limits.

OR2-3E The Business 580 Park is no longer a part of the Project, and the land uses proposed in the same footprint are substantially different in the new THSP. (See Chart attached as **Exhibit I.**) This mitigation Easement No. 1 is project specific for the old Business 580 Park and cannot now be used for the new THSP. Indeed, the EIR concedes that the Tracy 580 Business Park is no longer a proposed development project. (See Section 4.4, Biological Resources, p. 4.4-7: “The former Tracy 580 Business Park has since been abandoned and is no longer being pursued.”)

OR2-3F The dedication of Easement Nos. 2 and 3 to SJCOG as potential future mitigation for some unidentified project with unidentified impacts is not mitigation. The DEIR’s effort to label this area as “habitat/open space” provides no assistance and is of no legal import. (See for example Section 4.4, Biological Resources, p. 4.4-3, ¶2.) Further, these easement grants allow the owner/grantor continued use of the property, and such use is subject to change, even if it is incompatible with habitat plans and objectives. For example, the easements allow the grantor “...continuation of agricultural and ranching uses that have proven historically compatible with such values....” but do not specify or limit in any way what these uses include, including instances where agricultural and ranching uses may directly conflict or interfere with habitat plans. (**Exs. G and H, Recital E.**)

OR2-3G Easement Nos. 2 and 3 specifically allow the “...Grantor’s *discretion* to employ his choice of farm and ranch uses and management practice so long as those uses and practices are consistent with the purpose of the Easement and the Plan”. (**Exs. G and H, Section 3.E.**) However, the purpose of these easements are vague and conflicting. Is it to preserve open space, scenic value, animal habitat, agricultural uses, grazing uses, farming operations, or ranching uses? All these terms are used intermittently and inconsistently throughout the grant document. Is grazing permitted only? A commercial farm? Would a fully operational

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Cont.

dairy farm be compatible? The easements are wholly unintelligible and conflicted on this point. The easements also specifically reserve all oil and mineral rights to the Grantor.

**(Exs. G and H, Recital B and Section 7.)** Is an oil field or mining quarry compatible with the non-defined “open space and environmental values”?

OR2-3H

Besides future reserve Easement Nos. 2 and 3 conflicting over their purpose and intent, they allow the grantor and grantee to change the permitted uses under the “Plan” without amendment (**Exs. G and H, Section 2**), and based upon “...change in economic conditions, in agricultural technology, and accepted farm and ranch management practices, and in the situation of Grantors [sic] may result in the evolution of agricultural uses of the Property.”

**(Exs. G and H, Section 6.)** The Grantor’s unfettered discretion significantly diminishes use of easement property as habitat mitigation, depending on the type of species affected, and renders the mitigation aspect of the easements illusory.

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On May 15, 2012, The California Department of Fish and Game and the U.S. Fish and Wildlife Service wrote a joint letter regarding the inclusion of Easement No. 1 as part of SJMSHCP for the 580 Business Park, only. (This letter is attached as **Exhibit J**, with the quoted text highlighted for reference.) With regard to Easement Nos. 2 and 3, these agencies wrote:

“The Agencies are not making any finding regarding the suitability of the Property as mitigation for any specific future project. Such a determination would be made at the time the Agencies receive and consider future permit applications. The Southern Preserve Easement Areas [easements 2 and 3] habitat management plan and endowment funding would need to meet all Agency mitigation standards in place when and if the Property is used as mitigation land and therefore may need amending. At such time, the Agencies will consider, among other issues, whether a proposed development project impacts the same species as those supported on the Property for which mitigation value is being sought, and whether the property location has habitat values that are suitable for mitigating the impacts associated with the proposed development, as determined by the Agencies....”

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In contrast to the Project DEIR, the 2014 Draft THSP identifies the 3,500-acre open space set aside as an “open conservation easement” that will be “preserved for [wildlife] **habitat** in perpetuity”. (Bold added.) (2014 Draft THSP p. 1-10, Introduction.) The 2014 Draft THSP lumps together Easement Nos. 1, 2, and 3 without distinction or consideration of inconsistent use (Open Space vs. Habitat). Figure 1-4 of the 2014 Draft THSP labels the entire 3,500-acre area, encompassing Easement Nos. 1, 2, and 3, as a “Habitat Conservation Easement Area.” According to the Project DEIR, this same property is supposed to provide full mitigation for the loss of 500 acres of grazing land - yet there is no factual support anywhere that this 3,500-acre area is set aside for mitigation purposes of any kind. But Easement No. 1 is tied specifically to the Tracy 580 Business Park project, which has been abandoned; and Easement No. 2 is a “Future Preserve Area” *only* of approximately 2,439 acres, not tied to any Project and with no proven mitigation value for either habitat, agricultural, or species specific migration.

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The U.S. Fish and Wildlife Service’s May 21, 2014 letter makes clear that the 3,552-acre proposed designation is inadequate. There is no HMP into which the remainder 2,700 acres have been committed. We have found no evidence that efforts to establish an additional habitat management plan (“HMP”) for the 2,700-acre property have been developed. The deeds, besides allowing the grantor absolute discretion and conversion of the use, assume continuous grazing. Thus, unless an HMP is formed and accepted by the relevant agencies, no valid mitigation exists.

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The DEIR lists the entire 3,500-acre easement as mitigation for the loss of 500 acres of grazing land, stating that 3,500 acres of grazing land would be preserved in perpetuity. As Horizon just explained, there is no mitigation land set aside for this purpose, in perpetuity, or specifically tied to this Project. (See Agricultural Resources Mitigation Measure 4.2-1 and 4.2-3, pp. 4.1-11 and 12.)

OR2-3L Cont. Identifying the 3,500 acres “future preserve” easement as open space and/or mitigation for the 2014 Project is misleading, does not properly describe the Project, and is therefore a failure to proceed as required by law.

4. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW IN THAT IT FAILS TO PROVIDE ADEQUATE, CERTAIN, AND ENFORCEABLE MITIGATION FOR IMPACTS RELATING TO THE PROTECTION AND PRESERVATION OF FEDERALLY ENDANGERED AND STATE THREATENED SPECIAL-STATUS SPECIES AND HABITAT

OR2-4A Areas A and B of the THSP are covered under the SJMSCP,<sup>6</sup> and therefore appropriate mitigation may be available for these areas if actual impacts are properly identified by a corrected and recirculated DEIR, evaluated, and the land within Areas A and B contains the necessary habitat attributes and values to suffice as mitigation for anticipated impacts.

OR2-4B However, Area C of the Project (South of I-580): (1) has no habitat management plan; (2) is not covered under the SJMSCP; (3) has not been the subject of an amendment to the SJMSCP to include Area C; (4) would require a “Major” Amendment to the SJMSCP; (5) may require additional permitting under the ESA; (6) may require a project specific HCP in accordance with Section 10 of the FESA; (7) may require a Biological Opinion under Section 7 of the FESA, and/or Section 2081 of the CESA; and (8) may otherwise be required to obtain mitigation approval for impacts to federal and state listed species from CDFW and USFWS. (2014 THSP DEIR, at p. 4.4-9, 45, 47; 2014 Habitat Assessment, pp. 2, 21-23; 4/24/14 SJCOG Comment Letter on NOP.)

OR2-4C Most of the Project’s Area C mitigation for significant impacts to special status animal species and habitat is improper, consisting of either problematic future applications for coverage under the SJMSCP, which our research indicates is insufficiently likely to be

<sup>6</sup> Area B is 580 Business Park.

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Cont.

approved, or other future uncertain permitting, analysis, and mitigation approval. As shown on the Multi-Species Occurrence Map (**Exhibit M**), documented regular occurrences of multiple special status species have been shown within the Project area or immediate vicinity. (See also detailed species discussion below.) Therefore, there are a number of special status species that are significantly impacted by the Project for which no adequate mitigation exists. The 1996 Habitat Management Plan, which was drafted and included in the EIR for the original 1998 THSP approval, was never finalized. (2014 THSP DEIR, at p. 4.4-9.) Area C of the Tracy Hills Specific Plan area was specifically called out as being excluded from SJMSCP coverage because Area C was to have prepared its own Habitat Management Plan. (2014 THSP DEIR, at p. 4.4-8.) The Biological Opinion prepared for the SJMSCP did not analyze Area C, so it cannot conceivably be covered by the SJMSCP. Horizon understands that a Major Amendment or supplement to the SJMSCP to include Area C would be a major undertaking and is highly speculative at this time. Indeed, the DEIR's own supporting Habitat Assessment concludes there are insufficient grasslands within the SJMSCP to extend coverage to Area C. (2014 Habitat Assessment, at p. 23.)

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The DEIR concludes that "implementation of the Project would result in a significant impact on special-status animal species known or with potential to utilize the existing habitat on the Tracy Hills Specific Plan." (2014 DEIR, Impact 4.4-2.) The DEIR further states that implementation of Mitigation Measures 4.4-2a and 4.4-2b (see below) would result in less-than-significant impacts to sensitive animal species. (2014 THSP DEIR, at p. 4.4-45.) These proposed mitigation measures are inadequate to address anticipated impacts.

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Mitigation Measure 4.4-2a applies to Areas A and B, while Mitigation Measure 4.4-2b applies to Area C, and states the following:

Area C of the THSP is not currently covered by the SJMSCP and would need to apply independently for coverage. However, coverage under the SJMSCP may not be available for Area C. If a Project Applicant within Area C opts for coverage

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Cont.

through participation in the SJMSCP, then the applicant shall either: 1) participate in the SJMSCP and comply with all required Incidental Take Minimization Measures or 2) secure incidental take authorizations for State and/or federally-listed species directly from the CDFW and USFWS, respectively. Participation in the SJMSCP shall include compliance with all relevant Incidental Take Minimization Measures pertinent to the THSP area, including pre-construction surveys for covered species to confirm presence or absence and provide for their relocation, if necessary. Issuance of grading and construction permits shall be contingent on providing evidence of either 1) compliance with the SJMSCP or 2) a 2081 Permit from the CDFW and Biological Opinion from the USFWS to the City of Tracy Development Services Director to ensure compliance with applicable regulations and ensure adequate compensatory mitigation has been provided. (2014 THSP DEIR, at pp. 4.4-49 through 50.)

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For the reasons stated at the beginning of this Section 4, Mitigation Measure 4.4-2b relies on future uncertain permitting, analysis, and mitigation approval, which is so ephemeral that such unsecure, deferred mitigation cannot meet recognized exceptions for future speculative mitigation measures. Deferred mitigation measures must ensure that the applicant will be required to find some way to reduce impacts to less than significant levels through objective and certain standards. (*Realto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4<sup>th</sup> 899, 945.) Although Mitigation Measure 4.4-2b appears to condition construction permits for Area C on agency reviews and plan approvals, the number and variety of species times the design plan for development south of I-580 indicates that the plan submitted to the City at this time cannot meet agency approval. No provision to decouple Area C from the rest of the plan area is provided. All financing and design of the Updated Specific Plan is integrated, including claims of use of Easement Nos. 1, 2, and 3, which CDFG will not allow as to Area C. (See CDFG Letter, **Exhibit J.**)

OR2-4F

This proposal constitutes the type of illegal use of deferral of mitigation measures which has been routinely and regularly criticized by the Courts. The proposed defective mitigation plan parallels the facts of *San Joaquin Rescue Center v. Merced* (2007) 149 Cal.App.4<sup>th</sup> 649, 699, where agency studies were contemplated, but the manner of assurance of approval was not provided. The proposed mitigation in *San Joaquin Raptor* was determined to be improper because allowance of future formulation of land management aspects of the mitigation measures improperly deferred development of important mitigation measures until after project approval. [CEQA Guidelines §15126.4(a)(1)(B).] The variety of alternatives proposed here means that the final scope of mitigation for south of I-580 (Area C) is completely unconfirmed at this time. As set out in the DEIR, every proposed mitigation measure for Area C may fail, and therefore the property in Area C which would be approved through use of the DEIR is without evaluation of mitigation of Area C impacts. This is a failure to process as required by law.

OR2-5A

5. THE DEIR HAS NOT BEEN PREPARED IN A MANNER REQUIRED BY LAW  
BECAUSE NO ADEQUATE MITIGATION IS PROVIDED FOR SPECIAL-  
STATUS SPECIES

The City's General Plan mandates preserving any habitat that may support rare, endangered or threatened plant and animal species. (2011 GP OSC-1.1, as referenced in the 2014 THSP DEIR, at p. 4.4-44.) Inconsistent with this mandate, the Project significantly impacts special-status species habitat area for which no adequate mitigation has been provided, including, but not limited to, the following:<sup>7</sup>

California Red-Legged Frog

OR2-5B

The California Red-Legged Frog ("CRLF") is federally listed as threatened and is state listed as a California Species of Special Concern. CRLF has been reported in Corral Hollow Creek upstream from the THSP property, and has the potential to utilize Corral Hollow

OR2-5B Creek adjacent to the Project site during favorable water conditions. A portion of its Critical Habitat extends into Area C of the THSP Project. (2014 THSP DEIR, at p. 4.4-36.) (See Red-Legged Frog Critical Habitat map attached as **Exhibit K**.)

OR2-5C California Tiger Salamander

The California Tiger Salamander (“CTS”) is federally and state listed as threatened. As shown on the Multi-Species Occurrence Maps (**Exhibit M**), California Tiger Salamanders have been observed in Area C.

OR2-5D Burrowing Owl

No Burrowing Owl focused surveys have been conducted on Area C and included in the DEIR. However, Burrowing Owls were observed in this area during the 2013 RBG Habitat Assessment. (2014 Habitat Assessment for the THSP DEIR, at pp. 22, 51.) During the 2014 Habitat Assessment, several occupied and suitable Burrowing Owl burrows were observed within Area C, a couple of large stick nests were observed in the cottonwood trees in Corral Hollow Creek adjacent to the southern boundary of Area C, a large stick nest was observed in one of the transmission lines within Area B, and a small passerine nest was observed in a tree along the California Aqueduct in Area A. (2014 THSP DEIR, at p. 4.4-18.) (See Burrowing Owl sightings map attached as **Exhibit L**.)

OR2-5E American Badger

The American Badger is classified as a California Species of Special Concern. The CNDDDB has documented its occurrence within the boundaries of the Project site (on the southern boundary) and along the western portion of the Project (within the proposed conservation

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<sup>7</sup> See also discussion regarding impact to special-status plant species in Section 7, below.

OR2-5E  
Cont. area). (Appendix A to the Habitat Assessment for the 2014 THSP DEIR.) All of the plant communities on the THSP property provide suitable habitat for the American Badger. As such, this species was determined to have a high potential to occur onsite. (2014 THSP DEIR, at pp. 4.4-40 to 41.)

OR2-5F Northern Harrier

The Northern Harrier is classified as a California Species of Special Concern and was observed foraging over the THSP property during the 2014 Habitat Assessment. Corral Hollow Creek adjacent to the Project provides suitable nesting habitat for this species. (2014 THSP DEIR, at p. 4.4-40.)

OR2-5G San Joaquin County Kit Fox

According to the 1998 DEIR for the Tracy Hills Specific Plan, the federally endangered and state threatened San Joaquin Kit Fox were observed at numerous sites in the vicinity of the Project and the entire Project site, and were presumed present based upon nearby presence of the species and the abundant suitable habitat on-site. (1998 THSP DEIR, at pp. 4.8-11, 12, 15.) In 1998, the developer, wildlife specialists, CDFG (now CDFW), and USFWS worked together regarding species of concern for the THSP. When the 1988 and 1990 site surveys were conducted, “the San Joaquin kit fox was the primary species of concern.” (1998 THSP, at p. 3-38.) According to the 1998 Tracy Hills Specific Plan, after extensive consultation with the CDFG and USFWS, and as a result of the surveys, the developer set aside approximately 3,552 acres on-site and 592 acres off-site of replacement habitat to mitigate for impacts to wildlife with special emphasis on the Kit Fox. (1998 THSP, at pp. 3-38, and 39.) This calculation was based on CDFG and USFWS accepted standards of 3-to-1 replacement habitat. (1998 THSP DEIR, at p. 4.4-9.)<sup>8</sup> The 1998 THSP acknowledged that

<sup>8</sup> In fact, the 3,552 and 592 acre habitat acreage served as mitigation for only a portion of the original 1998 THSP project, specifically – only lands owned by Grupe Development. 1,036 acres within the THSP

OR2-5G  
Cont.

this protected habitat area shown as the Open Space component of the 1998 Land Use Plan is a pivotal aspect of an extensive habitat range running north and south along this side of San Joaquin County. (1998 THSP, at pp. 3-38, and 39.) A Habitat Management Plan for the replacement habitat area was drafted, but it was never finalized. (2014 THSP DEIR, at p. 4.4-9.)

Although the Project description varies in many places (see Section 1 above), the 1998 and 2014 THSP projects contain the same outline of development “footprint.” However, the 1998 Open Space area that was required for Kit Fox replacement habitat is gone, and the same area is now referred to as Conservation Easement Areas 1, 2, and 3, which are no longer considered a part of the 2014 THSP area boundaries. Out of these three conservation easements, only Conservation Easement No. 1 has been identified as mitigation for the 2014 THSP, and it only mitigates for Area B’s impacts. (Habitat Assessment for the 2014 THSP DEIR, at p. 49.) Conservation Easement Nos. 2 and 3 are not tied to any specific development, property, or impact, are not preserved in perpetuity, and there is no funding mechanism for the conservation area. (See arguments above in Section 3.) This leaves Area C impacts to Kit Fox and other wildlife habitat without any identified replacement habitat area, and the DEIR’s proposed mitigation for Area C consists of uncertain, deferred permits or approvals that do not meet recognized exceptions for such future speculative mitigation measures. (See Section 4 above).

The 2011 Multi-Species Occurrence Map shows multiple documented occurrences of Kit Fox along the boundaries of the Project site and within the conservation easement areas. (See attached **Exhibit M.**) In contrast with the 1998 THSP DEIR’s “presumed presence” of Kit Fox on-site, the 2014 DEIR states that the 2011, 2012, and 2013 focused surveys (conducted by Berryman Ecological) provide evidence that the Kit Fox is not present on the

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development footprint (non-Grupe land) were left unmitigated. (1998 THSP DEIR, at pp. 4.8-1, 2.) Therefore, the required amount of replacement Kit Fox habitat should be increased accordingly.

OR2-5G  
Cont.

THSP property. (2014 THSP DEIR, at p. 4.4-7; see also 2014 Habitat Assessment, at pp. 19, 22.) This conflict in data is not explained. Although the DEIR concludes that the impacts to Kit Fox are potentially significant (2014 Habitat Assessment for the THSP DEIR, at p. 44; DEIR Impact 4-4.2, at p. 4.4-49), there is no effective mitigation in place for impacts to Kit Fox habitat from Area C development. Replacement habitat area must be secured for the benefit of development in Area C that provides both quality habitat area and quality corridor movement for the Kit Fox. Based on the foregoing, Horizon concurs with CDFW's statement that the significant impacts to the Kit Fox are potentially unable to be offset by mitigation. (CDFW Comment Letter on 2014 NOP for the THSP DEIR dated 5/21/14.)

OR2-6A

6. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW IN THAT IT FAILS TO PROVIDE ADEQUATE, CERTAIN AND ENFORCEABLE MITIGATION FOR IMPACTS RELATING TO INTERFERENCE WITH WILDLIFE MOVEMENT

CDFW has stated in writing that it believes the THSP Project, as currently proposed, would significantly impact and impede the continued use by wildlife of a key linkage corridor, and that this impact and the concomitant adverse effects on wildlife are potentially unable to be offset by mitigation.

OR2-6B

In 2013, CDFW (formerly CDFG) expressed its concern that the southern portion of the Project proposes a significant barrier to Corral Hollow Creek from the other areas of proposed open space planned. CDFW stated also that the appropriate wildlife corridors and open space preserves in the southern portion of the Project should be designed to allow for more open space near the creek system and corresponding riparian and upland areas to allow special-status species to persist in the area and move freely from open space preserve to open space preserve without becoming landlocked by residential developments. (CDFW Comment Letter on 2013 NOP for the THSP DEIR dated 11/26/13.) No Project design revision has been implemented to reduce impacts to migrating species.

OR2-6B  
Cont.

In 2014, the CDFW repeated that it was concerned that development in the [project] areas could prevent future colonization or expansion opportunities of biological resources into their historic range, create significant barriers for wildlife access to creek and riparian habitat, render wildlife movement corridors impermeable, and impede access to and pinch key linkage areas. (CDFW Comment Letter on 2014 NOP for the THSP DEIR dated 5/21/14.) CDFW further stated that the Project, as currently proposed, would significantly impact and impede the continued use by wildlife of a key linkage corridor through this area, and that CDFW believes this impact and the concomitant adverse effects on wildlife are potentially unable to be offset by mitigation. (Id., emphasis added.) Horizon concurs with CDFW's position. CDFW requested that the DEIR adequately analyze and address direct, indirect, and cumulative impacts to this key linkage area and public trust resources, and discuss mitigation measures in its own separate section. (Id.)

ORD-6C

In response to CDFW's comment letters, the DEIR preparers inserted the following ½ page impact analysis in the DEIR and proposed mitigation:

“Area C of the THSP Project extends into the eastern foothills of the Diablo Mountain Range. This area provides a natural wildlife corridor to the north and the south extending along the southern coastal mountain ranges of California. As described above, three conservation easements adjacent to the THSP have tentatively been set aside to protect the integrity of this migration corridor that provides connectivity to the north and south. Conservation of this area would maintain the connectivity between the areas north and south of the THSP property.

Development of Area C would be limited to the relatively flat grasslands south of I-580 and east of the foothills of the mountains, and therefore, would not impact an established wildlife corridor. However, the California Aqueduct and Delta-Mendota Canal located in the eastern portion of the THSP property provide unobstructed travel corridors for wildlife species to connect to habitats located to the north and south of the Project site.

Mitigation for the development of Area B of the THSP provides a 41-acre portion along most of the California Aqueduct to enable habitat connectivity for SJKF and

OR2-6C  
Cont. other wildlife species that may travel along the canal corridors. Additionally, 100-foot wide wildlife corridors would be maintained along both sides of I-580 as mitigation for the development of Area B to provide an undeveloped area for wildlife to travel between the freeway and proposed development. Therefore, implementation of the Project *would not significantly* interfere with the movement of resident or migratory wildlife.”

OR2-6D Both the impact analysis and the proposed mitigation are wholly insufficient. It is imperative that the DEIR provide a thorough analysis and adequate mitigation for this impact. The DEIR essentially ignores the issue by failing to evaluate the Project’s specific impacts on movement of key species as requested by CDFW. The THSP has not been redesigned to address CDFW’s request that the southern portion of the Project be designed to allow for more open space near the Corral Hollow Creek system and corresponding riparian and upland areas to allow special-status species to persist in the area and move freely from open space preserve to open space preserve without becoming landlocked by the residential development. The approval of the THSP with Area C included cannot go forward until all analysis of impacts is corrected in the Plan. Any development in this area interferes with the movement of wildlife based on wildlife sitings (**Exhibit M**), and redesign with appropriate mitigation for remaining impacts should be required.

ORD-6E Not only does the Project design analyzed in the DEIR impede wildlife movement, but the proposed fencing of the movement corridors and conservation areas can also impede movement, as acknowledged by the 1998 DEIR preparers. In an effort to address concerns raised in 1998 by CDFW that people and domestic animals would interfere with special-status wildlife species in proposed open space areas, the 2014 THSP Project proposes fencing around conservation easement areas. However, as acknowledged by the DEIR preparers in 1998, fencing impedes wildlife movement and established key linkage corridors:

OR2-6E

Cont.

In response to DWR's 1997 concerns regarding lack of fencing around the California Aqueduct and its many cross drainage structures, the DEIR preparers stated: "It should be noted that the most effective potential deterrent to trespass would be security fencing along the perimeter of the facilities. This mitigation was considered infeasible, however, because of the secondary impacts to wildlife movement between the project sites and the adjacent open space areas." (1998 THSP DEIR at p. 4.2-17; emphasis added.)

OR2-6F

It is unclear whether the proposed mitigation can be or is being used consistently. The DEIR states that mitigation for the development of Area B of the THSP provides a 41-acre portion<sup>9</sup> along most of the California Aqueduct to enable habitat connectivity for Kit Fox and other wildlife species that may travel along the canal corridors, and additionally that 100-foot wide wildlife corridors would be maintained along both sides of I-580 as mitigation. (2014 THSP DEIR, at p. 4.4-46; Habitat Assessment for 2014 THSP DEIR, at p. 49.) However, the DEIR also states that the same 41-acre corridor along the California Aqueduct and the existing 100-foot wide corridor along both sides of I-580 do not count as mitigation. (2014 THSP DEIR, at pp. 4.4-8 to 9; emphasis added.) Furthermore, the Habitat Assessment noted that the 100-foot-wide corridors have multiple gaps in the conservation easement for storm drainage, roadways, and other purposes. (Habitat Assessment for 2014 THSP DEIR, at p. 33.) Absent some type of explanation for these conflicting statements, the Project may need to mitigate for its impacts on movement in some other manner.

OR2-6G

In conclusion, the mitigation is ephemeral in nature and makes no reference to compliance with the wildlife agencies' standards. There is no showing in the analysis that the proposed mitigation provides for adequate movement of wildlife, or that the mitigation measure will be effective in lessening the impact to less than significant.

OR2-7A

7. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW IN THAT IT DEFERS ANALYSIS OF IMPACTS TO SENSITIVE PLANT SPECIES AND FAILS TO PROVIDE ADEQUATE, CERTAIN, AND ENFORCEABLE MITIGATION

In its May 21, 2014 Comment Letter on the NOP for the THSP DEIR, CDFW states that sensitive botanical communities warrant further focused surveys conducted in accordance with 2000 CDFW and USFWS guidelines to determine the potential for listed and rare plant species to be present. CDFW further stated that the botanical surveys are floristic in nature and must be timed appropriately, cover the entire area of direct and indirect effects, and may require multiple surveys in order to detect all species which could potentially be present before CEQA impact analysis occurs. (Id., emphasis added.)

OR2-7B

The DEIR does not reflect any response to CDFW's concerns. No plant surveys have been conducted for the Project since 1988 and 1990, according to the DEIR: "Environmental Impacts and Analysis. Plant Species. Forty-five (45) special status plant species are known to occur in the Project vicinity. New protocols for surveying sensitive plants have been adopted by the wildlife agencies since sensitive plant surveys for the Project were conducted in 1988 and 1990; therefore, the wildlife agencies may require updated sensitive plant surveys be conducted in accordance with the CDFW 2009 and USFWS 1996 protocols." (2014 THSP DEIR, at p. 4.4-45; 2014 Habitat Assessment, at pp. 19, 23.) The 2014 Habitat Assessment further states that "these updated surveys will ensure none of the sensitive plants currently listed by USFWS, CDFW and CNPS occur on the project site." (Id., at pp. 37, 52.)

OR2-7C

The statement that the wildlife agencies may require updated plant surveys is misleading, in that CDFW has already stated in its May 21, 2014 comment letter that focused plant surveys should be conducted. Stated slightly differently, the document offers no evidence or reason why these necessary studies cannot be conducted at this point in time to determine the scope of proposed Project impacts and mitigation necessary therefore.

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9 We have been unable to determine the location of this 41-acre area.

OR2-7D

The DEIR concludes, at Impact 4.4-1, that implementation of the Project would result in a significant impact on special-status plant species known or with potential to utilize the existing habitat on the Tracy Hills Specific Plan. The proposed mitigation requires participation in the SJMSCP for areas A and B, if one or more of these species are present on the THSP property. (2014 Habitat Assessment for the THSP DEIR, at p. 37.) However, the Habitat Assessment (at p. 23) states that, prior to the development of Area C, compliance with the FESA and CESA will need to be demonstrated, through the following mitigation measure (4.4-1): “Prior to commencement of ground disturbing activities, communication with USFWS and CDFW should be initiated to determine if sensitive plant surveys would be required. If required, the applicant shall hire a qualified biologist to conduct sensitive plant surveys in accordance with the CDFW 2009 and USFWS 1996 protocols.”

OR2-7E

The proposed mitigation and analysis are insufficient. This approach constitutes improper deferred analysis, in that the DEIR cannot identify the geographical areas where agency required mitigation will occur, or what substitutes for identified mitigation, if any, will inevitably be accepted. (*San Joaquin Raptor Rescue, supra*, at 668, 699; *POET, LLC v. CARB* (2013) 218 Cal.App.4<sup>th</sup> 681, 740.)

OR2-7F

Not only does the mitigation for Area C depend on improperly deferred analysis, but if the results of that analysis are that protected plant species have been impacted, Area C has no valid habitat management plan to mitigate for any of those impacts (see discussion in Section 4 above).

OR2-8A

8. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW IN THAT IT FAILS TO ADEQUATELY ADDRESS POTENTIAL IMPACTS TO CORRAL HOLLOW CREEK AND RIPARIAN WOODLANDS, HABITAT FOR SEVERAL PROTECTED SPECIAL-STATUS SPECIES

According to the CDFW, Corral Hollow Creek and its associated flood plain and alluvial fan area have high species diversity and provide suitable habitat for, among others: San Joaquin Kit Fox, California Red-Legged Frog, and California Tiger Salamander, and a variety of special-status plant species. (5/21/14 CDFW Comment Letter on NOP for the DEIR for the Tracy Hills Specific Plan, at pp. 4-5.) CDFW has stated that the southern portion of the Project design (figures of fenced development) could significantly impact hydrology, riparian, and water quality values of this watercourse. (Id.) The adopted 1998 DEIR for the THSP acknowledged that the riparian woodland located along Corral Hollow Creek within the Project area provides the primary habitat for native California special status, protected, and endangered species. (1998 THSP, at pp. 4.8-2, 13.) The 2014 THSP does nothing to preserve this habitat.

OR2-8B

Under the prior proposed HMP for the THSP, 1.5 miles of the riparian woodland of Corral Hollow Creek within the Project site was to be preserved as a regional park. (1998 THSP DEIR, at p. 4.8-13.) The City's prior Urban Management Plan/General Plan stated that the Corral Hollow riparian corridor shall be considered environmentally sensitive open space area. (Action OS 1.3.4, 1993 UMP/GP.) The City's current Open Space and Conservation Element of the General Plan lists the Riparian Woodlands along the Corral Hollow system as habitat area for wildlife and plant species. (2011 GP, at p. 6-3.) Objective OSC-1.1 of the 2011 General Plan requires the preservation of habitat that may support rare, endangered, or threatened plant species. (Id., at p. 6-18.) The current THSP DEIR also acknowledges that Corral Hollow Creek, on the southern boundary of Area C, potentially provides suitable habitat for sensitive plant species and suitable nesting/denning and foraging habitat for a variety of wildlife species (at 4.4-31), and supports relatively undisturbed stretches of riparian forest habitats (at 4.4-46).

OR2-8C

The DEIR does not address how the THSP preserves this habitat. Although a portion of the Corral Hollow Creek area is included in Conservation Easement No. 2, the current design shows residential development butting right up against the Creek area, and the EIR omits any analysis of whether the lack of separation between residential and habitat mitigation land diminishes the effectiveness of the mitigation measure.

OR2-8D

The 1998 THSP Project recognized the importance of this sensitive habitat and planned a regional park around the Corral Hollow Creek area for protection. CDFW stated also that the appropriate wildlife corridors and open space preserves in the southeast portion of the Project should be designed to allow for more open space near the creek system and corresponding riparian and upland areas to allow special-status species to persist in the area and move freely from open space preserve to open space preserve without becoming landlocked by residential developments. (CDFW Comment Letter on 2013 NOP for the DEIR for the Tracy Hills Specific Plan dated 11/26/13.) The 2014 land use design should be revised to remove the development south of I-580 until such time as all impacts of the Project are identified, evaluated, and real mitigation is assured.

OR2-9A

9. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW AS IT CONTAINS IMPROPER MITIGATION MEASURES FOR THE CONVERSION OF AGRICULTURAL FARMLAND

The DEIR contains multiple inconsistencies for definitions of loss of farmland in the Agricultural section which must be addressed and incorporated into a recirculated DEIR. Some of these inconsistencies are as follows:

A. The 2014 DEIR states (at Impact 4.2-1) that implementation of the Project would result in the conversion of 25 acres of Prime Farmland, approximately 2,200 acres of Farmland of Local Importance, and approximately 500 acres of grazing land. The DEIR further states that the Project has “provided mitigation through the establishment of a conservation

OR2-9A  
Cont.

easement to ensure that over 3,500 acres of grazing land would be preserved in perpetuity.” (Mitigation Measure 4.2-1 and 4.2-3.) As discussed above in Section 3, this land was never set aside in connection with the Project as a whole. Additionally, use of this area for agricultural/grazing mitigation can be incompatible with its other purported mitigation use for sensitive wildlife habitat, depending on the type of wildlife intended to be mitigated for. Although debate exists as to whether grazing land can be successfully used for specific sensitive species, substantial federal and state litigation continue as to the propriety of treating grazing land as appropriate habitat for any and all threatened species. (See for example: *Oregon Natural Desert Assn v. Tidwell* (2010) 716 F.Supp.2<sup>nd</sup> 982; *Center for Biological Diversity v. California Fish and Game Com'n* (2008) 166 Cal.App.4<sup>th</sup> 697, 668.) The two purposes have irreconcilable conflicts with each other.

OR2-9B

B. The amount of converted acreage is unclear. In the 1998 DEIR for the Tracy Hills Specific Plan, under the Land Use Considerations section, at p. 4.1-14 through 16, it states that the proposed Tracy Hills Specific Plan will result in the conversion of approximately 615 acres of Class I (225 acres) and Class II (390 acres) soils classified as “Prime Farmland” to urban uses. The 2014 DEIR states that the Project will result in the conversion of only 25 acres of Prime Farmland. No explanation of this difference can be found in the document, and must be addressed in any final document; and full, enforceable mitigation for this loss must be provided.

OR2-9C

C. As also discussed in Section 3, because Grantor retained rights to convert portions of easement land to any type of agricultural related use, there is no assurance that the same 3,500 acres serves to mitigate for grazing land. (**Exs. G&H**, Recitals B&F, and Sections 2, 3.E, F, and 6.)

The 25 acres identified Prime Farmland is an existing vineyard. (2014 DEIR Agricultural Resources p.4.2-9.) Area A of the THSP property is actively utilized for agricultural crops. (2014 DEIR Biological Resources, pp. 4.4-14.) The Project would result in net loss of

OR2-9C  
Cont.

Prime Agricultural Land. (DEIR Agricultural Resources p. 4.2-10.) Lastly, the proposed THSP's impact on agricultural resources violates the 2011 City of Tracy General Plan, Open Space and Conservation Element, which states at pp. 6-18, Goal OSC-2: Identification, preservation and protection of significant agricultural resources; and Policy P4: The City shall encourage the continued agricultural use of land within the Planning Area and outside the Sphere of Influence that is currently being farmed.

Therefore, the proposed Project conflicts with the General's Plan's stated goals and policies calling for the preservation of agricultural resources. Although the applicant relies on the General Plan's statement of overriding considerations for this significant and avoidable impact, such override is not an appropriate underpinning, because purchase of mitigation agricultural land is possible and feasible. Simply stated, a statement of overriding consideration is unavailable to the City of Tracy whenever feasible mitigation measures are available but not imposed.

OR2-10A

10. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW BECAUSE IT DOES NOT DISCLOSE AND EVALUATE THE ENERGY IMPACTS OF THE PROJECT

The Project DEIR contains a summary two-page analysis of energy conservation. (Section 5.3 Energy Conservation, pp. 5-3, 4, 5.) This type of summary analysis has recently been found to be legally inadequate. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4<sup>th</sup> 173.) *California CEC* involved a 234-acre regional shopping center in the City of Woodland. The *California CEC* court noted that the "...entirety of the City's energy impact analysis for Gateway II comprises less than a page in the Draft EIR." (*California CEC, supra*, at. 207.) The *California CEC* court found that this treatment was inadequate, as it did not provide an assessment of or mitigation for certain energy impacts and renewable energy impacts set forth in Appendix F of the CEQA Guidelines, including transportation energy impacts, construction energy impacts, and renewable energy impacts. The court further found that a requirement that the Project comply with State building codes

OR2-10A Cont. and green buildings standards alone did not mitigate for construction and operational energy impacts of the project.

OR2-10B Here, the Project DEIR contains a *two-page* analysis for a project with a magnitude of scale substantially larger than the shopping center in the *California CEC* case, and like *California CEC*, this Project fails to address the requirements of Appendix F.

The Project's energy analysis concludes - without analysis or evidence - that the Project will not be any more inefficient or wasteful than similar projects (these "similar" projects are not identified): ".....energy consumption would not be any more inefficient, wasteful, or unnecessary than other similar development of projects of this nature ...." and that the Project "would not result in an unusual characteristics that would result in excess long-term operational building energy demand." (DEIR 5-4.) Presumably, based on the fact that the Project is *no more wasteful* than any other undefined similar project, the DEIR proposes no mitigations for the Project's energy impacts. This failure to identify the Project's energy impacts and a failure to mitigate for those impacts at all is a failure to proceed as required by law. The *California CEC* court noted that: "Under CEQA, an EIR is 'fatally defective' when it fails to include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy." (*California CEC, supra*, at 209, citing *People v. County of Kern* (1976) 62 Cal.App.3d 761,774.) As with the *California CEC* case, this Project's summary analysis of the Project is inadequate. The DEIR must analyze and disclose impacts in accordance with CEQA Appendix F which includes, at a minimum, an analysis of 1) transportation energy impacts, 2) constructional and operational energy impacts, and 3) renewable energy impacts, none of which are addressed in the Project DEIR.

OR2-10C Appendix F to the CEQA Guidelines was adopted to provide guidance to the required energy analysis. Appendix F notes that the means to obtaining goals of energy conservation include, "...1) decreasing the overall per capita energy consumption, 2) decreasing reliance

OR2-10C  
Cont.

on fossil fuels such as coal, natural gas, and oil, and (3) increasing reliance on renewable energy sources.” (Guidelines, App. F, §(I).) Appendix F also mandates that the Project DEIR evaluate the Project’s Growth Inducing Impacts. (Appendix F, §II, EIR Contents, I.) The Project DEIR’s summary two-page analysis fails to evaluate the Project’s Growth Inducing impacts as a result of a large scale project being built away from the urban core and on the City’s fringes.

OR2-10D

With respect to transportation energy impacts, the Project’s analysis is also fatally defective. The Project will generate an additional 18,268 daily traffic trips by 2035, and 21,895 daily traffic trips post-2035. (Traffic and Circulation Table 4.13-17 and 18.) These traffic projections are not evaluated or mitigated in the Project’s summary energy analysis, and zero mitigation measures are proposed to mitigate for the effect of the Project’s transportation energy impacts. In *California Clean Energy Committee*, the Court found that this type of analysis constituted a failure to address the transportation energy impacts of the project as required by law, insofar as it does not address or consider mitigation for transportation energy impacts of the project. (*California Clean Energy Committee*, *supra*, at. 520.) The same result will lie for this Project. Here, the Project EIR asserts that the energy impacts of the THSP Project would be less than significant because the project had been reduced from a previously proposed project – thus this “reduction” constituted mitigation.

OR2-11A

11. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND EVALUATE THE PROJECT’S PROVISION OF WATER AND IMPACTS TO EXISTING WATER SUPPLY, AND THEREFORE HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW

A. The EIR Fails To Satisfy The Requirements Identified In *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*

The DEIR’s evaluation of long-term water supply impacts fails to satisfy the minimum requirements of CEQA as identified by the Supreme Court, and therefore the City cannot

OR2-11A  
Cont.

certify the DEIR. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 401 is the seminal case on the adequacy of an EIR's water supply analysis. There, the Supreme Court held Rancho Cordova's EIR failed to adequately analyze the long-term water supply for the project. *Vineyard* provides the following requirements for public agencies preparing long-term water supply assessments:

- An EIR cannot ignore or assume a solution to the problem of supplying water will emerge on its own. It must provide sufficient information so that the pros and cons of supplying water for the project can be evaluated.
- Water supplies analyzed in an EIR must bear *a likelihood of actually proving available*. Speculative sources of unrealistic allocation do not provide a sufficient basis for decision-making under CEQA.
- Where there is uncertainty about future water sources, the EIR must discuss possible replacement sources or alternatives, and analyze the impacts of those strategies.
- "Factual inconsistencies and lack of clarity in an EIR leave the reader and the decision makers without substantial evidence for concluding that sufficient water is, in fact, likely to be available for the [Project] at full build out." Some of the factual inconsistencies include contradictory projections of demand and water supply availability.
- An EIR must "show a likelihood water would be available, over the long term, for this project...Without an explanation that shows at least an approximate long-term sufficiency in total supply, the public and decision makers could have no confidence that the identified sources were actually likely to fully serve this extraordinarily large development project."
- "The ultimate question under CEQA...is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project."
- The EIR must provide sufficient information to "evaluate the pros and cons of supplying water." An EIR must demonstrate a "rough balance between water supply and demand."

OR2-11A  
Cont.

- "An EIR may by other means demonstrate that water will be available for the project from an identified source....Even without a showing that water from the identified source is likely to be sufficient, an EIR may satisfy CEQA by fully disclosing the uncertainty, the other possible outcomes, their impacts and appropriate mitigation measures."

Perhaps nowhere is such analysis more important than in evaluating the impacts of supplying water to a large-scale, mixed-use specific plan like the Tracy Hills Project. Unfortunately, the Project's DEIR fails at disclosing the uncertainty, possible outcomes, and impacts, and proposes no mitigation measures should the assumed water supply fail to materialize. Such analytical deficiency renders the DEIR legally inadequate. The DEIR must be revised and re-circulated pursuant to 14 CCR §15088.5 prior to certification.

OR2-11B

B. The EIR's Water Supply Assessment fails to meet the requirements of SB 610 and SB 221

The Water Supply Assessment ("WSA") fails to comply with SB 610/SB221 requirements because it does not demonstrate that the City has a sufficient water supply to serve the Tracy Hills project. As explained at p. 4.12-20 of the DEIR:

**Senate Bill 610** Senate Bill (SB) 610 amended the Public Resources and Water Codes as it pertains to consultation with water supply agencies and water supply assessments. SB 610 requires the preparation of water supply assessments (WSAs) for projects, as that term is defined by Water Code Section 10912, that are subject to CEQA. The Project meets the definition of a 'project" under the Water Code and a WSA has been prepared.

**Senate Bill 221** SB 221 is a companion measure to SB 610 that seeks to promote more collaborative planning between local water suppliers and cities and counties. Where SB 610 requires water assessments be furnished to local governments for inclusion in any environmental documentation for projects (as defined by Water

OR2-11B  
Cont.

Code Section 10912) subject to CEQA, SB 221 states that approval by a city or county of certain residential subdivisions requires an affirmative written verification of sufficient water supply.

According to the WSA, project water demand is 5,700 acre feet (AF) annually, of which 3,730 AF is potable water demand and 1,970 AF is recycled water demand. Yet there is no recycled water available today, in the near future, or maybe ever, so total recycled demand must be included in potable project demand. Thus, baseline project demand is the 5,700 AF. The proposed water supply is as follows:

2,430 AF BBID;  
635 AF BBID CVP Ag supplies,  
670 AF groundwater  
1,970 AF recycled water.

BBID CVP Ag needs to be supplemented with additional BBID CVP Ag water and Semitropic storage water. Neither supply exists today. The WSA assumes 2,430 AF of BBID pre-1914 water is "firm and well-established." While this is true in part, these rights are not beyond being challenged. The State and Federal contractors last year claimed that the South Delta (which includes BBID) riparians and "pre-1914 water" water right holders were stealing their water. Just last month, the State Water Board issued an order requiring BBID, among others, to submit information justifying the claimed right. (See State Water Board Order attached as **Exhibit N**, Background Recital 6 - all 4 letters referenced on website.) Moreover, BBID pre-1914 water rights are for the irrigation season; the City contemplates using them year round. The WSA/DEIR does not address this at all. Because BBID water is not available during the winter, non-irrigation season, the DEIR's water supply assumptions suffer a fatal flaw.

OR2-11B  
Cont.

In addition, the WSA and DEIR utilize unrealistic/faulty assumptions on reliability of water. Specifically the DEIR improperly assumes availability of 95% of Stanislaus River water in multiple dry years and 90% of full pre-1914 water availability in multiple dry years. USBR allocations for Ag south of the Delta has been 0% in 2013 and 2014, yet the WSA assumes 15% and 10% allocation in single and multiple dry years.

The WSA further improperly relies on unfettered groundwater pumping (9TAF) that may not be available in the future, after the historic groundwater regulation legislation that was adopted last year that requires the formation of Groundwater Sustainability Agencies with plans that will allow limitation of pumping. Historically, the City has never pumped even close to 9TAF, but the DEIR assumes that amount as the City's share of the "safe-yield", which has never been demonstrated. The DEIR must discuss the impacts from likely reductions.

Regarding recycled water, the WSA and DEIR rely on the provision of recycled water. Currently the City has no recycled water available. The WSA and DEIR fail to bridge the analytic gap to leap from non-existent supplies to 1,970 AF. (See WSA Table 22 and DEIR 4.12-11.) The uncertainty regarding when recycled water will be available mandates that the City add "recycled water demands" into potable water supply demands." Curing this defect exacerbates the insufficiency of potable water. Also, we note that the Table 22 numbers on the bottom line do not add up, further demonstrating insufficient supply.

Assuming CVP water will be supplied further renders the DEIR inadequate. The DEIR relies on CVP water for the Project, and yet there is no agreement between BBID and the City to provide CVP water to the City for this Project. The same is true for Semitropic groundwater bank supply, but the absence of any agreement and the dearth of any discussion of contingencies in the DEIR render that document insufficient as a disclosure document. Stated slightly differently, what happens if these speculative agreements do not materialize?

OR2-11B  
Cont.

Finally, Water Code § 10910(c)(1) requires the water supplier (the City) to determine whether projected water demand associated with a proposed project was included as part of the most recently adopted urban water management plan (UWMP). The City's UWMP underestimates projected Tracy Hills demands and must be re-drafted to include correct demand. And the entire WSA analysis relies on "future water supplies." (See Table 22.) Water Code Section 10910(d)(1) and (2) requires the WSA to identify the existing water supply entitlement, water rights, or water service contracts held by the public water system. Here, the WSA is relying on future, yet-to-be-negotiated contracts. Speculative, future supplies cannot be substituted for current, existing conditions. To do so runs afoul of *Vineyard*'s requirement that water supplies analyzed in an EIR bear a likelihood of actually proving available. Speculative sources of unrealistic allocation do not provide a sufficient basis for decision-making under CEQA.

Accordingly, the City must revise and re-circulate the DEIR to address these shortcomings prior to certifying the DEIR and approving the specific plan. Failing to do so amounts to a prejudicial abuse of discretion and a failure to proceed as required by law.

OR2-12A

12. THE DEIR HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW BECAUSE IT DOES NOT EVALUATE, DISCLOSE, AND MITIGATE THE GHG EMISSIONS OF THE PROJECT IN COMPLIANCE WITH RECENT CASE LAW CLARIFYING THE STANDARDS FOR A PROJECT LEVEL GHG ANALYSIS

The DEIR must be recirculated after the City properly evaluates the impact of Project GHGs on the environment and disclose the projected GHG emissions that will be produced by the Project and whether, or how, the Project as a whole will meet the GHG reduction goals of AB 32 and 2005 Executive Order 5-3-05. Two recent decisions have established that a Project's GHG analysis must comply with state policy established by Executive Order 5-3-05. This policy mandates that a project reduce GHG emissions to 2000 levels by 2010, to 1990 levels by 2020, and to 80% below 1990 levels by 2050. (See *Cleveland National*

OR2-12A  
Cont.

*Forest Foundation, et. al. v. San Diego Association of Governments et. al. (2014) 231 Cal.App.4<sup>th</sup> 1056, 1068; and Sierra Club v. County of San Diego (2014) 231 Cal.App.4<sup>th</sup> 1152, 1175.)* Instead of evaluating the Project's GHG anticipated emissions and establishing Project thresholds of significance, the DEIR relies on SJVAPCD thresholds of significance requiring a decrease of emissions of 29% through the application of Best Performance Standards. (DEIR Section 4.7, 4.7-9.) The 29% reduction rate established by the SJVAPCD is *not* correlated with any Project level analysis of GHG emissions, and therefore does not comply with Executive Order 5-3-05. The Project EIR must evaluate and disclose the *Project's* related, anticipated GHG emissions, and base any mitigation off the actual Project data, not merely defer to a third agency's figures for the area as a whole which are not Project specific. The DEIR should also address the Project's *continued* efforts to reduce GHG emissions through 2050 as required by Executive Order 5-3-05.

OR2-12B

The DEIR also fails to address SB 375's mandates, also co-related with the 2014 San Joaquin Council of Government Regional Transportation Plan/Sustainable Communities Strategy (the "RTP/SCS"). SB 375 requires regional transportation planning authorities to prepare a Sustainable Communities Plan consistent with state climate policy under AB 32 and Executive Order S-3-05. In enacting SB 375, the Legislature found that state emission reduction goals cannot be met without improved land use and transportation policy. One of the main policies of SB 375 requires projects to consider its impact on regional transportation systems in order to comply with state policy to reduce greenhouse gas emissions.

OR2-12C

There is no Project level discussion in the DEIR as to how the Project will reduce greenhouse gas emissions in compliance with AB 32, SB 375, Executive Order S-3-05, or the RTP/SCS. The Project's inclusion of mitigation measures promoting pedestrian connectivity, bicycle lanes, and other similar Project-specific mitigation measures does nothing to address the Project's greenhouse gas emissions from a broader land planning and transportation planning perspective.

OR2-12D

In 2014, SJCOG adopted the RTP/SCS as required by SB 375 and ratified a Program EIR (the “Program EIR”). The Program EIR requires that subsequent *project level EIRs* reduce identified impacts in conformance with the RTP/SCS: “In addition, this Program EIR provides regional-scale mitigation measures as well as a framework of mitigation measures for *subsequent, site specific environmental review documents prepared by the lead agencies to reduce identified impacts as appropriate and feasible.*” (Program EIR, p. 4.3-1, emphasis added.) The RTP/SCS defers compliance with state polices to reduce greenhouse gas emissions to a *project level*. However, the THSP DEIR merely references and incorporates the RTP/SCS (at pp. 4.7-5 and 4.13-2, 3, and 4), but contains no analysis of how the Project complies or achieves the goals set forth in this document. The Program EIR defers to the City of Tracy compliance (at p. 4.3-1) and mandates review of new impacts at a project level (at pp. 4.3-31, 32, and 33.)

OR2-12E

Tracy is and has been a bedroom community for higher paying jobs in the Bay Area, encouraging longer traffic trips and therefore necessarily increasing gas emissions. Half of the Project’s proposed housing units are residential estate or low density (122 and 3,282 units, respectively). These lot sizes demand a higher price point and higher income buyers. There is no analysis in the Project DEIR on where the potential buyers will come from and where they will work. Historic and current work/home patterns indicate that buyers for these new homes will in large part be commuters to the Bay Area. This is especially true since the Project converts almost all the former Business 580 Park sites to residential use. In light of this, the absence of any vehicle miles traveled (VMT) analysis with appropriate mitigation is glaring.

OR2-12F

This is the type of regional transportation issue that SB 375 is meant to address. Projects can no longer plan in a bubble. Since the RTP/SCS Program EIR defers compliance with SB 375 to the project level, and the Project DEIR punts by referring back to the RTP/SCS (essentially two agencies pointing the finger at the other for compliance), there has been no

OR2-12F Cont. compliance with state policy regarding greenhouse gas reductions by evaluating the Project in light of the policies mandated by state legislation. Failure to analyze the Project's impacts inconsistent with state policy under SB 375 and Executive Order S-3-05 relative to greenhouse gas emissions is a failure to process under CEQA as required by law. (*Cleveland National Forest Foundation v. San Diego* (2014) Cal.App. 4<sup>th</sup> 1056, 1065.)

OR2-12G The RTP/SCS provides specific goals, strategies, and polices that must be addressed in a project EIR. These include, but are not limited to, Supportive Strategies No. 1-27 of the RTP/SCS (at ES-5 and 6) – for example, Strategy #3 “Improve Air Quality by Reducing Transportation Related Emissions” – as well as the policies found at pp. 4.3-31 through 33 of the Project EIR – for example 6<sup>th</sup> strategy from the top: “The City shall promote land use patterns that reduce the number and length of motor vehicle trips.” (The RTP/SCS and the corresponding Project EIR are a matter of public record and incorporated by reference.) The Project’s GHG analysis must also include the GHG emissions as a result of the Project’s growth inducing impacts. This Project is on a massive scale, encompassing over 5,000 residential units and nearly six million square feet of commercial buildings. A project of this magnitude, especially given its location beyond the urban core and on the City’s fringe, has manifest growth inducing impacts that must be included in the GHG analysis. These polices must be addressed in a revised Project DEIR and re-circulated in compliance with CEQA.

OR2-12H The required Project Mitigations 4.7-1 through 3 are comprised of general goals that are non-exclusive, undefined, untested, of unknown efficacy, and show no factual correlation to the Project. For example, GHG Mitigation 4.7-1 is a list of general design features (e.g. “pedestrian connections” and “traffic calming features”) without any evidence indicating that these general measures would achieve a decrease in greenhouse gas emissions resulting from commuting traffic impacts at all. The DEIR mitigation measures must be based on evaluation of impacts, and accompanied by concrete evidence showing the mitigation measure can accomplish the stated goal, which is totally lacking here, and cannot be

Bill Dean / City of Tracy  
March 3, 2015  
Page 42

*Horizon Planet Comments on  
Tracy Hills Specific Plan Subsequent DEIR*

OR2-12H  
Cont.

investigated given the broad and vague nature of the proposed mitigations. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 96.) Even assuming the SJCOG 29% regional reduction figure is correct (and there is no Project-specific data to support this), there is no evidence that the DEIR proposed mitigations will obtain this decrease.

OR2-12I

CONCLUSION

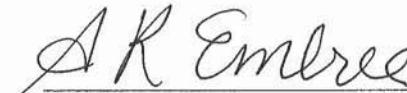
The DEIR is legally deficient, and must be revised and re-circulated pursuant to 14 CCR §15088.5 prior to certification. This revised DEIR must, at a minimum, correct the deficiencies identified by Horizon in this letter.

Sincerely,



Brigit S. Barnes, Esq.

~and~



Annie R. Embree, Esq.

Enclosures: Exhibits A – N

cc: Client (via email)  
Members of Tracy Planning Commission (via mail)  
City Clerk (via mail)

Horizon.Tracy Hills/Horizon Planet THSP DEIR Comment Letter

**EXHIBIT "A"**

## Updated Notice of Preparation

<b>TO:</b>	California State Clearinghouse	<b>FROM:</b>	City of Tracy
	1400 Tenth Street Sacramento, CA 95814		Development Services Department
			333 Civic Center Plaza Tracy, CA 95376
Attn.: Bill Dean, Assistant Director			

### Subject: Updated Notice of Preparation of Environmental Impact Report

The City of Tracy (City) will be the lead agency and will prepare a Project-level environmental impact report (EIR) for the Tracy Hills Specific Plan Project (Project). This Notice of Preparation (NOP) is sent pursuant to Section 15082 of the California Environmental Quality Act (CEQA) Guidelines (Title 14, Chapter 3 of the California Code of Regulations (Section 15000 *et seq.*) to announce the initiation of the EIR process and to solicit comments from responsible and trustee agencies, utility providers, organizations, neighboring property owners, and interested parties concerning the scope of issues to be addressed in the EIR. Please focus your comments on the project's potential environmental impacts and recommendations for methods of avoiding, reducing, or otherwise mitigating those impacts. If you are a governmental agency with discretionary authority over initial or subsequent aspects of this project, describe that authority and provide comments regarding potential environmental effects that are germane to your agency's area of responsibility.

**Project Title:** Tracy Hills Specific Plan Project

**Project Applicant:** The Tracy Hills Project Owner, LLC  
672 W. 11<sup>th</sup> Street, Suite 104  
Tracy, CA 95376  
(209)-229-7760

**Project Description:**

The Project, described below, is to develop approximately 2,732 acres with up to 5,499 residential dwellings, schools, parks, commercial, industrial, and other land uses.

A Draft EIR will be prepared by the City of Tracy to evaluate potential environmental impacts that could result from the approval and implementation of the Tracy Hills Specific Plan ("THSP") Project (hereinafter referred to as the "Project," "THSP Project" or the "Specific Plan"). The Project includes a comprehensive update to the previously adopted 1998 Tracy Hills Specific Plan (hereinafter referred to as the "1998 THSP"). The 1998 THSP covered approximately 6,175 acres; it established land use and development standards for approximately 2,732 acres located near the existing interchange around Corral Hollow Road and the proposed Lammers Road interchange on Interstate 580 (see Figure 1, below), and designated the remaining 3,443 acres as conservation open space. Following adoption of the 1998 THSP, the City annexed the 2,732 acres designated for development, but did not annex the 3,552-acre conservation/open space area. The current Project area consists of the incorporated 2,732-acre portion of the 1998 THSP, but does not include the 3,552 acres that were designated conservation open space.

In May, 2013, the Applicant requested certain amendments to the 1998 THSP, and on October 23, 2013, the City published a Notice of Preparation for the Project, then titled the "Tracy Hills Specific Plan Amendment Project." On November 6, 2013, the City conducted a scoping meeting for the Tracy Hills Specific Plan Amendment Project. Because the requested modifications to the 1998 THSP are substantial (including

modifications to the project goals, zoning and development standards, and zoning districts, and associated text, graphics and format), the Project Applicant, in consultation with City Staff, has decided to submit a comprehensive update to the Specific Plan as opposed to submitting numerous amendments to specific sections of the 1998 THSP. While the scope and substance of the Applicant's requested amendments to the 1998 THSP have not changed, it was determined that an entirely re-written Specific Plan would provide greater clarity and definition and more contemporary policy direction, and would reduce the possibility of confusion that could be created by separately amending individual sections of the 1998 THSP. As a result, the City and the Project Applicant have agreed that the environmental analysis for the re-written Specific Plan should address the proposed amendments as an entirely new CEQA project subject to a full environmental impact report, rather than utilizing any streamlined or tiered form of environmental review that could be available under CEQA and the CEQA Guidelines. To document this change in approach to the environmental review for the Project, the City has published this Updated Notice of Preparation. At the same time, however, the development contemplated by the THSP remains largely the same as that authorized by the 1998 THSP and that proposed under the name of the Tracy Hills Specific Plan Amendment Project.

The proposed update to the THSP would include a mixture of residential, commercial, business park, office, industrial, schools, parks, and open space land uses on approximately 2,732 acres. Refer to Figure 2 and Table 1, below. It would also make modifications required to bring the 1998 THSP into consistency and compliance with the City's updated Infrastructure Master Plans and the General Plan. The Project would involve the adoption of a General Plan amendment; the amendments to the 1998 THSP in the form of the comprehensive update described above; adoption of a new zone district for the THSP; the approval and implementation of a development agreement; approval of a vesting tentative map application for the first proposed phase of development (referred to as Phase 1a); approval of a Tracy Hills Storm Drainage Master Plan; and implementation of the THSP including subdivision maps, school siting, and other development within the Specific Plan Area consistent with the standards specified within the THSP. The Draft EIR will include an analysis of all environmental impacts associated with the implementation of the Tracy Hills Specific Plan required by CEQA and the CEQA Guidelines.

The Specific Plan that is the subject of this NOP was prepared pursuant to the provisions of California Government Code, Title 7, Article 8, Section 65450 et seq., which grants local planning agencies the authority to prepare a specific plan for any area covered by a General Plan for the purpose of establishing systematic methods for implementation of the General Plan.

Due to the time limits mandated by State law, your response should be sent at the earliest possible date, but no later than 30 days after receipt of this notice. This notice will be available from April 21, 2014 through May 21, 2014. Please send your response to Bill Dean, Assistant Director, Development Services Department, City of Tracy, at the address shown on the first page, above. If you are a public or private organization or agency, we respectfully request the name of a contact person.

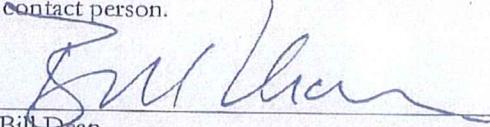
Date:

4-15-14

Signature:

Title:

Telephone:

  
Bill Dean

Assistant Director, Development Services  
Department, City of Tracy

209-831-6400

Figure 1: Project Location

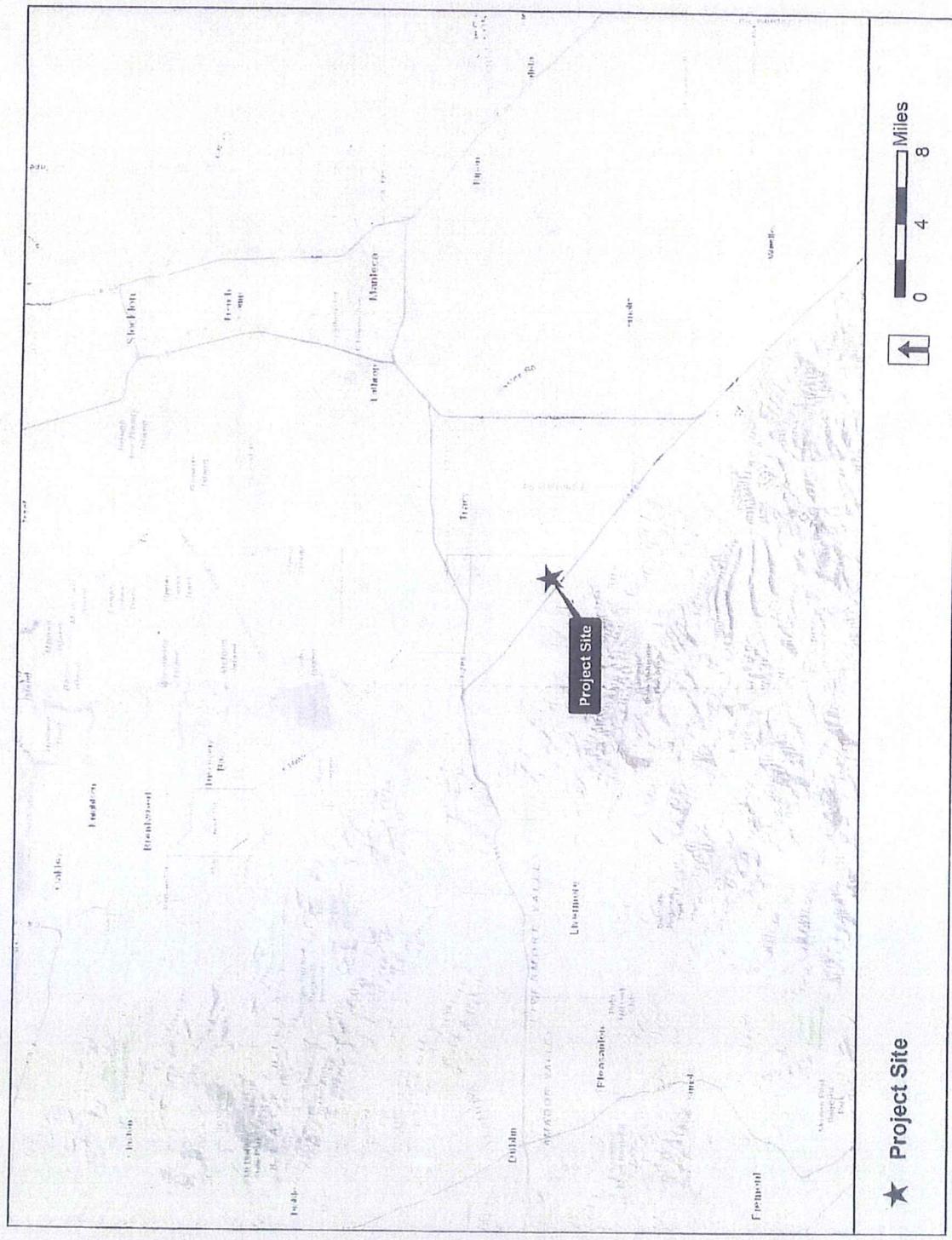


Figure 2: Zoning Districts

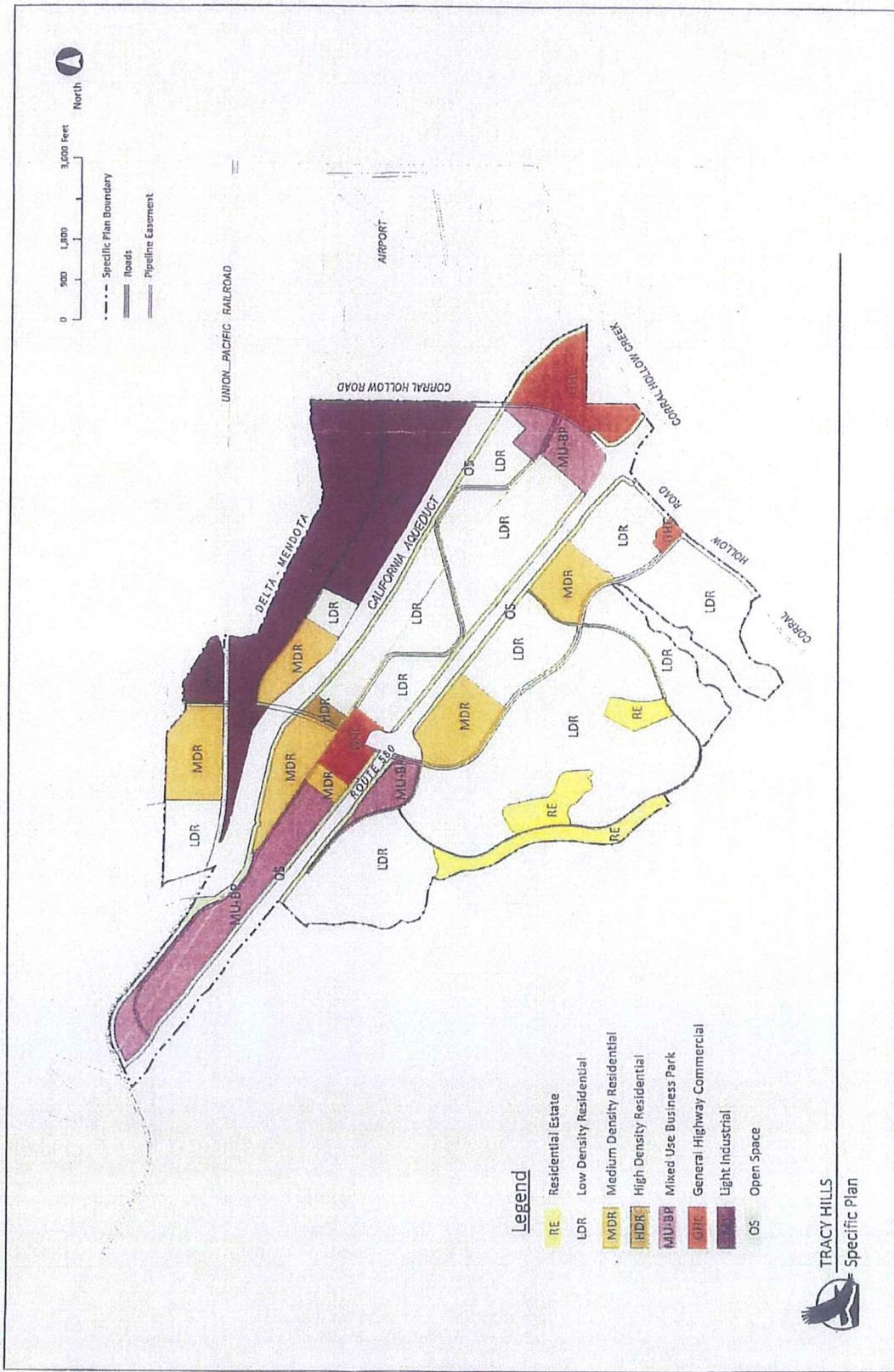
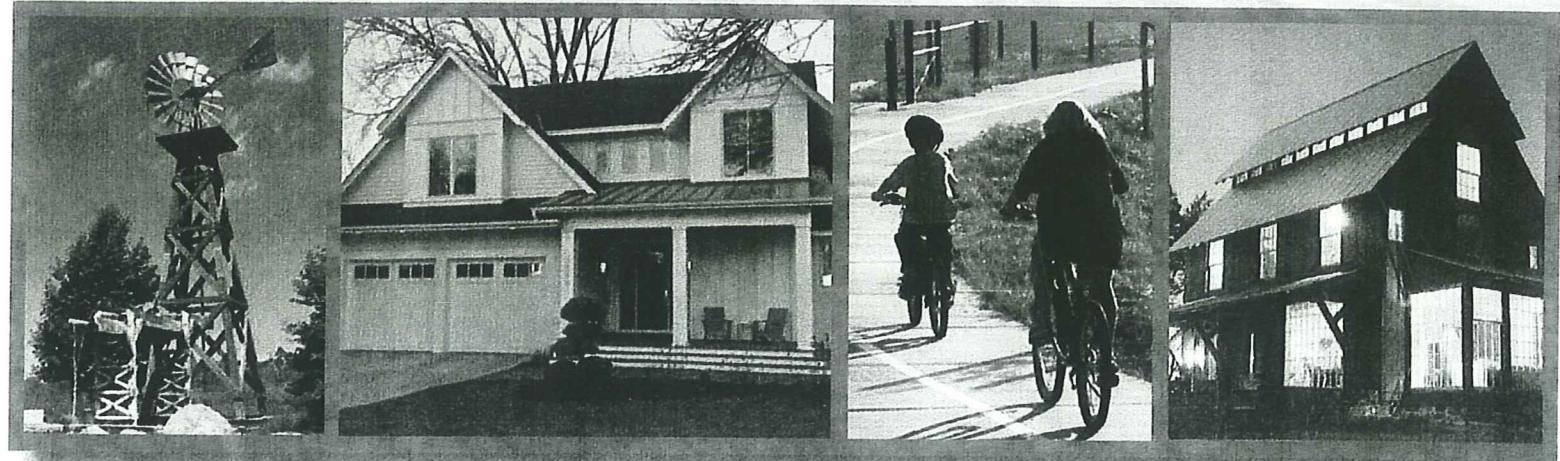


Table 1: THSP Land Use and Zoning Districts Summary

Zoning District		Gross Acres		
RE-TH	Residential Estate	95.6		
LDR-TH	Low Density Residential	1,278.1		
MDR-TH	Medium Density Residential	257.2		
HDR-TH	High Density Residential	9.2		
MUBP-TH	Mixed Use Business Park	214.6		
GHC-TH	General Highway Commercial	102.4		
M-1-TH	Light Industrial	361.9		
		Subtotal	2,319	
OS-TH	Conservation Corridors	119.83		
	Road ROW (segments over Aqueduct/RR)	3.2		
	Interstate 580 and Interchanges	137.5		
	California Aqueduct	140.1		
	Union Pacific Rail Road	12.0		
SPECIFIC PLAN TOTAL		2,731.6		
Projected Developable Acres <sup>(1)</sup>				
	Zoning District or Land Use	Adjusted Acres	Permitted Density Range or Intensity	Estimated Units Or S.F.
RE-TH	Residential Estate	81.3	(0.5-2.0 DU's/Ac.)	122
LDR-TH	Low Density Residential	901.4	(2.1-5.8 DU's/Ac.)	3,425
MDR-TH	Medium Density Residential	218.6	(5.9-12.0 DU's/Ac.)	1,827
HDR-TH	High Density Residential	7.8	(12.1-25.0 DU's/Ac.)	125
MUBP-TH	Mixed Use Business Park	182.4	0.20 FAR	1,589,156
GHC-TH	General Highway Commercial	87.0	0.20 FAR	758,292
M-1-TH	Light Industrial	307.6	0.25 FAR	3,349,927
		Subtotal	1,786.1	
OS-TH	Conservation Corridors	119.8		
	(-15% of gross acres for roadways/utilities)	351.0		
	Interstate 580 Interchange	137.5		
	California Aqueduct ROW	140.1		
	Union Pacific Rail Road	12.0		
	GP Mandated Open Space	185.0		
SPECIFIC PLAN TOTALS		2,731.6	Total units	5,499
			Total sq.ft.	5,697,376
<p>(1) Residential, Mixed Use Business Park, General Highway Commercial, and Light Industrial acreages have been adjusted to show that an estimated 15% of the land area is used for infrastructure such as roads and utilities, and/or public facilities such as neighborhood parks and amenities, schools, and/or public facilities such as retention basins as noted on page 2-60 of the City of Tracy General Plan. Actual yields will vary depending on site-specific characteristics.</p> <p>(2) 185 acres of LDR is required by the City of Tracy General Plan (pg 2-57) to be open space.</p>				

**EXHIBIT "B"**

11-191



City of Tracy

**Tracy Hills Specific Plan  
Draft Subsequent Environmental Impact Report**

December, 2014

SCH#2013102053

**Kimley»Horn**

# 1 EXECUTIVE SUMMARY

## 1.1 INTRODUCTION

This chapter summarizes the proposed Project and its history, and provides an overview of the analysis contained in Chapter 4: *Environmental Analysis*. The California Environmental Quality Act (CEQA) requires that this chapter summarize the following: 1) areas of controversy; 2) significant impacts; 3) unavoidable significant impacts; 4) implementation of mitigation measures; and 5) alternatives to the Project.

## 1.2 PROJECT HISTORY

The Tracy Hills Specific Plan (“THSP”) was approved by the City Council in 1998. In addition to the approval of the Tracy Hills Specific Plan, the “Project” that was examined in the certified Tracy Hills Final Environmental Impact Report (SCH No. 95122045) also included corresponding amendments to the City’s General Plan and Zoning Ordinance, and annexation into the City. The 1998 THSP study area included approximately 2,732 acres of developable area for development of up to 5,499 residential units in a mix of low, medium and high density neighborhoods, and over five million square feet of non-residential land uses including office, commercial, and light industrial uses, in addition to parks, schools, and additional open space.

Following the City’s 1998 approval of the THSP, various regional and local steps were taken to begin implementing the THSP Project. For example, as part of a settlement agreement reached between the County of Alameda, the City of Livermore, the City of Tracy, Sierra Club, and the original applicant, the parties agreed to the creating a governing structure in the form of a joint powers authority (“JPA”) which would serve as a mechanism to fund needed regional transportation infrastructure improvements. This JPA was ultimately formed and served as the model followed by the San Joaquin COG in subsequent years when it formed a Regional Transportation Infrastructure Fund to mitigate regional traffic impacts. The City’s previous approval of the THSP also resulted in the permanent dedication of 3,500 acres for open space uses west of I-580. A conservation easement has been recorded on this 3,500 acres, but in the absence of the development of the THSP, there is no management funding source available. It is envisioned that implementation of the revised THSP would allow for a source of permanent management funding for the 3,500 acres covered by the conservation easement. Lastly, in the interim years since the City’s approval of the THSP, the City has embarked on numerous planning efforts aimed at ultimately implementing the THSP. These planning efforts have included the adoption of a revised General Plan in 2011 that included the anticipated build out of the THSP. In addition, in order to implement the City’s General Plan as it relates to the THSP, the City has adopted city-wide numerous infrastructure plans designed to accommodate the buildup of the THSP. These infrastructure plans were subjected to their own CEQA review and are now part of the City’s adopted infrastructure plans to implement the THSP. The City’s previously-certified EIR prepared for the THSP is incorporated by reference into this EIR and is available on the City’s website.

Following the 1998 Project approvals, the City updated its General Plan with a comprehensive update in 2011. The General Plan was the subject of a certified FEIR, *City of Tracy General Plan Final EIR*, State Clearinghouse No. 2008092006 (the “General Plan EIR”), and established land use designations for the Project site.

This Draft Environmental Impact Report (EIR) was prepared by the City of Tracy to evaluate potential environmental impacts that could result from the approval and implementation of the Project. The Project includes a comprehensive update to the previously adopted 1998 Tracy Hills Specific Plan. The 1998 THSP established land use and development standards for approximately 2,732 acres located near the existing interchange around Corral Hollow Road and the proposed Lammers Road interchange on Interstate 580. The current Project Area consists of the incorporated portion

## Tracy Hills Specific Plan Draft Subsequent EIR

of the 1998 THSP, which is the approximately 2,732 acres described here (hereinafter referred to as the "THSP Area" or the "Specific Plan Area"). The Specific Plan was prepared pursuant to the provisions of California Government Code, Title 7, Article 8, Section 65450 et seq., which grants local planning agencies the authority to prepare a specific plan for any area covered by a General Plan for the purpose of establishing systematic methods for implementation of the General Plan.

### 1.3 PROJECT UNDER REVIEW

#### OVERVIEW

The Tracy Hills Project Area encompasses approximately 2,731.6 acres within the southern portion of the City of Tracy surrounding the existing interchange at Corral Hollow Road and the proposed Lammers Road interchange on Interstate 580 (I-580).

The Specific Plan consists of three areas defined by the physical characteristics of the site:

1. The northern portion of the Specific Plan between the Delta-Mendota Canal and the California Aqueduct will include a mix of low and medium density residential areas adjacent to light industrial uses.
2. The central portion of the Specific Plan, south of the California Aqueduct and north of I-580, is planned predominately for single-family homes, open space conservation corridors, mixed use business park, and commercial retail areas. These uses will provide employment opportunities and daily needs and services for residents. Multi-use trails will connect residential neighborhoods, integrated with public park amenities that are within walking distance. Additionally, an elementary school site is planned to serve the neighborhood residents of this area.
3. The southern portion of the Project Area, with rolling and steeper slopes on the southern side of I- 580, will be primarily residential neighborhoods with parks and school sites. Consistent with the General Plan, 185 acres of open space, (originally shown as a golf course in the 1998 approved Specific Plan), will be integrated into the low density residential areas. A mixed use business park area will be located southwest of the planned Lammers interchange and a commercial retail area will be located along the southeasterly Project boundary at Corral Hollow Road. This area abuts approximately 3,500 acres of open space under a conservation easement.

Refer to Table 1-1, *THSP Land Use Plan Projected Buildout*.

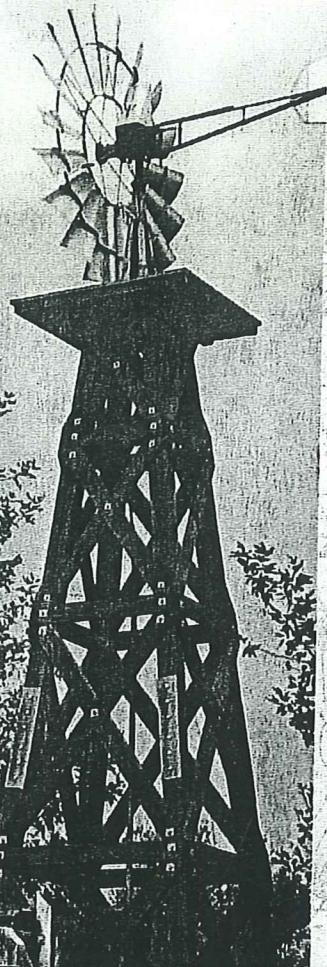
Table 1-1: THSP Land Use Plan Projected Buildout

Zoning District or Land Use	Approximate Gross Acres <sup>1</sup>	Approximate Adjusted Developable Acres <sup>1,2,3</sup>	Target Density Range or F.A.R.	Projected Dwelling Units or Square Feet <sup>1</sup>
Residential Estate	95.6	81.3	(0.5-2.0 DU's/ac.)	122 DU's
Low Density Residential <sup>2</sup>	1,216.0	876.3	(2.1-5.8 DU's/ac.)	3,238 DU's
Medium Density Residential	318.1	270.4	(5.9-12.0 DU's/ac.)	2,014 DU's
High Density Residential	9.2	7.8	(12.1-25.0 DU's/ac.)	125 DU's
Mixed Use Business Park	214.6	182.5	0.20 F.A.R.	1,589,069 s.f.
General Highway Commercial	102.4	87.0	0.20 F.A.R.	758,944 s.f.
Light Industrial	363.1	308.6	0.25 F.A.R.	3,360,654 s.f.
Conservation Corridors	119.8		n/a	
<b>Subtotal:</b>	<b>2,438.8</b>	<b>1,813.9</b>		
Interstate 580 Interchange and ROW	137.5			
California Aqueduct ROW	143.1			
Union Pacific Rail Road	12.2			
<b>TOTAL:</b>	<b>2,731.6</b>	<b>1,813.9</b>		5,499 DU's 5.7 mil s.f.

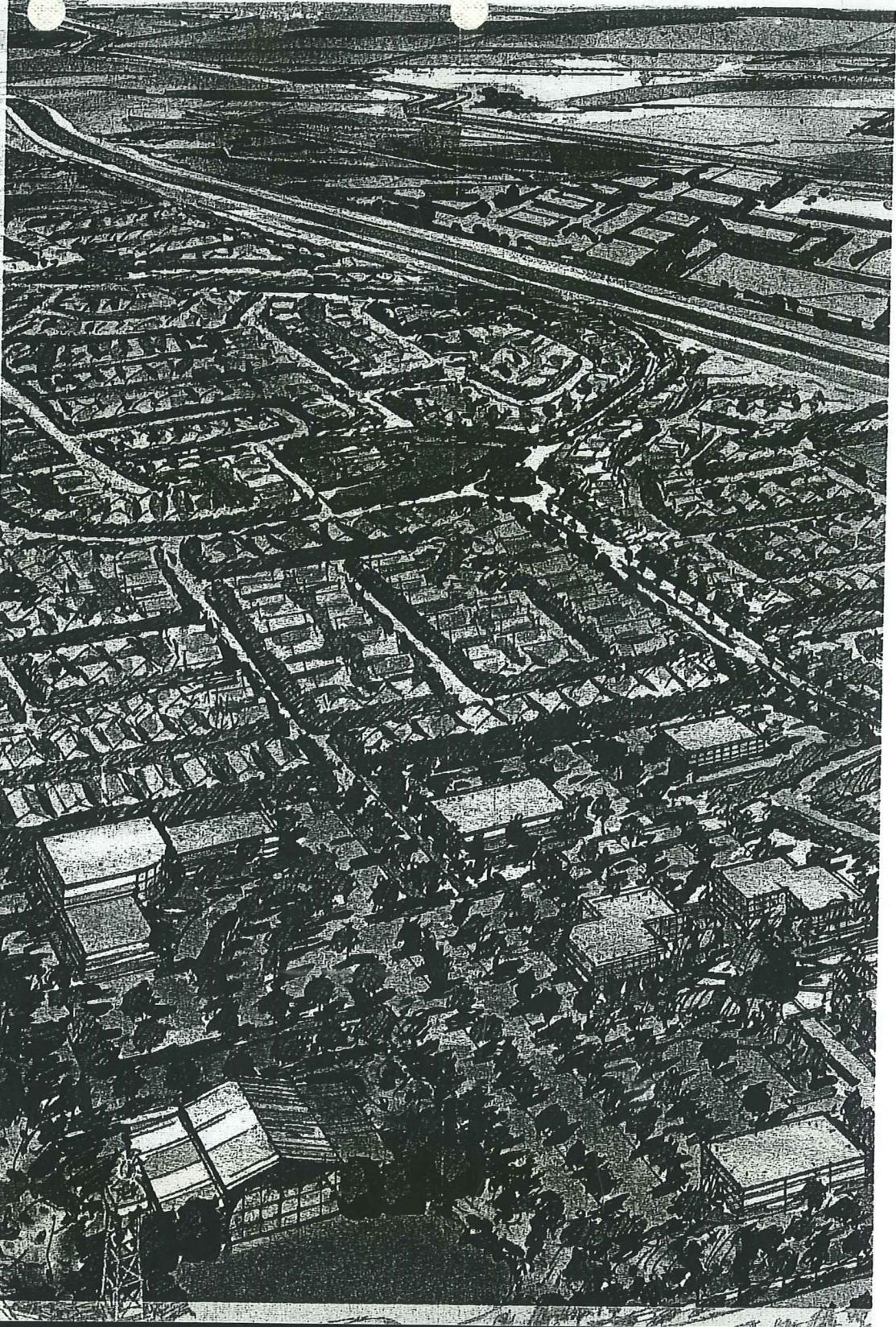
## 1.4 PROJECT BACKGROUND

In May, 2013, the Applicant requested certain amendments to the 1998 THSP, and on October 23, 2013, the City published a Notice of Preparation for the Project, then titled the "Tracy Hills Specific Plan Amendment Project." On November 6, 2013, the City conducted a scoping meeting for the Tracy Hills Specific Plan Amendment Project. Because the requested modifications to the 1998 THSP are substantial (including modification to the project goals, zoning and development standards, and zoning districts, and associated text, graphics and format), the Project Applicant in consultation with City Staff decided to submit a comprehensive update to the Specific Plan as opposed to submitting numerous amendments to specific sections of the 1998 THSP. While the scope and substance of the Applicant's requested amendments to the 1998 THSP have not changed, it was determined that an entirely re-written Specific Plan would provide greater clarity and definition and more contemporary policy direction, and would reduce the possibility of confusion that could be created by separately amending individual sections of the 1998 THSP. As a result, the City and the Project Applicant have agreed that the environmental analysis for the re-written Specific Plan should address the proposed amendments as an entirely new CEQA project subject to a full environmental impact report, rather than utilizing any streamlined or tiered form of environmental review that could be available under CEQA and the CEQA Guidelines. The analysis contained in this Draft EIR compares impacts associated with implementation of the proposed Project to current existing conditions, and not to conditions identified in the 1998 THSP. To document this change in approach to the environmental review for the Project, the City published an Updated Notice of Preparation on April 21, 2014. Per Section 15125 of the *CEQA Guidelines* baseline conditions from which this EIR evaluates impacts were established at the time the Notice of Preparation (NOP) was released on April 21, 2014 and identifies that the Draft EIR will cover the entire Project Area and address the full range of environmental topics identified in Appendix G of the State CEQA Guidelines. Chapter 1A of this Draft EIR identifies comments received during the scoping period as well as where comments have been responded to throughout the EIR.

**EXHIBIT "C"**



Tracy Hills  
**Specific Plan  
Draft**  
December 2014





## 1 INTRODUCTION

### 1.1 PURPOSE AND SCOPE OF THE TRACY HILLS SPECIFIC PLAN

The Tracy Hills Specific Plan is the detailed plan and regulatory document for the development of the entire Specific Plan area. This Specific Plan document is intended to implement the General Plan and direct all facets of the development of the property including, but not necessarily limited to, the distribution of land uses, the location, and sizing of the existing and proposed supporting infrastructure and an overview of the financial vehicles that are intended to be used to plan, construct, and operate these facilities. This Specific Plan is a regulatory document, is incorporated into the City's Zoning Ordinance, and serves as the zoning for all properties within the Specific Plan area.

The Tracy Hills Specific Plan was originally adopted in 1998 (the 1998 THSP). Since then, City policies and developer plans have changed. Due to these changes, the developer submitted and the City approved this new THSP to replace the former 1998 THSP.

### 1.2 PROJECT OVERVIEW

The Tracy Hills Specific Plan area encompasses approximately 2,731.6 acres within the southern portion of the City of Tracy surrounding the existing interchange at Corral Hollow Road and the proposed Lammers Road interchange on Interstate 580 (I-580). (Refer to Figure 1-1, Regional Context Map; and Figure 1-2, Vicinity Map.)

The Specific Plan consists of three areas defined by the physical characteristics of the site. (Refer to Figure 1-3, Land Use Concept.)

1. The northern portion of the Specific Plan between the Delta-Mendota Canal and the California Aqueduct will include a mix of low and medium density residential areas adjacent to light industrial uses.
2. The central portion of the Specific Plan, south of the California Aqueduct and north of I-580, is planned predominately for single-family homes, open space conservation easements, mixed use business park, and commercial retail areas. These uses will provide employment opportunities and daily needs and services for residents. Multi-use trails will connect residential neighborhoods, integrated with public park amenities that are within walking distance. Additionally, an elementary school site is planned to serve the neighborhood residents of this area.
3. The southern portion of the Specific Plan area, with rolling and steeper slopes on the southern side of I-580, will be primarily residential neighborhoods with parks and school sites. Consistent with the General Plan, 185 acres of open space, (originally shown as a golf course in the 1998 THSP), will be integrated into the low density residential areas. A mixed use business park area will be located southwest of the planned Lammers interchange and a commercial retail area will be located along the southeasterly project boundary at Corral Hollow Road. This area abuts approximately 3,500 acres of open space under a conservation easement.

**Table 1-1, Land Use Plan Buildout Example** summarizes the various proposed land uses, and provides the approximate developable acreages, development ranges, and the projected buildout of residential dwelling units and non-residential development square footage. The approximate gross acres for the Zoning designations for the Tracy Hills Specific Plan are also summarized.

**EXHIBIT "D"**

## 4.8 BIOLOGICAL RESOURCES

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### 1. ENVIRONMENTAL ISSUES

This section of the EIR discusses the potential impacts to plants, wildlife and habitat occurring within the project area which may occur as a result of project implementation. This section inventories, habitat values, known and potential species of concern, and recommends measures to mitigate potential biological resource impacts.

### 2. EXISTING SETTING

#### PREVIOUS STUDIES

The consulting firm LSA conducted extensive surveys of the biological resources of 1,700 acres of the Tracy Hills project site in 1988 and 1989 (LSA 1989). The primary focus of these surveys were to assess the presence/absence of the San Joaquin kit fox (*Vulpes macrotis mutica*), and other potentially present special-status plants and animals. In addition, they made several recommendations for mitigation to potential project related impacts. In 1991, LSA expanded their survey efforts to the whole 6,175 acre Tracy Hills specific plan area.

In 1993 the Grupe Communities, Inc. contracted with Jones & Stokes to conduct an analysis of the corridor element of the previous specific plan on the movements of kit fox. This analysis was specifically designed to evaluate the effectiveness of the proposed corridor in providing for residency and dispersal by kit foxes, and provide recommendations to maximize the value of the corridor. This plan has since been supplanted by the Multi-Species Habitat Management Plan described below.

The firm H.T. Harvey & Associates, Ecological Consultants conducted a review of previous evaluations of biological resources within the Tracy Hills project area, including the HMP prepared for the project site by LSA. The following sections describe biological resources based upon the previously conducted studies and as verified by H.T. Harvey & Associates.

#### *Multi-Species Habitat Management Plan, Tracy Hills, San Joaquin County, May 28, 1996*

A Multi-Species Habitat Management Plan (HMP) has been prepared (1996) for a portion of the Tracy Hills Specific Plan area. The HMP was prepared in coordination with State and federal management agencies and establishes a mitigation and management plan for a 5,139 portion of the Specific Plan area owned by Grupe Communities Inc. The entire Tracy Hills Specific Plan area encompasses approximately 6,175 acres of land.

The 1996 HMP was developed between the project applicant (represented in part by LSA) and the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG). Both of these agencies have indicated that the present draft of the HMP satisfies their concerns on the biotic resources of the site (pers. comm. Sheila Larson, USFWS; Dan Gifford,

## 4.8 BIOLOGICAL RESOURCES

CDFG). Of the 5,139 acres of the project site, a total of 3,552 acres on site is proposed to be permanent open space. Additionally, the applicant will dedicate 592 acres of land off-site, for a total of 4,144 acres of open space habitat to be permanently preserved.

Grupe Communities, Inc. has requested that the 1996 HMP be considered as a component of their development proposal. Therefore, this document considers the open space dedications and land management practices described within the HMP as components of proposed land uses within the Specific Plan to mitigate development related biological impacts to lands owned by Grupe Communities, Inc.

### *Tracy Hills Lands Outside the HMP Boundaries*

No mitigation agreements have been established for the 1,036 acres within the Tracy Hills Specific Plan area that are not owned by Grupe. Lands not considered within the 1996 HMP are located near the intersection of Corral Hollow Road and Interstate 580, and between the California Aqueduct and the Delta Mendota Canal. Mitigation for development of these lands must be provided for by the owners/developers of these lands prior to development. Such mitigation provisions will require coordination with the California Department of Fish and Game and the U.S. Fish and Wildlife Service.

### EXISTING BIOLOGICAL RESOURCES

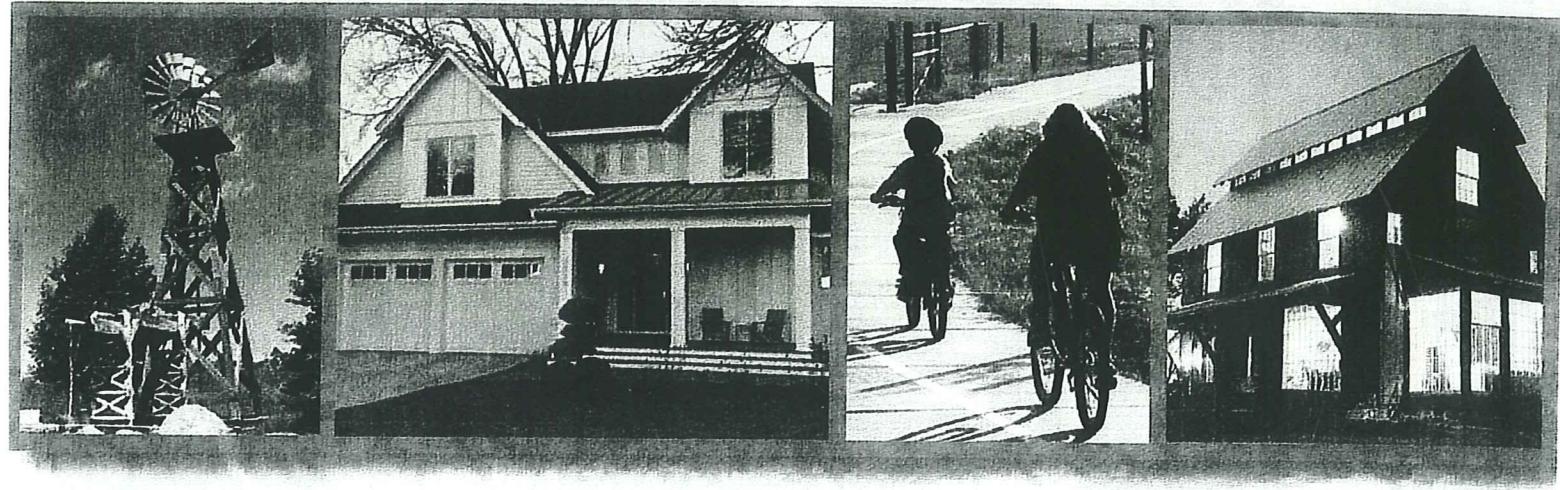
The Corral Hollow Creek passes through the southern portion of the site and supports areas of riparian woodland. Additionally, two major water projects, the California Aqueduct and the Delta-Mendota Canal, and areas of more intensive agricultural lands are located in the easterly portion of the project site. Numerous special status plant and animal species are known to occur or may occur within the project site, primarily within the hillside grazing lands or the Corral Hollow Creek area.

The site consists of California annual grassland, California sagebrush/matchweed scrub, and riparian woodland (i.e., Corral Hollow Creek). In addition to these habitats, several habitat features are found within the California annual grassland including water courses, purple needlegrass stands, and rock outcrops. Row crops and orchards are found between the California Aqueduct and the Delta Mendota Canal.

### VEGETATION COMMUNITIES

Vegetation types within the project area include extensive annual grasslands, small stands of California sagebrush/ matchweed scrub within the grasslands, and riparian woodland located along Corral Hollow Creek. Locations of these vegetation types are depicted on Figure 4.8-1. Natural vegetation communities, especially riparian corridors and wetlands, provide the primary habitat for most native California special status species.

**EXHIBIT "E"**



City of Tracy

**Tracy Hills Specific Plan  
Draft Subsequent Environmental Impact Report**

December, 2014

SCH#2013102053

**Kimley » Horn**  
71-209

# 1 EXECUTIVE SUMMARY

## 1.1 INTRODUCTION

This chapter summarizes the proposed Project and its history, and provides an overview of the analysis contained in Chapter 4: *Environmental Analysis*. The California Environmental Quality Act (CEQA) requires that this chapter summarize the following: 1) areas of controversy; 2) significant impacts; 3) unavoidable significant impacts; 4) implementation of mitigation measures; and 5) alternatives to the Project.

## 1.2 PROJECT HISTORY

The Tracy Hills Specific Plan (“THSP”) was approved by the City Council in 1998. In addition to the approval of the Tracy Hills Specific Plan, the “Project” that was examined in the certified Tracy Hills Final Environmental Impact Report (SCH No. 95122045) also included corresponding amendments to the City’s General Plan and Zoning Ordinance, and annexation into the City. The 1998 THSP study area included approximately 2,732 acres of developable area for development of up to 5,499 residential units in a mix of low, medium and high density neighborhoods, and over five million square feet of non-residential land uses including office, commercial, and light industrial uses, in addition to parks, schools, and additional open space.

Following the City’s 1998 approval of the THSP, various regional and local steps were taken to begin implementing the THSP Project. For example, as part of a settlement agreement reached between the County of Alameda, the City of Livermore, the City of Tracy, Sierra Club, and the original applicant, the parties agreed to the creating a governing structure in the form of a joint powers authority (“JPA”) which would serve as a mechanism to fund needed regional transportation infrastructure improvements. This JPA was ultimately formed and served as the model followed by the San Joaquin COG in subsequent years when it formed a Regional Transportation Infrastructure Fund to mitigate regional traffic impacts. The City’s previous approval of the THSP also resulted in the permanent dedication of 3,500 acres for open space uses west of I-580. A conversation easement has been recorded on this 3,500 acres, but in the absence of the development of the THSP, there is no management funding source available. It is envisioned that implementation of the revised THSP would allow for a source of permanent management funding for the 3,500 acres covered by the conversation easement. Lastly, in the interim years since the City’s approval of the THSP, the City has embarked on numerous planning efforts aimed at ultimately implementing the THSP. These planning efforts have included the adoption of a revised General Plan in 2011 that included the anticipated build out of the THSP. In addition, in order to implement the City’s General Plan as it relates to the THSP, the City has adopted city-wide numerous infrastructure plans designed to accommodate the buildout of the THSP. These infrastructure plans were subjected to their own CEQA review and are now part of the City’s adopted infrastructure plans to implement the THSP. The City’s previously-certified EIR prepared for the THSP is incorporated by reference into this EIR and is available on the City’s website.

Following the 1998 Project approvals, the City updated its General Plan with a comprehensive update in 2011. The General Plan was the subject of a certified FEIR, *City of Tracy General Plan Final EIR*, State Clearinghouse No. 2008092006 (the “General Plan EIR”), and established land use designations for the Project site.

This Draft Environmental Impact Report (EIR) was prepared by the City of Tracy to evaluate potential environmental impacts that could result from the approval and implementation of the Project. The Project includes a comprehensive update to the previously adopted 1998 Tracy Hills Specific Plan. The 1998 THSP established land use and development standards for approximately 2,732 acres located near the existing interchange around Corral Hollow Road and the proposed Lammers Road interchange on Interstate 580. The current Project Area consists of the incorporated portion

Table 4.4-2: Mitigation for Development

Development Area	Mitigation
Area A	SJMSCP Coverage, pay fee, follow Incidental Take Minimization Measures
Area B	SJMSCP Coverage, pay fee, follow Incidental Take Minimization Measures
Area C	Not covered under SJMSCP, 3500-ac easements

## AREA A

The original habitat assessments for the Tracy Hills Specific Plan Project were conducted in 1988 and 1989<sup>1</sup> by LSA which covered Area A. Then in 2014 a habitat assessment (RBF) and in 2013 a jurisdictional delineation (Olberding Environmental, Inc.) were conducted. Only general biological resources surveys have been conducted on Area A. No state or federal protocol level focused plant or wildlife surveys have been conducted on Area A. Area A of the THSP is covered under the SJMSCP since it was not included in the stand alone Tracy Hills HCP.

## AREA B

Area B has SJMSCP coverage through a Minor Amendment to the SJMSCP in 2012. The Minor Amendment included an in-lieu of fee payment of approximately 3,500-acres to be dedicated as habitat/open space via conservation easements. The 3,500-acres, located west of the THSP and south of I-580 was dedicated by the Project Applicant as a conservation easement and accepted by SJCOG. As a result, Area B is eligible for coverage by the SJMSCP and is shown on the SJMSCP compensation map for Tracy.

### Habitat Assessment

The original habitat assessments for the Tracy Hills Specific Plan Project were conducted in 1988 and 1989<sup>2</sup> by LSA. Two reports were prepared for the THSP, one covering the Properties West of the California Aqueduct and the other covering Properties East of the California Aqueduct. Both of these reports focused on the portion of the THSP east of I-580. Then in 1991, LSA prepared a third report covering the entire THSP property, east and west of I-580. These three habitat assessment reports primarily focused on the presence/absence of SJKF within the THSP boundaries and assessed the suitability of the habitat for sensitive plant and wildlife species known to occur on the Project site and within the general area.

In 2010, Berryman Ecological prepared a biological resources report for Area B. This report was prepared to provide information to SJCOG staff to evaluate this area for inclusion in the SJMSCP. The 2010 report primarily focused on the suitability of the habitat for SJKF, burrowing owl, CRLF, California tiger salamander (*Ambystoma californiense*), and western spadefoot toad (*Spea hammondii*).

<sup>1</sup> LSA. Biological Assessment Tracy Property: San Joaquin County, California. 1989

<sup>2</sup> LSA. Biological Assessment Tracy Property: San Joaquin County, California. 1989

### Jurisdictional Delineation

A delineation of state and federal jurisdictional waters and wetlands was conducted to delineate the limits of wetlands and jurisdictional waters subject to jurisdiction by the U.S. Army Corps of Engineers (Corps) under Section 404 of the Federal Clean Water Act (CWA), California Department of Fish and Wildlife (CDFW) under Sections 1600 et seq. of the California Fish and Wildlife Code, and the Regional Water Quality Control Board (RWQCB) under Section 401 of the CWA and the California Porter-Cologne Water Quality Control Act by Foothill Associates in 2003. In 2013, Olberding Environmental, Inc. prepared a Corps Jurisdictional Assessment for the THSP property<sup>3</sup>.

### Focused Surveys

#### San Joaquin Kit Fox

In 1993 Jones & Stokes prepared a kit fox corridor analysis for the THSP<sup>4</sup>. This analysis was designed to evaluate the effectiveness of the proposed corridor in providing for residency and dispersal by kit foxes, and provide recommendations to maximize the value of the corridor. This analysis was succeeded by the 1996 Multi-Species Habitat Management Plan (HMP) prepared by LSA, and again in 2006 by the Tracy Hills SJKF Analysis prepared by Berryman Ecological.

Berryman Ecological and H.T. Harvey & Associates conducted a SJKF aerial survey by flying transects over the THSP and general area<sup>5</sup>. The results of the aerial survey concluded that no potential kit fox dens were observed on the Project site, but the survey did not rule out the potential for SJKF to occur on the THSP property.

Scat Detection Dog Surveys for SJKF were conducted for the THSP in 2011, 2012, and 2013 by Berryman Ecological. No kit fox scats, or other kit fox sign were observed during surveys<sup>6</sup>. The negative findings of the three consecutive years of scat detection surveys provide evidence that the kit fox is not present on the THSP property.

#### Burrowing Owl

In accordance with CDFW protocol, Berryman Ecological conducted a focused survey during the 2009 breeding season for burrowing on Area B. No burrowing owls were observed within the boundaries of Area B during the focused surveys conducted between June 28 and July 14, 2009.

#### Sensitive Plants

Sensitive plant surveys were conducted in 1988 and 1990 by LSA<sup>7</sup> and reviewed in 1996 by H.T. Harvey & Associates<sup>8</sup> for the Tracy Hills Specific Plan Project, which included Area B of the THSP. Based on the results of the initial surveys and following review, it was determined the proposed THSP would not significantly affect sensitive status plant species. However, these surveys are over twenty years old and new sensitive plant species have been listed and/or changed status by USFWS, CDFW, and CNPS.

#### Preserve Management Plan for the Tracy 580 Business Park Preserve

Tracy 580 Business Park is the name of a former development project proposed for land within Area B after approval of the 1998 THSP. The former Tracy 580 Business Park project has since been abandoned and is no longer being pursued.

<sup>3</sup>Olberding Environmental, Inc. Tracy Hills Project – U.S. Army Corps of Engineers Jurisdiction Assessment. 2013

<sup>4</sup>Jones & Stokes Associates. Evaluation of a Proposed Corridor for the San Joaquin Kit Fox in the Tracy Hills Specific Plan Project. 1993

<sup>5</sup>H.T. Harvey & Associates. Tracy Triangle San Joaquin Kit Fox Surveys. 2006

<sup>6</sup>Berryman Ecological. Tracy Hills San Joaquin Kit Fox Analysis. 2006

<sup>7</sup>LSA. Biological Assessment Tracy Property: San Joaquin County, California. 1989

<sup>8</sup>LSA. Biological Study Tracy Hills Community: San Joaquin County, California. 1991

## Tracy Hills Specific Plan Draft Subsequent EIR

In October of 2011, ICF International prepared the *Preserve Management Plan for the Tracy 580 Business Park*<sup>9</sup>. This document presented the preserve management plan for the approximately 688-acre Tracy 580 Business Park Preserve (Area B or most of Phase 1 (figure 3-11) of the THSP). The Preserve is part of a larger contiguous block of conserved land (approximately 3,432-acres), currently utilized for livestock grazing, that may be added to the Preserve in the future. SJCOG, Inc. has obtained three conservation easements (Figure 4.4-2, *The Preserve*) on the Preserve for inclusion in the preserve system primarily as a Grassland Preserve of the Southwest Index Zone. The three conservation easements are described in detail below:

- 1) Conservation Easement 1 (CE-1) is an approximately 790-acre area in the northern portion of the Preserve, adjacent to Interstate I-580. Included in the easement are an approximately 41-acre corridor along the California Aqueduct and a 100-foot wide corridor along both sides of that portion of I-580 from the northern boundary of CE-1 to the intersection with Corral Hollow Road that do not count as mitigation and for which SJCOG, Inc., will not assume any management or monitoring responsibility. The 100-foot wide corridors have multiple gaps in the conservation easement for storm drainage, roadways, and other purposes. No grading or other development-related activity will be allowed on this conservation easement, except for temporary access on the California Aqueduct corridor associated with adjacent development.
- 2) Conservation Easement 2 (CE-2) is an approximately 2,429-acre area that includes the majority of the Preserve. This easement allows for limited future construction of a water tank and access road. These facilities may be necessary in association with future development to the east and within the THSP. Additional communication with the regulatory agencies, and possible permit coordination, may be required for this limited construction. Although SJCOG, Inc., will hold the easement, SJCOG, Inc., will not have management or monitoring responsibility on this easement.
- 3) Conservation Easement 3 (CE-3) is an approximately 316-acre area that occupies slopes adjacent to proposed development within the THSP. This easement allows for limited future grading, slope stabilization, road construction, and other temporary ground disturbance associated with the potential need to remediate the existence of landslide deposits that may be necessary if adjacent development within the THSP occurs, SJCOG, Inc. will hold the easement but will not have management or monitoring responsibility on this easement.

The Preserve Management Plan for the Tracy 580 Business Park provided the Landowner, SJCOG, and the Land Manager with specific guidelines regarding allowed and prohibited uses, land management, and monitoring in accordance with the requirements of the SJMSCP. Fences shall be installed around the established conservation easements to ensure that domestic animals and humans do not impact that areas being conserved.

### Habitat Conservation Plan

Prior to the finalization of the SJMSCP, the Tracy Hills Specific Plan Project (under the 1998 THSP) opted to create a separate HCP rather than participate in the SJMSCP. As a result, the 1998 Tracy Hills Specific Plan Project was called out as a project specifically not covered by the SJMSCP in Section 8.2.2.2 of the plan. However, the Tracy Hills HCP was never finalized and Area B was not covered under the SJMSCP or the stand alone Tracy Hills HCP. As a result, SJCOG Inc. allowed Area B to be amended into the SJMSCP, under a minor amendment, for coverage under the SJMSCP (July 2013<sup>10</sup>). Other phases of the THSP are not currently covered by the SJMSCP and would need to apply independently for coverage or otherwise obtain mitigation approval for impacts to federal and state listed species from CDFW and USFWS.

<sup>9</sup>ICF International. Preserve Management Plan for the Tracy 580 Business Park Preserve. 2011

<sup>10</sup>USFWS. Determination of a Minor Amendment for Inclusion of the Tracy 580 Business Park Project under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, San Joaquin County, May 6, 2012

### Multi-Species Habitat Management Plan

A Multi-Species Habitat Management Plan (HMP) was prepared in 1996 for a portion of the THSP property<sup>11</sup>. The HMP was prepared in coordination with USFWS and CDFW to establish a mitigation and management plan for development of 5,138.9 acres of the 1998 THSP property (the THSP boundary has been modified to approximately 2,732 acres). The HMP was never formalized with the wildlife agencies and is not recognized as an enforceable plan.

### Habitat Management Plan

In 2004, Foothill Associates prepared a Habitat Management Plan in coordination with the USFWS and CDFW to describe the management and monitoring measures to be implemented within the conservation areas for the THSP<sup>12</sup>. Specifically, this Plan was prepared to manage habitat for SJKF, CRLF, and California tiger salamander. In addition to Endangered Species Act compliance, this habitat management plan was developed to satisfy requirements imposed by the City of Tracy General Plan Policy OS 1.3.1 and to implement certain project specific mitigation measures required by the 1998 THSP. This Plan was never formalized with the wildlife agencies and is not recognized as an enforceable plan.

### AREA C

Area C of the THSP includes the southern portion of the THSP, south of I-580 and northwest of Corral Hollow Road. Area C extends into the undeveloped hillside to the west and abuts the approximately 3,500-acre open space area under a conservation easement. Area C has a separate HCP. As a result, Area C is not covered under the SJMSCP and no amendments to the SJMSCP have been prepared to include Area C of the THSP into the SJMSCP.

### Habitat Assessment

In 1991, LSA prepared a habitat assessment report covering the entire THSP property, east and west of I-580. This habitat assessment report primarily focused on the presence/absence of SJKF within the THSP boundaries and assessed the suitability of the habitat for sensitive plant and wildlife species known to occur on the Project site and within the general area.

### Jurisdictional Delineation

A delineation of state and federal jurisdictional waters and wetlands was conducted by Foothill Associates in 2003, and updated in 2013 by Olberding Environmental, Inc. for the THSP property which included Area C of the THSP.

### Focused Surveys

#### San Joaquin Kit Fox

In 1993 Jones & Stokes prepared a kit fox corridor analysis for the THSP (Evaluation of a Proposed Corridor for the SJKF in the Tracy Hills Specific Plan Project, Jones & Stokes 1993). This analysis was designed to evaluate the effectiveness of the proposed corridor in providing for residency and dispersal by kit foxes, and provide recommendations to maximize the value of the corridor. This analysis was succeeded by the 1996 HMP prepared by LSA, and again in 2006 by the Tracy Hills SJKF Analysis prepared by Berryman Ecological.

<sup>11</sup>LSA. Multi-Species Habitat Management Plan: San Joaquin County, California. 1996

<sup>12</sup>Foothill Associates. Habitat Management Plan for the Tracy Hills Project: San Joaquin County, California. 2004

Tracy Hills Specific Plan  
Draft Subsequent EIR

Berryman Ecological and H.T. Harvey & Associates conducted a SJKF aerial survey by flying transects over the THSP and general area. The results of the aerial survey concluded that no potential kit fox dens were observed on the Project site, but the survey did not rule out the potential for SJKF to occur on the THSP property.

Scat Detection Dog Surveys for SJKF were conducted for the THSP in 2011, 2012, and 2013 by Berryman Ecological. No kit fox scats, or other kit fox sign were observed during surveys. The negative findings of the three consecutive years of scat detection surveys do not support the presence of kit fox on the THSP property.

#### Burrowing Owl

No burrowing owl focused surveys have been conducted on the THSP property west of I-580 (Area C) to date. However, burrowing owls were observed in this area during the 2014 habitat assessment (RBF).

#### Sensitive Plants

Sensitive plant surveys were conducted in 1988 and 1990 by LSA and reviewed in 1996 by H.T. Harvey & Associates for the Tracy Hills Specific Plan Project, which included Area C of the THSP. Based on the results of the initial surveys and following review, it was determined the proposed THSP would not significantly affect sensitive status plant species. However, these surveys are over twenty years old and new sensitive plant species have been listed and/or changed status by USFWS, CDFW, and CNPS.

#### Habitat Conservation Plan

Area C of the THSP was part of the 1998 Tracy Hills Specific Plan Project that was called out as a project specifically not covered by the SJMSCP in Section 8.2.2.2 of the plan since the developer opted to create a separate HCP rather than participate in the SJMSCP. Since there are not enough grasslands within the SJMSCP for Area C to be covered, Area C is not covered under the SJMSCP and no amendments to the SJMSCP have been prepared to include Area C of the THSP into the SJMSCP. If Area C were to be amended to the SJMSCP it would have to do so under a major amendment.

#### SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP)

The THSP is located within the Southwest Zone and Central/Southwest Transition Zone designated by the SJMSCP. Specifically, Area B of the THSP is located in the Central/Southwest Transition Zone. The SJMSCP was adopted in 2001 and is intended to provide a strategy for conserving agricultural lands and wildlife habitat while accommodating a growing population and property rights of individual landowners. The SJMSCP has established an assessment process for conversion of land to non-open space uses when such conversion might affect the plant and wildlife species covered by the SJMSCP. The SJMSCP addresses 97 special-status plant, fish, and wildlife species in 52 vegetative communities. The ultimate goal of the SJMSCP is to provide 100,241 acres of habitat preserves over the projected 50-year lifetime of the SJMSCP. Most of the land for these preserves would be designated as conservation easements over existing agricultural lands in the areas covered by the SJMSCP.

#### EXISTING SITE CONDITIONS

The THSP encompasses approximately 2,732-acres along I-580, between the Union Pacific Railroad and I-580 and Corral Hollow Road interchange and is primarily undeveloped and has been utilized for livestock grazing and other agricultural purposes. Interstate 580 is a four-lane, limited-access interstate highway that bisects the property on a north-to-south axis. Interstate 580 connects to I-205 and the western extension of I-580 on the north and to I-5 to the south. The freeway is also fronted by the 100-foot wide, open space habitat conservation easements within portions of the THSP. Existing roadways providing access to the THSP Area include I-580, Corral Hollow Road, and Lammers Road. Within approximately four miles from the Project site, I-580 connects I-205 and the western extension of I-580 to the north and with I-5 to the south.

**EXHIBIT "F"**

Placer Title 404-4224  
RECORDING REQUESTED AND  
WHEN RECORDED, RETURN TO:  
SICOG, INC.  
555 E. Weber Avenue  
Stockton, California 95202  
Attention: President

Certified to be a true and  
correct copy of that certain July 20, 2012  
document recorded  
Series No. 2012 - 91283  
County SAN JOAQUIN  
PLASER TITLE COMPANY  


(space above this line reserved for Recorder's use)

R-T 11911 - No Consideration  
**GRANT DEED OF CONSERVATION EASEMENT**  
(Tracy 380 Business Park Easement)

Tue 22, 2012, is by and between Tsakopoulos, LLC, a California limited liability company, and Angelo K. Tsakopoulos, an unmarried man as his sole and separate property (collectively, "Grantor"), and SICOG, INC., a California public benefit corporation ("Grantee").

**RECITALS**

A. Grantor is the fee simple owner of that certain real property located in San Joaquin County, California, that consists of approximately Five Thousand Three Hundred Twelve and 09/100 (5.31209) acres, together with all appurtenances thereto including, without limitation, all water and water rights, but subject to those matters provided in Recital B below (the "Primary Property"). The Primary Property is described in Exhibit 1, attached hereto and incorporated herein by this reference. With respect to Grantor's collective ownership of the Primary Property, Tsakopoulos Family Partnership, a California general partnership, and Angelo K. Tsakopoulos own Parcels One through Seventeen as described in Exhibit 1, and Gibson-Tsakopoulos, LLC, a California limited liability company, and Angelo K. Tsakopoulos own Parcels Eighteen and Nineteen as described in Exhibit 1.

B. Grantor owns all rights of surface entry over and upon the Primary Property related to the exploration or extraction of any and all oil, gas, mineral and hydrocarbon substances, except for any surface rights reserved by reason of its Corporation Grant Deed to Bertha G. Berger, Vera Guasner, and Doris Powell as to all oil, gas, hydrocarbons and other minerals, recorded March 27, 1959 in Book 2160 at Page 308. Grantee owns a portion of the rights to oil, gas, mineral and hydrocarbon substances lying below the surface of the Primary Property, and such subsurface rights are subject to Paragraph 7 of this Grant.

C. The Primary Property possesses wildlife and habitat values, agricultural, open space and scenic values of great importance, to Grantor, the people of San Joaquin County, and the people of the State of California.

D. Grantor intends, as owner of the Primary Property, to convey a conservation easement on a portion of the Primary Property consisting of approximately Seven Hundred Eighty and 33/100 (780.33) acres, as described in Exhibit 2, attached hereto and incorporated herein by this reference (the "Property"). A map of the Property identifying the improvements existing on the Property as of the date of this Grant Easement and various other natural features of the Property is attached hereto as Exhibit 3, and incorporated herein by reference (the "Property Map").

E. The Grantor intends that the Property be maintained in agricultural production by the maintenance of agricultural values thereof and that the open space and environmental values of the property be preserved by continuation of the agricultural and ranching uses that have proven historically compatible with such values.

F. The Property provides high quality habitat for species covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (the "SJMSP") whose preservation is highly important to Grantor, the people of San Joaquin County and the people of the State of California. Protection and preservation of the Property pursuant to the Preserve Management Plan will assure that the Property and its existing features will continue to be available for those activities that are set forth in this conservation easement, to preserve other natural habitat and to provide a significant public benefit by preserving open space against development pressure and scenic qualities.

G. The purpose of the conservation easement is to ensure that the Property will continue to be used for those permitted agricultural purposes as set forth herein and to preserve and enhance the natural areas located on the Property for the benefit and promotion of the aforementioned wildlife.

H. Grantor intends as the owner of the Primary Property to convey to Grantee the right to preserve and protect the agricultural, open-space and scenic values of the Property in perpetuity.

I. The State of California recognizes the public importance and viability of conservation easements by its enactment of Section 815 et seq. of the California Civil Code.

1. Grantee is a nonprofit corporation incorporated under the laws of the State of California, and, as a tax-exempt public charity described in Section 815.3 of the California Civil Code and Sections 501(c)(3) and 509(e)(1) of the Internal Revenue Code of 1986, as amended from time to time and together with any and all regulations promulgated thereunder. The "Code", is organized to protect and conserve natural areas and ecologically significant land for

scientific, charitable and educational purposes, and is a "qualified organization" within the provisions of Section 170(h) of the Code qualified to acquire and hold conservation easements, and is authorized to hold conservation easements pursuant to Section 815.3 of the California Civil Code.

K. To accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee, and Grantee intends to obtain from Grantor, a conservation easement that restricts the uses which may be made of the Property and that grants rights to Grantor in order to preserve and protect the purposes of the conservation easement on the Property in perpetuity and specifically includes the agricultural uses as set forth herein.

#### AGREEMENTS

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California and in particular California Civil Code Section 815 et seq., Grantor hereby, voluntarily grants and conveys to Grantee, and to Grantee's successors and assigns, and Grantee hereby accepts a conservation easement in gross in perpetuity in, on, over, and across the Property (the "Conservation Easement"), subject to the terms and conditions set forth herein, restricting forever the uses that may be made of the Property and granting to Grantee rights in the Property, and the parties agree as follows:

1. **PURPOSES.** The purposes of the Conservation Easement are (a) to enable that the Property will be retained in perpetuity in its natural, scenic, agricultural values, character, use and utility (to the extent consistent with those agricultural activities that are in this Grant) and open space condition, and (b) to preserve, protect, identify, monitor, enhance and restore in perpetuity habitat for species covered by the SIMSCP on the Property. It is intended that the Conservation Easement shall foster agricultural practices on the Property in harmony with the protection and preservation purposes of the Conservation Easement on the Property.
2. **PRESERVE MANAGEMENT PLAN.** The parties hereto acknowledge that a Preserve Management Plan prepared by ICF International and dated October, 2011, and executed by the parties (the "Plan") has been prepared regarding the Property and its environs. The Plan sets forth specific rights of the Grantor and their successors and assigns with respect to the continued permitted uses and activities that may be conducted on the Property ("Permitted Use") notwithstanding the Conservation Easement. The Plan also sets forth specific restrictions on the uses of the Property by the Grantor or their successors and assigns ("Prohibited Use") as a part of the Conservation Easement. The Permitted Uses and Prohibited Uses set forth in the Plan are specifically incorporated into this Conservation Easement and shall constitute a part of this Conservation Easement that has been granted to Grantee by the Grantor. Grantor and Grantee acknowledge and agree that: (i) the Plan may be modified by mutual agreement of Grantor and Grantee (or their successors and assigns) without any need to modify or amend this

Conservation Easement, and (ii) any such modification of the Plan, as it pertains to the Permitted Uses and/or Prohibited Uses shall be automatically incorporated into this Conservation Easement by reference.

3. **GRANTEE'S RIGHTS.** In order to ensure compliance with the Permitted Uses and Prohibited Uses, the rights and interests that are conveyed to Grantee by this Grant, also include, without limitation, the following (collectively, "Grantee's Rights"):

A. **Preserve and Protect.** Grantee may identify, preserve and protect in perpetuity, enhance and monitor (including the right to conduct evaluations of wetland quantity and quality and evaluations of habitat quantity and quality) in perpetuity the Property for compliance with the Permitted Uses and Prohibited Uses, including, without limitation, the natural, ecological, scenic and open space features and values of the Property, the water resources of the Property and the natural flora and fauna on the Property provided, however, Grantee shall not be required to compensate Grantor for those activities of Grantor that maintain and support suitable habitat that are a part of normal and customary farming operations.

B. **Wind Power Rights.** All present and future development rights and wind power rights allocated, implied, reserved or inherent in the Property, such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property.

C. **Restriction of Use and Development.** To restrict all uses and development of the Property and all development rights that are now or may hereafter be allocated or implied, reserved or inherent in the Property, to the fullest extent reasonably necessary to protect the conservation values, as described in the Plan, including, but not limited to, preventing the use of any such development rights for the purpose of calculating permissible development or lot yield on any other Property except to the extent otherwise specifically provided in the Plan. Grantor understands and agrees that nothing in this Conservation Easement relieves Grantor of any obligation or restriction in relation to the development or use of the Easement Area/Property imposed by law, including, but not limited to, local land use restrictions.

D. **Entry and Access Rights.** Grantee and Grantee's employees and agents are hereby granted rights of access to enter upon the Property, using existing appurtenant easements and rights-of-way, if any, and may enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of the Conservation Easement, to study and make scientific observations of the natural elements and ecosystems of the Property, to determine whether Grantor's activities are in compliance with the terms of this Conservation Easement and to take all actions deemed necessary by Grantee to inspect, identify, preserve, protect, enhance, monitor and restore in perpetuity the habitat on the Property in accordance with the Permitted Uses and the Prohibited Uses. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Conservation

SAN JOAQUIN COUNCIL OF GOVERNMENTS

555 E. Main Street • Sacramento, California 95814

209-235-6000 • 209-235-0438 (Fax)

www.sjcg.org



**MINUTE RESOLUTION**  
**NUMBER 09-16**

Whereas, the SJCOG, Inc. has accepted the staff report under authority of Minute Resolution No. 09-16, approved by the SJCOG, Inc. Board of Directors meeting on October 27, 2011.

Agenda Item #94A

Tracy 580 Business Park and South Property Dedication and Preserve

Management Plan

It was moved/seconded (Johnson/Vogel) to 1) approve the conservation easement dedications and 2) approve the PMP for the Tracy 580 Business Park Preserve. Motion passed unanimously 9/0 by voice vote.

*Rosie C. Vargas*  
RODIE C. VARGAS  
Office Services Supervisor

Date: July 19, 2012

Easement, Grantee shall give Grantor reasonable prior notice of such entry and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

E. Enforcement. Grantee may prevent or enjoin any activity on, or use of, the Property that is inconsistent with the Permitted Uses, or a violation of the Prohibited Uses or a failure of Grantor to exercise its rights conveyed by this Grant and may enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, which constitutes a violation of the terms of this Conservation Easement. However, it is the intention of this easement not to limit Grantor's discretion to employ his choices of farm and ranch uses and management practices, so long as those uses and practices are consistent with the purposes of this Easement and the Plan.

F. Signs. Grantee may install and maintain, at Grantee's sole cost and expense, a sign or other appropriate marker at a prominent location on the Property in order to indicate the participation of Grantee and of any of Grantee's public or private funding sources in the acquisition and maintenance of the Conservation Easement; provided, however, that the size, location, number, text and design of the signage shall be subject to the approval of Grantor, Grantee and any funding source, which approval shall not be unreasonably withheld, conditioned or delayed. The wording of the information shall be determined by Grantee, but shall currently indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the cost of directing and maintaining the sign or marker.

G. Grantee's Expenses. Grantor and Grantee intend that this Grant shall allow Grantee to undertake Grantee's Rights at its sole cost and expense.

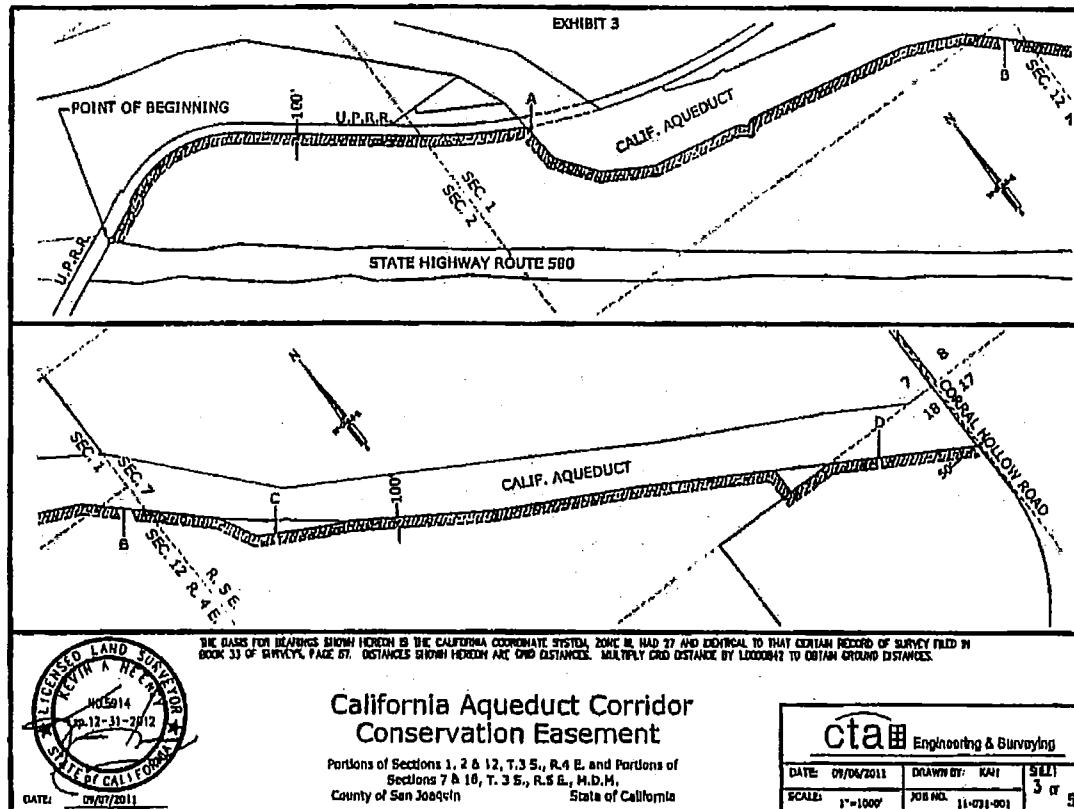
4. PERMITTED USES OF THE PROPERTY. Grantor and Grantee intend that this Grant shall contain the uses of the Property to those Permitted Uses identified in the Plan and no other uses shall be permitted or allowed.

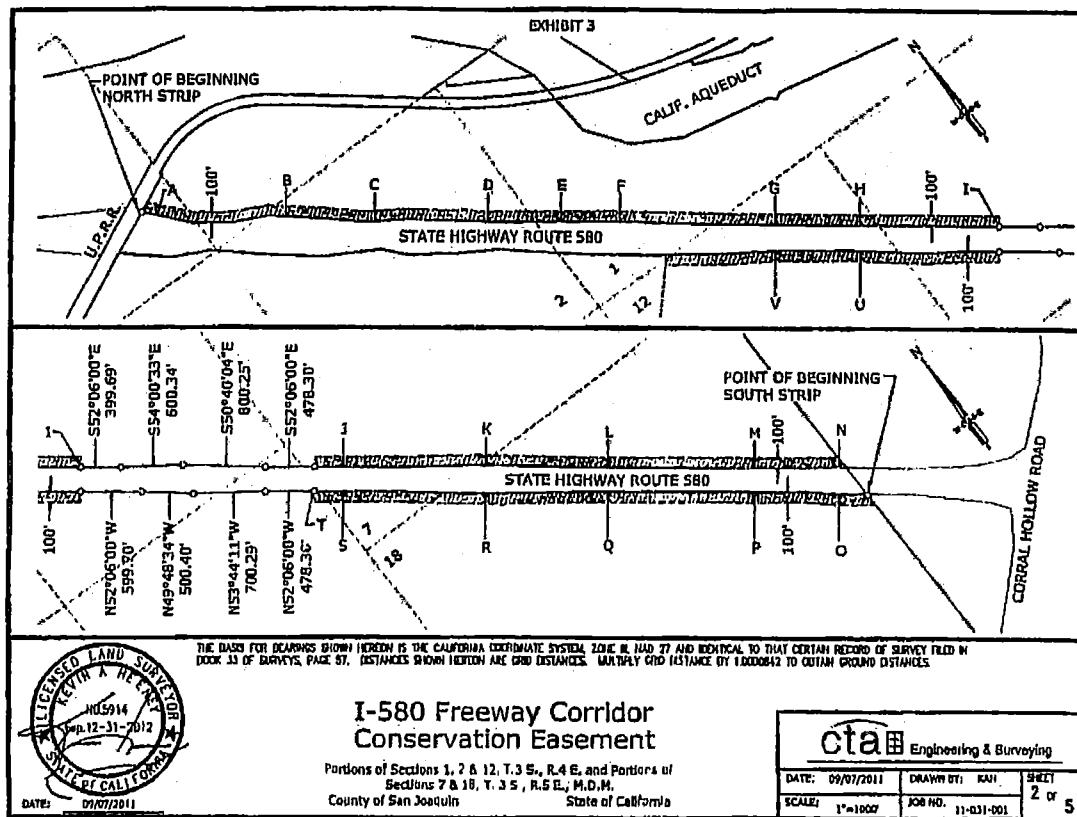
5. PROHIBITED USES OF THE PROPERTY. Grantor and Grantee intend that this Grant shall prohibit any activity on or use of the Property that is identified as a Prohibited Use in the Plan. The following uses and activities by Grantor, Grantor's agents, and third parties, are expressly prohibited:

A. Unseasonal watering, use of fertilizers, pesticides, herbicides, herbicides or other agricultural chemicals; weed abatement activities and incompatible fire protection activities, except as otherwise specifically permitted in the Plan.

B. Use of off-road vehicles and use of any other motorized vehicles except on existing rights-of-way, except as otherwise specifically permitted in the Plan.

C. Conversion of the Property from grazing land to other agricultural uses or to other uses that are not compatible with preserving and protecting habitat for the species





GOVERNMENT OF THE STATE

D. Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except for personal, non-commercial, recreational activities of the Governor, so long as such activities are consistent with the purposes of this Conservation Easement and consistent with the terms and conditions of this Conservation Easement.

E. Commercial, industrial, residential, or institutional uses, except as otherwise specifically permitted in the General Land Use Map.

F. Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, including, but not limited to, wind turbines or other devices which convert wind power into a useful form of energy and supporting infrastructure; solar panels and associated infrastructure, new utility structures or lines outside existing easements and new sewer systems, except as otherwise specifically permitted in the Plan (including, without limitation, the construction and placement of a weather station as described in the Plan).

G. Depositing or accumulation of soil, trash, ashes, refuse, waste or bio-wastes

H. Planting, introduction or dispersal of non-native or exotic plant or animal species, provided that Grantor may undertake such activities with the prior written consent of Game and Fish.

I. Filling, dumping, excavating, draining, dredging, mining, drilling, removing or capturing for or extraction of minerals, loam, soil, sand, gravel, rock or other material on the surface of the Property or grading or authorizing a surface entry for any of these

1. Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for (i) the access road construction, firebreaks, roadside repairs, and habitat management activities specified in the

K. Removing, destroying, or cutting of trees, shrubs or other vegetation, except as otherwise specifically permitted in the Plan, or as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease.

1. Manufacturing, impounding or altering any natural water body or water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except

EXHIBIT 3

as otherwise specifically permitted in the Plan.

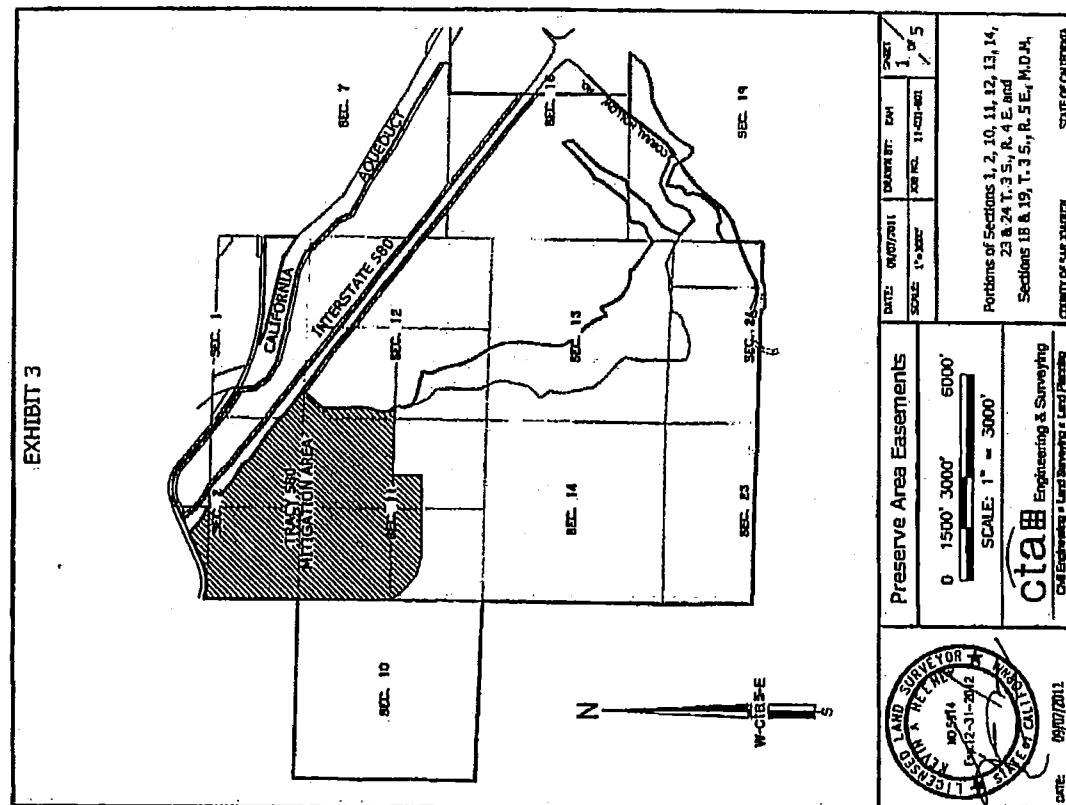
M. Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, State, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

6. **CURRENT PRACTICES AND CONDITIONS.** Grantee acknowledges by acceptance of this Easement that Grantor's present usage of the Property as identified in the Plan is compatible with the purposes of this Easement. In order to establish the present condition of the Property protected values, Grantee may prepare an inventory of the Property's relevant features and conditions. Grantor and Grantee recognize that change in economic conditions, in agricultural technology, and accepted farm and ranch management practices, and in the information of Grantors may result in the evolution of the agricultural uses of the Property, provided such uses are consistent with the purposes of the Easement.

7. **RESERVED RIGHTS.** Grantor reserves to themselves and to their personal representatives, heirs, successors and assigns, all rights occurring from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (a) all right, title, and interest in and to all tributary and non-tributary waters, water rights, and related interest in, on, under, or appurtenant to the Property, provided that such water rights are used on the Property in the manner consistent with the purposes of this Easement; (b) all right, title, and interest in a portion of the subsurface oil, gas and minerals, provided that the manner of exploration for, and the extraction of any oil, gas, and minerals shall be only by a subsurface method, and shall not damage, impair, or endanger the protected values of the Property.

8. **REMEDIES.**

A. **Grantee's Remedies:** If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Except where caused by third parties, Grantee shall demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Grant, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, Grantee shall have all remedies available at law or in equity to enforce the terms of this Grant, including, without limitation, the right to seek a temporary or permanent injunction with respect to such activity to cause the restoration of that portion of the Property affected by such activity to the condition that



existed prior to the undertaking of such prohibited activity, to pay monetary amounts which, if not paid, could result in extinguishment, modification, non-enforcement or impairment of the Conservation Easement, and/or to recover any damages arising from the violation. Grantee's rights under this Paragraph 8.A. apply equally to actual or threatened violations of the terms of this Grant. Grantor agrees, that in the event of a breach by Grantor, that Grantee's remedies at law for any violation of the terms of this Grant are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph 8.A., both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Paragraph 8 shall be cumulative and shall be in addition to all remedies hereinafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 et seq. are incorporated herein by this reference, and the Conservation Easement and this Grant shall include all of the rights and remedies set forth therein.

B. **Costs of Enforcement.** In any action, suit or other proceeding undertaken to enforce the provisions of this Grant, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses, including, without limitation, attorney's and experts' fees and costs, and if such prevailing party shall recover judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment.

C. **Emergency Enforcement.** If circumstances require immediate action to prevent or mitigate significant damage or to prevent breach or extinguishment of the Conservation Easement, Grantee may pursue its remedies under this Paragraph 8 without giving prior notice to Grantor and without waiting for the cure period set forth in Paragraph 8.A. In expires; provided, however, Grantee will comply with any notice requirements as required by law for obtaining ex parte relief.

D. **Discretion.** Enforcement of the terms and provisions of this Grant shall be at the discretion of the applicable party, and the failure of a party to discover a violation or to take action under this Paragraph 8 shall not be deemed or construed to be a waiver of a party's rights hereunder with respect to such violation in the event of any subsequent breach. In no event shall any delay or omission by a party in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy.

E. **Act 2000 Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any entry to or change in the Property in result of causes beyond Grantor's control including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant entry to the property resulting from such causes.

GRANTOR'S INITIALS: A

EXHIBIT 3  
PROPERTY MAP  
(see attached)

**9. ASSIGNMENT:** Grantee may not assign the Conservation Easement created by this Grant without Grantor's consent, which shall not be unreasonably withheld, provided, that: (a) Grantee requires, as a condition of such transfer, that the Conservation Easement shall continue to be carried out following such transfer; (b) any assignment shall be made only to a local, state or federal agency and/or to an organization qualified at the time of transfer as an eligible donee under Section 170(b)(2) of the Code; and (c) Grantee shall provide Grantor with notice of the assignment, at the address last provided by Grantor to Grantee, within thirty (30) days of the effective date of the assignment. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

**10. RUNNING WITH THE LAND:** The Conservation Easement created by this Grant is perpetual and shall cascade and run with the Property in perpetuity. Every provision of this Grant that applies to Grantor or Grantee shall also apply in perpetuity to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees and assigns, and all other successors as their interests may appear. Grantor agrees that transfer by Grantee of any interest in the Property shall be in accordance with the terms of this Grant and subject to the Permitted Uses and Prohibited Uses as set forth in the Plan.

**11. COMPLIANCE WITH APPLICABLE LAWS:** Grantor hereby covenants and agrees with Grantee as follows in connection with Grantor's use and operation of the Property:

A. Grantor shall comply with all statutes, laws, and ordinances applicable to the Property which have been enacted or otherwise promulgated by any federal, state, county, municipal or other governmental or quasi-governmental agency or any court (whether legislative, administrative or judicial), or by any competent official of any of the foregoing (in each case, an "Applicable Law"), including, without limitation, those relating to pollution or the protection of health and safety or the environment.

B. Without placing any limitation on Grantor's general obligation to comply with all Applicable Laws, Grantor shall keep the Property free of contamination by any of the following (collectively, "Hazardous Materials"): wastes, materials, chemicals or other substances (whether, in the form of liquids, solids or gases and whether or not airborne) which are ignitable, reactive, corrosive or radioactive, or which are deemed to be pollutants, contaminants or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under the authority of any Applicable Law concerning such wastes, materials, chemicals or other substances (in each case, a "Hazardous Materials Law"), exceeding actionable levels under any of such Hazardous Materials Laws, including, without limitation, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin or asbestos (but excluding non-flammable asbestos containing material), as well as any biocide, herbicide, insecticide or other agri-chemical; it being understood that such Applicable Laws

GRANTOR'S INITIALS: th

include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 et seq.); the Hazardous Waste Control Law (Cal Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (Cal Health & Safety Code Section 25340 et seq.); and any rule, regulation or other promulgation adopted under any of the foregoing laws.

**12. RESPONSIBILITY FOR OPERATIONS.** Grantor shall have and retain all responsibility for, and shall bear all costs and liabilities of, the ownership, operation, upkeep and maintenance of the Property of any kind. Grantor shall pay before delinquency any and all tax, assessment fees and charges levied by competent authority on the property or on this Easement, except for Grantee's Rights set forth in this Grant for which Grantee shall bear all costs of maintenance and induction. Without placing any limitation on the foregoing sentence, the parties agree as follows:

A. Grantee shall have no duty or responsibility for the operation or maintenance of the Property with the exception of Grantee's Rights, the monitoring of any hazardous conditions thereon, or the protection of Grantor, the public, or any other person or entity from any risks relating to the conditions on the Property, unless those conditions are caused or created by Grantee.

B. Grantor shall be solely responsible for obtaining any and all applicable governmental permits and approvals for any activity or use by Grantor, which is permitted by this Grant, and any such activity or use shall be undertaken in accordance with all Applicable Law.

C. The parties do not intend this Grant or the Conservation Easement to be construed to create in or give to Grantee: (i) the obligations or liabilities of an "owner" or "operator," as those words are defined and used in CERCLA, or any other Hazardous Materials Law; (ii) the obligations or liabilities of a person under any applicable Hazardous Materials Law; (iii) any obligation to investigate or remediate any Hazardous Materials associated with the Property; or (iv) control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property in compliance with any Hazardous Materials Law.

### 13. INDEMNIFICATION.

A. **BY GRANTOR.** Notwithstanding any other provision herein to the contrary, Grantor shall indemnify, defend and hold harmless Grantee and Grantee's members, directors, officers, employees, agents and contractors and their successors and assigns (the "Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, court costs and reasonable attorneys' and experts' fees

### Exhibit 2

The total acreage of the areas and strips described above equals 780.835 acres, more or less.

#### End of Description

The Basis of Bearings for this description is identical with that certain Record of Survey, Book 33 in the office of the County Record of San Joaquin County in Book 33 of Surveys, Page 57. Distances given are grid distances. To obtain ground distances, multiply the grid distance by 1.0000542.

This description has been prepared by me or under my direct supervision.

  
LAND SURVEYOR  
NO. 5914  
Exp. 12-31-2022  
STATE OF CALIFORNIA  
Date  
09/07/2011  
Kevin J. Heppen-Pyles 5914

Exhibit 2

2. North 00°40'47" East, 26.60 feet; thence
3. North 00°23'55" East, 98.31 feet; thence
4. along the arc of a curve to the right, having a radius of 1065.91 feet, the chord of which bears South 02°21'17" East, 1138.91 feet; thence
5. South 51°00'32" East, 1707.50 feet; thence
6. along the arc of a curve to the left, having a radius of 6779.51 feet, the chord of which bears South 01°36'20" East, 100.23 feet to a point on the East line of said Section 2; thence
7. continuing along the arc of a curve to the left, having a radius of 5777.51 feet, the chord of which bears South 57°12'53" East, 1020.86 feet to a point on the Southwesterly line of the California Aqueduct, as shown on said Record of Survey;

thence along the Southwesterly line of the California Aqueduct the following eleven (11) courses:

1. continuing South 03°54'10" East, 40.60 feet to a point hereinafter referred to as "A"; thence
2. continuing South 03°54'10" East, 327.31 feet; thence
3. South 32°35'04" East, 473.15 feet; thence
4. South 59°31'42" East, 517.04 feet; thence
5. South 77°44'43" East, 927.20 feet; thence
6. South 42°05'11" East, 78.99 feet; thence
7. North 06°25'44" East, 70.05 feet; thence
8. South 77°44'45" East, 187.84 feet; thence
9. South 04°45'06" East, 585.94 feet; thence
10. continuing South 45°54'35" East, 971.10 feet;
11. continuing the Southwesterly line of the California Aqueduct, South 26°02'38" East, 411.32 feet; thence leaving the Southwesterly line of the California Aqueduct, South 26°02'38" East, 185.62 feet to a point hereinafter referred to as "C"; thence continuing South 26°02'38" East, 185.62 feet to a point on the Southwesterly line of said California Aqueduct, South 56°11'22" East, 1327.22 feet; thence South 02°01'16" East, 1402.10 feet; thence South 03°05'07" East, 1370.32 feet; thence leaving the Southwesterly line of said California Aqueduct, South 00°34'13" West, 267.75 feet more or less to a point on the South line of said Section 7; thence along the South line of said Section 7, South 08°16'14" East, 459.59 feet to a point on the Southwesterly line of said California Aqueduct, South 08°16'14" East, 451.53 feet to a point hereinafter referred to as "D"; thence along the Southwesterly line of said California Aqueduct, South 08°16'13" East, 451.53 feet to a point hereinafter referred to as "E"; thence South 04°53" East, 520.57 feet more or less to a point lying 50.00 feet West, South 04°53" East, 520.57 feet more or less to a point lying 50.00 feet West, measured at right angles to the West line of Coral Hollow Road.

The extremes of the above described strip of land shall be extended to or terminate at the Northeasternly line of Interstate Highway Route 50 and at a line parallel to the West side of Coral Hollow Road.

EXCEPTING THEREFROM, strips of land of a uniform width of 50 (50) feet, lying twenty five (25) feet to the other side of the following described boundaries, extending from the Northeasternly line to the Southwesterly line of the above described strip of land:

1. Beginning at the aforementioned point "A"; thence South 06°05'50" West, 100.00 feet; and
2. Beginning at the aforementioned point "C"; thence South 25°36'27" West, 100.00 feet; and
3. Beginning at the aforementioned point "D"; thence South 30°59'07" West, 100.00 feet.

ALSO EXCEPTING THEREFROM, a strip of land of a uniform width of one hundred forty (140) feet, lying seventy (70) feet on either side of the following described boundaries, extending from the Northeasternly line to the Southwesterly line of the final above described strip of land:

1. Beginning at the aforementioned point "B"; thence South 17°51'27" West, 111.49 feet.

The above described strip containing 41.268 acres, more or less

See Exhibit 3, at sheet 3 of 5 attached hereto and made a part hereof.

Page 5 of 8

A-11-301-007E-SubArea 1 doc

and costs, whether incurred at the trial, appellate or administrative level, or in connection with any arbitration (collectively "Damages") which the Indemnified Parties may suffer or incur as a result of or arising out of any of the following: (a) the activities of Grantor on the Property; (b) the indemnity of any representation or warranty made by Grantor; (c) the breach of any provision of this Conservation Easement by Grantor; (d) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition or other manner related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties. Without limiting the foregoing, Grantor shall indemnify, defend and hold harmless the Indemnified Parties for any Damage relating to or arising out of any of the following:

1. Taxes. Any real property taxes, insurance, utilities or assessments that are levied against the Property or on the interests of Grantor created under this Grant, including, without limitation, those for which exemption cannot be obtained, or any other costs associated with the operation, upkeep and maintenance of the Property.
2. Hazardous Materials. Any Hazardous Material present, alleged to be present or otherwise connected in any way to the Property, whether before, on or after the date of this Grant.

B. BY GRANTEE. Notwithstanding any other provision herein to the contrary, Grantee shall indemnify, defend and hold harmless Grantor and Grantor's, employees, agents and contractors and their successors and assigns from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, court costs and reasonable attorneys' and experts' fees and costs, whether incurred at the trial, appellate or administrative level, or in connection with any arbitration) (collectively "Damages") which the Grantor may suffer or incur as a result of or arising out of any actions of the Grantee on the Property not in compliance with the Preservation Plan and/or negligent act not in compliance with performing the obligations under the Preservation Plan.

14. NOTICE-APPROVAL.

A. Notice for Entry. Where notice to Grantor of Grantor's entry upon the Property is required herein, Grantee shall notify any of the persons constituting Grantor or Grantor's authorized agents by telephone or in person, or by written notice in the manner described below, prior to such entry.

B. Other Notice. Except as provided herein, whenever express agreement or consent is required by this Grant, the initiating party shall give written notice, in the manner described herein, and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party within forty-five (45) days after receipt of notice of any objections to such activity. Any objections that the proposed activity is inconsistent with the terms of this Grant, opinion that the proposed activity is inconsistent with the terms of this Grant.

Exhibit 2

C. **Written Notices.** Any notice called for in this Grant shall be in writing and may be delivered (i) in person; (ii) by certified mail, return receipt requested, postage prepaid; (iii) by facsimile; with the original deposited with the United States Post Office, postage prepaid on the same date as sent by facsimile; or (iv) by a reputable overnight carrier that guarantees next day delivery and provides a receipt, and addressed as follows:

To Grantee:

SUCOG, INC.  
555 East Weber Avenue  
Stockton, California 95202  
Attn: Executive Officer  
Facsimile: (209) 468-1084

To Grantor:

Angelo K. Tsakopoulos  
The Tsakopoulos Family Partnership  
Gibson-Tsakopoulos, LLC  
7700 College Town Drive, Suite 101  
Sacramento, CA 95826

To CDFG:

Department of Fish and Game  
Region 3, Bay Delta  
7329 Silverado Trail  
Napa, CA 94558  
Attn: Regional Manager

With a copy to:

Department of Fish and Game  
Office of the General Counsel  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814-2090  
Attn: General Counsel

Any party listed above may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Notice is deemed to be given upon receipt.

D. **Subsequent Activities.** Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

15. **SEVERABILITY AND ENFORCEABILITY.** The terms and purposes of this Grant are intended to be perpetual. If any provision or purpose of the Conservation Easement or this Grant or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of this Grant, and the application of such provision or

EXCEPTING THEREFROM, strips of land of a uniform width of fifty (50) feet, lying twenty-five (25) feet on either side of the following described boundaries extending from the Southwestern line of said Interstate Highway 580 to the Southwestern line of the above described strip:

- Beginning at the aforementioned point 'U'; thence South 37°15'11" West, 100.15 feet; and
- Beginning at the aforementioned point 'U'; thence South 37°15'11" West, 100.01 feet; and
- Beginning at the aforementioned point 'U'; thence South 37°15'11" West, 100.01 feet; and
- Beginning at the aforementioned point 'U'; thence South 37°15'11" West, 100.01 feet; and
- Beginning at the aforementioned point 'U'; thence South 37°15'11" West, 100.01 feet.

TOGETHER WITH a strip of land of uniform width of one hundred (100) feet, lying to the left of, adjacent, contiguous to and parallel with the following described line:

Commencing at the aforementioned point 'T'; thence along the Southwestern line of said Interstate Highway 580, North 52°05'00" West, 478.30 feet; thence North 53°44'11" West, 700.29 feet; thence North 48°18'34" West, 500.40 feet; thence North 52°05'50" West, 509.70 feet to the True Point of Beginning of the herein described line; thence Northwardly along the Southwestern line of said Interstate Highway 580, in the following eight (8) courses:

1. North 52°05'00" West, 400.30 feet; thence North 52°05'14" West, 301.04 feet; thence North 52°05'14" West, 500.40 feet; thence North 52°05'16" West, 658.75 feet to a point hereinafter referred to as 'U'; thence continuing North 50°03'16" West, 33.68 feet; thence
4. continuing North 50°03'16" West, 33.68 feet; thence
5. North 52°05'00" West, 700.00 feet; thence North 52°05'15" West, 801.50 feet to a point hereinafter referred to as 'V'; thence continuing North 52°05'15" West, 410.62 feet; thence
6. North 52°05'15" West, 650.80 feet to the Northwestern terminus of said line.

The sides of the above described strip of land shall terminate at a line perpendicular to the above described line.

EXCEPTING THEREFROM, strips of land of a uniform width of fifty (50) feet, lying twenty-five (25) feet on either side of the following described boundaries extending from the Southwestern line of said Interstate Highway 580 to the Southwestern line of the above described strip:

- Beginning at the aforementioned point 'U'; thence South 37°15'11" West, 100.05 feet; and
- Beginning at the aforementioned point 'U'; thence South 37°15'11" West, 100.37 feet.

The above described strip containing 19.171 acres, more or less.

See Exhibit 3, sheet 2 of 5 attached hereto and made a part hereof.

California Aqueduct Corridor

All that real property situated in the County of San Joaquin, State of California being portion of Sections 1, 2 and 12, Township 3 South, Range 4 East and a portion of Sections 7 and 15, Township 3 South, Range 5 East, M.D.M. and being more particularly described as follows:

A strip of land of uniform width of one hundred (100) feet, lying to the right of, adjacent, contiguous to and parallel with the following described line:

Beginning at the intersection of the Southern right of way line of the Union Pacific Railroad and the Northwesterly line of Interstate Highway Route 580, as shown on that certain Record of Survey, filed in the offices of the County Recorder of San Joaquin County in Book 33 of Surveys, Page 57; thence along the Southern right of way of the Union Pacific Railroad the following seven (7) courses:

1. North 80°23'39" East, 400.28 feet; thence

Exhibit 2

8. continuing South 57°16'00" East, 523.89 feet; thence  
South 50°03'33" East, 265.24 feet to a point hereinafter referred to as '1'; thence  
9. continuing South 54°07'33" East, 493 feet; thence  
10. South 51°16'53" East, 88.71 feet more or less to a point on the East line of the West One-half of  
said Section 18 and the Southeastern boundary of said line

The sides of the above described strip of land shall be extended to or terminate at the East line of the West One-half of said Section 18 and at a line perpendicular to course number 1 above.

EXCEPTING THEREFROM, strips of land of a uniform width of fifty (50) feet, lying twenty-five (25) feet on either side of the following described boundaries, extending from the Northeastern line of said line on Highway 580 to the Northeastern line of the above described strip:

1. Beginning at the aforementioned point '1'; thence North 37°15'11" East, 100.01 feet; and
2. Beginning at the aforementioned point '1'; thence North 37°15'11" East, 100.04 feet; and
3. Beginning at the aforementioned point '1'; thence North 37°15'11" East, 100.01 feet; and
4. Beginning at the aforementioned point '1'; thence North 37°15'11" East, 100.01 feet; and
5. Beginning at the aforementioned point '1'; thence North 37°15'11" East, 100.02 feet.

The above described strip containing 32.825 acres, more or less.

Interstate 580 Southwesterly Corridor

All that real property situated in Butte County of San Joaquin, State of California, being portion of Sections 1 and 12, Township 3 South, Range 6 East, M.D.M., and being more particularly described as follows:

A strip of land of uniform width of one hundred (100) feet, lying to the left of, adjacent to and parallel with the following described line:

Commencing at the One-quarter Section corner common to said Sections 7 and 16; a 2' iron pipe with brass cap, stamped D/W/R, as shown on that certain Record of Survey, Book 33 of Survey, Page 57, Official Records of San Joaquin County, thence along the East line of the Northwest One-quarter of said Section 18, South 00°00'00" East, 250.62 feet to a point on the Southwesterly line of Interstate Highway 580 and bearing the True Point of Beginning of the herein described line, thence Northwest along the Southwesterly line of said Interstate Highway 580, the following twelve (12) courses:

1. North 52°55'00" West, 270.26 feet; thence  
2. North 48°17'00" West, 1,868 feet to a point hereinafter referred to as 'Q'; thence  
3. continuing North 48°17'00" West, 286.78 feet; thence  
4. continuing North 52°07'00" West, 52.28 feet to a point hereinafter referred to as 'P'; thence  
5. continuing North 52°06'00" West, 1441.51 feet to a point hereinafter referred to as 'Q'; thence  
6. continuing North 52°06'00" West, 100.20 feet; thence  
7. North 53°41'45" West, 137.21 feet; thence  
8. continuing North 52°06'00" West, 54.37 feet to a point hereinafter referred to as 'R'; thence  
9. continuing North 52°06'00" West, 245.53 feet; thence  
10. North 50°12'27" West, 602.33 feet; thence  
11. North 52°06'00" West, 50.08 feet to a point hereinafter referred to as 'S'; thence  
12. continuing North 52°06'00" West, 283.62 feet to a point hereinafter referred to as 'T' and the Northwest boundary of said line.

The sides of the above described strip of land shall be extended to or terminate at the East line of the Northwest One-quarter of said Section 18 and at a line perpendicular to course number 12 above.

purpose to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

16. TERMINATION: VALUATION.

A. Extinction: It is the intention of the parties that the Conservation Easement shall be carried out in perpetuity. If circumstances arise in the future that renders the purpose of this Conservation Easement impossible to be accomplished, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation which the Grantee shall be entitled from any sale, exchange, involuntary conversion of all or a portion of the property subsequent to such termination or extinguishment, shall be determined in such judicial proceeding. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity.

B. Compensation: Stipulated Fair Market Value. Grantor and Grantee acknowledge and agree that this Grant gives rise to a property right in favor of Grantee, immediately vested in Grantee, which shall be determined by judicial proceedings unless otherwise agreed between the Grantor and Grantee.

C. Condemnation: The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680, notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Grant, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental ordinary damages resulting from the taking. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The remaining proceeds shall be divided as the Grantor and Grantee may agree, provided then, if they cannot agree then as determined by judicial proceedings consistent with the provisions of this Paragraph 16.

17. INTERPRETATION.

A. Liberal Construction: It is the intent of this Grant to preserve the conditions of the Property and the purposes of the Conservation Easement protected herein. The provisions of this Grant shall be liberally construed to effectuate their purposes of preserving and protecting in perpetuity the purposes of the Conservation Easement described above, and allowing Grantor's use, including agricultural uses, and enjoyment of the Property to the extent consistent with the Plan.

Exhibit 2

**B. Cumulative Remedies.** No remedy or election given by any provision in this Grant shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity.

**C. Ambiguities.** The parties acknowledge that each party and its counsel have reviewed and revised this Grant and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Grant. In the event of any conflict between the provisions of this Grant and the provisions of any use and zoning restrictions of the State of California, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

**D. Governing Law.** This Grant shall be governed by, and interpreted in accordance with, the laws of the State of California.

**E. Cessions.** The cessions have been inserted solely for convenience of reference and are not part of this Grant and shall have no effect upon construction or interpretation.

**18. SUBSEQUENT LIENS ON THE PROPERTY.** No provision of this Grant should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowings, provided that any deed of trust, mortgage or other lien arising from such borrowings must, at all times, be subordinate to the Conservation Easement and this Grant by means of a written subordination agreement that shall be recorded in the Official Records of San Joaquin County and shall otherwise be in form and substance acceptable to Grantee. No such deed of trust, mortgage or other lien on the property shall impair this Conservation Easement as this Conservation Easement shall continue as a senior circumstance or pursuant to a power of sale, and this Conservation Easement shall continue as a senior circumstance on the Property. Any successor in interest of Grantor, by acceptance of a deed, lease or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Grant and the Conservation Easement.

**19. MORTGAGEE PROTECTION:** The exercise of any remedy for enforcement of this Conservation Easement by Grantee, including but not limited to any claim of lien for damages or other costs of enforcement, shall not defeat or render invalid the lien or deed of trust of any mortgagee or lender securing a loan made in good faith and for value as to the Primary Property or any part thereof.

**20. ACCESS.** Nothing contained in this Grant shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Grant. Grantor shall undertake all reasonable actions, including but not limited to the posting of "No Trespassing" signs, to prevent the unlawful entry of the Property or any part thereof.

along said South line, South 66°23'53" West, 400.28 feet to a point on the Northeastly line of Interstate Highway 580 and being the True Point of Beginning for the herein described line; thence Southeastly along the Northeastly line of said Interstate Highway 580, the following eighteen (18) courses:

1. South 47°06'17" East, 102.81 feet to a point hereinafter referred to as 'A'; thence continuing South 49°05'17" East, 324.34 feet; thence
2. South 52°06'07" East, 400.00 feet; thence
3. South 62°37'15" East, 355.68 feet; thence
4. South 48°58'40" East, 173.08 feet to a point hereinafter referred to as 'B'; thence
5. continuing South 49°58'40" East, 377.73 feet; thence
6. South 47°46'39" East, 401.12 feet; thence
7. South 55°40'35" East, 85.88 feet to a point hereinafter referred to as 'C'; thence continuing South 55°40'35" East, 314.80 feet; thence
8. South 50°30'22" East, 750.37 feet to a point hereinafter referred to as 'D'; thence continuing South 50°30'22" East, 110.18 feet; thence
11. South 52°52'22" East, 620.07 feet to a point hereinafter referred to as 'E'; thence continuing South 52°52'22" East, 480.03 feet; thence
12. South 50°54'23" East, 88.45 feet to a point hereinafter referred to as 'F'; thence continuing South 50°54'22" East, 1110.81 feet; thence
13. South 52°06'07" East, 406.84 feet to a point hereinafter referred to as 'G'; thence continuing South 52°06'07" East, 824.11 feet to a point hereinafter referred to as 'H'; thence
14. continuing South 52°06'07" East, 1368.38 feet to a point hereinafter referred to as 'I' and the Southeastly terminus of said line.

The sideslines of the above described strip of land shall be extended to or terminate at the South line of the Union Pacific Railroad Company right of way and at a line perpendicular to course number 18 above.

EXCEPTING THEREFROM, strips of land of a uniform width of fifty (50) feet, lying twenty five (25) feet on either side of the following described continuations extending from the Northeastly line of said Interstate Highway 580 to the Northeastly line of the above described strip:

1. Beginning at the aforementioned point 'A'; thence North 47°51'52" East, 100.08 feet, and continuing at the aforementioned point 'B'; thence North 37°15'11" East, 100.22 feet; and
2. Beginning at the aforementioned point 'C'; thence North 37°15'11" East, 100.13 feet; and
3. Beginning at the aforementioned point 'D'; thence North 37°15'11" East, 100.08 feet; and
4. Beginning at the aforementioned point 'E'; thence North 37°15'11" East, 100.08 feet; and
5. Beginning at the aforementioned point 'F'; thence North 37°15'11" East, 100.05 feet; and
6. Beginning at the aforementioned point 'G'; thence North 37°15'11" East, 100.01 feet; and
7. Beginning at the aforementioned point 'H'; thence North 37°15'11" East, 100.01 feet; and
8. Beginning at the aforementioned point 'I'; thence North 37°15'11" East, 100.01 feet.

TOGETHER WITH a strip of land of uniform width of one hundred (100) feet, lying to the left of, adjacent, contiguous to and parallel with the following described line:

Commencing at the aforementioned point 'I'; thence along the Northeastly line of said Interstate Highway 580, South 52°06'07" East, 306.68 feet; thence South 52°06'07" East, 470.30 feet to the True Point of Beginning of the herein described line; thence Southeastly along the Northeastly line of said Interstate Highway 580, the following eleven (11) courses:

1. South 52°06'07" East, 280.91 feet to a point hereinafter referred to as 'J'; thence continuing South 52°06'07" East, 540.73 feet; thence
2. South 53°31'54" East, 800.25 feet; thence
3. South 51°03'30" East, 472.67 feet to a point hereinafter referred to as 'K'; thence continuing South 51°03'30" East, 1057.69 feet; thence
4. South 52°06'07" East, 134.50 feet to a point hereinafter referred to as 'L'; thence
5. continuing South 52°06'07" East, 1441.51 feet to a point hereinafter referred to as 'M'; thence
7. continuing South 52°06'07" East, 1441.51 feet to a point hereinafter referred to as 'N'; thence

Exhibit 2

TRACY 580 BUSINESS PARK EASEMENT

Tracy 580 Mitigation Area

All that real property situated in the County of San Joaquin, State of California, being a portion of Sections 1, 2, 11 and 12, Township 3 South, Range 4 East, N.D.M. and being more particularly described as follows:

Comencing at the Southwest corner of said Section 1, as shown on that certain Record of Survey, Book 33 of the Office of the County Recorder of San Joaquin County in Book 33 of Surveys, Page 57; thence from said Southwest corner, North 88°53'55" East, 823.72 feet to a point on the Southwest line of Intertate Highway Route No. 580, as described in the Final Order of Condemnation dated January 3, 1957, and filed in Book 308, Page 714, Official Records of San Joaquin County and the Point of Beginning of the herein described tract; thence along the Southwest line of Interstate Highway Route 580, North 53°19'38" West, 30.28 feet; thence North 51°43'31" West, 800.00 feet; thence North 48°14'15" West, 208.61 feet to the intersection of said Southwest line and the West line of said Section 1; thence continuing along said Southwest line, North 48°14'15" West, 582.49 feet; thence North 57°48'38" West, 402.80 feet; thence North 55°47'00" West, 500.23 feet; thence North 55°47'35" West, 285.98 feet; thence North 56°21'11" West, 554.44 feet; thence North 50°11'27" West, 800.33 feet; thence North 47°48'38" West, 497.31 feet; thence North 52°01'34" West, 408.08 feet; thence North 47°48'38" West, 492.04 feet more or less to a point on the South line of the Union Pacific Railroad; thence along the South line of the Union Pacific Railroad, South 68°22'59" West, 619.24 feet; thence along the arc of a curve to the right, having a radius of 1507.12 feet, the chord of which bears South 88°36'00" West, 1040.62 feet more or less to a point on the West line of the Northwest One-quarter of said Section 2; thence along said West line, South 08°28'24" West, 72.78 feet to the Northwest corner of the Southwest One-quarter of said Section 2; thence along the West line of the Southwest One-quarter of Section 2, South 00°36'15" West, 2863.52 feet to its corner, common to Sections 2, 10 and 11, Township 3 South, Range 4 East; thence along the West line of the Northwest One-quarter of said Section 11, South 00°27'08" West, 2863.88 feet; thence having said West line, South 32°38'37" East, 342.35 feet; thence South 48°57'11" East, 715.77 feet; thence South 24°47'47" East, 590.88 feet; thence East, 265.31 feet; thence North 62°33'56" feet; thence South 08°33'44" East, 1058.44 feet; thence North 63°28'23" West, 77.08 feet; thence North 32°20'42" West, 120.34 feet; thence North 08°22'25" West, 168.02 feet; thence North 10°56'42" East, 775.33 feet; thence North 20°34'45" East, 770.52 feet; thence North 07°40'15" East, 138.20 feet; thence North 10°16'55" East, 144.59 feet; thence North 09°02'22" West, 301.77 feet; thence North 05°33'44" West, 222.63 feet; thence North 54°30'14" West, 83.61 feet; thence North 43°40'36" East, 758.85 feet; thence North 35°40'21" East, 100.00 feet to the Point of Beginning, containing 887.771 acres, more or less.

See Exhibit 3, sheet 1 of 5 attached hereto and made a part hereof.

Interstate 580 Northeast Corridor

All that real property situated in the County of San Joaquin, State of California, being a portion of Sections 1, 2 and 12, Township 3 South, Range 4 East and a portion of Sections 7 and 18, Township 3 South, Range 5 East, N.D.M. and being more particularly described as follows:

A strip of land of width of one hundred (100) feet, lying to the left of, adjacent, contiguous to and parallel with the following described line:

Commencing at the center of said Section 2, a 1/2" iron pipe, as shown on that certain Record of Survey, Filed in Book 33 of Surveys, Page 57, Official Records of San Joaquin County; thence North 00°40'17" East, 940.48 feet to a point on the South line of the Union Pacific Railroad Company right of way; thence

Page 1 of 8

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first  
above written.

GRANTEE:

SUCOG, INC., a California public benefit  
corporation

By: Stelios  
Name: ANGELO K. TSAKOPOULOS  
Title: President

EXHIBIT 2

LEGAL DESCRIPTION OF THE PROPERTY

(see attached)

GRANTOR:

TSAKOPOULOS FAMILY PARTNERSHIP,  
a California General Partnership

Date: July 2, 2012 By: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GIBSON-TSAKOPOULOS, LLC,  
a California limited liability company

Date: July 2, 2012 By: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: July 2, 2012 By: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANGELO K. TSAKOPOULOS,  
a married man as his sole and separate property

EXHIBITS:

Exhibit 1 - Legal Description of the Primary Property  
Exhibit 2 - Legal Description of the Property  
Exhibit 3 - Property Map

GRANTOR'S INITIALS: A-K

**EXHIBIT 2**

**LEGAL DESCRIPTION OF THE PROPERTY**

(see attached)

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first  
above written.

**GRANTEE:**

SJCOG, INC., a California public benefit  
corporation

Date: June 25, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTOR:**

TSAKOPoulos FAMILY PARTNERSHIP,  
a California general partnership

Date: June 25, 2012

By: TC  
Name: Skotina Tsakopoulos  
Title: Managing General Partner

GBSON-TSAKOPoulos, LLC,  
a California limited liability company

Date: June 25, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANGELO K. TSAKOPoulos,  
a married man as his sole and separate property

**EXHIBITS:**

Exhibit 1 - Legal Description of the Primary Property  
Exhibit 2 - Legal Description of the Property  
Exhibit 3 - Property Map

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above written. IN WITNESS WHEREOF, the parties have executed this Grant as of the date first

GRANTEE:

SICOG, INC., a California public benefit corporation

Date: June 22, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTOR:

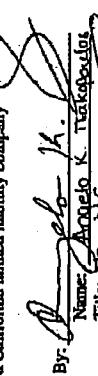
TSAKOPOULOS FAMILY PARTNERSHIP,  
a California general partnership

Date: June 22, 2012

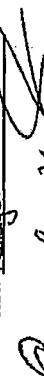
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GIBSON-TSAKOPOULOS, LLC,  
a California limited liability company

Date: June 22, 2012

By:   
Name: Angelo K. Tsakopoulos  
Title: Manager

Date: June 22, 2012

  
ANGELO K. TSAKOPoulos,  
a married man as his sole and separate property

EXHIBITS:

Exhibit 1 - Legal Description of the Primary Property

Exhibit 2 - Legal Description of the Property

Exhibit 3 - Property Map

EXHIBIT 1\*

LEGAL DESCRIPTION *continued*

FREEWAY NO. 380 AS DESCRIBED IN PARCEL NO. 1 OF THE GRANT DEED RECORDED ON JULY 18, 1982, IN BOOK 2514 PAGE 14, SAN JOAQUIN COUNTY RECORDS AND BEING THE TRUE POINT OF BEGINNING, ALONG THE SAID SOUTHWESTERLY HIGHT OF WAY OF INTERSTATE FREEWAY NO. 580 THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

- 1) SOUTH 52° 55' 06" EAST, 47.35 FEET;
- 2) SOUTH 45° 01' 07" EAST, 457.16 FEET;
- 3) SOUTH 47° 20' 45" EAST, 30.33 FEET;
- 4) SOUTH 35° 37' 28" EAST, 201.48 FEET;
- 5) SOUTH 32° 38' 36" WEST, 101.30 FEET

TO THE FOREMENTIONED NORTHWESTERLY HIGHT OF WAY OF CORRAL HOLLOW ROAD AS DESCRIBED AS P. 1 CERMONLY ROAD NO. 544 OF THE ROAD DEED RECORDED JUNE 18, 1946 IN BOOK 674 PAGE 467 SAN JOAQUIN COUNTY RECORDS; THENCE ALONG SAID NORTHWESTERLY HIGHT OF WAY SOUTH 45° 38' 34" WEST A DISTANCE OF 46.26 FEET TO THE NORTHWESTERLY HIGHT OF WAY OF CORRAL HOLLOW ROAD NO. 544 OF THE ROAD DEED RECORDED MARCH 4, 1959 IN BOOK 2552 PAGE 52 SAN JOAQUIN COUNTY RECORDS; THENCE ALONG SAID NORTHWESTERLY HIGHT OF WAY OF CORRAL HOLLOW ROAD NO. 544, SOUTH 45° 38' 34" WEST A DISTANCE OF 70.41 FEET TO THE AFOREMENTIONED WEST LINE OF THE EAST 1/2 OF SECTION 18, THENCE ALONG SAID WEST LINE NORTH 80° 37' 08" WEST A DISTANCE OF 216.51 FEET TO THE TRUE POINT OF BEGINNING.

PURSUANT TO THAT CERTAIN LOT LINE ADJUSTMENT RECORDED OCTOBER 5, 2005, INSTRUMENT NO. 2465-24587, AND DESCRIBED IN DEED RECORDED FEBRUARY 23, 2006, INSTRUMENT NO. 2006-40504, SAN JOAQUIN COUNTY RECORDS.

EXCISING THEREFROM PARCELS ONE AND TWO ALL OIL, GAS AND MINERAL RIGHTS BELOW A DEPTH OF 500 FEET WITH NO SURFACE ENTRY AS RESERVED IN THAT CERTAIN BY KERLINGER STATION LP, A CALIFORNIA LIMITED PARTNERSHIP IN THAT CERTAIN GRANT DEED DATED FEBRUARY 22, 2006, RECORDED FEBRUARY 22, 2006, AS INSTRUMENT NO. 2006-40504, OFFICIAL RECORDS.

PARCELS EIGHTEEN AND NINETEEN ABOVE DESCRIBE ASSESSOR PARCEL NO. 233-634-01

EXHIBIT 11

LINE OF SAID SECTION 15: THERECE ALONG SAID EAST LINE SOUTH 80° 27' 25" WEST, A DISTANCE OF 161.51 FEET TO A POINT SITUATED ON THE AFOREMENTIONED NORTHEASTERLY RIGHT OF WAY OF CORRAL BULLOW ROAD AS DESCRIBED AS P.J. CARRONBURY ROAD NO. 554, OF THE ROAD DEED RECORDED JUNE 14, 1946 IN BOOK 674 PAGE 407. :

THENCE ALONG SAID NORTHWESTERLY RIGHT OF WAY SOUTH 22° 45' 34" WEST, A DISTANCE OF 761.0 FEET TO THE WEST LINE OF CORRAL HOLLOW ROAD NO. 54 AS DESCRIBED IN ROAD DEED RECORDED MARCH 4, 1853, IN BOOK 252 PAGE 321, SAN JACINTO COUNTY RECORDS; THENCE ALONG SAID WEST LINE NORTHE 00° 27' 25" EAST, A DISTANCE OF 761.0 FEET TO A POINT CURVATURE; THENCE CONTINUING ALONG SAID ROAD DEED FROM A NARROW LINE WHICH BEARS SOUTH 19° 32' 54" EAST, A DISTANCE OF 1,166.11 FEET ALONG THE ARC OF A 182° 41 RADIUS NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 45° 11' 15" TO A POINT FOR A FOREMENTIONED NORTHWESTERLY RIGHT OF WAY OF R.J. CORYELL ROAD NO. 54; THENCE ALONG SAID NORTHWESTERLY RIGHT OF WAY SOUTH 3° 54' 00" WEST A DISTANCE OF 362.2 FEET TO A POINT SITUATED ON THE SOUTHEASTERLY RIGHT OF WAY OF A FOREMENTIONED UNPAVED STATE HIGHWAY NO. 56A AS DESCRIBED AS PARCEL NO. 1 OF THE GRANT DEED RECORDED ON JULY 15, 1922 IN BOOK 2574 PAGE 117, SAN JOAQUIN COUNTY RECORDS; THENCE ALONG THE RIGHT OF WAY OF SAID PARCEL NO. 1 THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

TO A POINT SITUATED ON THE WEST LINE OF THE AFOREMENTIONED EAST 1/2 OF SECTION  
& HENCE ALONG SUDS WEST LINE NORTH 90° 37' 45" WEST, A DISTANCE OF

UESUANT TO THAT CERTAIN LOT LINE ADJUSTMENT RECORDED OCTOBER 5, 2005  
INSTRUMENT NO. 2005-23857, AND DESCRIBED IN DEED RECORDED FEBRUARY 23, 2006,  
IN SAID COUNTY, TEXAS.

1. **SECTION 14.** BEGINS AT THE NORTHEAST CORNER OF THE EAST 1/4 OF SECTION 14, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT VARIOUS BASE AND MERIDIAN, BEING THAT CERTAIN TRACK OF LAND LYING SOUTHWEST OF THE SOUTHWESTERLY RIGHT OF WAY OF INTERSTATE HIGHWAY NO. 35 AND SOUTHWEST OF HE NORTHWESTERLY RIGHT OF WAY OF CORRAL HOLLOW ROAD AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

2. **SECTION 14.** BEGINS AT THE NORTHEAST CORNER OF THE EAST 1/4 OF SECTION 14, TRENCE FROM AND POINT OF BEGINNING ALONG THE WEST LINE OF SAID EAST 1/4 OF SECTION 14, SOUTH 37° 15' EAST, A DISTANCE OF 256.50 FEET TO THE INTERSECTION BETWEEN SAID WEST LINE WITH SAID SOUTHWESTERLY RIGHT OF WAY OF INTERSTATE HIGHWAY NO. 35 AND THE NORTHEAST CORNER OF THE EAST 1/4 OF SECTION 14, TRENCE FROM AND POINT OF BEGINNING ALONG THE WEST LINE OF SAID EAST 1/4 OF SECTION 14, SOUTH 37° 15' EAST, A DISTANCE OF 256.50 FEET TO THE INTERSECTION BETWEEN SAID WEST LINE WITH SAID SOUTHWESTERLY RIGHT OF WAY OF INTERSTATE HIGHWAY NO. 35.

State of California  
San Francisco  
County of San Francisco  
On July 2, 2012 before me, Floride L. Olano, a Notary Public, personally appeared Steve Dill who proved to me on the basis of satisfactory evidence to be the person (s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Floride L. Olano

State of California  
County of San Diego

On June 25, 2012 before me, MARY A. JONES, a Notary Public, personally appeared ROBERT T. VASQUEZ, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Mary A. Jones

EXHIBIT 10

LEGAL DESCRIPTION OF LAND

Plaintiff, personally appeared, Arguello K. Tercero, Esq., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY hand and official seal.

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of California

Society of Scanians

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On June 22, 2012, before me, Lawry B. F. a Notary Public, personally appeared Angelio K. Tackabourous, who produced to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),

I certify under PENALTY OF PERJURY under the laws of the State of California that

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BEGINNING AT THE NORTHWEST CORNER OF SAID BAST 1/2 OF SECTION 14, THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTH LINE OF SAID SECTION 14, SOUTH  $12^{\circ} 41' 33''$  EAST, A DISTANCE OF 1367.39 FEET TO THE NORTHWEST CORNER OF PARCEL A, AS DESCRIBED IN GRANT DEED RECORDED IN BOOK 16, 1594 IN BOOK 2826 PAGE 315, ; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL A, SOUTH  $59^{\circ} 31' 11''$  EAST, A DISTANCE OF 1506.43 FEET TO A POINT SITUATED ON THE EAST

**EXHIBIT "1"**  
**LEGAL DESCRIPTION continued**

EXCEPT THEREFROM ALL OIL, GAS, MINERAL, AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 50 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 29, 1952 AS DOCUMENT NO. 1425244, SAN JOAQUIN COUNTY RECORDS.

APNS 251-110-02 AND 251-110-04 AND 251-110-05

**PARCEL FIFTEEN:**

SECTION 7, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THAT CERTAIN NINE-ACRE TRACT CONVEYED TO THE CENTRAL PACIFIC RAILROAD COMPANY BY DEED RECORDED JULY 29, 1952 IN BOOK 7A OF DEEDS, VOL. 27, PAGE 215, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 61.84 ACRE TRACT CONVEYED TO UNITED STATES OF AMERICA BY DEED RECORDED FEBRUARY 24, 1890 IN BOOK OF OFFICIAL RECORDS, VOL. 142, PAGE 42, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 18 ACRE TRACT CONVEYED TO MAURICE G. VIEIRA, JR. BY DEED RECORDED DECEMBER 6, 1895 IN BOOK OF OFFICIAL RECORDS, VOL. 184, PAGE 133, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 16.49 ACRE TRACT CONVEYED TO MAURICE G. VIEIRA, JR. BY DEED RECORDED MARCH 2, 1891 IN BOOK OF OFFICIAL RECORDS, VOL. 251, PAGE 246, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 36 ACRE TRACT CONVEYED TO CHARLES SPERATORE, SR., ET AL, BY DEED RECORDED APRIL 29, 1890 IN BOOK OF OFFICIAL RECORDS, VOL. 224, PAGE 124, AND BY QUITSCLAM DEED RECORDED JUNE 30, 1895 IN BOOK OF OFFICIAL RECORDS, VOL. 369, PAGE 175, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION OF SAD LAND, AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 9, 1852 IN BOOK OF OFFICIAL RECORDS, VOL. 207, PAGE 284, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION LYING NORTH AND NORTHEAST OF THE NORIFERLY AND NORTHEASTERLY LINES OF THE 61.84 ACRE TRACT CONVEYED TO THE U.S.A. AFOREMENTIONED.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1857 IN BOOK 305, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL, AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 50 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 29, 1952 AS DOCUMENT NO. 1425244, SAN JOAQUIN COUNTY RECORDS.

APNS 253-102-02 AND 253-102-05

CLTA Preliminary Report

**EXHIBIT 1**

**LEGAL DESCRIPTION OF THE PRIMARY PROPERTY**

(see attached)

GRANTOR'S INITIALS: *fr*

1-1

Order No. 444-5224

**EXHIBIT "A"**  
LEGAL DESCRIPTION certified

JANUARY 25, 1861, EXECUTED BY ANNIE CARROLL AND RECORDED JANUARY 25, 1861 IN BOOK "A" OF DEEDS, VOL. 72, PAGE 50, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES, AS CONVEYED TO BUREKA RAILROAD AND COAL COMPANY, A CORPORATION BY DEED RECORDED OCTOBER 23, 1860, EXECUTED BY LIZZIE CLEARY AND RECORDED JANUARY 25, 1861 IN BOOK "A" OF DEEDS, VOL. 54, PAGE 164, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 300 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 24, 1852 AS DOCUMENT NO. 32024 SAN JOAQUIN COUNTY RECORDS.

APN 251-120-01 AND 251-124-01

## PARCEL TEN:

THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES AS CONVEYED TO BUREKA RAILROAD AND COAL COMPANY, A CORPORATION BY DEED DATED OCTOBER 23, 1860, EXECUTED BY LIZZIE CLEARY AND RECORDED JANUARY 25, 1861 IN BOOK "A" OF DEEDS, VOL. 54, PAGE 164, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 300 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 24, 1852 AS DOCUMENT NO. 32024 SAN JOAQUIN COUNTY RECORDS.

APN 251-124-02

## PARCEL ELEVEN:

THE SOUTH ONE-HALF OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION CONVEYED TO SHELL OIL COMPANY BY DEED RECORDED MAY 18, 1919 IN BOOK "A" OF DEEDS, VOL. 357 AT PAGE 210, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE UNITED STATES OF AMERICA BY DEED RECORDED FEBRUARY 25, 1847, IN BOOK 108 AT PAGE 162, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION WITHIN THE WESTERN PACIFIC RAILROAD RIGHT OF WAY.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1867 IN BOOK 305, PAGE 714.

CLTA Preliminary Report

Order No. 444-5224

**EXHIBIT "A"**  
LEGAL DESCRIPTION

PARCEL ONE:  
THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES OFFICIAL SURVEYS, EXCEPT THEREFROM A STRIP OF LAND 100 FEET HIGH IN THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILWAY COMPANY, A CORPORATION.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1867, IN BOOK 305, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 300 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 24, 1852 AS DOCUMENT NO. 32024 SAN JOAQUIN COUNTY RECORDS.

APN 251-444-07

## PARCEL TWO:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA AND CITY OF TRACY, AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST OF MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF, WHICH LIES SOUTH OF THE SOUTH LINE OF THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILROAD COMPANY.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1867 IN BOOK 305, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 300 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 24, 1852 AS DOCUMENT NO. 32024 SAN JOAQUIN COUNTY RECORDS.

APN 251-444-08 AND PORTION APN 251-444-07

CLTA Preliminary Report

**EXHIBIT "I"**  
**LEGAL DESCRIPTION continued**

**PARCEL THREE:**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:  
 THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION AS CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1867 IN BOOK OF OFFICIAL RECORDS, VOL. 385, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-4-4-47

**PARCEL FOUR:**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:  
 ALL OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

APN 251-320-12

**PARCEL FIVE:**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:  
 THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SECTION 11, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-470-41

**PARCEL SIX:**

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 24, LYING NORTH OF THE CENTER LINE OF CORRAL HOLLOW CREEK AS IT EXISTS ON JULY 1, 1850; THE NORTHEAST QUARTER AND WEST ONE-HALF OF NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.  
 EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES, AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION, BY DEED DATED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

CLTA Preliminary Report

**EXHIBIT "I"**  
**LEGAL DESCRIPTION continued**

**PARCEL ONE:**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:  
 THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE EAST ONE-HALF OF THE NORTHWEST QUARTER AND THE EAST ONE-HALF OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-070-41

**PARCEL SEVEN:**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

SECTION 14, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.  
 EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

APN 251-100-01

**PARCEL EIGHT:**

TER NORTH 1/2 OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.  
 EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

APN 251-150-01

**PARCEL NINE:**

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 24, LYING NORTH OF THE CENTER LINE OF CORRAL HOLLOW CREEK AS IT EXISTS ON JULY 1, 1850; THE NORTHEAST QUARTER AND WEST ONE-HALF OF NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.  
 EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES, AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION, BY DEED DATED JULY 20, 1862 AS DOCUMENT NO. #20324 SAN JOAQUIN COUNTY RECORDS.

CLTA Preliminary Report

**EXHIBIT "G"**

Placer Title 404-9224

RECORDING REQUESTED, AND  
WHEN RECORDED, RETURN TO:

SJCOG, INC.  
555 E. Weber Avenue  
Stockton, California 95202  
Attention: President

Certified to be a true and  
correct copy of that certain  
document recorded

July 20, 2012

Series No. 2012-91624

County San Joaquin

PLACER TITLE COMPANY



(space above this line reserved for Recorder's use)  
RTT 11911 - No consideration

#### GRANT DEED OF CONSERVATION EASEMENT

(Southern Preserve Easement Area 1)

THIS GRANT DEED OF CONSERVATION EASEMENT (the "Grant"), made as of  
July 2, 2012, is by and between Tsakopoulos Family Partnership, a California  
general partnership, and Angelo K. Tsakopoulos, a married man, as his sole and separate  
property (collectively, "Grantor"), and SJCOG, INC., a California public benefit corporation  
("Grantee").

#### RECITALS

A. Grantor is the fee simple owner of that certain real property located in San  
Joaquin County, California, that consists of approximately Five Thousand One Hundred Thirty-  
nine and 14/100 (5,139.14) acres together with all appurtenances thereto including, without  
limitation all water and water rights, but subject to those matters provided in Recital B below  
(the "Primary Property"). The Primary Property is described in Exhibit 1 attached hereto and  
incorporated herein by this reference.

B. Grantor owns all rights of surface entry over and upon the Primary Property  
related to the exploration or extraction of any and all oil, gas, mineral and hydrocarbon  
substances. Grantor owns a portion of the rights to oil, gas, mineral and hydrocarbon substances  
lying below the surface of the Primary Property, and such subsurface rights are subject to  
Paragraph 7 of this Grant.

C. The Primary Property possesses wildlife and habitat values, agricultural, open  
space and scenic values of great importance to Grantor, the people of San Joaquin County, and  
the people of the State of California.

D. Grantor intends, as owner of the Primary Property, to convey a conservation  
easement on a portion of the Primary Property consisting of approximately Two Thousand Four  
Hundred Thirty-seven (2,437) acres as described in Exhibit 2 attached hereto and incorporated  
herein by this reference (the "Property"). A map of the Property identifying the improvements

existing on the Property as of the date of this Grant Easement and various other natural features of the Property is attached hereto as Exhibit 3 and incorporated herein by reference (the "Property Map").

E. The Grantor intends that the Property be maintained in agricultural production by the maintenance of agricultural values thereof and that the open space and environmental values of the property be preserved by continuation of the agricultural and ranching uses that have proven historically compatible with such values.

F. The Property provides high quality habitat for species covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (the "SJMSCP") whose preservation is highly important to Grantor, the people of San Joaquin County and the people of the State of California. Protection and preservation of the Property pursuant to the Preserve Management Plan will assure that the Property and its existing features will continue to be available for those activities that are set forth in this conservation easement, to preserve other natural habitat and to provide a significant public benefit by preserving open space against development pressure and scenic qualities.

G. The purpose of the conservation easement is to ensure that the Property will continue to be used for those permitted agricultural purposes as set forth herein and to preserve and enhance the natural areas located on the Property for the benefit and promotion of the aforementioned wildlife.

H. Grantor intends as the owner of the Primary Property to convey to Grantee the right to preserve and protect the agricultural, open-space and scenic values of the Property in perpetuity.

I. The State of California recognizes the public importance and validity of conservation easements by its enactment of Section 815 et seq. of the California Civil Code.

J. Grantee is a nonprofit corporation incorporated under the laws of the State of California, and, as a tax-exempt public charity described in Section 815.3 of the California Civil Code and Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended from time to time and together with any and all regulations promulgated thereunder (the "Code"), is organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "qualified organization" within the provisions of Section 170(h) of the Code qualified to acquire and hold conservation easements, and is authorized to hold conservation easements pursuant to Section 815.3 of the California Civil Code.

K. To accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee, and Grantee intends to obtain from Grantor, a conservation easement that restricts the uses which may be made of the Property and that grants rights to Grantor in order to preserve

and protect the purposes of the conservation easement on the Property in perpetuity and specifically includes the agricultural uses as set forth herein.

#### AGREEMENTS

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California and in particular California Civil Code Section 815 et seq., Grantor hereby voluntarily grants and conveys to Grantee, and to Grantee's successors and assigns, and Grantee hereby accepts a conservation easement in gross in perpetuity in, on, over, and across the Property (the "Conservation Easement"), subject to the terms and conditions set forth herein, restricting forever the uses that may be made of the Property and granting to Grantee rights in the Property, and the parties agree as follows:

1. PURPOSES. The purposes of the Conservation Easement are (a) to enable that the Property will be retained in perpetuity in its natural, scenic, agricultural values, character use and utility (to the extent consistent with those agricultural activities that are in this Grant) and open space condition, and (b) to preserve, protect, identify, monitor, enhance and restore in perpetuity habitat for species covered by the SJMSCP on the Property. It is intended that the Conservation Easement shall foster agricultural practices on the Property in harmony with the protection and preservation purposes of the Conservation Easement on the Property.

2. PRESERVE MANAGEMENT PLAN. The parties hereto acknowledge that a Preserve Management Plan prepared by ICF International and dated October, 2011, and executed by the parties (the "Plan") has been prepared regarding the Property and its environs. The Plan sets forth specific rights of the Grantor and their successors and assigns with respect to the continued permitted uses and activities that may be conducted on the Property ("Permitted Uses") notwithstanding the Conservation Easement. The Plan also sets forth specific restrictions on the uses of the Property by the Grantor or their successors and assigns ("Prohibited Uses") as a part of the Conservation Easement. The Permitted Uses and Prohibited Uses set forth in the Plan are specifically incorporated into this Conservation Easement and shall constitute a part of this Conservation Easement that has been granted to Grantee by the Grantor. Grantor and Grantee acknowledge and agree that: (i) the Plan may be modified by mutual agreement of Grantor and Grantee (or their successors and assigns) without any need to modify or amend this Conservation Easement, and (ii) any such modification of the Plan, as it pertains to the Permitted Uses and/or Prohibited Uses shall be automatically incorporated into this Conservation Easement by reference.

3. GRANTEE'S RIGHTS. In order to ensure compliance with the Permitted Uses and Prohibited Uses, the rights and interests that are conveyed to Grantee by this Grant, also include, without limitation, the following (collectively, "Grantee's Rights"):

A. Preserve and Protect. Grantee may identify, preserve and protect in perpetuity, enhance and monitor (including the right to conduct evaluations of wetland quantity and quality and evaluations of habitat quantity and quality) in perpetuity the Property for compliance with the Permitted Uses and Prohibited Uses, including, without limitation, the natural, ecological, scenic and open space features and values of the Property, the water resources of the Property and the natural flora and fauna on the Property; provided, however, Grantee shall not be required to compensate Grantor for those activities of Grantor that maintain and support suitable habitat that are a part of normal and customary farming operations.

B. Wind Power Rights. All present and future development rights and wind power rights allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property.

C. Restriction of Use and Development. To restrict all uses and development of the Property and all development rights that are now or may hereafter be allocated to, implied, reserved or inherent in the Property, to the fullest extent reasonably necessary to protect the conservation values, as described in the Plan, including, but not limited to, preventing the use of any such development rights for the purpose of calculating permissible development or lot yield on any other Property except to the extent otherwise specifically provided in the Plan. Grantor understands and agrees that nothing in this Conservation Easement relieves Grantor of any obligation or restriction in relation to the development or use of the Easement Area/Property imposed by law, including, but not limited to, local land use restrictions.

D. Entry and Access Rights. Grantee and Grantee's employees and agents are hereby granted rights of access to enter upon the Property, using existing appurtenant easements and rights-of-way, if any, and may enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of the Conservation Easement, to study and make scientific observations of the natural elements and ecosystems of the Property, to determine whether Grantor's activities are in compliance with the terms of this Conservation Easement and to take all actions deemed necessary by Grantee to inspect, identify, preserve, protect, enhance, monitor and restore in perpetuity the habitat on the Property in accordance with the Permitted Uses and the Prohibited Uses. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Conservation Easement, Grantee shall give Grantor reasonable prior notice of such entry and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

E. Enforcement. Grantee may prevent or enjoin any activity on, or use of, the Property that is inconsistent with the Permitted Uses, or a violation of the Prohibited Uses or a failure of Grantor to allow Grantee to exercise its rights conveyed by this Grant and may enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, which constitutes a violation of the terms of this Conservation Easement. However, it is the intention of this easement not to limit Grantor's discretion to

employ his choices of farm and ranch uses and management practice so long as those uses and practices are consistent with the purposes of this Easement and the Plan.

F. Signage. Grantee may install and maintain, at Grantee's sole cost and expense, a sign or other appropriate marker at a prominent location on the Property in order to indicate the participation of Grantee and of any of Grantee's public or private funding sources in the acquisition and maintenance of the Conservation Easement; provided, however, that the size, location, number, text and design of the signage shall be subject to the approval of Grantor, Grantee and any funding source, which approval shall not be unreasonably withheld, conditioned or delayed. The wording of the information shall be determined by Grantee, but shall currently indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the cost of directing and maintaining the sign or marker.

G. Grantee's Expense. Grantor and Grantee intend that this Grant shall allow Grantee to undertake Grantee's Rights at its sole cost and expense.

4. PERMITTED USES OF THE PROPERTY. Grantor and Grantee intend that this Grant shall confine the uses of the Property to those Permitted Uses identified in the Plan and no other uses shall be permitted or allowed.

5. PROHIBITED USES OF THE PROPERTY. Grantor and Grantee intend that this Grant shall prohibit any activity on or use of the Property that is identified as a Prohibited Use in the Plan. The following uses and activities by Grantor, Grantor's agents, and third parties, are expressly prohibited:

A. Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities and incompatible fire protection activities, except as otherwise specifically permitted in the Plan.

B. Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, except as otherwise specifically permitted in the Plan.

C. Conversion of the Property from grazing land to other agricultural uses or to other uses that are not compatible with preserving and protecting habitat for the species covered by the SJMSCP.

D. Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Plan.

E. Commercial, industrial, residential, or institutional uses, except as otherwise specifically permitted in the Plan.

F. Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, including, but not limited to, wind turbines or other devices which convert wind power into a useful form of energy and supporting infrastructure, solar panels and associated infrastructure, new utility structures or lines outside existing easements and new sewer systems, except as otherwise specifically permitted in the Plan (including, without limitation, the construction and placement of a water tank as described in the Plan.)

G. Depositing or accumulation of soil, trash, ashes, refuse, waste or biosolids.

H. Planting, introduction or dispersal of non-native or exotic plant or animal species, provided that Grantor may undertake such activities with the prior written consent of Grantee.

I. Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rock or other material on the surface of the Property or granting or authorizing surface entry for any of these purposes.

J. Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for (i) the access road construction, firebreaks, landslide repairs, and habitat management activities specified in the Plan, or (ii) except as otherwise expressly permitted in the Plan.

K. Removing, destroying, or cutting of trees, shrubs or other vegetation, except as otherwise specifically permitted in the Plan, or as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease.

L. Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as otherwise specifically permitted in the Plan.

M. Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, State, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

6. **CURRENT PRACTICES AND CONDITIONS.** Grantee acknowledges by acceptance of this Easement that Grantor's present usage of the Property as identified in the Plan is compatible with the purposes of this Easement. In order to establish the present condition of

the Property protected values, Grantee may prepare an inventory of the Property's relevant features and conditions. Grantor and Grantee recognize that change in economic conditions, in agricultural technology, and accepted farm and ranch management practices, and in the situation of Grantors may result in the evolution of the agricultural uses of the Property, provided such uses are consistent with the purposes of the Easement.

7. **RESERVED RIGHTS.** Grantor reserves to themselves and to their personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved; (a) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interest in, on, under, or appurtenant to the Property, provided that such water rights are used on the Property in the manner consistent with the purposes of this Easement; (b) all right, title, and interest in a portion of the subsurface oil, gas and minerals; provided that the manner of exploration for, and the extraction of any oil, gas, and minerals shall be only by a subsurface method, and shall not damage, impair, or endanger the protected values of the Property.

8. **REMEDIES.**

A. **Grantee's Remedies.** If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Except where caused by third parties Grantee shall demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Grant, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, Grantee shall have all remedies available at law or in equity to enforce the terms of this Grant, including, without limitation, the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity, to pay monetary amounts which, if not paid, could result in extinguishment, modification, non-enforcement or impairment of the Conservation Easement, and/or to recover any damages arising from the violation. Grantee's rights under this Paragraph 8.A. apply equally to actual or threatened violations of the terms of this Grant. Grantor agrees, that in the event of a breach by Grantor, that Grantee's remedies at law for any violation of the terms of this Grant are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph 8.A., both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy

of otherwise available legal remedies. The remedies described in this Paragraph 8 shall be cumulative and shall be in addition to all remedies hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 et seq. are incorporated herein by this reference, and the Conservation Easement and this Grant shall include all of the rights and remedies set forth therein.

**B. Costs of Enforcement.** In any action, suit or other proceeding undertaken to enforce the provisions of this Grant, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses, including, without limitation, attorneys' and experts' fees and costs, and if such prevailing party shall recover judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment.

**C. Emergency Enforcement.** If circumstances require immediate action to prevent or mitigate significant damage or to prevent breach or extinguishment of the Conservation Easement, Grantee may pursue its remedies under this Paragraph 8 without giving prior notice to Grantor and without waiting for the cure period set forth in Paragraph 8.A. to expire; provided, however, Grantee will comply with any notice requirements as required by law for obtaining ex parte relief.

**D. Discretion.** Enforcement of the terms and provisions of this Grant shall be at the discretion of the applicable party, and the failure of a party to discover a violation or to take action under this Paragraph 8 shall not be deemed or construed to be a waiver of a party's rights hereunder with respect to such violation in the event of any subsequent breach. In no event shall any delay or omission by a party in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy.

**E. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any entry to or change in the Property in result of causes beyond Grantor's control including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant entry to the property resulting from such causes.

**9. ASSIGNMENT.** Grantee may not assign the Conservation Easement created by this Grant without Grantor's consent, which shall not be unreasonably withheld, provided, that: (a) Grantee requires, as a condition of such transfer, that the Conservation Easement shall continue to be carried out following such transfer; (b) any assignment shall be made only to a local, state or federal agency and/or to an organization qualified at the time of transfer as an eligible donee under Section 170(h)(3) of the Code; and (c) Grantee shall provide Grantor with notice of the assignment, at the address last provided by Grantor to Grantee, within thirty (30) days of the effective date of the assignment. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act

provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

10. **RUNNING WITH THE LAND.** The Conservation Easement created by this Grant is perpetual and shall encumber and run with the Property in perpetuity. Every provision of this Grant that applies to Grantor or Grantee shall also apply in perpetuity to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees and assigns, and all other successors as their interests may appear. Grantor agrees that transfer by Grantor of any interest in the Property shall be in accordance with the terms of this Grant and subject to the Permitted Uses and Prohibited Uses as set forth in the Plan.

11. **COMPLIANCE WITH APPLICABLE LAWS.** Grantor hereby covenants and agrees with Grantee as follows in connection with Grantor's use and operation of the Property:

A. Grantor shall comply with all statutes, laws, and ordinances applicable to the Property which have been enacted or otherwise promulgated by any federal, state, county, municipal or other governmental or quasi-governmental agency or any court (whether legislative, administrative or judicial), or by any competent official of any of the foregoing (in each case, an "Applicable Law"), including, without limitation, those relating to pollution or the protection of health and safety or the environment.

B. Without placing any limitation on Grantor's general obligation to comply with all Applicable Laws, Grantor shall keep the Property free of contamination by any of the following (collectively, "Hazardous Materials"): wastes, materials, chemicals or other substances (whether in the form of liquids, solids or gases and whether or not airborne) which are ignitable, reactive, corrosive or radioactive, or which are deemed to be pollutants, contaminants or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under the authority of any Applicable Law concerning such wastes, materials, chemicals or other substances (in each case, a "Hazardous Materials Law"), exceeding actionable levels under any of such Hazardous Materials Laws, including, without limitation, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin or asbestos (but excluding non-friable asbestos containing material), as well as any biocide, herbicide, insecticide or other agri-chemical; it being understood that such Applicable Laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 et seq.); the Hazardous Waste Control Law (Cal Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (Cal Health & Safety Code Section 25300 et seq.); and any rule, regulation or other promulgation adopted under any of the foregoing laws.

12. **RESPONSIBILITY FOR OPERATIONS.** Grantor shall have and retain all responsibility for, and shall bear all costs and liabilities of, the ownership, operation, upkeep and

maintenance of the Property of any kind. Grantor shall pay before delinquency any and all tax assessment fees and charges levied by competent authority on the property or on this Easement, except for Grantee's Rights set forth in this Grant for which Grantee shall bear all costs of maintenance and institution. Without placing any limitation on the foregoing sentence, the parties agree as follows:

A. Grantee shall have no duty or responsibility for the operation or maintenance of the Property with the exception of Grantee's Rights, the monitoring of any hazardous conditions thereon, or the protection of Grantor, the public, or any other person or entity from any risks relating to the conditions on the Property, unless those conditions are caused or created by Grantee.

B. Grantor shall be solely responsible for obtaining any and all applicable governmental permits and approvals for any activity or use by Grantor, which is permitted by this Grant, and any such activity or use shall be undertaken in accordance with all Applicable Laws.

C. The parties do not intend this Grant or the Conservation Easement to be construed to create in or give to Grantee: (i) the obligations or liabilities of an "owner" or "operator," as those words are defined and used in CERCLA or any other Hazardous Materials Law; (ii) the obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3); (iii) the obligations of a responsible person under any applicable Hazardous Materials Law; (iv) any obligation to investigate or remediate any Hazardous Materials associated with the Property; or (v) control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property in compliance with any Hazardous Materials Law.

13. INDEMNIFICATION.

A. BY GRANTOR. Notwithstanding any other provision herein to the contrary, Grantor shall indemnify, defend and hold harmless Grantee and Grantee's members, directors, officers, employees, agents and contractors and their successors and assigns (the "Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, court costs and reasonable attorneys' and experts' fees and costs, whether incurred at the trial, appellate or administrative level, or in connection with any arbitration) (collectively "Damages") which the Indemnified Parties may suffer or incur as a result of or arising out of any of the following: (a) the activities of Grantor on the Property; (b) the inaccuracy of any representation or warranty made by Grantor; (c) the breach of any provision of this Conservation Easement by Grantor; (d) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties. Without limiting the

foregoing, Grantor shall indemnify, defend and hold harmless the Indemnified Parties for any Damage relating to or arising out of any of the following:

1. **Taxes.** Any real property taxes, insurance, utilities or assessments that are levied against the Property or on the interests of Grantor created under this Grant, including, without limitation, those for which exemption cannot be obtained, or any other costs associated with the operation, upkeep and maintenance of the Property.

2. **Hazardous Materials.** Any Hazardous Material present, alleged to be present or otherwise connected in any way to the Property, whether before, on or after the date of this Grant.

B. **BY GRANTEE.** Notwithstanding any other provision herein to the contrary, Grantee shall indemnify, defend and hold harmless Grantor and Grantor's, employees, agents and contractors and their successors and assigns from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, court costs and reasonable attorneys' and experts' fees and costs, whether incurred at the trial, appellate or administrative level, or in connection with any arbitration) (collectively "Damages") which the Grantor may suffer or incur as a result of or arising out of any actions of the Grantee on the Property not in compliance with the Preservation Plan and / or negligent act not in compliance with performing the obligations under the Preservation Plan.

14. **NOTICE: APPROVAL.**

A. **Notice for Entry.** Where notice to Grantor of Grantee's entry upon the Property is required herein, Grantee shall notify any of the persons constituting Grantor or Grantor's authorized agents by telephone or in person, or by written notice in the manner described below, prior to such entry.

B. **Other Notice.** Except as provided herein, whenever express agreement or consent is required by this Grant, the initiating party shall give written notice, in the manner described herein, and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party within forty-five (45) days after receipt of notice of any objections to such activity. Any objections by a party shall be based upon its opinion that the proposed activity is inconsistent with the terms of this Grant.

C. **Written Notices.** Any notice called for in this Grant shall be in writing and may be delivered (i) in person; (ii) by certified mail, return receipt requested, postage prepaid; (iii) by facsimile, with the original deposited with the United States Post office, postage prepaid on the same date as sent by facsimile; or (iv) by a reputable overnight courier that guarantees next day delivery and provides a receipt, and addressed as follows:

To Grantee: SJCOC, INC.  
555 East Weber Avenue  
Stockton, California 95202  
Attn: Executive Officer  
Facsimile: (209) 468-1084

To Grantor: Angelo K. Tsakopoulos  
The Tsakopoulos Family Partnership  
7700 College Town Drive, Suite 101  
Sacramento, CA 95826

To CDFG: Department of Fish and Game  
Region 3, Bay Delta  
7329 Silverado Trail  
Napa, CA 94558  
Attn: Regional Manager

With a copy to: Department of Fish and Game  
Office of the General Counsel  
1416 Ninth Street, 12th Floor  
Sacramento, California 95814-2090  
Attn: General Counsel

Any party listed above may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Notice is deemed to be given upon receipt.

D. Subsequent Activities. Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

15. SEVERABILITY AND ENFORCEABILITY. The terms and purposes of this Grant are intended to be perpetual. If any provision or purpose of the Conservation Easement or this Grant or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of this Grant, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

16. TERMINATION: VALUATION.

A. Extinguishment. It is the intention of the parties that the Conservation Easement shall be carried out in perpetuity. If circumstances arise in the future that renders the purpose of this Conservation Easement impossible to be accomplished, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial

proceedings in a court of competent jurisdiction, and the amount of the compensation which the Grantee shall be entitled from any sale, exchange, involuntary conversion of all or a portion of the property subsequent to such termination or extinguishment, shall be determined in such judicial proceeding. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity.

B. Compensation: Stipulated Fair Market Value. Grantor and Grantee acknowledge and agree that this Grant gives rise to a property right in favor of Grantee, immediately vested in Grantee, which shall be determined by judicial proceedings unless otherwise agreed between the Grantor and Grantee.

C. Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680, notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Grant, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The remaining proceeds shall be divided as the Grantor and Grantee may agree, provided then if they cannot agree then as determined by judicial proceedings consistent with the provisions of this Paragraph 16.

17. INTERPRETATION.

A. Liberal Construction. It is the intent of this Grant to preserve the condition of the Property and the purpose of the Conservation Easement protected herein. The provisions of this Grant shall be liberally construed to effectuate their purposes of preserving and protecting in perpetuity the purposes of the Conservation Easement described above, and allowing Grantor's use, including agricultural uses, and enjoyment of the Property to the extent consistent with the Plan.

B. Cumulative Remedies. No remedy or election given by any provision in this Grant shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity.

C. Ambiguities. The parties acknowledge that each party and its counsel have reviewed and revised this Grant and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Grant. In the event of any conflict between the provisions of this Grant and the provisions of any use and zoning restrictions of the State of California, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

D. Governing Law. This Grant shall be governed by, and interpreted in accordance with, the laws of the State of California.

E. Captions. The captions have been inserted solely for convenience of reference and are not part of this Grant and shall have no effect upon construction or interpretation.

18. SUBSEQUENT LIENS ON THE PROPERTY. No provision of this Grant should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowings, provided that any deed of trust, mortgage or other lien arising from such borrowings must, at all times, be subordinated to the Conservation Easement and this Grant by means of a written subordination agreement that shall be recorded in the Official Records of San Joaquin County and shall otherwise be in form and substance acceptable to Grantee. No such deed of trust, mortgage or other lien on the property shall impair this Conservation Easement as this Conservation Easement shall survive the exercise of any remedy for enforcement of such lien including, but not limited to, any sale in foreclosure or pursuant to a power of sale, and this Conservation Easement shall continue as a senior encumbrance on the Property. Any successor in interest of Grantor, by acceptance of a deed, lease or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Grant and the Conservation Easement.

19. MORTGAGEE PROTECTION: The exercise of any remedy for enforcement of this Conservation Easement by Grantee, including but not limited to any claim of lien for damages or other costs of enforcement, shall not defeat or render invalid the lien or deed of trust of any mortgagee or lender securing a loan made in good faith and for value as to the Primary Property or any part thereof.

20. ACCESS. Nothing contained in this Grant shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Grant. Grantor shall undertake all reasonable actions, including but not limited to the posting of "No Trespassing" signs, to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the purposes of the Conservation Easement.

21. EXECUTORY LIMITATION. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code, or to be authorized to acquire in whole conservation Easements under California Law, then Grantees' rights and obligations under this Easement shall immediately be vested in the County of San Joaquin.

22. ENTIRE AGREEMENT. This Grant, together with the attached exhibits and schedules, and any documents incorporated herein by reference, constitutes the entire agreement

of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings of the parties.

23. AMENDMENTS. This Grant may be amended only by way of a written instrument signed by Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement, and shall comply with Section 815 et seq. of the California Civil Code.

24. COUNTERPARTS. This Grant may be signed in one or more counterparts, all of which shall constitute one and the same instrument.

25. TERMINATION OF RIGHTS AND OBLIGATIONS. The party's rights and obligations under this Easement terminate on transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring before transfer shall survive transfer.

26. WARRANTY. Grantor represents and warrants that Grantor is the owner of the Property.

(Signatures follow on next page.)

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first above written.

GRANTEE:

SJCOG, INC., a California public benefit corporation

Date: July 2, 2012

By: Steve Deal  
Name: STEVE DEAL  
Title: TREASURER

GRANTOR:

TSAKOPoulos FAMILY PARTNERSHIP,  
a California general partnership

Date: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

ANGELO K. TSAKOPoulos,  
a married man as his sole and separate property

EXHIBITS:

- Exhibit 1 -- Legal Description of the Primary Property
- Exhibit 2 -- Legal Description of the Property
- Exhibit 3 -- Property Map

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first above written.

GRANTEE:

SJCOG, INC., a California public benefit corporation

Date: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTOR:

TSAKOPOULOS FAMILY PARTNERSHIP,  
a California general partnership

Date: June 25, 2012

By: Katina Tsakopoulos  
Name: Katina Tsakopoulos  
Title: Managing General Partner

Date: \_\_\_\_\_, 2012

ANGELO K. TSAKOPOULOS,  
a married man as his sole and separate property

EXHIBITS:

- Exhibit 1 -- Legal Description of the Primary Property
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IN WITNESS WHEREOF, the parties have executed this Grant as of the date first above written.

GRANTEE:

SJCOG, INC., a California public benefit corporation

Date: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

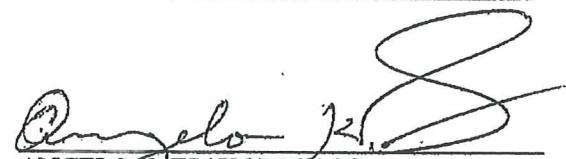
GRANTOR:

TSAKOPoulos FAMILY PARTNERSHIP,  
a California general partnership

Date: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: June 22, 2012

  
ANGELO K. TSAKOPoulos,  
a married man as his sole and separate property

EXHIBITS:

Exhibit 1 -- Legal Description of the Primary Property

Exhibit 2 -- Legal Description of the Property

Exhibit 3 -- Property Map

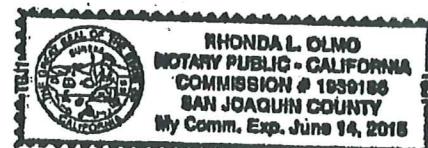
State of California  
San Joaquin )  
County of San Joaquin )

On July 3, 2012, before me, Rhonda L. Olmo, a Notary Public, personally appeared Steve Dial, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Rhonda L. Olmo



State of California  
San Diego )  
County of San Diego )

On June 25, 2012 before me, Mary A. Jones, a Notary Public, personally appeared Katina Tsakopoulos, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Mary A. Jones



State of California )  
County of Sacramento )

On June 22, 2012 before me, Tawny for, a Notary Public, personally appeared Angelo K. Tsakopoulos, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are-subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**EXHIBIT 1**

**LEGAL DESCRIPTION OF THE PRIMARY PROPERTY**

**(see attached)**

**GRANTOR'S INITIALS:** DR

**EXHIBIT 1**

**LEGAL DESCRIPTION OF THE PRIMARY PROPERTY**

(see attached)

GRANTOR'S INITIALS: TT

**EXHIBIT 1**  
**LEGAL DESCRIPTION**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES OFFICIAL SURVEYS.

EXCEPT THEREFROM A STRIP OF LAND 100 FEET WIDE IN THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILWAY COMPANY, A CORPORATION.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967, IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-040-07

**PARCEL TWO:**

ALL THAT PORTION OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST OF MOUNT DIABLO BASE AND MERIDIAN, (ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF), WHICH LIES SOUTH OF THE SOUTH LINE OF THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILROAD COMPANY.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992, AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-040-08 AND PORTION APN 251-040-07

**PARCEL THREE:**

THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION AS CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK OF OFFICIAL RECORDS,

EXHIBIT 1  
LEGAL DESCRIPTION continued

VOL. 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-040-07

PARCEL FOUR:

ALL OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-320-12

PARCEL FIVE:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-070-01

PARCEL SIX:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTH ONE-HALF OF THE NORTHWEST QUARTER AND THE EAST ONE-HALF OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-070-01

PARCEL SEVEN:

SECTION 14, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

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**EXHIBIT 1**  
**LEGAL DESCRIPTION continued**

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-100-01

PARCEL EIGHT:

THE NORTH 1/2 OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-130-01

PARCEL NINE:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 24, LYING NORTH OF THE CENTER LINE OF CORRAL HOLLOW CREEK AS IT EXISTS ON JULY 1, 1950, THE NORTHWEST QUARTER AND WEST ONE-HALF OF NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES, AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION, BY DEED DATED JANUARY 28, 1891, EXECUTED BY ANNIE CARROLL AND RECORDED JANUARY 29, 1891 IN BOOK "A" OF DEEDS, VOL. 73, PAGE 590, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES, AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION BY DEED RECORDED OCTOBER 23, 1889, EXECUTED BY LIZZIE CLEARY AND RECORDED JANUARY 29, 1891 IN BOOK "A" OF DEEDS, VOL. 58, PAGE 160, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APNS 251-120-01 AND 251-120-09

PARCEL TEN:

THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION, BY DEED DATED CLTA Preliminary Report

EXHIBIT 1  
LEGAL DESCRIPTION continued

OCTOBER 23, 1889, EXECUTED BY LIZZIE CLEARY AND RECORDED JANUARY 29, 1891 IN  
BOOK "A" OF DEEDS, VOL. 58, PAGE 160, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW  
A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS  
RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN  
JOAQUIN COUNTY RECORDS.

APN 251-120-02

PARCEL ELEVEN:

THE SOUTH ONE-HALF OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO  
BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION CONVEYED TO SHELL OIL COMPANY BY DEED RECORDED  
MAY 10, 1919 IN BOOK "A" OF DEEDS, VOL. 369 AT PAGE 210, SAN JOAQUIN COUNTY  
RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE UNITED STATES OF AMERICA BY  
DEED RECORDED FEBRUARY 25, 1947, IN BOOK 1039 AT PAGE 162, SAN JOAQUIN COUNTY  
RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION WITHIN THE WESTERN PACIFIC RAILROAD RIGHT OF  
WAY.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY  
FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714,  
SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO ARTHUR S. SASSER BY DEED  
RECORDED MARCH 2, 1995 AS DOCUMENT NO. 94017761, OFFICIAL RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW  
A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS  
RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN  
JOAQUIN COUNTY RECORDS.

APNS 251-050-07 AND 251-050-09 AND 251-050-13

PARCEL TWELVE:

THE WEST ONE-HALF OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO  
BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL  
ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714, SAN  
JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW  
CLTA Preliminary Report

**EXHIBIT 1**  
**LEGAL DESCRIPTION continued**

A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 251-060-04 AND 251-060-06 AND PORTION OF 251-060-05 AND PORTION OF 251-060-02

**PARCEL THIRTEEN:**

THE EAST ONE-HALF OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 9, 1967 IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992, AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

PORTION APNS 251-060-02 AND 251-060-05

**PARCEL FOURTEEN:**

ALL OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 251-110-03 AND 251-110-04 AND 251-110-05

**PARCEL FIFTEEN:**

SECTION 7, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THAT CERTAIN NINE-ACRE TRACT CONVEYED TO THE CENTRAL PACIFIC RAILROAD COMPANY BY DEED RECORDED JULY 12, 1873 IN BOOK "A" OF DEEDS, VOL. 26, PAGE 215, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 61.84 ACRE TRACT CONVEYED TO UNITED STATES OF AMERICA BY DEED RECORDED FEBRUARY 24, 1948 IN BOOK OF OFFICIAL RECORDS, VOL. 1103, PAGE 452, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 188 ACRE TRACT CONVEYED TO MAURICE G. VIEIRA, JR. BY DEED RECORDED DECEMBER 5, 1955 IN BOOK OF OFFICIAL RECORDS, VOL. 1814, PAGE 533, SAN JOAQUIN COUNTY RECORDS.

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EXHIBIT 1  
LEGAL DESCRIPTION continued

ALSO EXCEPT THAT CERTAIN 63.49 ACRE TRACT CONVEYED TO MAURICE G. VIEIRA, JR. BY DEED RECORDED MARCH 2, 1959 IN BOOK OF OFFICIAL RECORDS, VOL. 2151, PAGE 246, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 203 ACRE TRACT CONVEYED TO CHARLES SPEETAFORNE, SR., ET AL, BY DEED RECORDED APRIL 29, 1960 IN BOOK OF OFFICIAL RECORDS, VOL. 2294, PAGE 124, AND BY QUITCLAIM DEED RECORDED JUNE 30, 1966 IN BOOK OF OFFICIAL RECORDS, VOL. 3060, PAGE 175, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION OF SAID LAND, AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 9, 1963 IN BOOK OF OFFICIAL RECORDS, VOL. 2677, PAGE 204, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION LYING NORTH AND NORTHEAST OF THE NORTHERLY AND NORTHEASTERLY LINES OF THE 61.84 ACRE TRACT CONVEYED TO THE U.S.A. AFOREMENTIONED.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 253-020-02 AND 253-020-05

PARCEL SIXTEEN:

ALL OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, LYING NORTH OF THE CENTER LINE OF CORRAL HOLLOW CREEK AS IT EXISTED ON JULY 1, 1950.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992, AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 253-040-07 AND 253-040-08 AND 253-040-09 AND 253-040-10 AND 253-040-11

PARCEL SEVENTEEN:

THE WEST 1/2 OF FRACTIONAL SECTION 18, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID WEST 1/2 COMPRISING GOVERNMENT LOTS 1, 2, 3, 4, 5, AND 6 EXCEPT THEREFROM THAT PORTION AS DESCRIBED IN DEED TO THE COUNTY OF SAN JOAQUIN RECORDED APRIL 17, 1962 IN BOOK OF OFFICIAL RECORDS, VOL. 2538, PAGE 192 AND 195, SAN JOAQUIN COUNTY RECORDS.

CLTA Preliminary Report

LEGAL

EXHIBIT 1  
LEGAL DESCRIPTION continued

ALSO EXCEPT THAT PORTION DESCRIBED IN DEED TO THE STATE OF CALIFORNIA BY DEED  
RECORDED FEBRUARY 11, 1965 IN BOOK OF OFFICIAL RECORDS, VOL. 2915, PAGE 621,  
SAN JOAQUIN COUNTY RECORDS; ALSO IN BOOK OF OFFICIAL RECORDS, VOL. 2915, PAGE  
627, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL OF THE OIL, GAS, HYDROCARBONS, AND OTHER MINERALS IN  
AND UNDER SAID LAND, AS CONVEYED TO BERTHA G. BERGER, A WIDOW, VERA GRUNAUER,  
A SINGLE WOMAN AND DORIS G. POWELL, A SINGLE WOMAN BY DEED DATED OCTOBER 2,  
1958 AND RECORDED MARCH 27, 1959 IN BOOK OF OFFICIAL RECORDS, VOL. 2160, PAGE  
308, SAN JOAQUIN COUNTY RECORDS.

APNS 253-030-08 AND 253-030-12 AND 253-030-13

**EXHIBIT 2**

**LEGAL DESCRIPTION OF THE PROPERTY**

(see attached)

GRANTOR'S INITIALS: KT

**EXHIBIT 2**

**LEGAL DESCRIPTION OF THE PROPERTY**

**(see attached)**

**GRANTOR'S INITIALS:** D

Exhibit 2

**Southern Preserve Easement Area 1**  
**Future Preserve Area**

All that real property situate in the County of San Joaquin, State of California, being Sections 10 and 14, and a portion of Sections 1, 2, 11, 12, 13, 23 and 24, Township 3 South, Range 4 East and portions of Section 19, Township 3 South, Range 5 East, M.D.M. and being more particularly described as follows:

Commencing at a 1/2" iron pipe tagged RCE 2909 marking the West 1/4 Section corner of said Section 2 as shown on that certain Record of Survey filed in Book 33 of Surveys, Page 57, Official Records of San Joaquin County; thence along the West line of said Section 2, South 00°36'15" West, 2653.52 feet to the Section corner common with Sections 2, 3, 10 and 11 and the True Point of Beginning; thence along the North line of said Section 10, North 88°23'55" West, 5256.44 feet to the Northwest corner of said Section 10; thence along the West line of said Section 10, South 00°45'41" West, 5256.21 feet to the Southwest corner of said Section 10; thence along the South line of said Section 10, South 87°37'20" East, 5256.69 feet to the Section corner common to Sections 10, 11, 14 and 15; thence along the West line of said Section 14, South 00°28'48" West, 5217.53 feet to the Southwest corner of said Section 14; thence along the West line of said Section 23, South 00°02'12" East, 2618.90 feet, more or less to the Southwest corner of the North One-half of said Section 23; thence along the South line of said North One-half, South 88°20'18" East, 5280.70 feet more or less to the Southeast corner of the North One-half of said Section 23; thence along the South line of the North One-half of said Section 24, South 88°22'02" East, 2880.46 feet more or less to a point on the Northwesterly line of the strip of land conveyed to the Eureka Railroad and Coal Company as described in the deeds recorded in Book 'A' of Deeds, Volume 58, Page 160 and Volume 73, Page 590, and a point hereinafter referred to as Point 'A'; thence along said Northwesterly line and the arc of a curve, concave to the Northwest, having a radius of 269.62 feet, the chord of which bears North 30°01'24" East, 35.48 feet; thence North 26°15'02" East, 43.23 feet; thence along the arc of a curve to the right, having a radius of 115.00 feet, the chord of which bears North 80°51'08" East, 187.48 feet; thence South 44°32'55" East, 152.50 feet more or less to a point on the South line of the North One-half of said Section 24; thence along said South line, South 88°22'02" East, 111.75 feet more or less to a point on the centerline of Corral Hollow Creek; thence along the centerline of Corral Hollow Creek, South 35°06'06" East, 119.12 feet; thence South 89°38'34" East, 255.58 feet; thence North 89°27'50" East, 391.91 feet; thence North 74°05'10" East, 248.59 feet more or less to a point on the South line of the North One-half of said Section 24; thence leaving the centerline of Corral Hollow Creek and along the South line of said North One-half, South 88°22'02" East, 358.21 feet more or less to a point on the Northwesterly line of said Eureka Railroad and Coal Company strip and a point hereinafter referred to as Point 'B'; thence along said Northwesterly line, North 61°56'02" East, 168.98 feet; thence North 57°15'02" East, 261.71 feet; thence North 51°32'02" East, 380.76 feet more or less to a point on the East line of said Section 24; thence along said East line, North 00°27'02" East, 588.71 feet to a point on the centerline of said Corral Hollow Creek; thence along said centerline, North 29°37'37" East, 144.84 feet; thence North 62°31'55" East, 311.86 feet; thence South 83°41'47" East, 154.08 feet; thence South 50°03'25" East, 114.36 feet; thence North 75°03'38" East, 202.88 feet; thence North 84°39'38" East, 116.50 feet; thence North 43°01'41" East, 371.67 feet; thence North 37°31'09" East, 153.04 feet; thence North 20°52'54" East, 72.74 feet; thence North 41°52'09" East, 101.36 feet; thence North 17°13'45" East, 222.98 feet; thence North 15°00'39" West, 159.04 feet; thence North 32°15'20" East, 89.80 feet; thence North 69°05'42" East, 100.66 feet; thence North 38°27'12" East, 66.92 feet; thence North 11°19'19" East, 449.58 feet; thence South 68°11'40" East, 623.34 feet; thence South 31°16'07" East, 468.16 feet; thence South 51°43'26" East, 170.94 feet; thence North 78°01'47" East, 143.80 feet; thence North 31°51'57" East, 418.38 feet; thence North 41°35'39" East, 450.60 feet; thence North 57°15'15" East, 330.51 feet; thence North 62°54'01" East, 316.26 feet; thence North 68°02'57" East, 310.31 feet; thence North 82°21'19" East, 200.34 feet; thence South 87°43'01" East, 210.96 feet; thence North 75°03'45" East, 441.77 feet; thence North 58°07'21" East, 132.80 feet; thence North 69°01'09" East, 137.27 feet; thence North 36°17'43" East, 204.00 feet; thence North 46°57'04" East, 216.82 feet; thence North 30°08'02" East, 92.24 feet to a point on the North line of said Section 19; thence along the North line of said Section 19, North 89°13'41" West, 1229.28 feet to the Northeast corner of the West One-half of said Section 19;

Exhibit 2

thence continuing along the North line of said Section 19, North 89°13'50" West, 634.23 feet to a point on the West line of Coral Hollow Road; thence along said Westerly line, South 36°40'02" West, 1057.40 feet; thence along the arc of a curve to the right, having a radius of 1877.99 feet, the chord of which bears South 42°38'55" West, 381.61 feet; thence South 52°45'56" West, 98.39 feet; thence South 61°49'56" West, 98.89 feet; thence South 65°37'56" West, 49.80 feet; thence South 59°36'56" West, 40.51 feet; thence leaving said Northwesterly line, North 32°43'43" West, 135.17 feet; thence North 84°24'35" West, 137.28 feet; thence North 67°10'34" West, 100.10 feet; thence North 62°34'33" West, 398.95 feet; thence North 81°29'49" West, 192.76 feet; thence South 64°37'50" West, 516.59 feet; thence South 35°36'05" West, 218.42 feet; thence South 11°25'41" West, 251.48 feet; thence South 32°38'01" West, 223.33 feet; thence South 63°24'11" West, 294.92 feet; thence North 47°29'41" West, 552.61 feet; thence North 63°51'49" West, 957.51 feet; thence South 74°43'49" West, 458.08 feet; thence North 83°29'55" West, 282.80 feet; thence South 72°14'45" West, 210.63 feet; thence South 87°04'19" West, 473.44 feet; thence South 05°37'22" West, 107.78 feet; thence South 39°46'16" West, 116.34 feet; thence South 49°25'43" West, 137.20 feet; thence South 75°02'59" West, 230.63 feet; thence South 65°17'38" West, 278.52 feet; thence South 80°22'33" West, 346.11 feet; thence North 82°17'47" West, 220.74 feet; thence North 68°13'27" West, 200.55 feet; thence North 07°36'55" West, 224.99 feet; thence North 03°55'05" West, 163.20 feet; thence North 02°44'38" East, 307.31 feet; thence North 04°27'18" East, 237.12 feet; thence North 07°16'10" West, 302.52 feet; thence North 00°56'42" West, 48.79 feet; thence North 10°55'14" East, 488.24 feet; thence North 31°32'13" West, 73.91 feet; thence North 43°59'53" West, 243.04 feet; thence North 48°04'09" West, 329.69 feet; thence North 45°37'55" West, 300.26 feet; thence North 42°16'46" West, 317.41 feet; thence North 01°08'10" West, 84.14 feet; thence North 03°44'55" West, 75.26 feet; thence North 09°50'24" West, 86.11 feet; thence North 15°37'37" West, 158.40 feet; thence North 16°35'09" West, 63.36 feet; thence North 02°59'19" West, 126.13 feet; thence North 16°17'03" West, 122.62 feet; thence North 06°16'56" West, 134.92 feet; thence North 17°13'31" West, 55.83 feet; thence North 09°09'34" East, 369.15 feet; thence North 35°14'56" West, 33.22 feet; thence North 35°38'29" West, 148.91 feet; thence North 35°38'54" West, 135.15 feet; thence North 17°44'51" West, 50.22 feet; thence North 48°12'35" East, 104.39 feet; thence North 46°25'14" East, 139.87 feet; thence North 38°39'24" East, 136.09 feet; thence North 41°10'53" East, 86.54 feet; thence North 15°22'23" East, 67.36 feet; thence North 13°00'46" East, 246.68 feet; thence North 07°37'30" East, 160.04 feet; thence North 10°43'25" East, 79.42 feet; thence North 20°11'26" East, 151.45 feet; thence North 00°00'56" West, 104.12 feet; thence North 12°01'13" West, 133.47 feet; thence North 17°51'47" West, 149.32 feet; thence North 22°24'37" West, 120.12 feet; thence North 28°13'05" West, 121.57 feet; thence North 23°55'43" West, 157.93 feet; thence North 01°45'45" West, 54.44 feet; thence North 00°35'29" East, 155.37 feet; thence North 03°16'38" West, 201.54 feet; thence North 01°35'12" East, 175.72 feet; thence North 03°24'43" East, 273.63 feet; thence North 00°00'56" West, 97.93 feet; thence North 08°24'56" West, 333.68 feet; thence North 48°58'24" West, 341.39 feet; thence North 24°06'34" West, 374.90 feet; thence North 08°43'24" West, 104.43 feet; thence North 17°43'19" West, 252.76 feet; thence North 15°24'52" East, 144.97 feet; thence North 16°18'02" West, 107.32 feet to a point on the North line of the Southwest One-quarter of said Section 12; thence along said North line, North 88°15'28" West, 354.08 feet to the Northeast corner of the Southeast One-quarter of said Section 11; thence along the North line of said Southeast One-quarter, North 88°39'44" West, 1658.44 feet; thence leaving said North line, South, 823.95 feet; thence West, 2363.31 feet; thence North 74°40'47" West, 569.98 feet; thence North 48°57'11" West, 715.77 feet; thence North 32°38'37" West, 342.35 feet to the Southwest One-quarter, North 00°27'09" East, 2663.68 feet to the Point of Beginning, containing 2,435.192 acres, more or less.

TOGETHER WITH:

Beginning at the aforementioned Point 'A'; thence along the South line of the North One-half of said Section 24, South 88°22'02" East, 112.57 feet to a point on the Southeasterly line of the strip of land conveyed to the Eureka Railroad and Coal Company as described in the deeds recorded in Book 'A' of Deeds, Volume 58, Page 160 and Volume 73, Page 590; thence along said Southeasterly and Southerly line of said strip, North 26°15'02" East, 31.74 feet; thence along the arc of a curve to the right, having a

Exhibit 2

radius of 15.00 feet, the chord of which bears North 80°51'08" East, 24.45 feet; thence South 44°32'58" East, 48.29 feet to a point on the South line of the North One-half of said Section 24; thence along said South line, North 88°22'02" West, 72.09 feet to the Point of Beginning, containing 0.037 acres, more or less.

ALSO TOGETHER WITH:

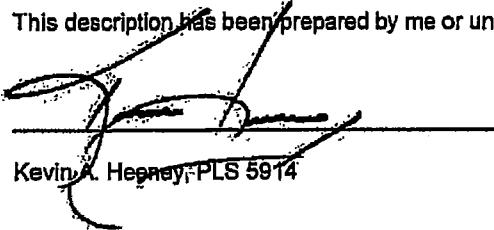
Beginning at the aforementioned Point 'B'; thence along the South line of the North One-half of said Section 24, South 88°22'02" East, 201.51 feet to a point on the Southeasterly line of the strip of land conveyed to the Eureka Railroad and Coal Company as described in the deeds recorded in Book 'A' of Deeds, Volume 58, Page 160 and Volume 73, Page 590; thence continuing along the South line of the North One-half of said Section 24, South 88°22'02" East, 462.35 feet more or less to the Southeast corner of said North One-half; thence along the East line of said Section 24, North 00°27'02" East, 348.33 feet to a point on the Southeasterly line of said Eureka Railroad and Coal Company strip; thence along the Southeasterly line of said strip, South 51°32'02" West, 305.01 feet; thence South 57°15'02" West, 268.81 feet to the Point of Beginning, containing 1.754 acres, more or less.

See Exhibit 3, sheet 4 of 5 attached hereto and made a part hereof.

End of Description

The Basis of Bearings for this description is identical with that certain Record of Survey, filed in the office of the County Record of San Joaquin County in Book 33 of Surveys, Page 57. Distances given are grid distances. To obtain ground distances, multiply the grid distance by 1.0000842.

This description has been prepared by me or under my direct supervision.

  
Kevin A. Heaney, PLS 5914

09/07/2011

Date



**EXHIBIT 3**

**PROPERTY MAP**

(see attached)

GRANTOR'S INITIALS: GT

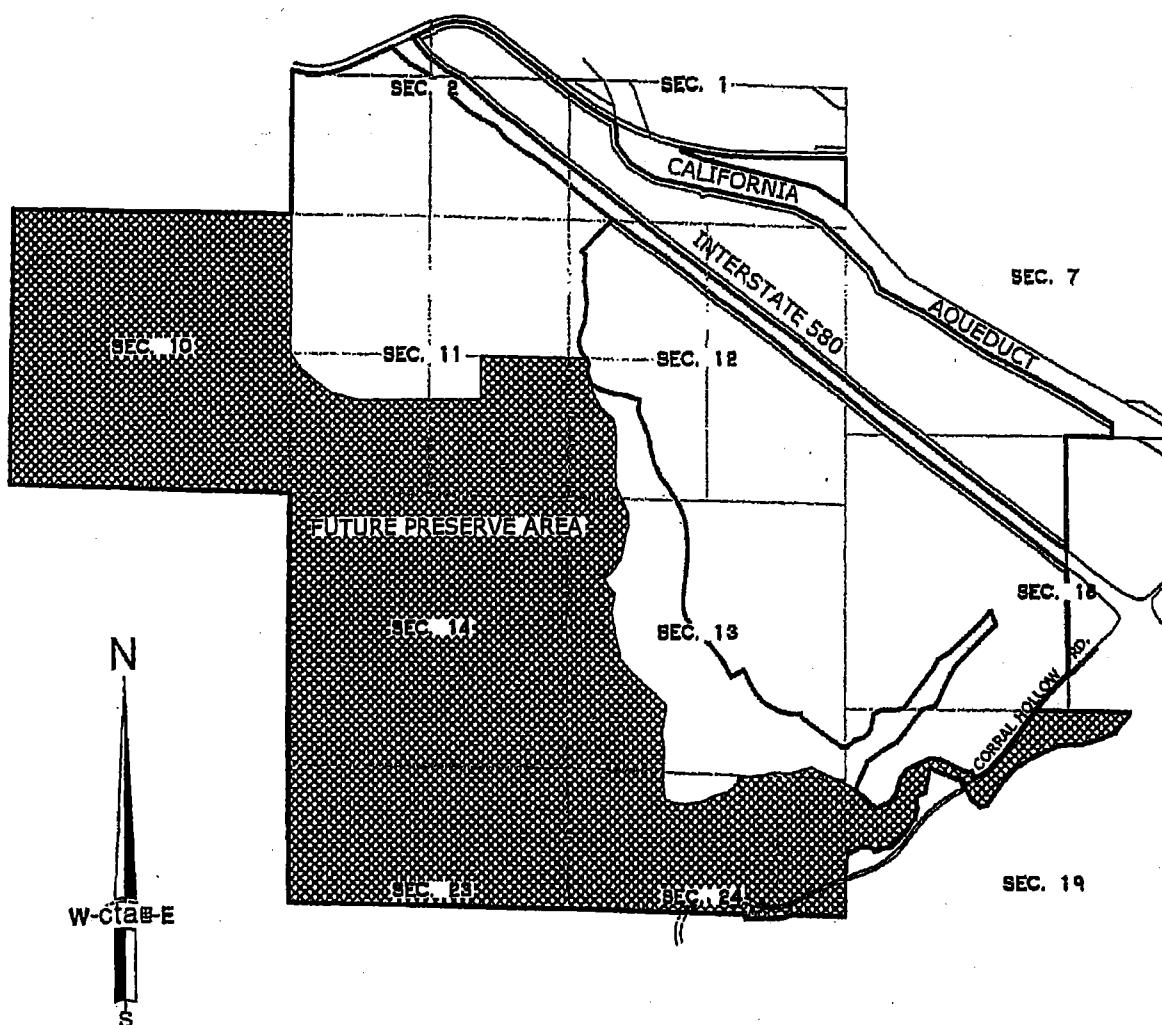
**EXHIBIT 3**

**PROPERTY MAP**

**(see attached)**

**GRANTOR'S INITIALS: J**

EXHIBIT '3'



 <p>DATE: 09/07/2011</p>	Preserve Area Easements		<p>DATE: 09/07/2011 DRAWN BY: KAH SCALE: 1"=3000' JOB NO. 11-031-001 SHEET 4 OF 5</p>
	0	1500' 3000' 6000'	
<p>SCALE: 1" = 3000'</p> <p><b>cta</b> Engineering &amp; Surveying</p> <p>Civil Engineering • Land Surveying • Land Planning</p> <p>COUNTY OF SAN JOAQUIN STATE OF CALIFORNIA</p>			



SAN JOAQUIN COUNCIL OF GOVERNMENTS

555 E. Weber Avenue • Stockton, California 95202

209.235.0600 • 209.235.0438 (fax)

[www.sjcoag.org](http://www.sjcoag.org)

Chuck Winn  
CHAIR

Ken Vogel  
VICE CHAIR

Andrew T. Chesley  
EXECUTIVE DIRECTOR

Member Agencies

CITIES OF  
ESCALON,  
LATHROP,  
LODI,  
MANTECAL,  
RIPON,  
STOCKTON,  
TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

## MINUTE RESOLUTION NUMBER 09-16

Whereas, the SJCOG, Inc. has accepted the staff report under authority of Minute Resolution No. 09-16 approved by the SJCOG, Inc. Board of Directors meeting on October 27, 2011.

Agenda Item #9.4A

Tracy 580 Business Park and South Property Dedications and Preserve  
Management Plan

It was moved/seconded (Johnston/Vogel) to 1) approve the conservation easement dedications and 2) approve the PMP for the Tracy 580 Business Park Preserve. Motion passed unanimously 9/0 by voice vote.

*Rosie C. Vargas*  
ROSIE C. VARGAS  
Office Services Supervisor

Date: July 19, 2012

**EXHIBIT "H"**

Placer Title 404-9224

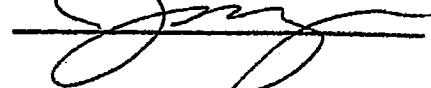
RECORDING REQUESTED, AND  
WHEN RECORDED, RETURN TO:

SJCOG, INC.  
555 E. Weber Avenue  
Stockton, California 95202  
Attention: President

Certified to be a true and  
correct copy of that certain  
document recorded July 20, 2012

Series No. 2012-91625

County San Joaquin  
PLACER TITLE COMPANY



(space above this line reserved for Recorder's use)

R&T 11911 No Consideration

GRANT DEED OF CONSERVATION EASEMENT  
(Southern Preserve Easement Area 2)

THIS GRANT DEED OF CONSERVATION EASEMENT (the "Grant"), made as of  
July 2, 2012, is by and between Tsakopoulos Family Partnership, a California  
general partnership, and Angelo K. Tsakopoulos, a married man as his sole and separate property  
(collectively, "Grantor"), and SJCOG, INC., a California public benefit corporation ("Grantee").

RECITALS

A. Grantor is the fee simple owner of that certain real property located in San Joaquin County, California, that consists of approximately Five Thousand One Hundred Thirty-nine and 14/100 (5,139.14) acres, together with all appurtenances thereto including, without limitation, all water and water rights, but subject to those matters provided in Recital B below (the "Primary Property"). The Primary Property is described in Exhibit 1 attached hereto and incorporated herein by this reference.

B. Grantor owns all rights of surface entry over and upon the Primary Property related to the exploration or extraction of any and all oil, gas, mineral and hydrocarbon substances, except for any surface rights reserved by reason of the Corporation Grant Deed to Bertha G. Berger, Vera Grunauer, and Doris Powell as to all oil, gas, hydrocarbons and other minerals, recorded March 27, 1959 in Book 2160 at Page 308. Grantor owns a portion of the rights to oil, gas, mineral and hydrocarbon substances lying below the surface of the Primary Property, and such subsurface rights are subject to Paragraph 7 of this Grant.

C. The Primary Property possesses wildlife and habitat values, agricultural, open space and scenic values of great importance to Grantor, the people of San Joaquin County, and the people of the State of California.

D. Grantor intends, as owner of the Primary Property, to convey a conservation easement on a portion of the Primary Property consisting of approximately Three Hundred Sixteen and 80/100 (316.80) acres, as described in Exhibit 2 attached hereto and incorporated herein by this reference (the "Property"). A map of the Property identifying the improvements existing on the Property as of the date of this Grant Easement and various other natural features of the Property is attached hereto as Exhibit 3 and incorporated herein by reference (the "Property Map").

E. The Grantor intends that the Property be maintained in agricultural production by the maintenance of agricultural values thereof and that the open space and environmental values of the property be preserved by continuation of the agricultural and ranching uses that have proven historically compatible with such values.

F. The Property provides high quality habitat for species covered by the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (the "SJMSCP") whose preservation is highly important to Grantor, the people of San Joaquin County and the people of the State of California. Protection and preservation of the Property pursuant to the Preserve Management Plan will assure that the Property and its existing features will continue to be available for those activities that are set forth in this conservation easement, to preserve other natural habitat and to provide a significant public benefit by preserving open space against development pressure and scenic qualities.

G. The purpose of the conservation easement is to ensure that the Property will continue to be used for those permitted agricultural purposes as set forth herein and to preserve and enhance the natural areas located on the Property for the benefit and promotion of the aforementioned wildlife.

H. Grantor intends as the owner of the Primary Property to convey to Grantee the right to preserve and protect the agricultural, open-space and scenic values of the Property in perpetuity.

I. The State of California recognizes the public importance and validity of conservation easements by its enactment of Section 815 et seq. of the California Civil Code.

J. Grantee is a nonprofit corporation incorporated under the laws of the State of California, and, as a tax-exempt public charity described in Section 815.3 of the California Civil Code and Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended from time to time and together with any and all regulations promulgated thereunder (the "Code"), is organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "qualified organization" within the provisions of Section 170(h) of the Code qualified to acquire and hold conservation easements, and is authorized to hold conservation easements pursuant to Section 815.3 of the California Civil Code.

K. To accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee, and Grantee intends to obtain from Grantor, a conservation easement that restricts the uses which may be made of the Property and that grants rights to Grantor in order to preserve and protect the purposes of the conservation easement on the Property in perpetuity and specifically includes the agricultural uses as set forth herein.

#### AGREEMENTS

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California and in particular California Civil Code Section 815 et seq., Grantor hereby voluntarily grants and conveys to Grantee, and to Grantee's successors and assigns, and Grantee hereby accepts a conservation easement in gross in perpetuity in, on, over, and across the Property (the "Conservation Easement"), subject to the terms and conditions set forth herein, restricting forever the uses that may be made of the Property and granting to Grantee rights in the Property, and the parties agree as follows:

1. PURPOSES. The purposes of the Conservation Easement are (a) to enable that the Property will be retained in perpetuity in its natural, scenic, agricultural values, character use and utility (to the extent consistent with those agricultural activities that are in this Grant) and open space condition, and (b) to preserve, protect, identify, monitor, enhance and restore in perpetuity habitat for species covered by the SJMSCP on the Property. It is intended that the Conservation Easement shall foster agricultural practices on the Property in harmony with the protection and preservation purposes of the Conservation Easement on the Property.

2. PRESERVE MANAGEMENT PLAN. The parties hereto acknowledge that a Preserve Management Plan prepared by ICF International and dated October, 2011, and executed by the parties (the "Plan") has been prepared regarding the Property and its environs. The Plan sets forth specific rights of the Grantor and their successors and assigns with respect to the continued permitted uses and activities that may be conducted on the Property ("Permitted Uses") notwithstanding the Conservation Easement. The Plan also sets forth specific restrictions on the uses of the Property by the Grantor or their successors and assigns ("Prohibited Uses") as a part of the Conservation Easement. The Permitted Uses and Prohibited Uses set forth in the Plan are specifically incorporated into this Conservation Easement and shall constitute a part of this Conservation Easement that has been granted to Grantee by the Grantor. Grantor and Grantee acknowledge and agree that: (i) the Plan may be modified by mutual agreement of Grantor and Grantee (or their successors and assigns) without any need to modify or amend this Conservation Easement, and (ii) any such modification of the Plan, as it pertains to the Permitted Uses and/or Prohibited Uses shall be automatically incorporated into this Conservation Easement by reference.

3. **GRANTEE'S RIGHTS.** In order to ensure compliance with the Permitted Uses and Prohibited Uses, the rights and interests that are conveyed to Grantee by this Grant, also include, without limitation, the following (collectively, "Grantee's Rights"):

A. **Preserve and Protect.** Grantee may identify, preserve and protect in perpetuity, enhance and monitor (including the right to conduct evaluations of wetland quantity and quality and evaluations of habitat quantity and quality) in perpetuity the Property for compliance with the Permitted Uses and Prohibited Uses, including, without limitation, the natural, ecological, scenic and open space features and values of the Property, the water resources of the Property and the natural flora-and-fauna-on-the-Property; provided, however, Grantee shall not be required to compensate Grantor for those activities of Grantor that maintain and support suitable habitat that are a part of normal and customary farming operations.

B. **Wind Power Rights.** All present and future development rights and wind power rights allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property.

C. **Restriction of Use and Development.** To restrict all uses and development of the Property and all development rights that are now or may hereafter be allocated to, implied, reserved or inherent in the Property, to the fullest extent reasonably necessary to protect the conservation values, as described in the Plan, including, but not limited to, preventing the use of any such development rights for the purpose of calculating permissible development or lot yield on any other Property except to the extent otherwise specifically provided in the Plan. Grantor understands and agrees that nothing in this Conservation Easement relieves Grantor of any obligation or restriction in relation to the development or use of the Easement Area/Property imposed by law, including, but not limited to, local land use restrictions.

D. **Entry and Access Rights.** Grantee and Grantee's employees and agents are hereby granted rights of access to enter upon the Property, using existing appurtenant easements and rights-of-way, if any, and may enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of the Conservation Easement, to study and make scientific observations of the natural elements and ecosystems of the Property, to determine whether Grantor's activities are in compliance with the terms of this Conservation Easement and to take all actions deemed necessary by Grantee to inspect, identify, preserve, protect, enhance, monitor and restore in perpetuity the habitat on the Property in accordance with the Permitted Uses and the Prohibited Uses. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Conservation Easement, Grantee shall give Grantor reasonable prior notice of such entry and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

E. **Enforcement.** Grantee may prevent or enjoin any activity on, or use of, the Property that is inconsistent with the Permitted Uses, or a violation of the Prohibited Uses or

a failure of Grantor to allow Grantee to exercise its rights conveyed by this Grant and may enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, which constitutes a violation of the terms of this Conservation Easement. However, it is the intention of this easement not to limit Grantor's discretion to employ his choices of farm and ranch uses and management practice so long as those uses and practices are consistent with the purposes of this Easement and the Plan.

F. Signage. Grantee may install and maintain, at Grantee's sole cost and expense, a sign or other appropriate marker at a prominent location on the Property in order to indicate the participation of Grantee and of any of Grantee's public or private funding sources in the acquisition and maintenance of the Conservation Easement; provided, however, that the size, location, number, text and design of the signage shall be subject to the approval of Grantor, Grantee and any funding source, which approval shall not be unreasonably withheld, conditioned or delayed. The wording of the information shall be determined by Grantee, but shall currently indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the cost of directing and maintaining the sign or marker.

G. Grantee's Expense. Grantor and Grantee intend that this Grant shall allow Grantee to undertake Grantee's Rights at its sole cost and expense.

4. PERMITTED USES OF THE PROPERTY. Grantor and Grantee intend that this Grant shall confine the uses of the Property to those Permitted Uses identified in the Plan and no other uses shall be permitted or allowed.

5. PROHIBITED USES OF THE PROPERTY. Grantor and Grantee intend that this Grant shall prohibit any activity on or use of the Property that is identified as a Prohibited Use in the Plan. The following uses and activities by Grantor, Grantor's agents, and third parties, are expressly prohibited:

A. Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities and incompatible fire protection activities, except as otherwise specifically permitted in the Plan.

B. Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, except as otherwise specifically permitted in the Plan.

C. Conversion of the Property from grazing land to other agricultural uses or to other uses that are not compatible with preserving and protecting habitat for the species covered by the SJMSCP.

D. Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation

Easement and specifically provided for in the Plan.

E. Commercial, industrial, residential, or institutional uses, except as otherwise specifically permitted in the Plan.

F. Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, including, but not limited to, wind turbines or other devices which convert wind power into a useful form of energy and supporting infrastructure, solar panels and associated infrastructure, new utility structures or lines outside existing easements and new sewer systems, except as otherwise specifically permitted in the Plan (including, without limitation, the construction and placement of a water tank as described in the Plan.)

G. Depositing or accumulation of soil, trash, ashes, refuse, waste or bio-solids.

H. Planting, introduction or dispersal of non-native or exotic plant or animal species, provided that Grantor may undertake such activities with the prior written consent of Grantee.

I. Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rock or other material on the surface of the Property or granting or authorizing surface entry for any of these purposes.

J. Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material except for (i) the access road construction, firebreaks, landslide repairs, and habitat management activities specified in the Plan, or (ii) except as otherwise expressly permitted in the Plan.

K. Removing, destroying, or cutting of trees, shrubs or other vegetation, except as otherwise specifically permitted in the Plan, or as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease.

L. Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as otherwise specifically permitted in the Plan.

M. Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, State, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

6. **CURRENT PRACTICES AND CONDITIONS.** Grantee acknowledges by acceptance of this Easement that Grantor's present usage of the Property as identified in the Plan is compatible with the purposes of this Easement. In order to establish the present condition of the Property protected values, Grantee may prepare an inventory of the Property's relevant features and conditions. Grantor and Grantee recognize that change in economic conditions, in agricultural technology, and accepted farm and ranch management practices, and in the situation of Grantors may result in the evolution of the agricultural uses of the Property, provided such uses are consistent with the purposes of the Easement.

7. **RESERVED RIGHTS.** Grantor reserves to themselves and to their personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved; (a) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interest in, on, under, or appurtenant to the Property, provided that such water rights are used on the Property in the manner consistent with the purposes of this Easement; (b) all right, title, and interest in a portion of the subsurface oil, gas and minerals; provided that the manner of exploration for, and the extraction of any oil, gas, and minerals shall be only by a subsurface method, and shall not damage, impair, or endanger the protected values of the Property.

8. **REMEDIES.**

A. **Grantee's Remedies.** If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Except where caused by third parties, Grantee shall demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Grant, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, Grantee shall have all remedies available at law or in equity to enforce the terms of this Grant, including, without limitation, the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity, to pay monetary amounts which, if not paid, could result in extinguishment, modification, non-enforcement or impairment of the Conservation Easement, and/or to recover any damages arising from the violation. Grantee's rights under this Paragraph 8.A. apply equally to actual or threatened violations of the terms of this Grant. Grantor agrees, that in the event of a breach by Grantor, that Grantee's remedies at

law for any violation of the terms of this Grant are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph 8.A., both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Paragraph 8 shall be cumulative and shall be in addition to all remedies hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 et seq. are incorporated herein by this reference, and the Conservation Easement and this Grant shall include all of the rights and remedies set forth therein.

B. Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce the provisions of this Grant, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses, including, without limitation, attorneys' and experts' fees and costs, and if such prevailing party shall recover judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment.

C. Emergency Enforcement. If circumstances require immediate action to prevent or mitigate significant damage or to prevent breach or extinguishment of the Conservation Easement, Grantee may pursue its remedies under this Paragraph 8 without giving prior notice to Grantor and without waiting for the cure period set forth in Paragraph 8.A. to expire; provided, however, Grantee will comply with any notice requirements as required by law for obtaining ex parte relief.

D. Discretion. Enforcement of the terms and provisions of this Grant shall be at the discretion of the applicable party, and the failure of a party to discover a violation or to take action under this Paragraph 8 shall not be deemed or construed to be a waiver of a party's rights hereunder with respect to such violation in the event of any subsequent breach. In no event shall any delay or omission by a party in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy.

E. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any entry to or change in the Property in result of causes beyond Grantor's control including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant entry to the property resulting from such causes.

9. ASSIGNMENT. Grantee may not assign the Conservation Easement created by this Grant without Grantor's consent, which shall not be unreasonably withheld, provided, that: (a) Grantee requires, as a condition of such transfer, that the Conservation Easement shall continue to be carried out following such transfer; (b) any assignment shall be made only to a local, state or federal agency and/or to an organization qualified at the time of transfer as an eligible donee under Section 170(h)(3) of the Code; and (c) Grantee shall provide Grantor with

notice of the assignment, at the address last provided by Grantor to Grantee, within thirty (30) days of the effective date of the assignment. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

10. **RUNNING WITH THE LAND.** The Conservation Easement created by this Grant is perpetual and shall encumber and run with the Property in perpetuity. Every provision of this Grant that applies to Grantor or Grantee shall also apply in perpetuity to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees and assigns, and all other successors as their interests may appear. Grantor agrees that transfer by Grantor of any interest in the Property shall be in accordance with the terms of this Grant and subject to the Permitted Uses and Prohibited Uses as set forth in the Plan.

11. **COMPLIANCE WITH APPLICABLE LAWS.** Grantor hereby covenants and agrees with Grantee as follows in connection with Grantor's use and operation of the Property:

A. Grantor shall comply with all statutes, laws, and ordinances applicable to the Property which have been enacted or otherwise promulgated by any federal, state, county, municipal or other governmental or quasi-governmental agency or any court (whether legislative, administrative or judicial), or by any competent official of any of the foregoing (in each case, an "Applicable Law"), including, without limitation, those relating to pollution or the protection of health and safety or the environment.

B. Without placing any limitation on Grantor's general obligation to comply with all Applicable Laws, Grantor shall keep the Property free of contamination by any of the following (collectively, "Hazardous Materials"): wastes, materials, chemicals or other substances (whether in the form of liquids, solids or gases and whether or not airborne) which are ignitable, reactive, corrosive or radioactive, or which are deemed to be pollutants, contaminants or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under the authority of any Applicable Law concerning such wastes, materials, chemicals or other substances (in each case, a "Hazardous Materials Law"), exceeding actionable levels under any of such Hazardous Materials Laws, including, without limitation, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin or asbestos (but excluding non-friable asbestos containing material), as well as any biocide, herbicide, insecticide or other agri-chemical; it being understood that such Applicable Laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 et seq.); the Hazardous Waste Control Law (Cal Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (Cal Health & Safety Code Section 25300 et seq.); and any rule, regulation or other promulgation adopted under any of the foregoing laws.

12. **RESPONSIBILITY FOR OPERATIONS.** Grantor shall have and retain all responsibility for, and shall bear all costs and liabilities of, the ownership, operation, upkeep and maintenance of the Property of any kind. Grantor shall pay before delinquency any and all tax assessment fees and charges levied by competent authority on the property or on this Easement, except for Grantee's Rights set forth in this Grant for which Grantee shall bear all costs of maintenance and institution. Without placing any limitation on the foregoing sentence, the parties agree as follows:

A. Grantee shall have no duty or responsibility for the operation or maintenance of the Property with the exception of Grantee's Rights, the monitoring of any hazardous conditions thereon, or the protection of Grantor, the public, or any other person or entity from any risks relating to the conditions on the Property, unless those conditions are caused or created by Grantee.

B. Grantor shall be solely responsible for obtaining any and all applicable governmental permits and approvals for any activity or use by Grantor, which is permitted by this Grant, and any such activity or use shall be undertaken in accordance with all Applicable Laws.

C. The parties do not intend this Grant or the Conservation Easement to be construed to create in or give to Grantee: (i) the obligations or liabilities of an "owner" or "operator," as those words are defined and used in CERCLA or any other Hazardous Materials Law; (ii) the obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3); (iii) the obligations of a responsible person under any applicable Hazardous Materials Law; (iv) any obligation to investigate or remediate any Hazardous Materials associated with the Property; or (v) control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property in compliance with any Hazardous Materials Law.

13. **INDEMNIFICATION.**

A. **BY GRANTOR.** Notwithstanding any other provision herein to the contrary, Grantor shall indemnify, defend and hold harmless Grantee and Grantee's members, directors, officers, employees, agents and contractors and their successors and assigns (the "Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, court costs and reasonable attorneys' and experts' fees and costs, whether incurred at the trial, appellate or administrative level, or in connection with any arbitration) (collectively "Damages") which the Indemnified Parties may suffer or incur as a result of or arising out of any of the following: (a) the activities of Grantor on the Property; (b) the inaccuracy of any representation or warranty made by Grantor; (c) the breach of any provision of this Conservation Easement by Grantor; (d) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition or other matter

related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties. Without limiting the foregoing, Grantor shall indemnify, defend and hold harmless the Indemnified Parties for any Damage relating to or arising out of any of the following:

1. Taxes. Any real property taxes, insurance, utilities or assessments that are levied against the Property or on the interests of Grantor created under this Grant, including, without limitation, those for which exemption cannot be obtained, or any other costs associated with the operation, upkeep and maintenance of the Property.

2. Hazardous Materials. Any Hazardous Material present, alleged to be present or otherwise connected in any way to the Property, whether before, on or after the date of this Grant.

B. BY GRANTEE. Notwithstanding any other provision herein to the contrary, Grantee shall indemnify, defend and hold harmless Grantor and Grantor's, employees, agents and contractors and their successors and assigns from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, court costs and reasonable attorneys' and experts' fees and costs, whether incurred at the trial, appellate or administrative level, or in connection with any arbitration) (collectively "Damages") which the Grantor may suffer or incur as a result of or arising out of any actions of the Grantee on the Property not in compliance with the Preservation Plan and / or negligent act not in compliance with performing the obligations under the Preservation Plan.

14. NOTICE; APPROVAL.

A. Notice for Entry. Where notice to Grantor of Grantee's entry upon the Property is required herein, Grantee shall notify any of the persons constituting Grantor or Grantor's authorized agents by telephone or in person, or by written notice in the manner described below, prior to such entry.

B. Other Notice. Except as provided herein, whenever express agreement or consent is required by this Grant, the initiating party shall give written notice, in the manner described herein, and detailed information to the other party. The receiving party shall review the proposed activity and notify the initiating party within forty-five (45) days after receipt of notice of any objections to such activity. Any objections by a party shall be based upon its opinion that the proposed activity is inconsistent with the terms of this Grant.

C. Written Notices. Any notice called for in this Grant shall be in writing and may be delivered (i) in person; (ii) by certified mail, return receipt requested, postage prepaid; (iii) by facsimile, with the original deposited with the United States Post office, postage prepaid on the same date as sent by facsimile; or (iv) by a reputable overnight courier that guarantees next day delivery and provides a receipt, and addressed as follows:

To Grantee: SJCOG, INC.  
Attn: Executive Officer  
555 East Weber Avenue  
Stockton, California 95202  
Facsimile: (209) 468-1084

To Grantor: Angelo K. Tsakopoulos  
The Tsakopoulos Family Partnership  
7700 College Town Drive, Suite 101  
Sacramento, CA 95826

To CDFG: Department of Fish and Game  
Region 3, Bay Delta  
7329 Silverado Trail  
Napa, CA 94558  
Attn: Regional Manager

With a copy to: Department of Fish and Game  
Office of the General Counsel  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814-2090  
Attn: General Counsel

Any party listed above may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Notice is deemed to be given upon receipt.

D. Subsequent Activities. Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

15. SEVERABILITY AND ENFORCEABILITY. The terms and purposes of this Grant are intended to be perpetual. If any provision or purpose of the Conservation Easement or this Grant or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of this Grant, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

16. TERMINATION; VALUATION.

A. Extinguishment. It is the intention of the parties that the Conservation Easement shall be carried out in perpetuity. If circumstances arise in the future that renders the purpose of this Conservation Easement impossible to be accomplished, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation which the Grantee shall be entitled from any sale, exchange, involuntary conversion of all or a portion of the property subsequent to such termination or extinguishment, shall be determined in such judicial proceeding. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity.

B. Compensation; Stipulated Fair Market Value. Grantor and Grantee acknowledge and agree that this Grant gives rise to a property right in favor of Grantee, immediately vested in Grantee, which shall be determined by judicial proceedings unless otherwise agreed between the Grantor and Grantee.

C. Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680, notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Grant, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The remaining proceeds shall be divided as the Grantor and Grantee may agree, provided then if they cannot agree then as determined by judicial proceedings consistent with the provisions of this Paragraph 16.

17. INTERPRETATION.

A. Liberal Construction. It is the intent of this Grant to preserve the condition of the Property and the purpose of the Conservation Easement protected herein. The provisions of this Grant shall be liberally construed to effectuate their purposes of preserving and protecting in perpetuity the purposes of the Conservation Easement described above, and allowing Grantor's use, including agricultural uses, and enjoyment of the Property to the extent consistent with the Plan.

B. Cumulative Remedies. No remedy or election given by any provision in this Grant shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity.

C. Ambiguities. The parties acknowledge that each party and its counsel have reviewed and revised this Grant and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Grant. In the event of any conflict between the provisions of this Grant and the provisions of any use and zoning restrictions of the State of California, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

D. Governing Law. This Grant shall be governed by, and interpreted in accordance with, the laws of the State of California.

E. Captions. The captions have been inserted solely for convenience of reference and are not part of this Grant and shall have no effect upon construction or interpretation.

18. SUBSEQUENT LIENS ON THE PROPERTY. No provision of this Grant should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowings, provided that any deed of trust, mortgage or other lien arising from such borrowings must, at all times, be subordinated to the Conservation Easement and this Grant by means of a written subordination agreement that shall be recorded in the Official Records of San Joaquin County and shall otherwise be in form and substance acceptable to Grantee. No such deed of trust, mortgage or other lien on the property shall impair this Conservation Easement as this Conservation Easement shall survive the exercise of any remedy for enforcement of such lien including, but not limited to, any sale in foreclosure or pursuant to a power of sale, and this Conservation Easement shall continue as a senior encumbrance on the Property. Any successor in interest of Grantor, by acceptance of a deed, lease or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Grant and the Conservation Easement.

19. MORTGAGEE PROTECTION: The exercise of any remedy for enforcement of this Conservation Easement by Grantee, including but not limited to any claim of lien for damages or other costs of enforcement, shall not defeat or render invalid the lien or deed of trust of any mortgagee or lender securing a loan made in good faith and for value as to the Primary Property or any part thereof.

20. ACCESS. Nothing contained in this Grant shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Grant. Grantor shall undertake all reasonable actions, including but not limited to the posting of "No Trespassing" signs, to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the purposes of the Conservation Easement.

21. EXECUTORY LIMITATION. If Grantee shall cease to exist or to be a qualified

organization under Section 170(h) of the Code, or to be authorized to acquire in whole conservation Easements under California Law, then Grantees' rights and obligations under this Easement shall immediately be vested in the County of San Joaquin.

22. **ENTIRE AGREEMENT.** This Grant, together with the attached exhibits and schedules, and any documents incorporated herein by reference, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings of the parties.

23. **AMENDMENTS.** This Grant may be amended only by way of a written instrument signed by Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement, and shall comply with Section 815 et seq. of the California Civil Code.

24. **COUNTERPARTS.** This Grant may be signed in one or more counterparts, all of which shall constitute one and the same instrument.

25. **TERMINATION OF RIGHTS AND OBLIGATIONS.** The party's rights and obligations under this Easement terminate on transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring before transfer shall survive transfer.

26. **WARRANTY.** Grantor represents and warrants that Grantor is the owner of the Property.

(Signatures follow on next page.)

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first above written.

GRANTEE:

SJCOG, INC., a California public benefit corporation

Date: July 2, 2012

By: Steve Ditt  
Name: STEVE DITI  
Title: TREASURER

GRANTOR:

TSAKOPOULOS FAMILY PARTNERSHIP,  
a California general partnership

Date: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

ANGELO K. TSAKOPOULOS,  
a married man as his sole and separate property

EXHIBITS:

- Exhibit 1 -- Legal Description of the Primary Property
- Exhibit 2 -- Legal Description of the Property
- Exhibit 3 -- Property Map

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first above written.

**GRANTEE:**

SJCOG, INC., a California public benefit corporation

Date: June 25, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTOR:**

TSAKOPOULOS FAMILY PARTNERSHIP,  
a California general partnership

Date: June 25, 2012

By:   
Name: Katina Tsakopoulos  
Title: Managing General Partner

Date: \_\_\_\_\_, 2012

ANGELO K. TSAKOPoulos,  
a married man as his sole and separate property

**EXHIBITS:**

- Exhibit 1 -- Legal Description of the Primary Property
- Exhibit 2 -- Legal Description of the Property
- Exhibit 3 -- Property Map

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first above written.

**GRANTEE:**

SJCOG, INC., a California public benefit corporation

Date: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

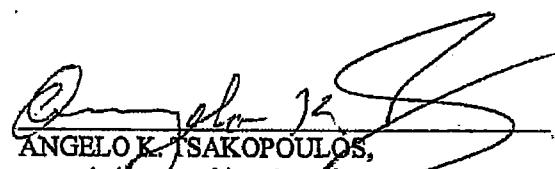
**GRANTOR:**

TSAKOPoulos FAMILY PARTNERSHIP,  
a California general partnership

Date: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: June 22, 2012

  
ANGELO K. TSAKOPoulos,  
a married man as his sole and separate property

**EXHIBITS:**

- Exhibit 1 -- Legal Description of the Primary Property
- Exhibit 2 -- Legal Description of the Property
- Exhibit 3 -- Property Map

State of California

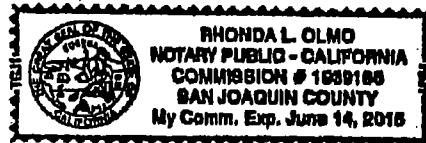
County of San Joaquin

On July 2, 2012, before me, Rhonda L. Olmo, a Notary Public, personally appeared Steve Dial, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Rhonda L. Olmo



State of California

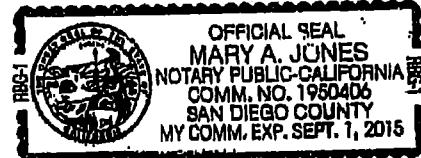
County of San Diego

On June 25, 2012 before me, Mary A. Jones, a Notary Public, personally appeared Katina Tsakopoulos, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Mary A. Jones



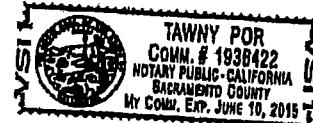
State of California )

County of Sacramento)

On June 22, 2012, before me, Tawny Por, a Notary Public, personally appeared Angelo K. Tsakopoulos, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



State of California )

County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**EXHIBIT 1**

**LEGAL DESCRIPTION OF THE PRIMARY PROPERTY**

**(see attached)**

**GRANTOR'S INITIALS:** Am

**EXHIBIT 1**

**LEGAL DESCRIPTION OF THE PRIMARY PROPERTY**

(see attached)

GRANTOR'S INITIALS: TC

EXHIBIT 1  
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES OFFICIAL SURVEYS.

EXCEPT THEREFROM A STRIP OF LAND 100 FEET WIDE IN THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILWAY COMPANY, A CORPORATION.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967, IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-040-07

PARCEL TWO:

ALL THAT PORTION OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST OF MOUNT DIABLO BASE AND MERIDIAN, (ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF), WHICH LIES SOUTH OF THE SOUTH LINE OF THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILROAD COMPANY.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992, AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-040-08 AND PORTION APN 251-040-07

PARCEL THREE:

THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION AS CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK OF OFFICIAL RECORDS,

CLTA Preliminary Report

EXHIBIT 1  
LEGAL DESCRIPTION continued

VOL. 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-040-07

PARCEL FOUR:

ALL OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-320-12

PARCEL FIVE:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-070-01

PARCEL SIX:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTH ONE-HALF OF THE NORTHWEST QUARTER AND THE EAST ONE-HALF OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

PORTION APN 251-070-01

PARCEL SEVEN:

SECTION 14, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

CLTA Preliminary Report

LEGAL

EXHIBIT 1  
LEGAL DESCRIPTION continued

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-100-01

PARCEL EIGHT:

THE NORTH 1/2 OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APN 251-130-01

PARCEL NINE:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 24, LYING NORTH OF THE CENTER LINE OF CORRAL HOLLOW CREEK AS IT EXISTS ON JULYU 1, 1950; THE NORTHWEST QUARTER AND WEST ONE-HALF OF NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES, AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION, BY DEED DATED JANUARY 28, 1891, EXECUTED BY ANNIE CARROLL AND RECORDED JANUARY 29, 1891 IN BOOK "A" OF DEEDS, VOL. 73, PAGE 590, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES, AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION BY DEED RECORDED OCTOBER 23, 1889, EXECUTED BY LIZZIE CLEARY AND RECORDED JANUARY 29, 1891 IN BOOK "A" OF DEEDS, VOL. 58, PAGE 160, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS.

APNS 251-120-01 AND 251-120-09

PARCEL TEN:

THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM A STRIP OF LAND 100 FEET IN WIDTH FOR RAILROAD PURPOSES AS CONVEYED TO EUREKA RAILROAD AND COAL COMPANY, A CORPORATION, BY DEED DATED CLTA Preliminary Report

EXHIBIT 1  
LEGAL DESCRIPTION continued

OCTOBER 23, 1889, EXECUTED BY LIZZIE CLEARY AND RECORDED JANUARY 29, 1891 IN  
BOOK "A" OF DEEDS, VOL. 58, PAGE 160, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW  
A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS  
RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN  
JOAQUIN COUNTY RECORDS.

APN 251-120-02

PARCEL ELEVEN:

THE SOUTH ONE-HALF OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO  
BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION CONVEYED TO SHELL OIL COMPANY BY DEED RECORDED  
MAY 10, 1919 IN BOOK "A" OF DEEDS, VOL. 369 AT PAGE 210, SAN JOAQUIN COUNTY  
RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE UNITED STATES OF AMERICA BY  
DEED RECORDED FEBRUARY 25, 1947, IN BOOK 1039 AT PAGE 162, SAN JOAQUIN COUNTY  
RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION WITHIN THE WESTERN PACIFIC RAILROAD RIGHT OF  
WAY.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY  
FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714,  
SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO ARTHUR S. SASSER BY DEED  
RECORDED MARCH 2, 1995 AS DOCUMENT NO. 94017761, OFFICIAL RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW  
A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS  
RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN  
JOAQUIN COUNTY RECORDS.

APNS 251-050-07 AND 251-050-09 AND 251-050-13

PARCEL TWELVE:

THE WEST ONE-HALF OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO  
BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL  
ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714, SAN  
JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW  
CLTA Preliminary Report

**EXHIBIT 1**  
**LEGAL DESCRIPTION continued**

A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 251-060-04 AND 251-060-06 AND PORTION OF 251-060-05 AND PORTION OF 251-060-02

**PARCEL THIRTEEN:**

THE EAST ONE-HALF OF SECTION 12, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992, AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

PORTION APNS 251-060-02 AND 251-060-05

**PARCEL FOURTEEN:**

ALL OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 251-110-03 AND 251-110-04 AND 251-110-05

**PARCEL FIFTEEN:**

SECTION 7, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THAT CERTAIN NINE-ACRE TRACT CONVEYED TO THE CENTRAL PACIFIC RAILROAD COMPANY BY DEED RECORDED JULY 12, 1873 IN BOOK "A" OF DEEDS, VOL. 26, PAGE 215, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 61.84 ACRE TRACT CONVEYED TO UNITED STATES OF AMERICA BY DEED RECORDED FEBRUARY 24, 1948 IN BOOK OF OFFICIAL RECORDS, VOL. 1103, PAGE 452, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 188 ACRE TRACT CONVEYED TO MAURICE G. VIEIRA, JR. BY DEED RECORDED DECEMBER 5, 1955 IN BOOK OF OFFICIAL RECORDS, VOL. 1814, PAGE 533, SAN JOAQUIN COUNTY RECORDS.

CLTA Preliminary Report

**EXHIBIT 1**  
**LEGAL DESCRIPTION continued**

ALSO EXCEPT THAT CERTAIN 63.49 ACRE TRACT CONVEYED TO MAURICE G. VIEIRA, JR. BY DEED RECORDED MARCH 2, 1959 IN BOOK OF OFFICIAL RECORDS, VOL. 2151, PAGE 246, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT CERTAIN 203 ACRE TRACT CONVEYED TO CHARLES SPRETAFORE, SR., ET AL, BY DEED RECORDED APRIL 29, 1960 IN BOOK OF OFFICIAL RECORDS, VOL. 2294, PAGE 124, AND BY QUITCLAIM DEED RECORDED JUNE 30, 1966 IN BOOK OF OFFICIAL RECORDS, VOL. 3060, PAGE 175, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION OF SAID LAND, AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 9, 1963 IN BOOK OF OFFICIAL RECORDS, VOL. 2677, PAGE 204, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION LYING NORTH AND NORTHEAST OF THE NORTHERLY AND NORTHEASTERLY LINES OF THE 61.84 ACRE TRACT CONVEYED TO THE U.S.A. AFOREMENTIONED.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED JANUARY 3, 1967 IN BOOK 3095, PAGE 714, SAN JOAQUIN COUNTY RECORDS.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 253-020-02 AND 253-020-05

**PARCEL SIXTEEN:**

ALL OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, LYING NORTH OF THE CENTER LINE OF CORRAL HOLLOW CREEK AS IT EXISTED ON JULY 1, 1950.

EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992, AS DOCUMENT NO. 92083244, SAN JOAQUIN COUNTY RECORDS.

APNS 253-040-07 AND 253-040-08 AND 253-040-09 AND 253-040-10 AND 253-040-11

**PARCEL SEVENTEEN:**

THE WEST 1/2 OF FRACTIONAL SECTION 18, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID WEST 1/2 COMPRISING GOVERNMENT LOTS 1, 2, 3, 4, 5, AND 6 EXCEPT THEREFROM THAT PORTION AS DESCRIBED IN DEED TO THE COUNTY OF SAN JOAQUIN RECORDED APRIL 17, 1962 IN BOOK OF OFFICIAL RECORDS, VOL. 2538, PAGE 192 AND 195, SAN JOAQUIN COUNTY RECORDS.

CLTA Preliminary Report

EXHIBIT 1  
LEGAL DESCRIPTION continued

ALSO EXCEPT THAT PORTION DESCRIBED IN DEED TO THE STATE OF CALIFORNIA BY DEED  
RECORDED FEBRUARY 11, 1965 IN BOOK OF OFFICIAL RECORDS, VOL. 2915, PAGE 621,  
SAN JOAQUIN COUNTY RECORDS; ALSO IN BOOK OF OFFICIAL RECORDS, VOL. 2915, PAGE  
627, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL OF THE OIL, GAS, HYDROCARBONS, AND OTHER MINERALS IN  
AND UNDER SAID LAND, AS CONVEYED TO BERTHA G. BERGER, A WIDOW, VERA GRUNAUER,  
A SINGLE WOMAN AND DORIS G. POWELL, A SINGLE WOMAN BY DEED DATED OCTOBER 2,  
1958 AND RECORDED MARCH 27, 1959 IN BOOK OF OFFICIAL RECORDS, VOL. 2160, PAGE  
308, SAN JOAQUIN COUNTY RECORDS.

APNS 253-030-08 AND 253-030-12 AND 253-030-13

**EXHIBIT 2**

**LEGAL DESCRIPTION OF THE PROPERTY**

**(see attached)**

**GRANTOR'S INITIALS:** Am

**EXHIBIT 2**

**LEGAL DESCRIPTION OF THE PROPERTY**

(see attached)

**GRANTOR'S INITIALS:** jt

**2-1**

11-304

## Exhibit 2

### Southern Preserve Easement Area 2

#### Potential Slope Stabilization Area

All that real property situate in the County of San Joaquin, State of California, being a portion of Sections 12, 13 and 24, Township 3 South, Range 4 East, and Sections 18 and 19, Township 3 South, Range 5 East, M.D.M. and being more particularly described as follows:

Commencing at the Southeast corner of said Section 13, as shown on that certain Record of Survey, filed in the office of the County Record of San Joaquin County in Book 33 of Surveys, Page 57; thence from said Southeast corner, South 47°36'17" East, 282.97 feet to the Point of Beginning of the tract described herein; thence from said Point of Beginning, North 24°55'21" East, 584.76 feet; thence North 52°45'03" East, 351.21 feet; thence North 59°10'54" East, 321.51 feet; thence North 38°54'46" East, 414.80 feet; thence North 39°05'58" East, 369.49 feet; thence North 74°42'05" East, 233.47 feet; thence North 33°15'08" East, 152.01 feet; thence North 23°34'56" East, 297.88 feet; thence North 26°13'35" East, 245.35 feet; thence North 31°42'43" East, 169.52 feet; thence North 43°45'08" East, 540.42 feet; thence North 44°45'37" East, 572.00 feet; thence North 17°15'12" West, 277.55 feet; thence South 41°52'19" West, 400.10 feet; thence South 46°08'52" West, 723.66 feet; thence South 60°29'07" West, 270.53 feet; thence South 26°56'14" West, 214.58 feet; thence South 37°15'01" West, 908.10 feet; thence South 74°16'31" West, 128.43 feet; thence South 89°56'25" West, 294.09 feet; thence South 60°37'18" West, 184.17 feet; thence South 08°52'00" West, 260.92 feet; thence South 27°52'22" West, 113.97 feet; thence South 54°51'11" West, 139.57 feet; thence South 72°34'38" West, 163.53 feet; thence South 53°00'08" West, 257.96 feet; thence North 67°35'08" West, 91.49 feet; thence North 53°52'14" West, 918.37 feet; thence North 19°27'23" West, 85.89 feet; thence South 86°29'50" West, 46.95 feet; thence along the arc of a curve to the right, having a radius of 921.00 feet, the chord of which bears North 59°40'58" West, 1020.79 feet; thence North 26°02'50" West, 364.68 feet; thence South 59°38'46" West, 262.44 feet; thence North 28°16'13" West, 403.22 feet; thence North 37°55'13" West, 327.23 feet; thence North 41°09'03" West, 332.87 feet; thence North 44°08'02" West, 227.78 feet; thence North 38°01'06" West, 118.29 feet; thence North 22°07'14" West, 94.16 feet; thence North 13°23'41" West, 112.23 feet; thence North 00°47'05" West, 229.37 feet; thence North 05°22'22" East, 407.17 feet; thence North 09°49'42" East, 209.52 feet; thence North 03°22'32" East, 360.12 feet; thence North 05°28'26" West, 342.08 feet; thence North 07°39'38" West, 199.20 feet; thence North 18°35'04" West, 161.45 feet; thence North 26°16'54" West, 207.07 feet; thence North 34°16'35" West, 287.89 feet; thence North 34°24'10" West, 328.32 feet; thence North 28°05'28" West, 104.88 feet; thence North 10°41'12" West, 118.71 feet; thence North 15°51'30" East, 162.70 feet; thence North 72°57'58" West, 321.66 feet; thence North 78°35'43" West, 260.79 feet; thence North 72°28'57" West, 238.21 feet; thence North 57°32'34" West, 185.62 feet; thence South 08°43'24" East, 104.43 feet; thence South 24°06'34" East, 374.90 feet; thence South 48°58'24" East, 341.39 feet; thence South 08°24'56" East, 333.68 feet; thence South 00°00'56" East, 97.93 feet; thence South 03°24'43" West, 273.63 feet; thence South 01°35'12" West, 175.72 feet; thence South 03°16'38" East, 201.54 feet; thence South 00°35'29" West, 155.37 feet; thence South 01°45'45" East, 54.44 feet; thence South 23°55'43" East, 157.93 feet; thence South 28°13'05" East, 121.57 feet; thence South 22°24'37" East, 120.12 feet; thence South 17°51'47" East, 149.32 feet; thence South 12°01'13" East, 133.47 feet; thence South 00°00'56" East, 104.12 feet; thence South 20°11'26" West, 151.45 feet; thence South 10°43'25" West, 79.42 feet; thence South 07°37'30" West, 160.04 feet; thence South 13°00'46" West, 246.68 feet; thence South 15°22'23" West, 67.36 feet; thence South 41°10'53" West, 88.54 feet; thence South 38°39'24" West, 136.09 feet; thence South 46°25'14" West, 139.87 feet; thence South 48°12'36" West, 104.39 feet; thence South 17°44'51" East, 50.22 feet; thence South 35°38'54" East, 135.15 feet; thence South 35°38'29" East, 148.91 feet; thence South 35°14'56" East, 33.22 feet; thence South 09°09'34" West, 389.15 feet; thence South 17°13'31" East, 55.83 feet; thence South 06°16'56" East, 134.92 feet; thence South 18°17'03" East, 122.62 feet; thence South 02°59'19" East, 126.13 feet; thence South 16°36'09" East, 63.36 feet; thence South 15°37'37" East, 158.40 feet; thence South 09°50'24" East, 86.11 feet; thence South 03°44'55" East, 75.26 feet; thence South 01°08'10" East, 84.14 feet; thence South 42°16'46" East, 317.41 feet; thence South 45°37'55" East, 300.26 feet; thence South 48°04'09" East, 329.69 feet; thence South 43°59'53" East, 243.04 feet;

**EXHIBIT 3**

**PROPERTY MAP**

(see attached)

**GRANTOR'S INITIALS:** tt

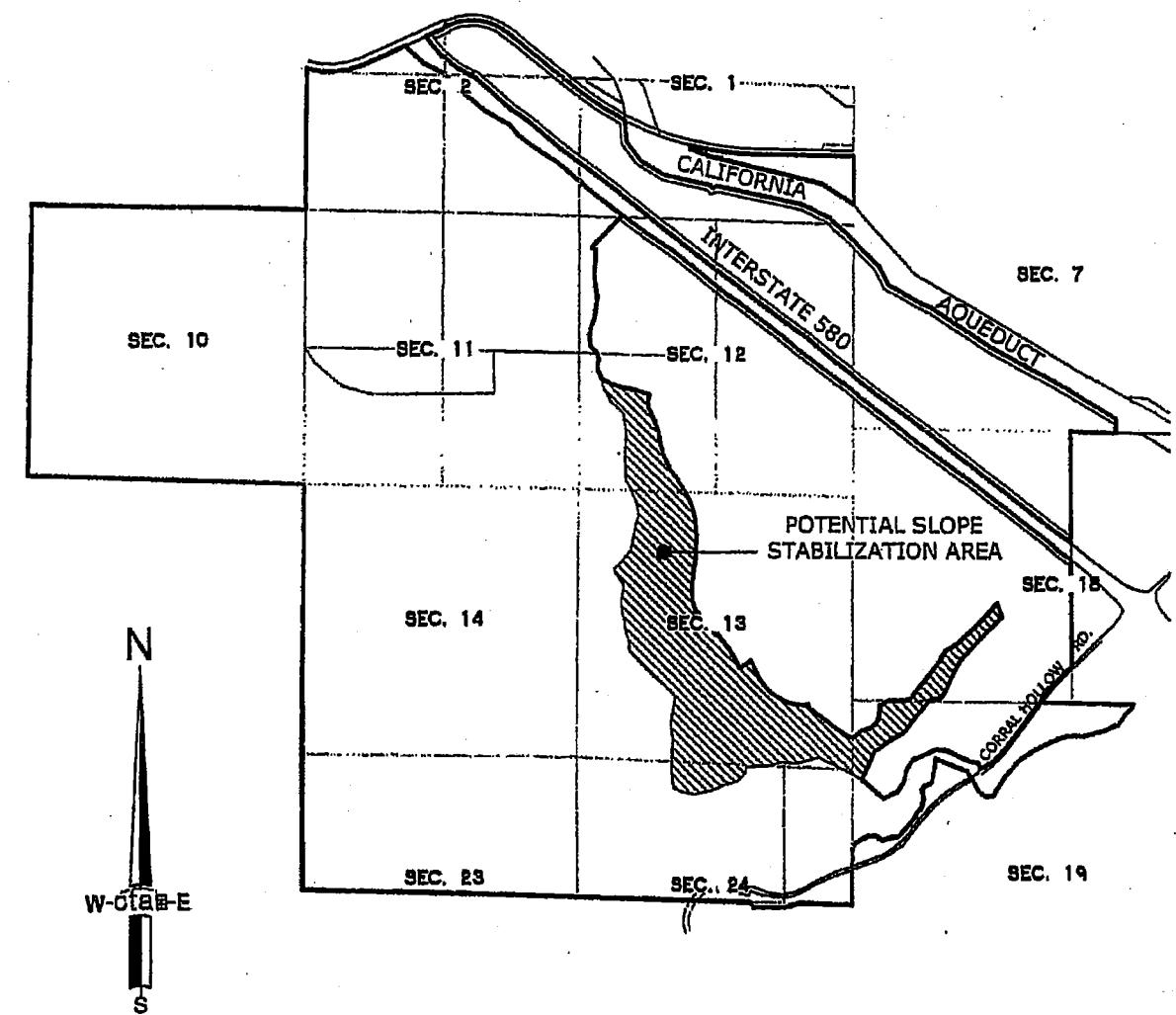
**EXHIBIT 3**

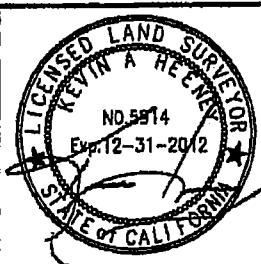
**PROPERTY MAP**

**(see attached)**

**GRANTOR'S INITIALS: dm**

EXHIBIT '3'



 <p>DATE: 09/07/2011</p>	<p><b>Preserve Area Easements</b></p>		<p>DATE: 09/07/2011 DRAWN BY: KAH</p>	<p>SHEET 5 OF 5</p>
	<p>SCALE: 1" = 3000'</p>	<p>JOB NO. 11-031-001</p>		
<p>0 1500' 3000' 6000'</p> <p>SCALE: 1" = 3000'</p> <p><b>cta</b> Engineering &amp; Surveying</p> <p>Civil Engineering • Land Surveying • Land Planning</p> <p>COUNTY OF SAN JOAQUIN STATE OF CALIFORNIA</p>				



SAN JOAQUIN COUNCIL OF GOVERNMENTS

555 E. Weber Avenue • Stockton, California 95202

209.235.0600 • 209.235.0438 (fax)

[www.sjcofg.org](http://www.sjcofg.org)

Chuck Winn  
CHAIR

Ken Vogel  
VICE CHAIR

Andrew T. Cheley  
EXECUTIVE DIRECTOR

Member Agencies

CITIES OF  
ESCALON,  
LATHROP,  
LODI,  
MANTOON,  
RIPON,  
STOCKTON,  
TRACY,  
AND  
THE COUNTY OF  
SAN JOAQUIN

## MINUTE RESOLUTION NUMBER 09-16

Whereas, the SJCOG, Inc. has accepted the staff report under authority of Minute Resolution No. 09-16 approved by the SJCOG, Inc. Board of Directors meeting on October 27, 2011.

### Agenda Item #9.4A

#### Tracy 580 Business Park and South Property Dedications and Preserve Management Plan

It was moved/seconded (Johnston/Vogel) to 1) approve the conservation easement dedications and 2) approve the PMP for the Tracy 580 Business Park Preserve. Motion passed unanimously 9/0 by voice vote.

*Rosie C. Vargas*  
ROSIE C. VARGAS  
Office Services Supervisor

Date: July 19, 2012

**EXHIBIT "I"**

TRACY HILLS SPECIFIC PLAN – LAND USE CHART – 1998 & 2014

1998	ACREAGE	2014
<b>AREA A:</b>		
MDR	51 ±	LDR
HS	40	M-1 (LT. IND.)
MDR	20 ±	LDR
<b>AREA B:</b>		
M-1	15.2	MU-BP
M-1	76.6	MU-BP
NP	12.1	MU-BP
E	10	MU-BP
HDR	10 ±	MDR
HDR	7 ±	GHC
POM	14.3	GHC
MDR	5 ±	NP
POM	10.4	MDR
VC	10	LDR
VC	7.4	HDR
NS	15 ±	GHC
HDR	11.1	LDR
HDR	8.1	LDR
GHC	8.4	LDR
MDR	21.9	LDR
E	10	LDR
MDR	10	NP
MDR	5.9	LDR
NP	10	LDR
MDR	12	LDR
MDR	8.6	NP
MDR	22.4	LDR
MDR	8.6	LDR
MDR	7.9	LDR
MDR	10.3	LDR
MDR	14.3	LDR
MDR	5 ±	NP
MDR	30.4 ±	LDR
MDR	11.5	LDR
POM	30 ±	LDR W/E
MDR	30	MU-BP
MDR	12.3	LDR
E	10	LDR
NP	10	LDR

TRACY HILLS SPECIFIC PLAN – LAND USE CHART – 1998 & 2014

1998	ACREAGE	2014
<b>AREA C:</b>		
MDR	40.5	LDR
MDR	22.7	LDR W/E
E	10	LDR
GC	5.2	ROS
OS	10 ±	RE
MDR	13.6	LDR
VC	2.2	GHC
VC	2.3	GHC
LAKE	15 ±	LDR

**EXHIBIT "J"**



DEPARTMENT OF FISH AND GAME  
BAY DELTA REGION  
7329 SILVERADO TRAIL  
NAPA, CA 94558  
(707) 944-5500

U. S. FISH AND WILDLIFE SERVICE  
SACRAMENTO FISH AND WILDLIFE OFFICE  
2800 COTTAGE WAY, ROOM W-2605  
SACRAMENTO, CA 95825  
(916) 414-6600



In reply to Service, refer to:  
08ESMF00-2012-TA-0413-01  
81420-2009-F-0721-08

Mr. Angelo K. Tsakopoulos  
Tsakopoulos Family Partnership  
AKT Developments  
7700 College Town Drive, Suite 101  
Sacramento, California 95826

Mr. Timothy Taron  
Hefner, Stark & Marois, LLP  
2150 River Plaza Drive, Suite 450  
Sacramento, California 95833-4136

MAY 15 2012

Subject: Two Proposed Conservation Easements and Potential Mitigation Property  
("Southern Preserve") in San Joaquin County, California

Dear Mr. Tsakopoulos and Mr. Taron:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG) (collectively referenced as Agencies) have reviewed the Grant Deeds of Conservation Easement Nos. 2 and 3 (titled "Southern Preserve Easement Areas 1 and 2", also referred to as the "Easements"), as well as the Preserve Management Plan, received in the Service's office on March 13, 2012. These documents are intended to protect and manage property (Property) comprised of approximately 2,753.8 acres owned by Tsakopoulos Family Partnership, and Angelo K. Tsakopoulos (collectively referred to as "Grantor"). The Property will be managed under the same Preserve Management Plan as the mitigation land provided to the San Joaquin Multi-Species Conservation Plan (SJMSCP) for the Tracy 580 Business Park (Service File No. 81420-2009-TA-0721), and the Easements will be recorded at the same time that the easement for mitigation of the Tracy 580 Business Park is recorded. Although the Property is not currently proposed as mitigation under the SJMSCP, the Property will be managed consistent with the SJMSCP preserve system overseen by the San Joaquin Council of Governments, Inc. (SJCOC). The SJCOC has voluntarily assumed responsibilities outlined in the Easements and Preserve Management Plan in order to ensure that management of the Property is consistent with nearby SJMSCP preserves.

The Property is located south of Interstate 580 approximately 5.9 miles southwest of the center of the City of Tracy with an approximate centerpoint of latitude 37.668946° and longitude -121.503231°. The Property is within the Southwest Zone of the SJMSCP, which is primarily comprised of valley grasslands and some riparian habitat adjacent to Corral Hollow Creek.

It is the Service's and CDFG's view that the proposed Property currently provides conservation value for the San Joaquin kit fox (SJKF) and western burrowing owl, as well as a known location for the California red-legged frog. This Property is within a known SJKF corridor and provides habitat for a recently-

documented population of burrowing owls. The Service's Biological Opinion for the SJMSCP (1-1-00-F-0231) indicated that the area of Tracy and southwest is important for burrowing owls, and currently there are no preserves for the SJMSCP that have known occurrences of this species. Other species on the Property that are covered under the SJMSCP will also benefit from its conservation status (e.g., Swainson's hawk, SJKF, etc.).

The Agencies acknowledge that preservation and management of the Property pursuant to the terms of the Southern Preserve Easement Areas 1 and 2 are not, as of the date of this letter, necessary to mitigate for the development of any property. However, the Agencies believe that the recordation of the Easements on the Property at this time will help preserve its ecological value. The Agencies agree that the Grantor's recordation of the Easements on the Property will not in any way limit, reduce, prejudice, or prevent Grantor from utilizing the Property as habitat mitigation for development of property within the Southwest Zone or the Transition Zone of the SJMSCP.

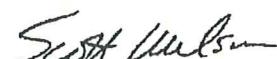
The Service and CDFG are issuing this joint letter accepting the proposal to convey the Southern Preserve Easement Areas 1 and 2, and have the Property managed by the SJCOG, pursuant to the Preserve Management Plan. The Agencies are not making any finding regarding the suitability of the Property as mitigation for any specific future project. Such a determination would be made at the time the Agencies receive and consider future permit applications. The Southern Preserve Easement Areas 1 and 2, habitat management plan and endowment funding would need to meet all Agency mitigation standards in place when and if the Property is used as mitigation land and therefore may need amending. At such time, the Agencies will consider, among other issues, whether a proposed development project impacts the same species as those supported on the Property for which mitigation value is being sought, and whether the Property location has habitat values that are suitable for mitigating the impacts associated with the proposed development, as determined by the Agencies. If multiple projects are proposed to mitigate at the Property, the Agencies may recommend the establishment of a conservation bank or consider individual project mitigation. The Southern Preserve Easement Areas 1 and 2 will be conveyed to SJCOG without an endowment for management. It is the Agencies' agreement with the Grantor that if the Southern Preserve Easement Areas 1 and 2 are used as mitigation for a future proposed project, that project will provide an endowment, using a calculation based on the time of that project's groundbreaking, to cover management of the Property in perpetuity.

Please contact Ellen R. McBride or Mike Thomas with the U. S. Fish and Wildlife Service at (916) 414-6630, or Randi Adair with California Department of Fish and Game at (707) 944-5596 if you have questions regarding this response. Please refer to Service file numbers 81420-2009-F-0721 and 08ESMF00-2012-TA-0413 in any future correspondence.

Sincerely,



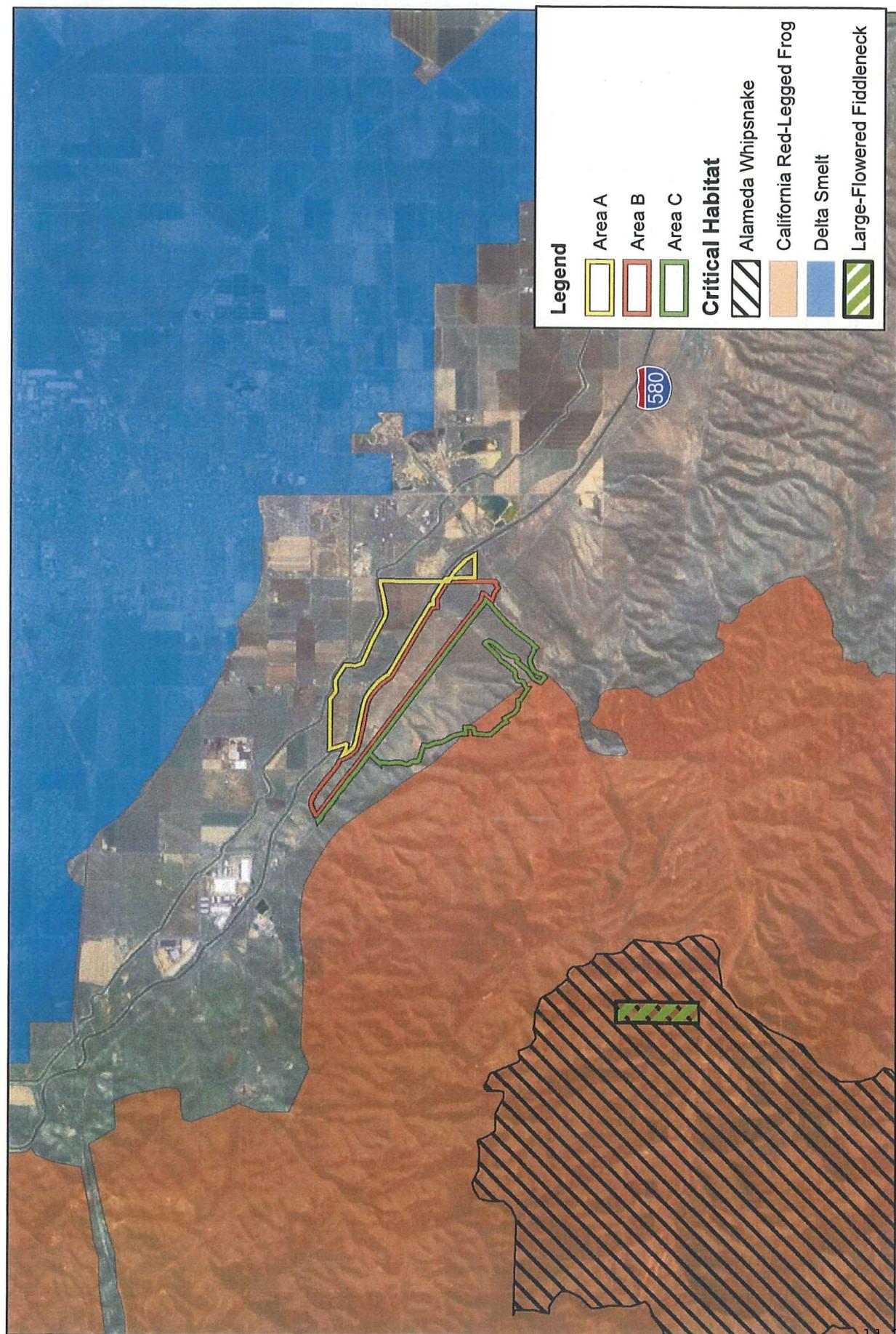
*cc:* Cay Goude  
Assistant Field Supervisor  
U.S. Fish and Wildlife Service  
Sacramento Fish & Wildlife Office



Scott Wilson  
Acting Regional Manager  
California Department of Fish and Game  
Bay Delta Region

cc: Steve Mayo, Senior Habitat Planner, San Joaquin Council of Governments  
555 East Weber Avenue, Stockton, California 95202

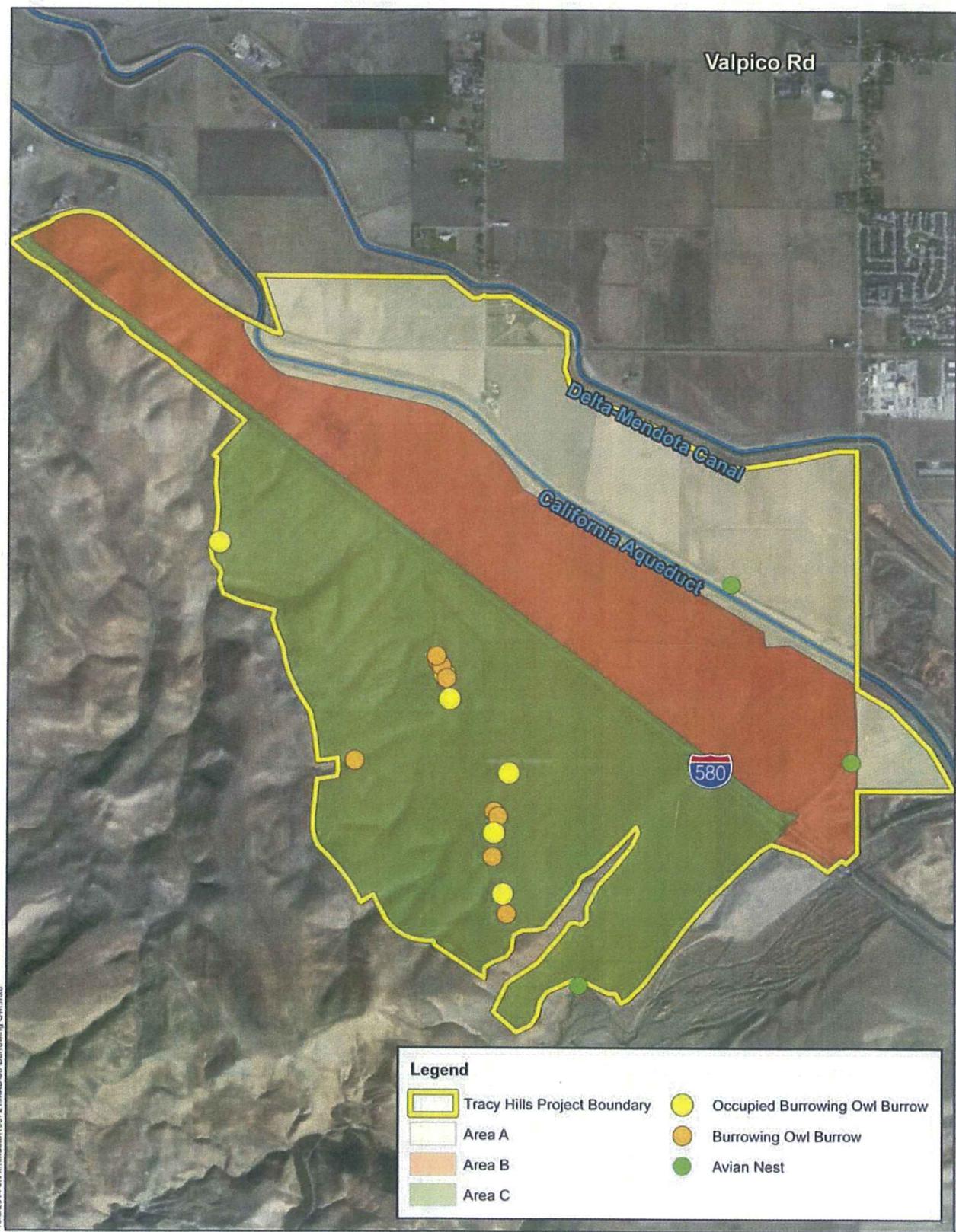
**EXHIBIT "K"**



TRACY HILLS SPECIFIC PLAN  
HABITAT ASSESSMENT AND SJMSCP CONSISTENCY ANALYSIS  
**Critical Habitat**

Exhibit 10

**EXHIBIT "L"**



Source: RBF Consulting. Tracy Hills Specific Plan Habitat Assessment and San Joaquin County Multi-Species Habitat Conservation and Open Space Plan. October 2014.

FIGURE 4.4-4

11.219

## BURROWING OWL AND AVIAN NEST LOCATION

**EXHIBIT "M"**

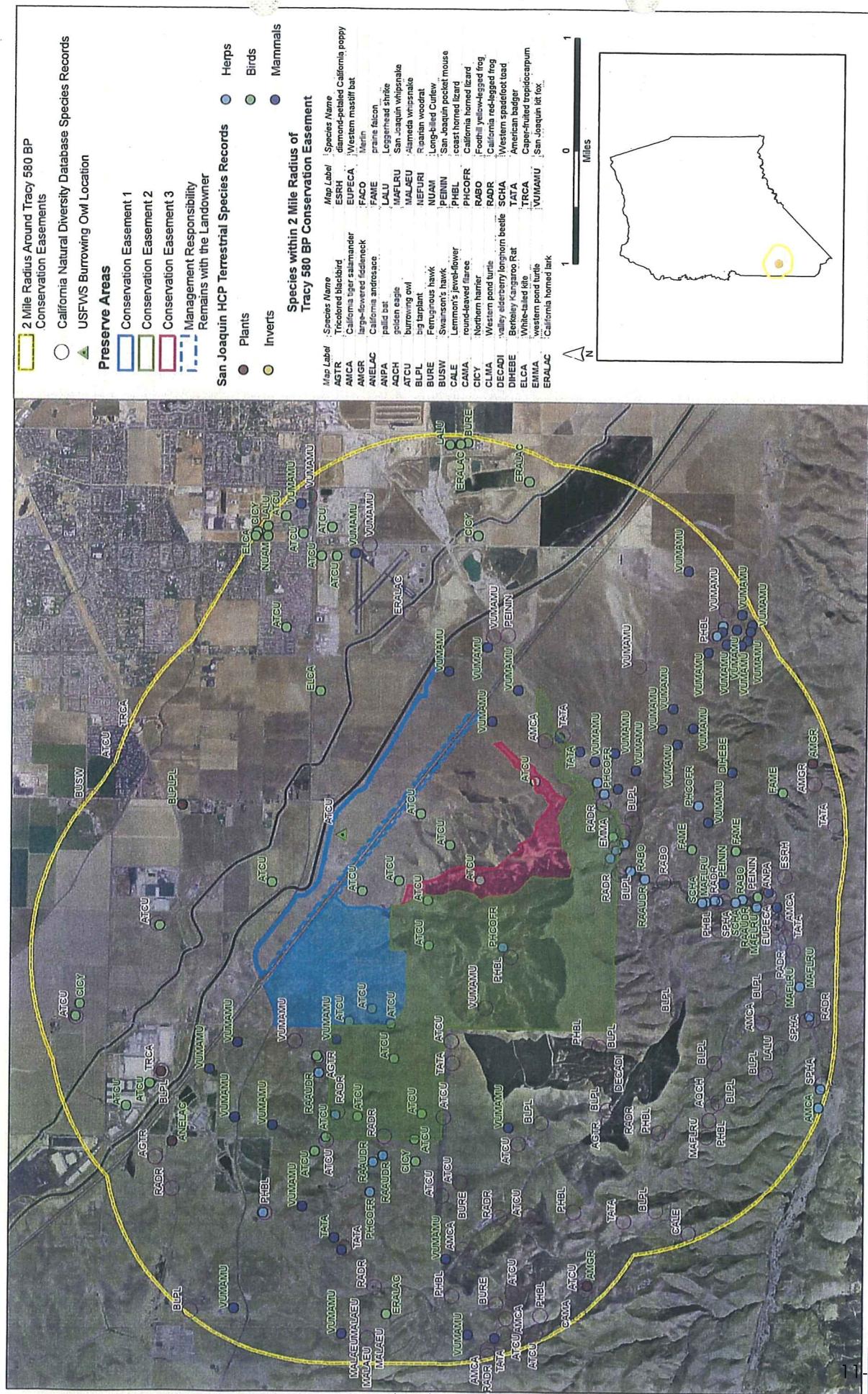
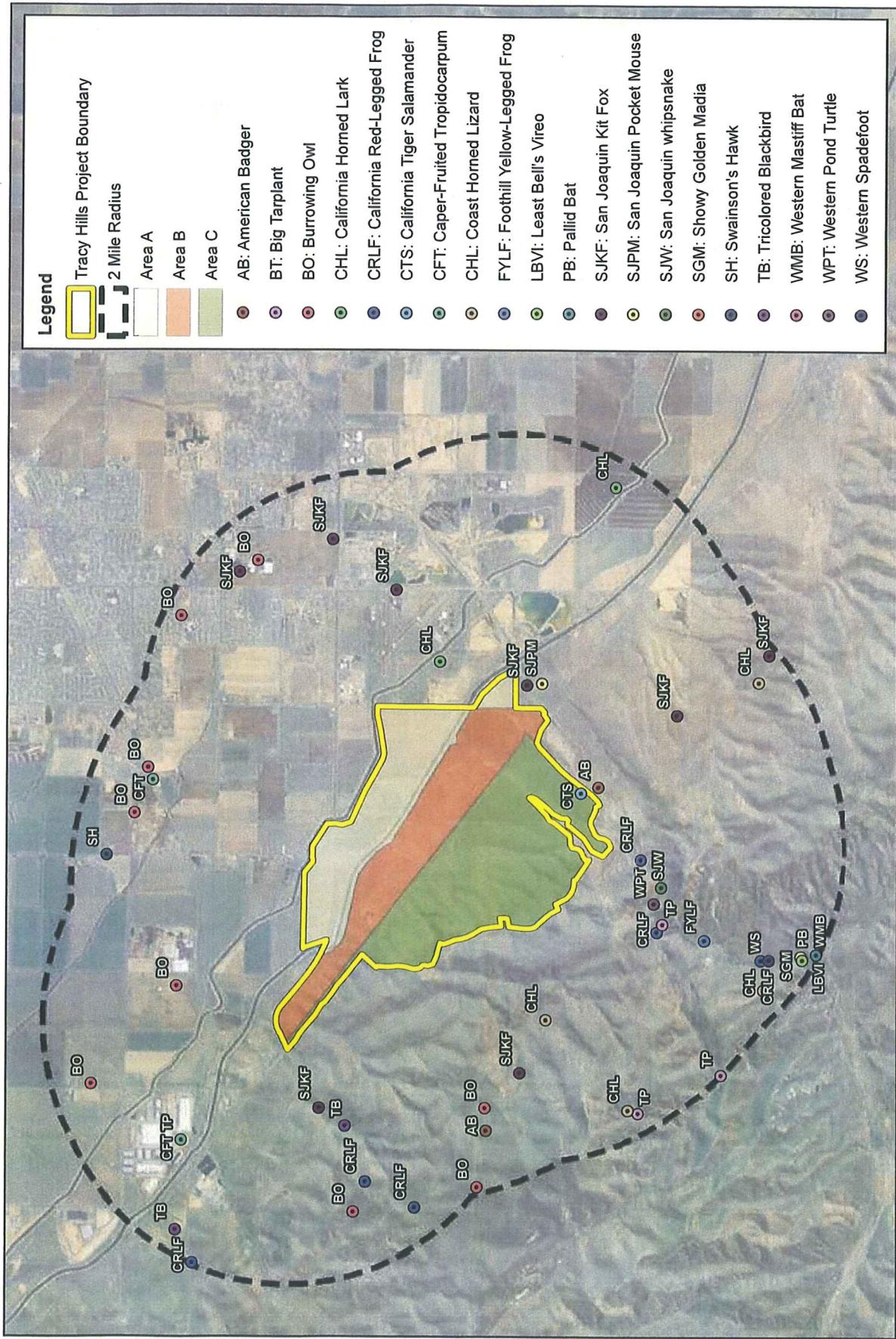


Figure 6  
Documented Occurrences of SJMSSCP-Covered Species  
within 2 Miles of Tracy 580 BP Conservation Easements

# CITY OF TRACY

## TRACY HILLS SPECIFIC PLAN DRAFT EIR



Source: RBF Consulting, Tracy Hills Specific Plan Habitat Assessment and San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, October 2014.

FIGURE 4.4-6

**CNDBB**

**EXHIBIT "N"**

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2015-0002-DWR

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**ORDER FOR ADDITIONAL INFORMATION**

In the Matter of Diversion of Water from

**SACRAMENTO AND SAN JOAQUIN RIVER WATERSHED AND DELTA**

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**BACKGROUND:**

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an Executive Order to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages for municipal water use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015.
2. The Executive Order refers to the Governor's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. These conditions also threaten the survival and recovery of fish, wildlife, and plants that rely on California's rivers, including many species in danger of, or threatened with, extinction. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent.
3. On May 27, 2014, the State Water Resources Control Board (State Water Board) issued a "Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watershed with a Post-1914 Appropriative Right." Based upon the reservoir storage and inflow projections, along with forecasts for precipitation events, the State Water Board determined the existing water supply in the Sacramento and San Joaquin River watershed was insufficient to meet the needs of all water rights holders. With the notice, the State Water Board notified all holders of post-1914 appropriative water rights within the Sacramento and San Joaquin River watershed of the need to immediately stop diverting under their post-1914 water rights, with some minor exceptions for non-consumptive diversions. Approximately 5,435 junior water-rights in the Sacramento River watershed and 3,116 water rights in the San Joaquin River watershed received curtailment notices. The condition of curtailment continued until water conditions improved and curtailment could be lifted.
4. On July 2, 2014, the State Water Board adopted an emergency regulation for Curtailment of Water diversions to Protect Senior Water Rights (California Code of Regulations, title 23, adding section 875 and 878.3, and amending Section 878.1 and 879<sup>1</sup>) (Regulations). The Regulations were reviewed by the Office of Administrative Law and went into effect on July 16, 2014. The Regulations establish a drought emergency curtailment method for post-1914 water right holders and requirements for riparian and pre-1914 rights holders to provide additional information in specific circumstances.
5. Pursuant to section 879, subdivision (c), the Deputy Director for the Division of Water Rights (Division) has delegated authority to issue an Order requiring riparian or pre-1914 water right holders to provide additional information. Section 879, subdivision (c), states:

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<sup>1</sup>All further section references are to California Code of Regulations, title 23 unless otherwise indicated.

*Upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 appropriative water right holder or upon receipt of information that indicates unlawful diversions of stored water by riparians or pre-1914 appropriative water right holders, the Deputy Director may issue an order under this article requiring such water right holders to provide additional information regarding the property patent date, the date of initial appropriation, and diversions made or anticipated during the current drought year. Any water right holder receiving an order under this subdivision shall provide the requested information within five (5) days.*

6. On July 23, 2014, the California Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) alleged that south and central Delta riparian and pre-1914 diverters were illegally diverting water stored and released by the State Water Project and the Central Valley Project (collectively, Projects) and water acquired by the Project Agencies' contractors through transfer and exchange agreements. DWR and Reclamation requested that the State Water Board exercise its statutory authority to require Delta water users to provide proof of their "assumed" water rights or require curtailment of the unauthorized diversions. The State Water Contractors and Westlands Water District submitted letters in support of the DWR and Reclamation request on August 5 and 7, 2014 respectively.
7. On August 13, 2014, the Division received a complaint filed by California Sportfishing Protection Alliance (CSPA) alleging illegal diversion of water from the San Joaquin, Mokelumne, Cosumnes and Calaveras Rivers and Delta agricultural return flow by DWR and Reclamation at their Delta pumping facilities and illegal diversion of San Joaquin River riparian flow by Reclamation at its Friant Project. The letter states that it is a complaint against Reclamation and [unnamed] others for unauthorized and illegal diversion of San Joaquin River riparian flow.
8. Storage by the Projects may be affected in two manners. As asserted in the July 23 letter, where water quality standards are controlling Project operations, any diversion of stored water by riparian and pre-1914 diverters necessitates additional releases of stored water or reductions in Project deliveries. In addition, the Division notes that unauthorized diversions anywhere within the Sacramento and San Joaquin River watershed and Delta may reduce instream flows in a manner which would require the Projects to increase reservoir releases to meet Delta water quality standards.
9. Attachment A is a summary of the largest Statement of Water Diversion and Use (Statement) holders claiming riparian and pre-1914 rights in the Sacramento and San Joaquin River watershed and Delta from the State Water Board's electronic water rights information management system (eWRIMS) and Report Management System (RMS). These large diverters claiming rights to divert from April 1 to September 30 have potential to divert water released from Project storage facilities or water needed by other senior rights. Direct diversion for power generation is excluded from this list, because it is non-consumptive. The list in Attachment A represents 90 percent of reported water use by Statement holders in the Legal Delta and 90 percent of the remaining Sacramento and San Joaquin watershed reported demand. The list includes 1,061 claimed rights, held by a total of 445 different parties. Additional information regarding these known diversions is necessary to determine if there has been unauthorized diversion of stored water or if there is potential for unauthorized diversion.
10. On November 24, 2014, the Division requested that Statement holders who had not previously identified their year of first use do so. This Informational Order requests more extensive information documenting the claimed right. Irrespective of whether you responded to the November 24 letter, you will need to respond to this order.

**FINDINGS:**

1. Section 879, subdivision (c), authorizes the Deputy Director for the Division to require parties claiming a riparian or pre-1914 right to divert water to submit certain information concerning the water rights claimed and concerning the past and future anticipated diversions under the claimed right. Section 879,

subdivision (c), supplements the State Water Board's general investigatory authority under Water Code sections 183 and 1051.

2. The Deputy Director for the Division has information that indicates there may be unlawful diversions of stored water by riparians or pre-1914 appropriative water right claimants in the Sacramento and San Joaquin River watershed and Delta.
3. To determine whether unauthorized diversions have occurred, the State Water Board needs supporting documentation for the claimed water right including the property patent date and the date of initial appropriation.
4. To determine whether unauthorized diversions have occurred, the State Water Board needs additional information on diversions made under a riparian or pre-1914 basis-of-right during 2014 and projected 2015 use.

**IT IS HEREBY ORDERED:**

1. This order is issued on the date shown below. However, this order takes effect on March 1, 2015, which is the 25<sup>th</sup> day after issuance of the order. All submittal requirements are based on the effective date of this order.
2. The existing pre-1914 and riparian water right claimants along the Sacramento and San Joaquin River watershed and Delta known by the State Water Board, as identified in Attachment A, are subject to this Order for additional information pursuant to section 879, subdivision (c), and shall provide the following information no later than March 6, 2015:
  - (A) The monthly amounts of water diverted and the basis of right allowing for the diversions for each month in 2014, and the anticipated monthly amount of water to be diverted and the basis of right each month in 2015. For direct diversion, the diversion information shall include the total amount of water diverted in the month and the maximum rate of diversion for each month. For storage, the diversion information shall include the quantity collected to storage each month. For all methods of diversion, you are requested to identify the method used to determine the amounts reported, and the primary use of water. This information shall be filed electronically at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/ewrims/curtailment/wateruseinfo.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/ewrims/curtailment/wateruseinfo.shtml)
  - (B) Identification and location of the point of diversion and place of use for water right being claimed for each point of diversion, the purpose of use, and the place of use being served with acreage and crop type, if applicable. All documentation supporting the type of water right claimed, including the property patent date and patent map, if riparian right. If pre-1914 right is claimed, a copy of notice filed with the county, copy of property deed and all other information supporting the pre-1914 right pertaining to initial diversion and continued beneficial use of water. This information is an attachment to the report filed in (A) and must be filed electronically at:  
<mailto:SWRCB-2014informational-order@waterboards.ca.gov>.
  - (C) If the current drought declaration is extended, the monthly diversion amount for each month starting with February 2015 shall be submitted by the fifth (5<sup>th</sup>) of each succeeding month until the drought ends.
3. All water users or water right claimants receiving this Order are required to submit the information requested. Failure to comply with this Order subjects the party to enforcement action.
4. Reservation of Enforcement Authority and Discretion: Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including, but not limited to, the authority to bring enforcement against diverters for unauthorized diversion or use in violation of Water Code section 1052.

STATE WATER RESOURCES CONTROL BOARD

*Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: **FEB 04 2015**

Attachment A

Owner	Statement Number(s)
A & M PYLMAN FARMS	S001906
A ROSSI INC	S016233, S020322
ABRATE FARMS	S018798
ABF FARM SERVICES INC.	S020408, S020411
ABILIO MORAIS	S020797, S020970
ADHEMAR ARELLANO	S017826, S017829
ADRIANNA ANTONIOLI	S020223
AG SPANOS TRUSTEE OF THE ALEX & FAYE SPANOS FAMILY TRUST UA	S017045, S017048, S017051, S017054
ALECK DAMBACHER	S018060
ALICE WHITMAN	S020009
AMISTAD RANCHES	S021377, S021383, S021403, S021405, S021406, S021411, S021414
ANDERSON-COTTONWOOD IRRIGATION DISTRICT	S012208, S016818
ANDREW SOLARI	S019348, S019407, S019410, S019413
ANDY JOHAS	S017903, S017906
ANITA MERLO	S019713, S019716, S019719, S019722, S019736
ANTHONY DUTRA	S017043
ANTHONY G. DUTRA TRUST	S018871, S018874, S023279
ANTHONY JAQUES JR	S017942
ANTHONY PODESTA FAM LP, ETL	S017930
ANTONIO BISCAIA	S018172, S018175, S018181
ANTONIO BRASIL	S018081, S018084
ANTONIO MARTIN	S019149
ANTONIO PASSAGLIA	S020156
ARCH CAMPBELL	S014982
ARMANDO P. AND MARY G. VANNI TRUST	S020887, S020888, S020889
ARNAUDO BROS LP	S017289, S017292, S017302, S017320
ARNAUDO BROTHERS	S019730
AUFDERMAUR LLC	S017189
AUGUSTA BIXLER FARMS	S016297, S016298
B&R TE VELDE RANCH	S017935, S017941, S017944, S017947, S017950, S017957, S017986, S019440, S019443, S019446, S019479
BAIRD LANDS INCORPORATED	S018109, S018112
BALDEV MUNGER	S017316, S017409, S017411
BANK OF STOCKTON	S018425, S018427, S018433
BANTA-CARBONA IRRIGATION DISTRICT	S000495
BARBARA OHM	S000137
BARBERA PACKING CORPORATION	S021432
BATTLE CREEK ISLAND RANCH, LLC	S018092
BERNICE SILVA	S018495
BERNIECE L. SILVA TRUST	S018507, S018513, S018766, S018769, S018890, S018987, S019017
BERT BACCHETTI FARMS	S017218
BETTENCOURT FARMING LLC	S016492
BETTY BRAZIL	S018185
BIDWELL RANCHES INC	S001613
BLACKHOLE HABITAT, INC.	S020867, S020871, S020872, S020873
BLOSSOM RANCH, INC.	S014703
BRADFORD HELLWIG	S017842, S017848
BRIAN BAILEY	S018023
BROADWAY CANAL RANCH	S019324, S019330, S019333, S019339
BROOKSIDE CLASSICS OWNER'S ASSOCIATION	S017418
BROOKSIDE LAKE COMMUNITY ASSOCIATION	S017403
BROWNS VALLEY IRRIGATION DISTRICT	S020580
BRUCE GORTO	S018134
BRUCE TOWNE	S018042, S018054
BUTTE SINK WATERFOWL ASSOCIATION	S000550
BYRON-BETHANY IRRIGATION DISTRICT	S021256
C&G FARMS	S006306
CALAVERAS PUBLIC UTILITY DISTRICT	S010773
CALIFIA, LLC	S017421, S017427, S017455, S017461, S017464, S017469, S017475, S017478, S017479, S017481, S017482, S017484, S017485, S018087
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE	S017677, S017680, S017681, S017683, S017686, S021242, S021243
CAMILLO LEVENTINI	S018299
CARDOZA HOME RANCH	S019065, S019089, S019092
CARROL GRUNSKY	S018400
CCRC FARMS, LLC	S020989, S020992, S021018, S021019, S021020, S021021, S021027, S021028, S021030, S021031, S021032, S021033
CECIL RODGERS	S016456, S020120
CELESTINO & ESMERALDA PERDIGAO TRUST	S018169

Attachment A

Owner	Statement Number(s)
CENTRAL CALIF IRRIGATION DISTRICT	S000477
CERRI & SON	S016213, S016470
CHARLES SYLVA	S017812
CHARLES TYSON	S021075
CHARLOTTE GILMORE	S017130
CHARLOTTE ROBBINS	S019794
CITY AND COUNTY OF SAN FRANCISCO PUC AGM WATER ENTERPRISE	S002635, S002636, S002638
CITY OF ANTIOCH, WATER TREATMENT PLANT	S009352
CITY OF DAVIS	S020968
CITY OF FOLSOM	S017323
CITY OF MANTECA	S015973
CITY OF SACRAMENTO	S014834
CITY OF TRACY	S019112
CLAVIUS CLUB COMPANY LLC	S020491, S020499, S020503
COLDANI FAMILY TRUST	S020780, S020781, S020782, S020783, S020784
COLEMAN FOLEY	S016294, S018955
COLEMAN FOLEY, JR.	S018436, S018439, S018442, S018451, S018939
COLLINS PINE COMPANY	S000698
COLUMBIA CANAL COMPANY	S001073
CONEY ISLAND FARMS INC	S020857, S020861, S020862, S020863, S020864
CONEY ISLAND LP	S020865
CORTOPASSI LIFE ESTATE, ET AL	S018698, S018699, S018700, S018701
CORTOPASSI PARTNERS LP	S020808, S020809, S020811, S020814, S020816, S020817, S020819, S020820, S020822, S020823, S020824, S020825, S020826
CRAIG MCARTHUR	S008735
D & R LIVESTOCK	S018255
D&G MERWIN	S017765, S017767, S017768, S017780, S017789, S017792
DANIEL ROZA JR	S019020, S019023, S019029, S019032, S019041, S019047, S019050, S021255
DANIEL SERPA	S018466
DARSIE HUTCHINSON AND PETTIGREW INC.	S021940
DAVID DAL PORTO	S017675
DAVID NUSS	S020011, S020012, S020013
DAYLY LEE/JEAN LEE FAMILY TRUST	S021945
DBE - ELLIOT FAMILY CO., LLC	S017383
DE MATEI FAMILY TRUST	S018384
DEADHORSE LP	S016908, S018494
DEER CREEK IRRIGATION DISTRICT	S000731
DELTA ORCHARDS, LP	S018579
DENNIS BRUGGMAN	S019859
DENNIS LEARY	S018046
DIABLO VINEYARDS	S021435, S021436
DIANE KIRKHAM	S018371, S018377
DIANE YOUNG	S019277, S020544, S020548, S020552
DOHRMANN FAMILY LLC	S017889
DON WIDMER	S019561
DONALD BIANCHI	S017662
DONALD E MORETTI TRUST	S018188
DONALD R REYNOLDS FAMILY	S017653
DONNA REED	S019376, S019912, S020750
DOUGLASS EBERHARDT II	S018428, S018431, S018434, S018437, S018921, S018927, S018933, S018935, S018954, S018951, S018964
DOUGLASS EBERHARDT, III ET AL.	S018924
DUARTE SOARES	S019682
DUTRA FARMS INC.	S023276, S023281
EARNEST POMBO JR.	S020594
EAST BAY REGIONAL PARK DISTRICT	S018690
EAST CONTRA COSTA IRRIGATION DISTRICT	S000404
ED VIRGIN	S019275
EDDIE P. AND AURELIA I LUCCHESI TR	S018840
EDDIE VIERRA FARMS LLC	S016199
EDDY CARDOZA	S019053, S019056
EDWARD MACHADO	S018650, S018765
EDWARD McDOWELL	S020047, S020612
EIGHT MILE ROAD NORTH L.P.	S017757, S017760
EL DORADO IRRIGATION DISTRICT	S009034, S015941
ELLIOT DELTA ORCHARDS, LLC	S017096, S018880, S018886
ELLIOT FAMILY REVOCABLE TRUST	S016915, S018859
ELMWOOD PARTNERS L.P.	S018872, S018878

Attachment A

Owner	Statement Number(s)
EMPIRE FIELDS, LLC	S018518
ENSHER, ALEXANDER AND BARSOOM, INC.	S018790, S018793, S018808, S018811, S018813, S018814, S018816, S019130, S019880, S019886
ERNEST DIXON	S001472
EVERETT LUIZ & SONS DAIRY	S016530, S016937
FAGUNDES DAIRY	S018779
FAHN BROTHERS PROPERTIES LLC	S016796
FARMLAND RESERVE, INC	S017811
FARMLAND RESERVE, INC.	S017814
FAY ISLAND FARMS, LLC	S017736, S017739
FAY LOUIE	S019126
FERREIRA FAMILY TRUST	S018015, S018024
FIDDYMENT ESTATE COMPANY LLC	S018059
FILDIN DEVELOPMENT COMPANY	S017014, S017016, S017017, S017025, S017026, S017027, S017028, S017029, S021429
FIREBAUGH CANAL COMPANY	S001098
FRANK E. & ELEANOR N. SILVA IRREVOCABLE TRUST, A & B	S018441
FRANK FRANEL COMPANY	S018447
FRANK LAMB	S016975
FRANK MACHADO	S020567, S020568, S020569, S020570, S020571, S020574
FRANK SILVA	S018435
FRANKIE SPINELLA	S016993
FRED A. DOUMA FAMILY TRUST	S019072
FREDERICK J. AND BERNARD F. DAMELE	S016467
GALLO VINEARDS INC	S016191
GARDINER IMPROVEMENT CO.	S021946
GARY CAFFESE	S019170, S019173
GARY GRAHAM	S018902
GASTO CO.	S017694
GEORGE BARBER	S019814
GEORGE BIAGI	S018662, S018664, S018667
GEORGE N. VIERRA	S019560
GIKAS PARTNERS	S017480
GLENMARRY PROPERTY SERVICES	S018967
GLENN-COLUSA IRRIGATION DISTRICT	S007367, S007368
GLIDE IN RANCH	S016333, S016334
GLOBAL AG PROPERTIES USA, LLC	S020798
GLORIA BACCHETTI	S019076
GRAEAGLE WATER COMPANY A CALIF CORP	S008734
GRAHAM CONNOR	S016379
GREENFIELDS TURF, INC	S020027
GRUNAUER COMMUNITY PROPERTY TRUST ET AL	S017215
GUILLERMO PEREZ	S019142
H AND C VAN EXEL 2002 TRUST	S016662
H. VAN DE MAELE	S019635, S019641
HALLWOOD IRRIGATION COMPANY	S016332
HAMILTON HECHTMAN JOINT VENTURE	S017082, S021257
HASTINGS ISLAND LAND COMPANY	S020104, S020108
HAY'S RANCH LLC.	S020584
HEATHER TANAKA	S019359
HENRY E MULLER & DIANA MULLER REVOCABLE TRUST	S017201
HENRY FOPPIANO	S018305, S018308, S018320, S018322, S018323, S018325
HENRY VAN EXEL	S016664
HERBERT A. AND JOYCE M. SPECKMAN	S020843, S020844, S020845
HERBERT A. SPECKMAN & JOYCE M. SPECKMAN REVOCABLE FAMILY	S023265
HERINGER HOLLAND LAND & FARMING CO.	S017888
HERITAGE LAND COMPANY, INC.	S019402, S020302, S020303, S020626, S020757, S020758, S020759, S020761, S020765, S020767, S021854, S021856, S021857
HILDER FAMILY PROPERTIES PTP	S018156, S018219
HOLDENER RANCHES	S017284, S017287
HONKER LAKE RANCH	S016906
ISLANDS, INC.	S017832, S017835, S017838, S017841, S017844, S017847, S020883, S020885, S020886
ISONE INC.	S018867, S018876
J H PATTERSON	S017122
J.H. JONSON & SONS INC.	S016702, S016703, S016704
J.L. ALDRICH RANCH	S017199
J.W. SILVEIRA CO.	S020972
JACK KLEIN TRUST PARTNERSHIP	S019500, S019580, S019582, S019583, S019585, S019588, S019599
JACK KLEIN TRUST PARTNERSHIP	S019482, S019486, S019489, S019497, S019602, S019605
JACKSON LAND & CATTLE LP	S017963, S017966, S017998, S018001, S018004, S018007, S018019, S018028, S018041, S018044

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Owner	Statement Number(s)
JACQUELYN CORDES	S016278
JAL FARMS INC	S020535, S020539, S020543, S020547, S020551
JAMES CODDINGTON	S016987
JAMES DE FREMERY IV	S019811, S019828, S019831, S019843
JAMES HARDESTY	S017511
JAMES MORRIS	S018043, S018061
JEAN BRODIE	S017665, S017837
JIM CHANCE	S019219
JOE SANCHEZ FARMS INC	S017216, S019865
JOE SILVA	S021341
JOHN AND MARIE CRONIN TRUST B	S016495
JOHN ARMANINO	S019141
JOHN BACKER	S020751
JOHN BLOOMFIELD	S013812
JOHN C KELLEY PROPERTIES LLC	S019057, S019120, S019123, S019129, S019132, S019144, S019145, S019147
JOHN COELHO	S000313
JOHN KAUTZ	S015087
JOHN L. & DIANA M. LEWALLEN TRUST, ET AL.	S021936
JOHN MCCORMACK COMPANY INC	S019921
JOHN MOULES	S020566
JOHN ROCHA	S018244, S018247, S018293, S020456, S020471, S020475, S020479
JOHN SCHEIBER	S022032
JOHN SOTO	S019379
JOHNNIE COSTA	S019069
JOINT WATER DISTRICTS BOARD	S000480
JOSEPH BACCHETTI	S020343
JOSEPH RATTO	S016258, S019316, S019318, S019319
JOSEPH SANCHEZ	S017264, S019830
JOY & ROBERT AUGUSTO TRUST	S016918
JUDITH BALCAO	S017859
KAE FARMS LLC	S016571
KARAN TOLAND	S019824
KELSEY RANCH LP	S001496
KEVIN MIKELIAN	S016673
KEWEL MUNGER	S017304
KIRTLAN FAMILY TRUST	S019063, S019066
KLEIN FAMILY RANCHES	S019448, S019450, S019451, S019454, S019456, S019457, S019459, S019460, S019462, S019463, S019465, S019466, S019469, S019472, S019475
KNOCH INC	S001050
KOLBER FARMS LLC	S018801
KRULL, BURNICE A LP #1	S019480
KURT AND SANDRA KAUTZ FAMILY TRUST	S016909
L & L FARMS, LLC	S017827, S020041, S020044
LAFAYETTE RANCH	S019353
LAKE WINCHESTER VINEYARDS	S017872
LAMB-GIANELLI FAMILY LIMITED PARTNERSHIP	S019538
LARKIN TR ET AL	S019696
LAWRENCE R AND RUTH VOTH SCHNEIDER FAMILY REVOCABLE TRUST	S020621
LEARY ET AL	S020749
LEEN DESNAYER	S018649, S018652
LINDA HEISIG	S016224
LLOYD PAREIRA	S021809
LONE TREE MUTUAL WATER COMPANY	S010411
LONG BROTHER FAMILY L.P.	S020890, S020891
LOS MOLINOS MUTUAL WATER CO	S002908, S002910
LOS RIOS FARMS INC	S013269, S022018, S022019, S022020, S022021, S022022
LOUIS BIAGIONI	S018831
LOUIS MELLO RANCH L.P.	S018235, S018238, S018241
LYNN MILLER	S016244
M RATTO, RODGERS, OHM, L RATTO AND NOMELLINI	S018768
M&T CHICO RANCH, INC.	S016689
MACHADO REVOCABLE TRUST	S016852
MADERA IRRIGATION DISTRICT	S004978, S012547, S014187
MAIN STONE CORPORATION	S019603, S019620, S019623, S019626, S019629, S019632, S019679, S019685, S019688, S019691, S020409
MALCOLM MCCORMACK	S021947
MANUEL MONROY	S017924
MARCHINI LAND COMPANY	S019509, S019512

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MARCHINI LAND COMPANY PTP	S019495
MARGERY STRASS	S019813, S019816, S019819
MARILYN MCKAPES	S020137
MARLENE RIZZI, LARRY PELLEGRI & GIOVANNONI TRUST	S019468
MARTIN EMIGH	S020799
MELINDA BARBERA	S021236
MELLO FARMS INC. - LOCKE	S022733, S022734
MERCED IRRIGATION DISTRICT	S004718
MERRILL/JOHNSON VINEYARDS	S021437
MERRITT ISLAND RANCH- GREENE & HEMLY, INC	S018959
MICHAEL DUTRA	S017042
MICHAEL GLEARY TRUST	S019839
MICHAEL QUARTAROLI/CWC LLC	S018253, S018256, S018259, S018296
MICHAEL ROBINSON	S019362
MING CENTRE, LLC C/O PREMIER MANAGEMENT CO.	S017046
MINNIE RATTO	S020329
MIZUNO FARMS INC	S015968, S015969, S015970, S017182
MNM VINEYARDS LLC	S017587, S017592
MUZIO FARMS, INC	S020071, S020073
MYERS LAND COMPANY LLP	S018614
N.R., B.P., D.C. HAMILTON	S017062, S018257
NAGLEE BURK IRRIGATION DISTRICT	S017229, S017232, S017235, S017241, S017244
NAKAHARA FAMILY TRUST C	S018034
NANCY NEUGEBAUER-HAASE	S016248
NANCY RIPKEN	S018170, S018183
NATAU ROAD JOINT PUMP	S020144
NEVADA IRRIGATION DISTRICT	S010794, S013330, S013791, S013800, S013809, S013927, S013928, S014356
NIRMAL SAMRA	S022185
OAKDALE IRRIGATION DISTRICT	S004683
ODYSSEUS FARMS	S015031
OLAGARAY BROTHERS	S017177, S017186
PACIFIC FRUIT FARMS	S002064, S002055, S002066, S008159, S019372
PACIFIC GAS AND ELECTRIC COMPANY	S000892, S000922, S000923, S000944, S000952, S000954, S000977, S000980, S000992, S000993, S000995, S001014, S009033, S020530, S020534, S020542
PARAMOUNT LAND COMPANY, LLC	S022153
PARKER DEVELOPMENT COMPANY	S013716
PARROTT INVESTMENT COMPANY	S009897
PATTERSON IRRIGATION DISTRICT	S009320
PAUL STEFANI	S020109
PER MC, LLC.	S020582
PESCADERO RECLAMATION DIST NO 2058	S019681, S019684, S019687, S019690, S019693, S019695, S019699, S019702
PETER BROWN	S022735
PETER DWYER, JR.	S018708, S018709
PETERSEN ESTATE COMPANY	S019224, S019242
PETERSEN RANCH	S019227, S019315
PIERSON LAMBERT VINEYARDS LLC	S018009
POINT RANCH PARTNERS LLC	S017233
PRINCETON-CODORA-GLENN IRRIGATION DISTRICT	S020961
PROVIDENT IRRIGATION DISTRICT	S020960
PUMP HOUSE RANCHES INC	S018360, S018363, S020125
PYLMAN VINEYARDS INC	S020149, S020157, S020454
R & M RANCH PTP	S020085, S020089, S020093
RANDALL RANCH GREENE & HEMLY INC.	S017190
RC FARMS INC	S020216, S020217
RECLAMATION DISTRICT #108	S020657, S020661, S020716
RECLAMATION DISTRICT #150	S020462
RECLAMATION DISTRICT #2068	S000565, S000566, S000567, S000571, S000573, S000574, S000576, S000577, S000578, S000579, S000580, S000581, S000582, S000583, S000584, S004995
RECLAMATION DISTRICT NO. 1004	S020165, S020172
RENZO MENCONI	S016420
REYNOLDS, JEAN CAROLE ETAL	S019683
RICHARD AND MIKKI RIELLA 2006 FAMILY TRUST	S019146
RICHARD BRANN	S018693
RICHARD G. KLEIN FAMILY LIMITED PARTNERSHIP	S019591
RICHARD JENNINGS	S014780, S014781, S014784
RICHARD MARCUCCI	S019689
RICHVALE IRRIGATION DISTRICT	S000378
RIELLA RANCHES TRACY RANCH, LLC	S019488

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RIEN AND LIESKE DOORNENBAL TRUST	S016257
RINDE TRACT PARTNERS LLC	S019251, S019253, S019256, S019262
RIO BLANCO RANCH	S019356
RIVER GARDEN FARMS COMPANY	S022169
RIVERMAID LAND LTD	S017228
RIM VINEYARDS LLC	S018394
ROBERT & CAROLYN REYNOLDS FAM LLC	S021853
ROBERT ARCEO	S019609
ROBERT CALCAGNO	S017273, S017276, S017282, S017285
ROBERT CECCHINI, INC	S016605, S016612
ROBERT FORBES	S000413
ROBERT GALLO	S017862, S018452
ROBERT HILARIDES	S019624
ROBERT J COSTA FARMS LLC	S016214
ROBERT J. AND NIVIA SILVA TRUST 8-31-08	S017915, S017961, S019444
ROBERT KAMMERER	S018002
ROBERT KIRTLAN	S017079, S017089
ROBERT MORI II	S018008
ROBINSON DIVERSIFIED FARMS #1	S009019, S009020, S019350, S019371
ROBINSON FAMILY RANCH #4	S008881, S019365
ROGER ZANNETTI	S020158
RON DEL CARLO	S020227
RONALD A. AND JANET MARCHETTI 2005 TRUST	S018294, S018307
RONALD BUHLER	S006543
RONALD NUNN FAMILY LTD.	S020718
RONALD ROBINSON	S016674
ROY MAZZANTI REVOCABLE TRUST	S017899, S017901, S017902, S017904
ROYAL WINE CORPORATION/HERZOG WINE CELLARS	S018014, S018039
RUDY M. MUSSI INVESTMENT L.P.	S016196, S017299, S017911, S017913, S017917, S017958, S018634, S018635, S018637, S018646, S019737, S019740, S020074, S020075
RUMSEY WATER USERS ASSOCIATION	S016899
RUNYON HOUSE VINEYARDS, LLC	S018146
S & B ROBERTSON FAMILY LIMITED PARTNERSHIP	S018058
SALLY BOWLSBEY	S020154, S020599
SAN JOAQUIN DELTA FARMS INC.	S017952, S019334, S021374
SAN JUAN WATER DISTRICT	S000656
SAN LUIS CANAL COMPANY	S001074
SARALE FARMS INC	S016652, S016653, S016656, S016658
SCHMIDT FAMILY PROPERTIES LLC	S016268
SCULLY PACKING COMPANY	S020286
SHADOWBIRD INC	S020068
SHARON VOTAW	S016249
SHERMAN CHIU	S020587
SILVERADO PREMIUM PROPERTIES LLC	S015343
SNODGRASS PARTNERS, LLC	S018145
SOUTH COW CREEK DITCH ASSOCIATION	S017295
SPAELLA REYNOLDS PTP	S021852
SPANOS FAMILY PARTNERSHIP	S017058, S017061, S017064, S017067, S017069, S017072
SPECKMAN EMPIRE TRACT LIMITED PARTNERSHIP	S023253, S023255, S023257, S023259, S023261, S023263, S023264
STANFORD VINA RANCH IRRIGATION CO	S000729
STATE OF CA, DEPT. OF WATER RESOURCES	S020095, S020099, S020103, S020107, S020111, S020115
STEAMBOAT ACRES L.P.	S020601, S020603
STEPHEN BARSOOM	S019895
STEVE MELLO	S019165
STEVEN COLDANI	S020786, S020787
STEVEN MELLO	S022727, S022728
STOCKTON PORT DISTRICT	S016286, S016287, S016288
STOKES & LOMBARDI FARMS	S018968
STOKES BROTHERS FARMS	S018053, S021415, S021416, S021417, S021418, S021419, S021420
SUTTER HOME WINERY INC	S016663
TAJ-SILVA FARMS	S020591, S020592, S020593
TERCEIRA PROPERTIES LLC	S016230
TERMINOUS RANCH	S021254, S021235
THACH NGOC	S020390
THE ARCHES LTD	S012858, S012860, S017893, S017896
THE ESTATE OF ANGELINA MERLO	S019733
THE LLOYD L PHELPS JR & PATSY R PHELPS TRUST	S017095, S017098

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Owner	Statement Number(s)
THE NATURE CONSERVANCY	S017965, S017968, S017971, S018382, S018524, S018525, S018526, S018527, S018528, S018530, S018533, S018534, S018536, S018537, S018538, S018539, S018540, S018541, S018542, S018543, S018544, S018546, S018547, S018548, S018549, S018550, S018551, S018552, S018553, S018554, S018556, S018557, S018560, S018563, S018564, S018566, S018569, S018572, S018575, S018578, S018581, S018584, S018587, S018746, S019178, S019181
THOMAS MCCORMACK	S018006, S018095, S018098, S018304, S018107
THOMPSON & FOLGER CO	S001860
TIM GRUNSKY	S016221, S018989
TONY GARCIA	S016217
TONY JAQUES (TRUSTEE)	S017939
TRANSMISSION AGENCY OF NORTHERN CALIFORNIA	S021244, S021247, S021248, S021250
TRAPPER SLOUGH RANCH CORPORATION	S020469, S020472
TRINITY CAPITAL DEVELOPMENT LLC	S016990, S017032
TURLOCK IRRIGATION DISTRICT	S013848
TUSCANY RESEARCH INSTITUTE	S020990, S020994, S020995, S020996, S020998, S021000, S021001, S021002, S021003, S021004, S021005, S021006, S021007, S021008, S021009, S021010, S021022, S021023, S021024
U.S. FISH & WILDLIFE SERVICE	S021371
ULYSSES MENDOZA	S019176
UNIVERSITY OF THE PACIFIC	S019552
US FISH AND WILDLIFE SERVICE - WATER RESOURCE BRANCH	S020789
UTICA POWER AUTHORITY	S000998
VENICE ISLAND, INC	S017060, S017063, S017070, S017073, S017076, S017081, S017084, S017087, S018373, S018379
VICTOR ANDRESEN	S008104
VICTORIA ISLAND LP	S019258, S019270, S019390, S019399, S021274, S021275, S021280, S021281, S021283, S021284, S021285, S021286, S021287, S021289, S021293, S021294, S021296, S021297, S021298, S021299, S021300, S021302
VIERA/MATHER	S019551
VIOLET EHLERS TRUST ET AL	S017733, S017761, S017764
VITAL FARMLAND LP	S014130, S017593, S017744, S017883, S017887
W. EDWARDS	S016326
WALNUT GROVE LAND COMPANY	S019836
WARREN BOGLE	S017202, S017211, S017753, S017756
WARREN SCHMIDT	S020468
WESTERN CANAL WATER DISTRICT	S000925
WHEELER RANCH GREENE AND HEMLY, INC	S017193
WHITE LAKE MUTUAL WATER COMPANY	S017189, S019548
WHITE MALLARD, INC.	S019929
WILCOX HOLLAND FAMILY TRUST	S019554
WILLIAM MESQUITA	S021263
WILLIAM SCHULTZ	S022390
WILLOW RCH. PROP.	S021233
WILLOW TREE FARMS & PRESERVE, LLC	S019261, S019268, S019280
WILSON FARMS	S019755, S019761, S019767
WILSON LAND LTD	S017239, S019361
WILSON VINEYARD PROPERTIES	S000653, S019741
WOODBRIDGE FARMS, INC.	S020874, S020875, S020876, S020877, S020878, S020879
WOODBRIDGE IRRIGATION DISTRICT	S015557
WOODS IRRIGATION COMPANY	S017905, S017908
WOODS VASQUEZ	S017907
WOODY'S ON THE RIVER LLC, ET AL	S019075
WRIGHT TRACT PARTNERS	S021954, S022747
WURSTER RANCHES, LP	S019784, S019790
YAMADA BROTHERS	S018789, S018792
YOLO COUNTY F C & W C DISTRICT	S000608, S000609, S014986
ZUCKERMAN-HERITAGE INC	S020483, S020644, S020648, S020656, S020668
ZUCKERMAN-MANDEVILLE, INC.	S020305, S020306, S020481, S020485, S020488, S020492, S020493

Letter OR2

Horizon Planet

Brigit S. Barnes & Associates, Inc. on behalf of Horizon Planet

March 3, 2015

**Response OR2-1A:** There is no inconsistency in the Draft SEIR's project description. The project includes what can alternatively be described as "updates," and/or "replacements," to the text of the 1998 THSP – which adjective is used is not relevant. As described on page 3-2 of the Draft SEIR, The Applicant has requested certain modifications to the 1998 THSP which would require formal amendments. Because the proposed text modifications (including the Project goals, zoning and development standards, and zoning districts), graphics and format to the previously approved Tracy Hills Specific Plan are substantial, the applicant, in consultation with City Staff, has decided to submit a comprehensive update to the Specific Plan as opposed to submitting amendments to sections of the 1998 THSP. Though the THSP has few land use changes (compared to what was previously approved), it was determined that an entirely re-written Specific Plan would provide for greater clarity, definition and contemporary policy direction, and would result in greater clarity and reduce the possibility of confusion created by separately amending sections. Out of an abundance of caution, the comprehensive update to the previously adopted Specific Plan is being analyzed as if it were a "new" Specific Plan, and thus the EIR comprehensively evaluates the potential environmental impacts of the THSP.

An NOP was distributed on April 21, 2014 and indicates that this EIR will cover the entire 2,732 acres of the THSP and address the full range of environmental topics identified in Appendix G of the State CEQA Guidelines. This NOP contains no discrepancies in the project description when compared to the project description contained in the Draft SEIR. Additionally, information contained in the Specific Plan was the basis for the project description in the Draft SEIR. Furthermore, the commenter does not specify how the project description is "inconsistent."

**Response OR2-1B:** Refer to Response 1-A, above. Furthermore, the commenter does not specify how the project description is "inconsistent."

**Response OR2-1C:** Refer to Response OR2-1A, above. There is no inconsistency in the DSEIR's Project Description. The Project includes what can alternatively be described as "updates," and/or "replacements," to the text of the 1998 THSP – which adjective is used is not relevant. Additionally, the City disagrees that the Project Description and EIR do not fully describe and disclose the project and its associated components. Chapter 3, *Project Description*, fully describes the technical (Section 3.3, economic (Section 3.3.5), and environmental characteristics (Section 3.2) of the proposed project. Development of the proposed project and its associated components (including utilities, services, and development both on and offsite) are fully disclosed and analyzed throughout each chapter of the EIR (refer to Chapters 4.1 through 4.13 of the Draft SEIR). Therefore, the EIR is in compliance with CEQA Guidelines Sections 15378 and 15124.

The City also disagrees that the Notice of Preparation dated April 15, 2014 contains a description of the project that is “unclear.” As stated beginning on page 1 of the Notice of Preparation, “because the requested modifications to the 1998 THSP are substantial (including modifications to the project goals, zoning, and development standards, and zoning districts, and associated text, graphics, and format), the Project Applicant, in consultation with City staff, has decided to submit a comprehensive update to the Specific Plan as opposed to submitting numerous amendments to specific sections of the 1998 THSP. As a result, the City and the Project Applicant have agreed that the environmental analysis for the re-written Specific Plan should address the proposed amendments as an entirely new CEQA project subject to a full environmental impact report, rather than utilizing any streamlined or tiered form of environmental review that could be available under CEQA and the CEQA Guidelines.” This text clearly identifies that while the Specific Plan has been updated, it is being processed and treated as an entirely new Specific Plan, and the environmental review of the Specific Plan is being conducted in a manner that reflects this approach.

**Response OR2-1D:** Refer to Responses to OR2-1A and OR2-1C, above.

**Response OR2-1E:** Refer to Responses OR2-1A and OR2-1C, above. The Notice of Preparation dated April 15, 2014 clearly identifies that while the Specific Plan has been updated, it is being processed and treated as an entirely new Specific Plan, and the environmental review of the Specific Plan is being conducted in a manner that reflects this approach. Additionally, the text on page 3-2 in Chapter 3, *Project Description*, of the Draft SEIR, includes language that clearly identifies that the updated Specific Plan is being treated and processed as a new Specific Plan.

Not only does the text in Chapter 3 identify the project location and boundaries, but Figures 3-1, 3-2, and 3-3 of the Draft SEIR include a clear understanding of the project and project area. Additionally, an extensive description of the project and project details can be found in Section 3.3 of Chapter 3.

The Draft SEIR identifies the potential impacts of the proposed project based on the use of both new technical studies as well as peer reviews and updates to previously prepared technical studies. Where previously prepared studies were used, these studies thoroughly analyzed to ensure consistency with and relevance to the updated THSP as well as reviewed against current policies and regulations for that resource area by technical experts. Additionally, updates to those previously prepared technical studies were conducted where appropriate and necessary. The vast majority of the technical reports utilized in the preparation of the Draft SEIR are new and completed in 2014 and 2015. Refer to the Appendices to the Draft SEIR.

The City disagrees that relevant data and information was omitted from the Draft SEIR. Refer to Chapter 3, *Project Description*, for a detailed description of all project elements.

**Response OR2-1F:** Refer to Responses OR2-1A and OR2-1C, above. The Draft SEIR does not only analyze the proposed changes from the 1998 THSP to the proposed THSP. Rather, the Draft SEIR analyzes all proposed development associated with the proposed THSP. The DSEIR thoroughly assesses potential impacts associated with all development proposed within the THSP. Impacts associated with development of the Project are included in Chapters 4.1 through 4.13 of the DSEIR. Therefore, to demonstrate the exact proposed land use changes for CEQA purposes is not necessary.

**Response OR2-2A:** Refer to Response OR2-1E above and OR2-3A below. As discussed below, the 1998 THSP was never executed and therefore, the mitigation measures proposed in that document were not implemented. The Draft SEIR identifies the potential impacts of the proposed project based on the use of both new technical studies as well as peer reviews and updates to previously prepared technical studies. Where previously prepared studies were used, these studies thoroughly analyzed to ensure consistency with and relevance to the updated THSP as well as reviewed against current policies and regulations for that resource area by technical experts. Additionally, updates to those previously prepared technical studies were conducted where appropriate and necessary. The vast majority of the technical reports utilized in the preparation of the Draft SEIR are new and completed in 2014. Refer to the Appendices to the Draft SEIR.

**Response OR2-2B:** CEQA Guidelines 15150 states that “where an EIR or Negative Declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.” This information was inadvertently left out of the Draft SEIR. Refer to page 2-7 of the revised and recirculated SEIR for the text change.

**Response OR2-3A:** Per NOREAS, as clarified above, as part of this revised Biological Resources section, the open space preserve is not mitigation, but is a project design feature resulting from the Project Applicant’s voluntary action to design a project with a footprint that avoids 3,500 acres that the Applicant owns, and instead dedicate this area as permanent open space.

As made clear by the voluminous historical surveys of the Project Site, the comprehensive updated surveys conducted in 2014 and 2015, the analysis provided in the updated Biological Resources Assessment and the analysis herein, the portion of the Project Site that will be developed, which is highly disturbed, simply does not contain the type of habitat or species that if impacted by development, would be potentially significant under CEQA. Accordingly, as concluded above, the proposed Project will result in a less-than-significant impacts on biological resources, even without mitigation. Under CEQA, mitigation measures are only required to reduce potentially significant. (*See, CEQA Guidelines § 15126.4(a).*) Therefore, here, no mitigation is required to mitigate the proposed Project’s potential impacts on biological resources. However, the Biological Resources section of the DEIR nonetheless imposes mitigation measures to

ensure that impacts remain less-than-significant impacts and to completely avoid any potential impacts all together.

Accordingly, characterizing the open space preserve as required mitigation for potentially significant impacts to biological resources is inaccurate. Instead, it is a voluntary project design feature aimed at lessening the project's already less-than-significant impacts, and ensuring such impacts remain less-than-significant in the future. Indeed, the commenter actually correctly observes that the preserve was set aside as open space in 2012, and was not tied to any specific development, property or impact. That is true because the preserve was created as a result Project Applicant's decision not to develop a 3,500 acre portion of its real property, and instead develop only the eastern portion of its property that has now become the Project Site. As such, it is a project design feature, not mitigation for specific impact(s).

Finally, the Tracy 580 Business Park Project was never completed, has been completely abandoned, and has been replaced by the proposed Project, which seeks to develop the area that the Tracy 580 Business Park proposed to developed.

**Response OR2-3B:** Refer to Responses to OR2-3A above.

**Response OR2-3C:** As described in Section 4.2.3, the recording of a conservation easement on 3,500 acres of Grazing Land adjacent to the Project has been identified as a Project Design Feature.

In determining whether impacts to agricultural resources are significant, the analysis in the DSEIR relied upon the 2014 CEQA Guidelines which use the following threshold as an indicator for a significant impact:

“Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.”

The most recent FMMP (2012) map identifies approximately 25 acres of Prime Farmland within the Project Area, and does not identify any Unique Farmland, or Farmland of Statewide Importance within the Project boundaries. The determination was made that the agricultural mitigation fee would be paid for the 25 acres of Prime Farmland within the Project Area. The Applicant has also agreed (but is not required by CEQA) to pay the agricultural mitigation fee for each acre of Farmland of Local Importance that has been actively farmed, and is to be developed. Similarly, the Applicant is not required by CEQA to mitigate for impacts to grazing land, since the conversion of grazing land is not considered a significant impact under the 2014 CEQA Guidelines.

Mitigation Measure 4.2-1 on page 4.2-11 of the DSEIR states: “For the 500-acres of Grazing Land, the Project has provided offsite mitigation for the conservation of lands by recording a conservation easement to ensure that over 3,500 acres of Grazing Land adjacent to the Project would be preserved in perpetuity.” This statement has been

deleted from the text of the DSEIR. As described in Section 4.2.3, the recording of a conservation easement on 3,500 acres of Grazing Land adjacent to the Project has been identified instead as a Project design feature. The DSEIR identified the potential Project impact to Grazing Land as less-than-significant, without the inclusion of mitigation measures. Therefore, the deletion of this portion of Mitigation Measure 4.2-1 does not result in any new previously unidentified impacts.

**Response OR2-3D:** Refer to Responses to OR2-3A above.

**Response OR2-3E:** Refer to Responses to OR2-3A above.

**Response OR2-3F:** The purpose of the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) is to conserve agricultural lands and wildlife habitats. Most of the lands for the preserve area under the SJMSCP are conserved through easements placed over existing agricultural land. The purpose of these conservation easements are to provide wildlife habitat/open space dedication, such as the case with the 3,500 acres of grazing land conserved as a result of a minor amendment to the SJMSCP in 2012 from the Tracy Hills Specific Plan. The 3,500 acres is existing grazing land, which was accepted by San Joaquin Council of Governments (SJCOP) as an appropriate use for wildlife habitat/open space under the SJMSCP.

**Response OR2-3G:** The commenter misrepresents the Easements, which make clear that new uses such as a “commercial farm” would not be permitted. For example, Easement No. 2 (attached to the comment letter) clearly states that the property covered by that Easement would be preserved by the “continuation of the agricultural and ranching uses that have proven historically compatible” with “open space and environmental values.” This makes clear that no new “commercial farm” type of use would be permitted, but instead existing uses can continue, which still allow area covered by the Easements to function as a migratory corridor and higher quality habitat than the Project Site, as discussed throughout the revised Section 4.4 of the DEIR.

The USFWS, CDFW, and SJCOP entered into a Habitat Conservation Agreement with the Project owner, acknowledging that the owner of the Project Site may, in the future, count the area covered by Easement No. 2 & 3 toward habitat mitigation requirements for development of adjacent property owned by the Project applicant or any other property subject to the SJMSCP. These agencies have specifically acknowledged that, at a minimum, portions of the area covered by these Easements – even with existing agricultural and ranching uses – function as habitat sufficient to support relevant species such that if the proposed Project actually had impact on biological resources, it could serve as mitigation land. Clearly, there is no conflict between existing agricultural and ranching uses and open space or environmental preservation uses.

Moreover, as concluded in Section 4.4 of the DEIR, the proposed Project will result in a less than significant impact on biological resources before mitigation. Specifically, as made clear by the voluminous historical surveys of the Project Site, the comprehensive

updated surveys conducted in 2014 and 2015, the analysis provided in the updated 2015 Biological Resources Assessment and analysis in Section 4.4 of the DEIR, the portion of the Project Site that will be developed, which is highly disturbed, simply does not contain the type of habitat or species that if impacted by development, would be potentially significant under CEQA. Accordingly, the proposed Project will result in a less-than-significant impacts on biological resources, even without mitigation. Under CEQA, mitigation measures are only required to reduce potentially significant impacts. (See, CEQA Guidelines § 15126.4(a).) Therefore, here, no mitigation is required to mitigate the proposed Project's potential impacts on biological resources.

Accordingly, characterizing the area covered by the Easements as a mitigation area for the Project's to biological resources is inaccurate. Instead, it is a voluntary project design feature aimed at lessening the Project's already less-than-significant impacts, and ensuring such impacts remain less-than-significant in the future. Indeed, the commenter actually correctly observes that the preserve was set aside as open space in 2012, and was not tied to any specific development, property or impact. That is true because the preserve was created as a result Project applicant's decision not to develop a 3,500 acre portion of its real property, and instead develop only the eastern portion of its property that has now become the Project Site. As such, it is a project design feature, not mitigation for specific impact(s).

**Response OR2-3H:** Notwithstanding the fact that the characterization that the grantor has “unfettered discretion” is patently untrue, the fact is that, as discussed above and throughout Section 4.4 of the DEIR, the areas covered by Easements Nos. 2 & 3 are not habitat mitigation areas because the proposed Project will result in a less than significant impact on biological resources before mitigation. The Easements are design features that provide significant open space refuge and corridors.

**Response OR2-3I:** Refer to Responses to OR2-3A above.

**Response OR2-3J:** Refer to Responses to OR2-3A above.

**Response OR2-3K:** Refer to Responses to OR2-3A above.

**Response OR2-3L:** Mitigation Measure 4.2-1 on page 4.2-11 of the DSEIR states: “For the 500-acres of Grazing Land, the Project has provided off-site mitigation for the conservation of lands by recording a conservation easement to ensure that over 3,500 acres of Grazing Land adjacent to the Project would be preserved in perpetuity.” This statement has been deleted from the text of the DSEIR. The recording of a conservation easement on 3,500 acres of open space adjacent to the Project has been identified instead as a Project Design Feature. The DSEIR identified the potential Project impact to Grazing Land as less than significant, without the inclusion of mitigation measures. Therefore, the deletion of this portion of Mitigation Measure 4.2-1 which references the conservation easement does not result in any new previously unidentified impacts.

**Response OR2-4A:** DEIR has been updated to evaluate the land within Areas A and B to properly identify impacts to appropriately identify mitigation under the SJMSCP.

**Response OR2-4B:** Per NOREAS, the DEIR concludes that the proposed Project – including the potential development of Area C – does not have any potentially significant impacts on biological resources, and therefore will result in less-than-significant impact in this regard. Under CEQA, mitigation measures are only required to reduce potentially significant. (See, CEQA Guidelines § 15126.4(a).) Therefore, here, no mitigation is required to mitigate the development of Area C. However, the DEIR still imposes mitigation measures to ensure less-than-significant impacts, even though these mitigation measures are not legally required. Mitigation measures that are not legally required cannot be legally inadequate.

Moreover, in an attempt to provide the most robust analysis of the proposed Project's impacts, the DEIR analyzes the impacts of the eventual development of Area C on a programmatic level, even though such development is not imminent, nor even certain to occur. As such, there will be subsequent analysis of the environmental impacts of the development of Area C. If this subsequent environmental analysis finds potentially significant impacts, mitigation will be imposed, including, if necessary, annexation into the SJMSCP or procurement of permits pursuant to Section 7 and/or Section 10 of the FESA, and/or Section 2081 of the CESA.

**Response OR2-4C:** Refer to Responses to OR2-4B above.

**Response OR2-4D:** Refer to Responses to OR2-4B above.

**Response OR2-4E:** Refer to Responses to OR2-4B above.

**Response OR2-4F:** Refer to Responses to OR2-4B above.

**Response OR2-5A:** Per NOREAS, the proposed Project will not impact any federally or state endangered and threatened species. The only federally or threatened species that has been documented anywhere near the Project Site in over a quarter century of study is the CRLF, which was actually documented off the Project Site and in the 3,500 acre preserve area. While small, discrete subset of land within Area C of the Project is co-located with USFWS-designated critical habitat for CRLF, that portion of the Project Site does not actually support CRLF, and the CRLF has never been documented in that area, or any area of the Project Site. (See, Appendix C-2, 2015 NOREAS Report, p. \_\_\_.) This is the only USFWS designated critical habitat anywhere on the Project Site for any species. Accordingly, the Project completely avoids any impacts to the CRLF and its habitat, as well as all other federally or state endangered and threatened species and their habitat.

The commenter makes comments about mitigation for impacts to the federally and state listed SJKF, but as discussed in detail above, the SJKF has never been observed on the

Project site over twenty-five years of study outside the single 2015 night spotlighting observation that actually occurred outside the Project Site, nor has any evidence of that species ever been discovered. No portion of the Project Site has ever been designated by the USFWS as “critical habitat” for the SJKF.

Over the past twenty-five years, many surveys directly aimed at finding evidence of SJKF have been conducted on the Project Site, including the most recent 2015 pedestrian-based surveys, yet no such evidence has ever been found. (See, Appendix C-2, 1993 Evaluation of a Proposed Corridor for the San Joaquin Kit Fox in the Tracy Hills Development; 1999 Habitat Conservation Plan for Lakeside Tracy Development; 2004 Environmental Assessment for the Tracy Hills HCP; 2006 Tracy Hills San Joaquin Kit Fox Analysis; 2006 Tracy Triangle San Joaquin Kit Fox Surveys #2689-01<sup>1</sup>; 2010 Biological Resources on the Tracy 580 Business Park Property; 2011 Preserve Management Plan for the Tracy 580 Business Park Preserve; 2011, 2012, 2013 and 2014 Scat detection Dog Surveys for the Endangered San Joaquin Kit Fox at the Tracy Hills Project Site; 2015 NOREAS Report, Appendix I.) The quarter century worth of surveys conducted for the SJKF consist of an incredibly comprehensive data set that goes well beyond the amount of data available for other projects located in the City.

Of particular note are the Scat Detection Dog Surveys that were conducted for all three area of the Project Site (Areas A, B & C) in 2010, 2012, 2013 and 2014 by the Working Dogs Foundation. No SJKF scats, or other signs of SKLF were observed during surveys. The negative findings of the four consecutive years of scat detection surveys provide strong evidence that the SJKF is not present on the Project Site. This conclusion was confirmed by NOREAS’ 2015 focused SJKF surveys, which only spotted on SKLF that was actually located outside the Project Site. (Appendix C-2, 2015 NOREAS Report, Appendix I.) The 2015 NOREAS survey concluded that impacts to SKLF would be less than significant based on historical surveys, its own surveys, and the Project Site’s poor quality habitat for SKLF, particularly when compared to the higher quality habitat in the 3,500 acre preserve area.

Moreover, as referenced above, the fact that areas of the Project Site could hypothetically support SJKF is not unique to the Project Site. The SJKF has been studied in connection with the Project Site due to the Project Site’s general geographic location, not because of its particular suitability to support the SJKF. Indeed, the 3,500 acres preserve located adjacent to Area C of the Project Site contains higher quality SJKF habitat than the Project Site. (Appendix C-2, 2015 NOREAS Report.)

Accordingly, the proposed Project would not have potentially significant impacts on the SJKF or any other federally or state listed species, and instead, all impacts will be less-than-significant in this regard.

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<sup>1</sup> Berryman Ecological and H.T. Harvey & Associates conducted a SJKF aerial survey by flying transects over the Project Site and general area. The results of the aerial survey concluded that no potential kit fox dens were observed on the Project site.

Under CEQA, mitigation measures are only required to reduce potentially significant. (*See*, CEQA Guidelines § 15126.4(a).) Therefore, here, no mitigation is required to mitigate the proposed Project's impacts to any federally or state listed species or their habitat, specifically including the SJKF and CRLF.

Notwithstanding the lack of any legal requirement to do so, this revised version of the Biological Resources section of the DEIR has added a number of mitigation measures specific to the SJKF and CRLF (*e.g.* pre-construction surveys and other preventative measures) to ensure that the proposed Project's impacts remain less-than-significant in this regard. (*See* Mitigation Measures 4.4-1c, 4.4-1d, and 4.4-1g.)

As to all species, as discussed in detail throughout this revised Biological Resources Section of the DEIR, based on both a quarter century of studies and 2014 and 2015 updated surveys, specifically including the focused surveys for all relevant special status species performed by NOREAS in 2015, the proposed Project will not result in any potentially significant impacts on any special status species, and will instead result in less-than-significant impacts in this regard. Under CEQA, mitigation measures are only required to reduce potentially significant. (*See*, CEQA Guidelines § 15126.4(a).) Therefore, here, no mitigation is required to mitigate the proposed Project's impacts to any special status species.

With regard to the CTS, burrowing owl, northern harrier, and American badger, despite the lack of any legal requirement to do so, this revised Section imposes Mitigation Measures 4.4-1e through 4.4-1o, to ensure all impacts to these species remain less-than-significant.

**Response OR2-5B:** Refer to Responses to OR2-5A above.

**Response OR2-5C:** Refer to Responses to OR2-5A above.

**Response OR2-5D:** Refer to Responses to OR2-5A above.

**Response OR2-5E:** Refer to Responses to OR2-5A above.

**Response OR2-5F:** Refer to Responses to OR2-5A above.

**Response OR2-5G:** Refer to Responses to OR2-5A above.

**Response OR2-6A:** Per NOREAS, as has been concluded in twenty-five years of study and confirmed by the 2014 and 2015 updated pedestrian-based surveys, the portion of the Project Site that will be developed does not support any State or Federally-listed flora and fauna, and is comprised entirely of non-native vegetation and low-grade habitat for any native wildlife species. As such, it is not a high value wildlife linkage corridor.

Additionally, Interstate 580 – which runs through the middle of the Project Site, separating Areas A and B from Area C – is a significant barrier which impedes and

curtails wildlife movement throughout the region, severely limiting the Project site's utility as a wildlife movement corridor or linkage area. The Project will also implement a 100-foot setback from I-580 in the form of a conservation easement to provide for a linkage corridor through the middle of the Project Site (between Areas B and C). (See Mitigation Measure 4.4-4a.)

The California Aqueduct – which is the border between Area A and B – and Delta-Mendota Canal, which is located northeast as functions as the border of Area A/the Project Site, act as stepping stone refugia habitat for the dispersal of SJKF and other wildlife species that exist in the region outside of the Project Area. These man-made waterways provide unobstructed travel corridors for wildlife species to connect to habitats located to the north and south of the Project Site, and would not be affected by development of the Project. The proposed Project includes a 100-foot setback from the California Aqueduct, also in the form of conservation easements, to allow wildlife movement to persist north/south through a portion of the Project Site (between areas A and B) without any significant barriers or blockades.

The aforementioned 3,500-acre open space area adjacent to Area C was set aside by the Project Applicant under a series of conservation easements to protect the integrity of a provides a natural corridor to the north and the south extending along the southern coastal mountain ranges of California. This preserve contains higher quality habitat for all relevant species than the low- grade habitat on the Project Site.

Area C of the Project Site is adjacent to the eastern foothills of the Diablo Mountain Range. The Diablo Mountain Range provides a natural wildlife corridor to the north and the south extending along the southern coastal mountain ranges of California. Development of Area C will be limited to the relatively flat grasslands south of I-580 and east of the foothills of the mountains, which is on the opposite side of the preserve area. As a result, the migration corridor west of the Project Site consisting of the Diablo Mountain Range will not be obstructed or significantly impacted. Additionally, the Project has been designed such that development of Area C will completely avoid direct impacts to the Corral Hollow Creek key linkage corridor (which is located just south of Area C) and its corresponding flood plain and alluvial sand movement areas. (Appendix C-2, NOREAS Report.) Corral Hollow Creek has higher species diversity and value for local and migratory wildlife than adjacent locales, and accordingly, the Project complete avoids development of the Corral Hollow Creek area to maintain local existing wildlife movement and dispersal linkages.

Due to the fact that the I-580 completely separates Areas A and B from Area C, even without any development of Areas A and B, species are not able to migrate from these Areas to the Diablo Mountain Range wildlife corridor. Accordingly, Area A and B (which encompasses the portion of the Project being analyzed by this EIR at the “project-level”) do not function as significant wildlife movement corridors nor do they provide linkage to significant habitats. Additionally, as stated above, the 100 setbacks from the California Aqueduct and the I-580, as well as the complete avoidance of the Corral Hollow Creek area, provides sufficient wildlife movement such that any impacts

from the development of the proposed Project would be less-than-significant. (Referenced within Appendix C-2, Jones & Stokes Evaluation of a proposed Corridor for the San Joaquin Kit Fox in the Tracy Hills Development [states that avoiding adverse effects to California Aqueduct and Corral Hollow Creek – as explained above, the proposed Project does – would be adequate to maintain local existing wildlife movement and dispersal corridors linkages]; *see also*, NOREAS 2105 Report, pp. 4-3, 4-4 [in accord].) In sum, development of the proposed Project (Areas A and B, and adjacent areas of Area C planned for development) will not impede any wildlife movement that occurs before development, nor result in any potentially significant impacts on the same.

Finally, it also bears noting that approximately 9 miles east of the Project Site the San Joaquin River traverses the agricultural fields on the valley floor of the Central Valley. The River was once dominated by riparian forest habitats and provided a major migration corridor through the middle of the State. This corridor was primarily used by migratory avian species (Pacific Flyway) but was also utilized by mammalian species. The San Joaquin River system is one of the most highly altered water systems in the state due to the diversion of water for agricultural purposes. However, the Project Site is separated from this regional migratory corridor by extensive existing urban development in the City of Tracy and extensive agricultural operations. There are no natural interconnecting habitats between the San Joaquin River and the proposed Project Site.

Accordingly, the proposed Project will not result in significant impacts on a wildlife movement corridor.

**Response OR2-6B:** Refer to Responses to OR2-6A above.

**Response OR2-6C:** Refer to Responses to OR2-6A above.

**Response OR2-6D:** Refer to Responses to OR2-6A above.

**Response OR2-6E:** Refer to Responses to OR2-6A above.

**Response OR2-6F:** Refer to Responses to OR2-6A above.

**Response OR2-6G:** Refer to Responses to OR2-6A above.

**Response OR2-7A:** Per NOREAS, in 2015, NOREAS undertook a focused rare plant survey to determine whether any federally or state listed, candidate other special status plant species occur on the Project Site. (Appendix C-2, 2015 NOREAS Report, Appendix E.) As discussed throughout this revised Biological Resources Section, and consistent with previous surveys, this survey determined that no such plant species occur.

**Response OR2-7B:** Refer to Responses to OR2-7A above.

**Response OR2-7C:** Refer to Responses to OR2-7A above.

**Response OR2-7D:** Refer to Responses to OR2-7A above.

**Response OR2-7E:** Refer to Responses to OR2-7A above.

**Response OR2-7F:** Refer to Responses to OR2-7A above.

**Response OR2-8A:** Per NOREAS, by virtue of Project design feature, the Corral Hollow Creek and floodplain area are entirely outside the footprint of the proposed Project, thereby completely avoiding impacts to this area. Indeed, the commenter correctly observes that the majority of the Corral Hollow Creek/floodplain area is located off of the Project Site, in the 3,500 acre preserve area. Additionally, it bears noting that the proposed Project will implement a 50-foot setback from any riparian habitat area. (See, Mitigation Measure 4.4-4a.)

**Response OR2-8B:** Refer to Responses to OR2-8A above.

**Response OR2-8C:** Refer to Responses to OR2-8A above.

**Response OR2-8D:** Refer to Responses to OR2-8A above.

**Response OR2-9A:** In determining whether impacts to agricultural resources are significant, the analysis in the DSEIR relied upon the 2014 CEQA Guidelines which use the following threshold as an indicator for a significant impact:

Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.

The most recent FMMP (2012) map identifies approximately 25 acres of Prime Farmland within the Project Area, and does not identify any Unique Farmland, or Farmland of Statewide Importance within the Project boundaries. The determination was made that the agricultural mitigation fee would be paid for the 25 acres of Prime Farmland within the Project Area. The Applicant has also agreed (but is not required by CEQA) to pay the agricultural mitigation fee for each acre of Farmland of Local Importance that has been actively farmed, and is to be developed. Similarly, the Applicant is not required by CEQA to mitigate for impacts to grazing land since the conversion of grazing land is not identified as a significant impact; see CEQA Guidelines, Appendix G.

Please refer to Response OR2-3C regarding the identification of a 3,500-acre conservation easement as a Project Design Feature.

Furthermore, the purpose of the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) is to conserve agricultural lands and wildlife habitats. Most

of the lands for the preserve area under the SJMSCP are conserved through easements placed over existing agricultural land. The purpose of these conservation easements are to provide wildlife habitat/open space dedication, such as the case with the 3,500 acres of grazing land conserved as a result of a minor amendment to the SJMSCP in 2012 from the Tracy Hills Specific Plan. The 3,500 acres is existing grazing land, which was accepted by San Joaquin Council of Governments (SJCOP) as an appropriate use for wildlife habitat/open space under the SJMSCP.

**Response OR2-9B:** With respect to the number of acres identified in each farmland classification, the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) prepares maps and statistical data used for analyzing impacts on California's agricultural resources. Agricultural land is rated according to soil quality and irrigation status, with the best quality land rated as Prime Farmland. The maps are typically updated every two years with the use of a computer mapping system, aerial imagery, public review, and field reconnaissance. However, the map for San Joaquin County is from 2012. In order for land to be shown on FMMP's Important Farmland Maps as Prime Farmland and Farmland of Statewide Importance, land must meet both the following criteria<sup>2</sup>:

1. The land has been used for irrigated agricultural production at some time during the four years prior to the Important Farmland Map date. Irrigated land use is determined by FMMP staff by analyzing current aerial photos, local comment letters, and related GIS data, supplemented with field verification, and;
2. The soil must meet the physical and chemical criteria for Prime Farmland or Farmland of Statewide Importance as determined by the USDA Natural Resources Conservation Service (NRCS). NRCS compiles lists of which soils in each survey area meet the quality criteria. Factors considered in qualification of a soil by NRCS include:
  - ◆ Water moisture regimes, available water capacity, and developed irrigation water supply
  - ◆ Soil temperature range
  - ◆ Acid-alkali balance
  - ◆ Water table
  - ◆ Soil sodium content
  - ◆ Flooding (uncontrolled runoff from natural precipitation)
  - ◆ Erodibility
  - ◆ Permeability rate
  - ◆ Rock fragment content
  - ◆ Soil rooting depth

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<sup>2</sup> State of California, Department of Conservation. Farmland Mapping and Monitoring Program. *Prime Farmland as Mapped by FMMP*. Accessed March 16, 2015. [http://www.conservation.ca.gov/dlrc/fmmp/overview/Pages/prime\\_farmland\\_fnmp.aspx](http://www.conservation.ca.gov/dlrc/fmmp/overview/Pages/prime_farmland_fnmp.aspx)

Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR

Please refer to Response OR2-9B which notes that the San Joaquin County Important Farmland Map identifies the Project Area to include 25 acres of Prime Farmland and relies on the CEQA Guidelines Appendix G in determining whether impacts to agricultural resources are significant.

Since the most recent FMMP (2012) map identifies approximately 25 acres of Prime Farmland within the Project Area, and does not identify any Unique Farmland, or Farmland of Statewide Importance within the Project boundaries, the determination was made that the agricultural mitigation fee would be paid for those 25 acres of Prime Farmland. As mentioned above, the Applicant has also agreed (but is not required by CEQA) to pay the agricultural mitigation fee for each acre of Farmland of Local Importance that has been actively farmed and is to be developed. The mitigation for Prime Farmland, Farmland of Local Importance, and Grazing Land can be found on page 4.2-11, under Mitigation Measure 4.2-1.

**Response OR2-9C:** Please refer to Response OR2-3C regarding the identification of a 3,500-acre conservation easement as a Project Design Feature. The DSEIR identifies a significant and unavoidable impact to Prime Farmland and Farmland of Local Importance and the DSEIR identifies a loss of Prime Farmland, as identified by the commenter.

The commenter also identifies the Project's inconsistency with City General Plan Goal OSC-2 and Policy P4. The DSEIR identifies a significant and unavoidable impact to Prime Farmland and Farmland of Local Importance. Please refer to Mitigation Measures 4.2-1 and 4.2-2 in the DSEIR; however, the DSEIR identifies that even with mitigation, impacts to Prime Farmland and Farmland of Local Importance remains a significant and unavoidable impact.

Lastly, the commenter contends that additional mitigation is possible and feasible to reduce potential impacts. The DSEIR describes the Project impacts and includes mitigation measures, despite the identification of a significant unavoidable impact which is not able to be reduced to a less-than-significant level with the incorporation of mitigation measures. Therefore, it will be the decision of the City decision makers if impacts are adequately described and if all feasible mitigation options have been suggested.

**Response OR2-10A:** The energy conservation analysis in the DSEIR was prepared in accordance with Public Resources Code Section 21100(b)(3) and Appendix F of the *CEQA Guidelines*, which requires a description (where relevant) of any “wasteful, inefficient, and unnecessary consumption of energy caused by a project.” The Specific Plan design guidelines and other Project Design Features encourage sustainable design solutions that reduce energy consumption (refer to Tracy Hills Specific Plan Section 3, *Design Guidelines*, EIR Section 5.3 [Energy Conservation], and EIR Section 4.7, [Greenhouse Emissions]).

In the *California Clean Energy Committee v. City of Woodland* case, the EIR's energy analysis relied solely on required compliance with Title 24 guidelines and regulations for energy efficiency to find the project would have no significant impacts on energy consumption

requiring mitigation. The court found that this was an insufficient analysis of energy use. As described above, the energy impacts for the proposed project are analyzed in both DSEIR Section 5.3 (Energy Conservation) and DSEIR Section 4.7 (Greenhouse Gas Emissions). It should be noted that Section 5.3 references the analysis, discussion, and mitigation in Section 4.7. As discussed in Section 4.7 Mitigation Measure 4.7-1 requires the project to implement numerous energy efficiency measures including compliance with Measure E-1 of the City's Sustainability Action Plan to meet or exceed Title 24 requirements. Mitigation Measure 4.7-1 also requires the use of energy efficient lighting and heating/cooling systems, energy efficient appliances, programmable thermostats, designing buildings to reduce energy through proper solar orientation and sun screens, as well as the use of cool roofs, cool pavements, and shade trees. The incorporation of these efficiency measures would reduce the Project's energy consumption by approximately 5 percent. Implementation of Mitigation Measure 4.7-1 would ensure that the project does not cause wasteful, inefficient, and unnecessary consumption of energy. Additional mitigation measures are also included to reduce emissions associated with transportation, water consumption, and solid waste generation. Unlike the *California Clean Energy Committee v. City of Woodland* case, the proposed project includes feasible mitigation measures to reduce the energy consumption.

Mitigation Measure 4.7-1 of the DSEIR also includes various measures to increase transit usage and opportunities, improve pedestrian accessibility, provide mixed-use, improve destination accessibility, and provide traffic calming measures; refer to Response OR1-3, above. The implementation of Mitigation Measure 4.7-1 would also reduce the Project's transportation energy consumption.

**Response OR2-10B:** Refer to response OR2-10A, above. The DSEIR included an energy conservation analysis in accordance with Public Resources Code Section 21100(b)(3) and Appendix F of the *CEQA Guidelines*. It should be noted that the development proposed by the THSP is anticipated within the City's General Plan. Therefore, the energy consumption from the proposed Project, after implementation of Mitigation Measure 4.7-1, would be more efficient than typical development anticipated within the General Plan. Transportation energy impacts, construction impacts, and operational energy impacts are addressed in the Energy Conservation analysis (Section 5.3), which also references the analysis, discussion, and mitigation in Section 4.7. As described above, the incorporation of the efficiency measures within Mitigation Measure 4.7-1 would reduce the Project's energy consumption by approximately 5 percent. Furthermore, Mitigation Measure 4.7-1 and the Project's design features would reduce transportation energy consumption. A key aspect of the THSP is to reduce vehicle miles traveled (which reduces transportation fuel consumption) through the development of a mix of residential and commercial land uses in a pedestrian friendly environment. Such uses would allow residents, employees, and customers to use transit, bicycles, and walk rather than travel by single-occupant vehicles.

Refer to Response OR2-10A, above. As described above, the Energy Conservation analysis (Section 5.3) references the analysis, discussion, and mitigation in Section 4.7. Mitigation Measure 4.7-1 includes numerous measures to reduce energy consumption.

**Response OR2-10C:** Refer to Response OR2-10A, above. As described above, the Energy Conservation analysis (Section 5.3) references the analysis, discussion, and mitigation in Section 4.7 and describes transportation energy consumption, building energy demand, and construction energy consumption. Each of these sources of energy demand use fossil fuels such as coal, natural gas, and oil. The implementation of mitigation measures in Section 4.7 would reduce the project's consumption of such energy resources.

An analysis of growth inducing impacts are provided in Section 5.2 of the DSEIR. As described in Section 5.2, implementation of the Project would be expected to directly induce growth. As described in the *2011 General Plan EIR*, residential growth under the General Plan is limited by the City's Growth Management Ordinance (GMO). Growth within the THSP Project Area was anticipated and planned for in the City's 2011 General Plan EIR. Hence, the potential household growth induced by implementation of the Project would not exceed the City's planned level.

**Response OR2-10D:** Refer to Response OR2-10A, above. As described above, the Energy Conservation analysis (Section 5.3) references the analysis, discussion, and mitigation in Section 4.7. Mitigation Measure 4.7-1 includes several measures that would reduce vehicle trips and vehicle miles traveled, thereby reducing transportation energy consumption. For example, Mitigation Measure 4.7-1 requires the commercial uses to implement a trip reduction program and a ride sharing program for future employees. Additionally, Mitigation Measure 4.7-1 would be required to provide pedestrian connections and amenities to facilitate alternative transportation options. The parking cash out program required by Mitigation Measure 4.7-1 would provide a financial incentive for employees not to drive to work. As documented in Table 4.7-7 of the DSEIR, the proposed Project would be consistent with the applicable measures in the City's Sustainability Action Plan.

**Response OR2-11A:** Page 33 states that “the EIR fails to satisfy the requirements identified in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*”

The cited Vineyard Area Citizens case found that a final EIR did not contain sufficient analysis of long-term water supplies for a mixed-use development project containing more than 22,000 residential units, schools, parks, and office and commercial uses. While recognizing that requiring absolute certainty regarding the overall water supply for a long-term, large-scale development would be “unworkable,” the Court stated that an EIR must make a “sincere and reasoned attempt to analyze the water sources the project is likely to use” (*Vineyard*, 40 Cal. 4<sup>th</sup> 412 at 432). The Court found that the EIR for the project in *Vineyard* failed to analyze long-term surface water supplies since it lacked substantial evidence demonstrating how future water supplies would serve the project. The Court determined that the EIR failed to state the “analytic route” by which the agency had made its informed decision (*Id.* at 445).

Here, the WSA, included as an appendix to the EIR, evaluates the adequacy of the City's total projected water supplies, including existing water supplies and future planned water supplies, to meet the City's existing and projected future water demands, including those future water demands associated with the Tracy Hills Project, consistent with SB610 requirements, under all hydrologic conditions (Normal Years, Single Dry Years, and Multiple Dry Years). The inclusion of future planned supplies in the WSA is specifically allowed by the Water Code:

Section 10631 (b): Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a).

The EIR thus provides the “route” by which the City identified existing water supplies, future water supplies, and the Tracy Hills Project’s demand on those supplies. This information represents the analysis and substantial evidence that the *Vineyard Area* EIR lacked. The EIR therefore complies with the applicable standard of review and complies with the Court’s holding in the *Vineyard Area* case. The EIR does satisfy the requirements identified in the *Vineyard Area* Citizens for Responsible Growth v. City of Rancho Cordova.

**Response OR2-11B:** Page 35 states that the WSA “fails to comply with SB610/SB221 requirements.”

The WSA evaluates the adequacy of the City’s total projected water supplies, including existing water supplies and future planned water supplies, to meet the City’s existing and projected future water demands, including those future water demands associated with the Tracy Hills Project, under all hydrologic conditions (Normal Years, Single Dry Years, and Multiple Dry Years), as required by SB 610 and SB 221. See Water Code § 10910 (SB 610) and Government Code § 66473.7 (SB 221). The City’s future planned water supplies are also described in the City’s 2010 Urban Water Management Plan which was adopted by the City in May 2011. See Water Code § 10910(c)(2) and Government Code § 66473.7(c)(1).

Page 36 states that “Yet there is no recycled water available today, in the near future, or maybe ever,...”.

The City is planning for recycled water use as described in the WSA (Section 6.4.1 starting on page 43). The City has taken the following actions related to recycled water:

- ◆ The City included projected future recycled water demands and recommended capital improvement projects in both the 2012 Citywide Water System Master Plan and the 2012 Tracy Wastewater Master Plan;
- ◆ In March 2013, the City adopted an updated Recycled and Non-Potable Water Ordinance in March 2013 (codified in the Tracy Municipal Code Chapter 11.30);
- ◆ The City has spent approximately \$85 million at the City’s Wastewater Treatment Plant (WWTP) to produce water suitable for recycled use;
- ◆ In December 2013, the City adopted Development Impact Fees to fund recycled water infrastructure and has collected \$1.3 million to date

- ◆ In April 2015, the City applied for a State funded grant for the construction of recycled water infrastructure.

As noted above, SB 610 and SB 221 specifically allow (and in fact, require) WSAs and water supply verifications to include an analysis of future water supplies. See Water Code § 10910 and Government Code § 66473.7.

Page 36 states that “BBID CVP Ag needs to be supplemented with additional BBID CVP Ag water and Semitropic storage water. Neither supply exists today.”

BBID CVP and Semitropic are identified in the WSA as future planned water supplies in accordance with the Water Code. Furthermore, the agreements associated with these future sources of water supply have precedent, as the City and BBID, and the City and Semitropic, have previously successfully negotiated water supply agreements that are currently in place.

BBID CVP Ag water is a future planned water supply and is identified in the WSA as such. BBID and the City are negotiating an agreement for this future planned water supply. .

Semitropic Water Storage District has permitted and is ready for construction of a second phase of the groundwater banking program and is currently looking for additional banking partners to share the benefits of the Stored Water Recovery Unit. The agreement associated with this future source of water supply has precedent, as the City and Semitropic, have previously successfully negotiated a water supply agreement that is currently in place.

Page 36 states that “BBID pre-1914 water is “firm and well-established”. While this is true in part, these rights are not beyond being challenged” and “Just last month, the State Water Board issued an order....”

The BBID pre-1914 water is available and the physical facilities have been constructed to deliver it to the Tracy Hills Project. The May 2003 “Agreement Between the Department of Water Resources of the State of California and the Byron-Bethany Irrigation District regarding the Diversion of Water from the Delta” and the April 2014 “Long-term Contract Between the United States and the Byron Bethany Irrigation District Providing for the Exchange of Non-Project Water for Project Water” (included in Appendix A of the WSA) and associated December 2013 Finding of No Significant Impact (FONSI-09-149) provide for reliable delivery of water to that portion of the project identified to use BBID pre-1914 water.

The SWRCB order referenced in the comment was a generic order requiring certain water right holders to provide information to the SWRCB. It was not a challenge to their water rights. The SWRCB has not curtailed senior water rights such as BBID’s pre-1914 right.

Page 36 states that “BBID pre-1914 water rights are for the irrigation season...”.

The 2003 agreement between DWR and BBID states that the District may divert water during any month of the year for agricultural, municipal and industrial purposes. The April 2014 “Long-term Contract Between the United States and the Byron Bethany Irrigation District Providing for the Exchange of Non-Project Water for Project Water” (included in Appendix A of the WSA) provides for exchanged water to be “conveyed, stored, and later made available to the Contractor during the then-current year” (paragraph 3(g) on page 5 of the agreement).

Page 37 states that “the WSA and DEIR utilize unrealistic/faulty assumptions on reliability of water:

The WSA utilizes the assumptions adopted in the City’s 2010 Urban Water Management Plan (UWMP) and states that hydrologic conditions and supply deliveries vary from year to year. Section 5.3 of the WSA (on page 22) state that additional water conservation may be needed in response to multiple dry years or other water supply shortages. Water conservation by the City’s water customers in 2014 exceeded the assumptions in the City’s 2010 UWMP. Also, as described in the WSA, the City has a Water Shortage Contingency Plan which it can implement were there to be water supply shortage due to extreme dry conditions or other water supply emergencies.

Page 37 states that “the WSA improperly relies on unfettered groundwater pumping (9TAF) that might not be available” and that “The DEIR must discuss the impacts from likely reductions”

In 2001, the City performed a technical analysis and environmental review that shows that up to 9,000 af/a can be pumped from the groundwater basin. The 2001 Estimated Groundwater Yield Study and associated City of Tracy Groundwater Management Policy Mitigated Negative Declaration dated April 2001 is included in Appendix C of the WSA. The WSA further describes the City’s 1996 adoption of the Northern Delta-Mendota Canal Groundwater Management Plan, the City’s May 2012 adoption of the revised Northern Delta-Mendota Canal Groundwater Management Plan, and the City’s participation in the Tracy Sub-basin Groundwater Management Plan (copies of which are included in Appendix C of the WSA). The City’s historical groundwater pumping is shown on Figure 6 of the WSA and shows that groundwater pumping in 2001 was 7,321 af, 2002 was 7,802 af, 2003 was 6,847 af, and 2004 was 7,176 af. This pumping occurred with no negative environmental impacts. The groundwater levels are currently high compared to past years due in part to decreased pumping by the City in recent years. There is no basis for the statement that the recently enacted Sustainable Groundwater Management Act will result in reduced availability of groundwater to the City.

Page 37 states that “the WSA and DEIR rely on the provision of recycled water”

The City is planning for recycled water use as described in the WSA (Section 6.4.1 starting on page 43). The City has taken the following actions related to recycled water:

- ◆ The City included projected future recycled water demands and recommended capital improvement projects in both the 2012 Citywide Water System Master Plan and the 2012 Tracy Wastewater Master Plan;
- ◆ In March 2013, the City adopted an updated Recycled and Non-Potable Water Ordinance in March 2013 (codified in the Tracy Municipal Code Chapter 11.30);
- ◆ The City has spent approximately \$85 million at the City's Wastewater Treatment Plant (WWTP) to produce water suitable for recycled use;
- ◆ In December 2013, the City adopted Development Impact Fees to fund recycled water infrastructure and has collected \$1.3 million to date
- ◆ In April 2015, the City applied for a State funded grant for the construction of recycled water infrastructure.

Page 37 states “that the Table 22 numbers on the bottom line do not add up”

The purpose of Table 22 is to show the water supply vs. water demand under existing conditions with the proposed project and other development projects with approved water supply. The bottom line of WSA Table 22 is a summation of the recycled water demands for approved projects plus the proposed Tracy Hills Project. The numbers do add up correctly to be 3,632 af/yr. The 7.5% unaccounted for water (UAFW) factor is applied to that total by dividing 3,632 af/yr by 92.5% (or 0.925) for a total demand (including UAFW) of 3,926 af/yr, such that 3,632 af/yr is 92.5% of the total of 3,926 af/yr.

Page 12 of the WSA says that the irrigation demands for the proposed project may be met with potable supplies if available in the interim period before recycled water becomes available. Based on the numbers in Table 22, potable water supplies would be adequate to meet the recycled water demands in normal and single dry years based on the estimated potable and recycled water demands.

Page 37 states that there are no agreements in place for CVP water and Semitropic water

BBID CVP and Semitropic are identified in the WSA as future planned water supplies in accordance with the Water Code. Furthermore, the agreements associated with these future sources of water supply have precedent, as the City and BBID, and the City and Semitropic, have previously successfully negotiated water supply agreements that are currently in place.

BBID CVP Ag water is a future planned water supply and is identified in the WSA as such. BBID and the City are negotiating an agreement for this future planned water supply..

Semitropic Water Storage District has permitted and is ready for construction of a second phase of the groundwater banking program and is currently looking for additional banking partners to share the benefits of the Stored Water Recovery Unit. The agreement associated with this future source of water supply has precedent, as the

City and Semitropic, have previously successfully negotiated a water supply agreement that is currently in place.

Page 38 states that “the City’s UWMP underestimates the projected Tracy Hills demands”

Section 3.4 of the WSA (starting on page 15) describes the projected water demand for the Tracy Hills Project as it was included in the City’s 2010 UWMP (adopted by the City in May 2011). The WSA acknowledges that the water demand included in the City’s 2010 UWMP is lower than the currently projected water demand for the Tracy Hills Project and thus the subsequent analysis provided in the WSA is based on the current projected water demand for the Tracy Hills Project.

The City’s UWMP is updated every five years in accordance with California Water Code requirements. The next update of the City’s UWMP (the 2015 UWMP) is due to the California Department of Water Resources by July 1, 2016.

Page 38 states that “the entire WSA relies on ‘future water supplies’” and “requires the WSA to identify the existing water supply entitlement, water rights, or water service contracts held by the public water system” and ” and that “speculative, future supplies cannot be substituted for current, existing conditions”

The WSA describes the City’s existing water supply entitlements, water rights, and water service contracts and future planned water supplies in Section 6.0 of the WSA (starting on page 23).

The WSA meets the standard for identifying and describing the total projected water supplies, including both existing water supplies and future planned water supplies. The inclusion of future planned supplies in the WSA is consistent with the Water Code:

Section 10631 (b): Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a).

BBID CVP and Semitropic are identified in the WSA as future planned water supplies in accordance with the Water Code. Furthermore, the agreements associated with these future planned sources of water supply have precedent, as the City and BBID, and the City and Semitropic, have previously successfully negotiated water supply agreements that are currently in place.

**Response OR2-12A:** On December 17, 2009, the SJVAPCD adopted the guidance: Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA and the policy: District Policy – Addressing GHG Emission Impacts for Stationary Source Projects Under CEQA When Serving as the Lead Agency. The guidance and policy rely on the use of Best Performance Standards (BPS) to assess significance of project specific GHG emissions during the environmental review process, as required by CEQA. Projects implementing BPS would be determined to

have a less than cumulatively significant impact. Otherwise, demonstration of a 29 percent reduction in GHG emissions, from business-as-usual, is required to determine that a project would have a less than cumulatively significant impact.

The SJVAPCD established the 29 percent GHG emissions reduction threshold based on the requirements and targets established in the California Air Resources Board (CARB) Assembly Bill 32 Scoping Plan (Scoping Plan). The goals and actions within the CARB Scoping Plan were developed to achieve the reduction targets established in Assembly Bill 32 and Executive Order S-3-05.

In *Cleveland National Forest Foundation et. al. v. San Diego Association of Governments et. al.*, the Court determined that the San Diego Association of Governments (SANDAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) failed to analyze GHG emissions past 2020 and failed to identify mitigation. Unlike the SANDAG RTP/SCS, the DSEIR calculates emissions for Phase 1a as well as buildout of the THSP, which goes well beyond 2020. Furthermore, the DSEIR included numerous reduction measures in Mitigation Measure 4.7-1, which require the Project to increase transit usage and opportunities, improve pedestrian accessibility, provide mixed-use, improve destination accessibility, provide traffic calming measures, install high efficiency lighting, and install energy efficient appliances. Mitigation Measure 4.7-1 also requires the implementation of feasible SAP measures and other measures to reduce GHG emissions. Additionally, it should be noted that the proposed THSP is a residential and commercial development and not a General Plan or a Regional Transportation Plan (i.e., RTP/SCS).

In *Sierra Club v. County of San Diego*, the Court determined that the County of San Diego's Climate Action Plan did not contain enforceable GHG reduction measures that would achieve the specified emissions reduction target. As described above, the DSEIR includes feasible, enforceable, and verifiable GHG reduction measures in Mitigation Measure 4.7-1.

It should be noted that the analysis, mitigation, and significance determination in the DSEIR Section 4.7 are based on quantification of GHG emissions by the California Emissions Estimator Model (CalEEMod), which is recommended by the SJVAPCD. The GHG emissions reductions that would be achieved through the Project Design Features and Mitigation Measure 4.7-1 were also quantified by CalEEMod and are project specific. The emissions reduction calculations in CalEEMod are based on research and data collected by the California Air Pollution Control Officers Association (CAPCOA). The reductions and significance determination in the DSEIR are not based on implementation of the SJVAPCD's Best Performance Standards (BPS) as indicated in the comment.

As described above, the project quantifies and analyzes the project emissions and determines that implementation of all feasible mitigation measures would achieve a reduction of 16.41 percent, which would fall short of the SJVAPCD's 29 percent threshold. The reduction targets established within Executive Order S-3-05 pertain to

Statewide reductions (e.g., reductions from improved vehicle emissions standards, efficient/renewable energy generation, etc.) and do not directly relate to the project level (i.e., residential and commercial development). Nonetheless, Project emissions would see a continued reduction as on-road vehicle emissions improve and as the State's Renewable Portfolio Standards for energy are implemented, among various other Statewide initiatives. The THSP also provides a foundation for continued reductions in vehicle emissions through the proposed mix of uses and pedestrian friendly environment. Such features would encourage residents, employees, and customers to use transit, bicycles, and walk rather than travel by single-occupant vehicles.

**Response OR2-12B:** SB 375 requires the San Joaquin Council of Governments (SJCOC) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) to identify a regional development pattern and transportation system that can meet the regional GHG reductions targets from the automobile and light truck sectors by 2020 and 2035. The GHG reduction targets focus on transportation projects, transportation funding, and overall regional growth. It is noted that compliance with SB 375 is incentive-based and does not depend on any regulatory action. Local government land use policies and regulations are not required to be consistent with the SCS, as SB 375 retains local land use authority. The SCS sets forth a forecasted regional development pattern, which, when integrated with the transportation network, will reduce GHG emissions from automobiles and light trucks to achieve the GHG reduction targets. The Project would be consistent with the development patterns and growth projections for the area. As described in the DSEIR, the THSP has been identified within the City of Tracy General Plan and it is anticipated that the THSP would be consistent with the anticipated growth within the City.

**Response OR2-12C:** Refer to Responses OR2-12A and OR2-12B, above. The implementation of all feasible mitigation measures would achieve a GHG emissions reduction of 16.41 percent. As determined in the DSEIR, this reduction would not meet the SJVAPCD's 29 percent reduction threshold and impacts would be significant. As noted in the DSEIR and Response OR2-12A, the SJVAPCD's threshold is based on the requirements and targets established in the CARB Scoping Plan, which was developed in response to Assembly Bill 32 and Executive Order S-3-05. Refer to Response OR2-12B, above, regarding compliance with the SJCOC RTP/SCS.

**Response OR2-12D:** Refer to Response OR2-12B, above. The THSP is not a transportation project and the DSEIR does not Tier off of the SJCOC 2014 SJCOC RTP/SCS EIR. It should be noted that the DSEIR includes both a project and program level analysis for the THSP. A project level analysis was conducted for Phase 1a and a program analysis was conducted for the subsequent phases. Furthermore, the DSEIR does not include improper deferral. All mitigation measures include the necessary performance standards and timing and enforcement mechanisms.

**Response OR2-12E:** Refer to Response OR1-6. The City is projected to experience growth in jobs by the TMP horizon year 2030 and buildout in 2050. In 2030, the TMP anticipates 40,506

houses and 64,182 jobs (a jobs:housing ratio of 1.58). By 2050 the TMP anticipates 43,557 houses and 184,003 jobs (a jobs:housing ratio of 4.22). The City's projected job growth is anticipated to outpace available housing, and additional housing units would be needed. The addition of housing in proximity to the planned employment growth in the City would improve the City's jobs/housing balance and reduce commute distances and times (i.e., reducing vehicle miles traveled [VMT]).

**Response OR2-12F:** Refer to Response OR2-12B, above. The RTP/SCS identifies a regional development pattern and transportation system that can meet the regional GHG reductions targets from the automobile and light truck sectors by 2020 and 2035. The Project would be consistent with the development patterns and growth projections for the area. Additionally, refer to Response OR2-12A, above, regarding the applicability of the *Cleveland National Forest Foundation v. San Diego* (2014) case to the Project. In that case the court found that the SANDAG RTP/SCS RTP/SCS) failed to analyze GHG emissions past 2020 and failed to identify mitigation. Section 4.7 of the DSEIR calculates emissions for Phase 1a as well as buildout of the THSP, which goes well beyond 2020 and includes numerous GHG emission reduction measures in Mitigation Measure 4.7-1.

**Response OR2-12G:** Refer to Response OR2-12B, above. The Project would be consistent with the development patterns and growth projections for the area. As described in the DSEIR, the THSP has been identified within the City of Tracy General Plan and it is anticipated that the THSP would be consistent with the anticipated growth within the City.

**Response OR2-12H:** Refer to Response OR2-12B, above. The emissions reduction calculations in CalEEMod are based on research and data collected by CAPCOA. These calculations are based on Project specific land uses and trip generation data and Mitigation Measure 4.7-1 includes performance standards and timing and verification mechanisms. In *Communities for a Better Environment v. City of Richmond* (2010), the court found that the EIR failed to identify how it quantified GHG emissions. As described above and in the DSEIR, the GHG emissions and reductions for the THSP were quantified by CalEEMod, as required by the SJVAPCD.

**Response OR2-12I:** The City of Tracy strongly disagrees with the assertion that the Draft SEIR is legally deficient. Further, because the City and the Applicant have completed additional technical analysis since publication of the December 23, 2015 Draft Subsequent EIR, the City has elected to recirculate the Draft SEIR in an effort to provide full and complete disclosure of all potential impacts associated with the proposed project. Not only does this re-circulated DSEIR include chapters that have been updated and/or re-written to provide additional clarity and understanding of proposed impacts, but also includes a full response to all comments received on the previously circulated December 23, 2015 DSEIR. The conclusions of the DSEIR remain unchanged.

RECEIVED

JUL 20 2015

CITY OF TRACY

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July 16, 2015

Bill Dean, Assistant Director  
Development Services Department  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Re: Tracy Hills Specific Plan Project Supplemental Comment:  
Water Supply Analysis

Dear Mr. Dean:

OR3-1

This letter, intended as a supplemental comment, is submitted on behalf of Horizon Planet. On March 3, 2015, Horizon submitted a comment letter ("the DEIR comment letter") on the 2014 Subsequent Draft Environmental Impact Report ("DEIR") for the Tracy Hills Specific Plan ("THSP" or "Project") which addresses many topics involved with Horizon's overarching mission; one of those topics was the provision of water to the Project. As set forth in the DEIR comment letter, the DEIR fails to adequately disclose and evaluate the Project's provision of water and impacts to existing water supply, or even whether adequate water is available to this Project while existing communities are losing water. Horizon's prior comments<sup>1</sup> have not been addressed by the City, nor has the City or applicants – to Horizon's knowledge – taken action to address the Project's failure to evaluate the provision of water to the Project, as well as the Project's impact to existing water supply.<sup>2</sup>

OR3-2

Since sending the DEIR comment letter to the City, the impacts of the drought that the State was facing at that time has compounded, causing the Governor to issue Executive Order B-29-15<sup>3</sup> imposing mandatory water restrictions across the State of a *minimum* 25% reduction in use. This Executive Order was issued on April 25, 2014, after Horizon submitted its DEIR comment letter. While the prior DEIR did not properly evaluate the provisions of water and water impacts of the Project, the Executive Order and resulting water curtailments bring into question whether there is any proven water available for the Project at all. The Executive Order provides in pertinent part:

<sup>1</sup> Horizon Planet's comments relative to water supply in the DEIR comment letter are attached hereto and incorporated herein by reference as **Exhibit A**.

<sup>2</sup> We are aware that some conversations regarding substantial revision and re-circulation are on-going.

<sup>3</sup> The full text of the Executive order is attached hereto and incorporated herein by reference as **Exhibit B**.

OR3-2  
Cont.

- WHEREAS the severe drought conditions continue to present urgent challenges including: drinking water shortages in communities across the state, diminished water for agricultural production, degraded habitat for many fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta;
- WHEREAS the distinct possibility exists that the current drought will stretch into a fifth straight year in 2016 and beyond; and
- WHEREAS new expedited actions are need to reduce harmful impacts from water shortages and other impacts of the drought; and
- The State Water Resources Control Board (Water Board) shall impose restrictions statewide to achieve a statewide 25% reduction in potable urban water usages through February 2016.

OR3-3

In response to the Governor's Executive Order, the San Joaquin County Board of Supervisors passed a resolution on May 5, 2015 "Implementing State II Emergency Water Conservation Measures For All Water Districts Governed by the Board of Directors."<sup>4</sup> The Resolution mandates that all County water districts comply with State II Emergency Water Conservation measures as enumerated by Section 5-3412 of the Ordinance Code of San Joaquin County.<sup>5</sup>

According to the Project Water Supply Assessment, Project water demand is 5,700 acre feet (AF) annually; the bulk was to be supplied by Byron Bethany Irrigation District ("BBID") as follows:

2,430 AF BBID;  
635 AF BBID CVP Ag supplies,  
670 AF groundwater  
1,970 AF recycled water.

OR3-4

The Project's water reliance on BBID as well as recycled water is problematic and uncertain, as pointed out in the DEIR comment later. Of total water demand, 1,970 AF is recycled water demand. Yet there is no recycled water available today, in the near future, or maybe ever, so total recycled demand must be included in potable project demand. Thus, baseline project demand is the 5,700 AF, all of which must be supplied by BBID or groundwater.

<sup>4</sup> Resolution R-15-59 is attached hereto and incorporated herein by reference as **Exhibit C**.

<sup>5</sup> Ordinance 5-3402, 5-3411, and 5-3412 are collectively attached hereto and incorporated herein by reference as **Exhibit D**.

OR3-5 BBID as a source of Project potable water is not merely uncertain, it may no longer exist. BBID had its water rights cut off by the State Water Resources Control Board in June 2015. Use of BBID water sources for future projects such as THSP is currently unknown due to ongoing and unresolved litigation. BBID does not have current sufficient supply even for its current users, including Mountain House. According to published articles, already approved and constructed communities like Mountain House face loss of BBID water, and your City is forced to assist with alternative water supplies for existing users.<sup>6</sup> BBID is now seeking to purchase potable water from South San Joaquin Water District – which is facing water shortages of its own – to sustain Mountain House through the end of the year. (See article, Ex. E.)

OR3-6 A recent letter signed by the BBID on July 7, 2015 indicates the severity of the water shortage faced by the district:<sup>7</sup>

The acquisition of very expensive supplemental water has been critical to our survival, and to the best of our ability we did plan ahead, stretching both water and financial portfolios to the breaking point. All of this water has been purchased by, or on behalf of, our water users and is not water we own....we need to address these matters before our critical supplemental supplies are too far exhausted by the current demand of other uses.

OR3-7 The Executive Order, water curtailments, and BBID's inability to serve current residents only underscore the Project's water analysis shortcomings, detailed in Horizon's prior DEIR comment letter. As previously stated, the Project must alternatively evaluate the impacts of supplying water to a large-scale, mixed-use specific plan like the Tracy Hills Project. Unfortunately, the Project's DEIR fails at disclosing the uncertainty, possible outcomes, and impacts, and proposes no mitigation measures should the assumed water supply fail to materialize. Such analytical deficiency renders the DEIR legally inadequate. The DEIR water analysis must be revised and recirculated pursuant to 14 CCR §15088.5 prior to certification.

OR3-8 The revised DEIR must include a Water Supply Assessment ("WSA") in compliance with SB 610/SB221, and the WSA must demonstrate that the City has a sufficient water supply to serve the Tracy Hills project. As explained at p. 4.12-20 of the DEIR:

**Senate Bill 610** Senate Bill (SB) 610 amended the Public Resources and Water Codes as it pertains to consultation with water supply agencies and water supply assessments. SB 610 requires the preparation of water supply assessments (WSAs) for projects, as that term is defined by Water

<sup>6</sup> Sacramento Bee article, "Threatened with water shutoff, Mountain House lands potential supply" is attached hereto and incorporated herein by reference as **Exhibit E**.

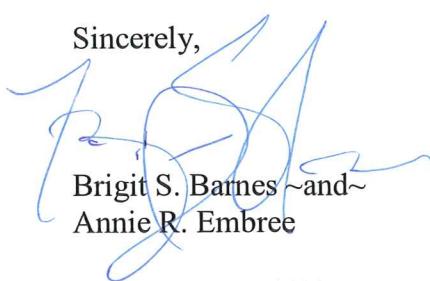
<sup>7</sup> July 7, 2015 letter signed by BBID is attached hereto and incorporated herein by reference as **Exhibit F**.

OR3-8  
Cont. Code Section 10912, that are subject to CEQA. The Project meets the definition of a ‘project’ under the Water Code and a WSA has been prepared.

**Senate Bill 221** SB 221 is a companion measure to SB 610 that seeks to promote more collaborative planning between local water suppliers and cities and counties. Where SB 610 requires water assessments be furnished to local governments for inclusion in any environmental documentation for projects (as defined by Water Code Section 10912) subject to CEQA, SB 221 states that approval by a city or county of certain residential subdivisions requires an affirmative written verification of sufficient water supply.

OR3-9 The DEIR was legally deficient prior to the April 2015 Executive Order and the California State Water Resources Control Board’s curtailment orders. These deficiencies have only amplified with the on-going drought and water curtailments. Given the dire water shortages facing the State, Horizon Planet is compelled to reiterate its prior comments that the Project’s Water Supply Analysis must be provided as part of the DEIR, and must be revised to reflect inability to rely on BBID and recycled water in its calculations, and recirculated pursuant to 14 CCR §15088.5 prior to certification.

Sincerely,

A handwritten signature in blue ink, appearing to be a stylized 'B' and 'A' followed by 'Brigit S. Barnes ~and~ Annie R. Embree'.

Enclosures: Exhibits A – F

cc: Client (via email)  
Members of Tracy Planning Commission (via mail)  
City Clerk (via mail)

Horizon.Tracy Hills\Horizon Planet THSP DEIR Supplemental Comment Letter

**EXHIBIT "A"**

6. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND EVALUATE THE PROJECT'S PROVISION OF WATER AND IMPACTS TO EXISTING WATER SUPPLY, AND THEREFORE HAS NOT BEEN PREPARED IN THE MANNER REQUIRED BY LAW

A. The EIR Fails To Satisfy The Requirements Identified In *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*

The DEIR's evaluation of long-term water supply impacts fails to satisfy the minimum requirements of CEQA as identified by the Supreme Court, and therefore the City cannot certify the DEIR. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 401 is the seminal case on the adequacy of an EIR's water supply analysis. There, the Supreme Court held Rancho Cordova's EIR failed to adequately analyze the long-term water supply for the project. *Vineyard* provides the following requirements for public agencies preparing long-term water supply assessments:

- An EIR cannot ignore or assume a solution to the problem of supplying water will emerge on its own. It must provide sufficient information so that the pros and cons of supplying water for the project can be evaluated.
- Water supplies analyzed in an EIR must bear *a likelihood of actually proving available*. Speculative sources of unrealistic allocation do not provide a sufficient basis for decision-making under CEQA.
- Where there is uncertainty about future water sources, the EIR must discuss possible replacement sources or alternatives, and analyze the impacts of those strategies.
- "Factual inconsistencies and lack of clarity in an EIR leave the reader and the decision makers without substantial evidence for concluding that sufficient water is, in fact, likely to be available for the [Project] at full build out." Some of the factual inconsistencies include contradictory projections of demand and water supply availability.
- An EIR must "show a likelihood water would be available, over the long term, for this project...Without an explanation that shows at least an approximate long-term sufficiency in total supply, the public and decision makers could have no confidence that the identified sources were actually likely to fully serve this extraordinarily large development project."

- "The ultimate question under CEQA...is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project."
- The EIR must provide sufficient information to "evaluate the pros and cons of supplying water." An EIR must demonstrate a "rough balance between water supply and demand."
- "An EIR may by other means demonstrate that water will be available for the project from an identified source....Even without a showing that water from the identified source is likely to be sufficient, an EIR may satisfy CEQA by fully disclosing the uncertainty, the other possible outcomes, their impacts and appropriate mitigation measures."

Perhaps nowhere is such analysis more important than in evaluating the impacts of supplying water to a large-scale, mixed-use specific plan like the Tracy Hills Project. Unfortunately, the Project's DEIR fails at disclosing the uncertainty, possible outcomes, and impacts, and proposes no mitigation measures should the assumed water supply fail to materialize. Such analytical deficiency renders the DEIR legally inadequate. The DEIR must be revised and re-circulated pursuant to 14 CCR §15088.5 prior to certification.

B. The EIR's Water Supply Assessment fails to meet the requirements of SB 610 and SB 221

The Water Supply Assessment ("WSA") fails to comply with SB 610/SB221 requirements because it does not demonstrate that the City has a sufficient water supply to serve the Tracy Hills project. As explained at p. 4.12-20 of the DEIR:

**Senate Bill 610** Senate Bill (SB) 610 amended the Public Resources and Water Codes as it pertains to consultation with water supply agencies and water supply assessments. SB 610 requires the preparation of water supply assessments (WSAs) for projects, as that term is defined by Water Code Section 10912, that are subject to CEQA. The Project meets the definition of a 'project" under the Water Code and a WSA has been prepared.

**Senate Bill 221** SB 221 is a companion measure to SB 610 that seeks to promote more collaborative planning between local water suppliers and cities and counties. Where SB

610 requires water assessments be furnished to local governments for inclusion in any environmental documentation for projects (as defined by Water Code Section 10912) subject to CEQA, SB 221 states that approval by a city or county of certain residential subdivisions requires an affirmative written verification of sufficient water supply.

According to the WSA, project water demand is 5,700 acre feet (AF) annually, of which 3,730 AF is potable water demand and 1,970 AF is recycled water demand. Yet there is no recycled water available today, in the near future, or maybe ever, so total recycled demand must be included in potable project demand. Thus, baseline project demand is the 5,700 AF. The proposed water supply is as follows:

2,430 AF BBID;  
635 AF BBID CVP Ag supplies,  
670 AF groundwater  
1,970 AF recycled water.

BBID CVP Ag needs to be supplemented with additional BBID CVP Ag water and Semitropic storage water. Neither supply exists today. The WSA assumes 2,430 AF of BBID pre-1914 water is "firm and well-established." While this is true in part, these rights are not beyond being challenged. The State and Federal contractors last year claimed that the South Delta (which includes BBID) riparians and "pre-1914 water" water right holders were stealing their water. Just last month, the State Water Board issued an order requiring BBID, among others, to submit information justifying the claimed right. (See State Water Board Order attached as **Exhibit N**, Background Recital 6 - all 4 letters referenced on website.) Moreover, BBID pre-1914 water rights are for the irrigation season; the City contemplates using them year round. The WSA/DEIR does not address this at all. Because BBID water is not available during the winter, non-irrigation season, the DEIR's water supply assumptions suffer a fatal flaw.

In addition, the WSA and DEIR utilize unrealistic/faulty assumptions on reliability of water. Specifically the DEIR improperly assumes availability of 95% of Stanislaus River water in multiple dry years and 90% of full pre-1914 water availability in multiple dry years. USBR

allocations for Ag south of the Delta has been 0% in 2013 and 2014, yet the WSA assumes 15% and 10% allocation in single and multiple dry years.

The WSA further improperly relies on unfettered groundwater pumping (9TAF) that may not be available in the future, after the historic groundwater regulation legislation that was adopted last year that requires the formation of Groundwater Sustainability Agencies with plans that will allow limitation of pumping. Historically, the City has never pumped even close to 9TAF, but the DEIR assumes that amount as the City's share of the "safe-yield", which has never been demonstrated. The DEIR must discuss the impacts from likely reductions.

Regarding recycled water, the WSA and DEIR rely on the provision of recycled water. Currently the City has no recycled water available. The WSA and DEIR fail to bridge the analytic gap to leap from non-existent supplies to 1,970 AF. (See WSA Table 22 and DEIR 4.12-11.) The uncertainty regarding when recycled water will be available mandates that the City add "recycled water demands" into potable water supply demands." Curing this defect exacerbates the insufficiency of potable water. Also, we note that the Table 22 numbers on the bottom line do not add up, further demonstrating insufficient supply.

Assuming CVP water will be supplied further renders the DEIR inadequate. The DEIR relies on CVP water for the Project, and yet there is no agreement between BBID and the City to provide CVP water to the City for this Project. The same is true for Semitropic groundwater bank supply, but the absence of any agreement and the dearth of any discussion of contingencies in the DEIR render that document insufficient as a disclosure document. Stated slightly differently, what happens if these speculative agreements do not materialize?

Finally, Water Code § 10910(c)(1) requires the water supplier (the City) to determine whether projected water demand associated with a proposed project was included as part of the most recently adopted urban water management plan (UWMP). The City's UWMP underestimates projected Tracy Hills demands and must be re-drafted to include correct demand. And the entire WSA analysis relies on "future water supplies." (See Table 22.) Water Code Section 10910(d)(1) and (2) requires the WSA to identify the existing water supply entitlement, water

rights, or water service contracts held by the public water system. Here, the WSA is relying on future, yet-to-be-negotiated contracts. Speculative, future supplies cannot be substituted for current, existing conditions. To do so runs afoul of *Vineyard*'s requirement that water supplies analyzed in an EIR bear a likelihood of actually proving available. Speculative sources of unrealistic allocation do not provide a sufficient basis for decision-making under CEQA.

Accordingly, the City must revise and re-circulate the DEIR to address these shortcomings prior to certifying the DEIR and approving the specific plan. Failing to do so amounts to a prejudicial abuse of discretion and a failure to proceed as required by law.

**EXHIBIT "B"**

Executive Department

State of California

EXECUTIVE ORDER B-29-15

WHEREAS on January 17, 2014, I proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions; and

WHEREAS on April 25, 2014, I proclaimed a Continued State of Emergency to exist throughout the State of California due to the ongoing drought; and

WHEREAS California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall this winter, with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking supplies in underground water basins; and

WHEREAS the severe drought conditions continue to present urgent challenges including: drinking water shortages in communities across the state, diminished water for agricultural production, degraded habitat for many fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta; and

WHEREAS a distinct possibility exists that the current drought will stretch into a fifth straight year in 2016 and beyond; and

WHEREAS new expedited actions are needed to reduce the harmful impacts from water shortages and other impacts of the drought; and

WHEREAS the magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and

WHEREAS under the provisions of section 8558(b) of the Government Code, I find that conditions of extreme peril to the safety of persons and property continue to exist in California due to water shortage and drought conditions with which local authority is unable to cope; and

WHEREAS under the provisions of section 8571 of the California Government Code, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the drought.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular Government Code sections 8567 and 8571 of the California Government Code, do hereby issue this Executive Order, effective immediately.

**IT IS HEREBY ORDERED THAT:**

1. The orders and provisions contained in my January 17, 2014 Proclamation, my April 25, 2014 Proclamation, and Executive Orders B-26-14 and B-28-14 remain in full force and effect except as modified herein.

**SAVE WATER**

2. The State Water Resources Control Board (Water Board) shall impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016. These restrictions will require water suppliers to California's cities and towns to reduce usage as compared to the amount used in 2013. These restrictions should consider the relative per capita water usage of each water suppliers' service area, and require that those areas with high per capita use achieve proportionally greater reductions than those with low use. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.
3. The Department of Water Resources (the Department) shall lead a statewide initiative, in partnership with local agencies, to collectively replace 50 million square feet of lawns and ornamental turf with drought tolerant landscapes. The Department shall provide funding to allow for lawn replacement programs in underserved communities, which will complement local programs already underway across the state.
4. The California Energy Commission, jointly with the Department and the Water Board, shall implement a time-limited statewide appliance rebate program to provide monetary incentives for the replacement of inefficient household devices.
5. The Water Board shall impose restrictions to require that commercial, industrial, and institutional properties, such as campuses, golf courses, and cemeteries, immediately implement water efficiency measures to reduce potable water usage in an amount consistent with the reduction targets mandated by Directive 2 of this Executive Order.
6. The Water Board shall prohibit irrigation with potable water of ornamental turf on public street medians.
7. The Water Board shall prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems.

8. The Water Board shall direct urban water suppliers to develop rate structures and other pricing mechanisms, including but not limited to surcharges, fees, and penalties, to maximize water conservation consistent with statewide water restrictions. The Water Board is directed to adopt emergency regulations, as it deems necessary, pursuant to Water Code section 1058.5 to implement this directive. The Water Board is further directed to work with state agencies and water suppliers to identify mechanisms that would encourage and facilitate the adoption of rate structures and other pricing mechanisms that promote water conservation. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.

#### INCREASE ENFORCEMENT AGAINST WATER WASTE

9. The Water Board shall require urban water suppliers to provide monthly information on water usage, conservation, and enforcement on a permanent basis.

10. The Water Board shall require frequent reporting of water diversion and use by water right holders, conduct inspections to determine whether illegal diversions or wasteful and unreasonable use of water are occurring, and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. Pursuant to Government Code sections 8570 and 8627, the Water Board is granted authority to inspect property or diversion facilities to ascertain compliance with water rights laws and regulations where there is cause to believe such laws and regulations have been violated. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.

11. The Department shall update the State Model Water Efficient Landscape Ordinance through expedited regulation. This updated Ordinance shall increase water efficiency standards for new and existing landscapes through more efficient irrigation systems, greywater usage, onsite storm water capture, and by limiting the portion of landscapes that can be covered in turf. It will also require reporting on the implementation and enforcement of local ordinances, with required reports due by December 31, 2015. The Department shall provide information on local compliance to the Water Board, which shall consider adopting regulations or taking appropriate enforcement actions to promote compliance. The Department shall provide technical assistance and give priority in grant funding to public agencies for actions necessary to comply with local ordinances.

12. Agricultural water suppliers that supply water to more than 25,000 acres shall include in their required 2015 Agricultural Water Management Plans a detailed drought management plan that describes the actions and measures the supplier will take to manage water demand during drought. The Department shall require those plans to include quantification of water supplies and demands for 2013, 2014, and 2015 to the extent data is available. The Department will provide technical assistance to water suppliers in preparing the plans.

13. Agricultural water suppliers that supply water to 10,000 to 25,000 acres of irrigated lands shall develop Agricultural Water Management Plans and submit the plans to the Department by July 1, 2016. These plans shall include a detailed drought management plan and quantification of water supplies and demands in 2013, 2014, and 2015, to the extent that data is available. The Department shall give priority in grant funding to agricultural water suppliers that supply water to 10,000 to 25,000 acres of land for development and implementation of Agricultural Water Management Plans.
14. The Department shall report to Water Board on the status of the Agricultural Water Management Plan submittals within one month of receipt of those reports.
15. Local water agencies in high and medium priority groundwater basins shall immediately implement all requirements of the California Statewide Groundwater Elevation Monitoring Program pursuant to Water Code section 10933. The Department shall refer noncompliant local water agencies within high and medium priority groundwater basins to the Water Board by December 31, 2015, which shall consider adopting regulations or taking appropriate enforcement to promote compliance.
16. The California Energy Commission shall adopt emergency regulations establishing standards that improve the efficiency of water appliances, including toilets, urinals, and faucets available for sale and installation in new and existing buildings.

#### **INVEST IN NEW TECHNOLOGIES**

17. The California Energy Commission, jointly with the Department and the Water Board, shall implement a Water Energy Technology (WET) program to deploy innovative water management technologies for businesses, residents, industries, and agriculture. This program will achieve water and energy savings and greenhouse gas reductions by accelerating use of cutting-edge technologies such as renewable energy-powered desalination, integrated on-site reuse systems, water-use monitoring software, irrigation system timing and precision technology, and on-farm precision technology.

#### **STREAMLINE GOVERNMENT RESPONSE**

18. The Office of Emergency Services and the Department of Housing and Community Development shall work jointly with counties to provide temporary assistance for persons moving from housing units due to a lack of potable water who are served by a private well or water utility with less than 15 connections, and where all reasonable attempts to find a potable water source have been exhausted.
19. State permitting agencies shall prioritize review and approval of water infrastructure projects and programs that increase local water supplies, including water recycling facilities, reservoir improvement projects, surface water treatment plants, desalination plants, stormwater capture, and greywater systems. Agencies shall report to the Governor's Office on applications that have been pending for longer than 90 days.

20. The Department shall take actions required to plan and, if necessary, implement Emergency Drought Salinity Barriers in coordination and consultation with the Water Board and the Department of Fish and Wildlife at locations within the Sacramento - San Joaquin delta estuary. These barriers will be designed to conserve water for use later in the year to meet state and federal Endangered Species Act requirements, preserve to the extent possible water quality in the Delta, and retain water supply for essential human health and safety uses in 2015 and in the future.
21. The Water Board and the Department of Fish and Wildlife shall immediately consider any necessary regulatory approvals for the purpose of installation of the Emergency Drought Salinity Barriers.
22. The Department shall immediately consider voluntary crop idling water transfer and water exchange proposals of one year or less in duration that are initiated by local public agencies and approved in 2015 by the Department subject to the criteria set forth in Water Code section 1810.
23. The Water Board will prioritize new and amended safe drinking water permits that enhance water supply and reliability for community water systems facing water shortages or that expand service connections to include existing residences facing water shortages. As the Department of Public Health's drinking water program was transferred to the Water Board, any reference to the Department of Public Health in any prior Proclamation or Executive Order listed in Paragraph 1 is deemed to refer to the Water Board.
24. The California Department of Forestry and Fire Protection shall launch a public information campaign to educate the public on actions they can take to help to prevent wildfires including the proper treatment of dead and dying trees. Pursuant to Government Code section 8645, \$1.2 million from the State Responsibility Area Fire Prevention Fund (Fund 3063) shall be allocated to the California Department of Forestry and Fire Protection to carry out this directive.
25. The Energy Commission shall expedite the processing of all applications or petitions for amendments to power plant certifications issued by the Energy Commission for the purpose of securing alternate water supply necessary for continued power plant operation. Title 20, section 1769 of the California Code of Regulations is hereby waived for any such petition, and the Energy Commission is authorized to create and implement an alternative process to consider such petitions. This process may delegate amendment approval authority, as appropriate, to the Energy Commission Executive Director. The Energy Commission shall give timely notice to all relevant local, regional, and state agencies of any petition subject to this directive, and shall post on its website any such petition.

26. For purposes of carrying out directives 2–9, 11, 16–17, 20–23, and 25, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are hereby suspended. This suspension applies to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions. This suspension, and those specified in paragraph 9 of the January 17, 2014 Proclamation, paragraph 19 of the April 25, 2014 proclamation, and paragraph 4 of Executive Order B-26-14, shall remain in effect until May 31, 2016. Drought relief actions taken pursuant to these paragraphs that are started prior to May 31, 2016, but not completed, shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code for the time required to complete them.
27. For purposes of carrying out directives 20 and 21, section 13247 and Chapter 3 of Part 3 (commencing with section 85225) of the Water Code are suspended.
28. For actions called for in this proclamation in directive 20, the Department shall exercise any authority vested in the Central Valley Flood Protection Board, as codified in Water Code section 8521, et seq., that is necessary to enable these urgent actions to be taken more quickly than otherwise possible. The Director of the Department of Water Resources is specifically authorized, on behalf of the State of California, to request that the Secretary of the Army, on the recommendation of the Chief of Engineers of the Army Corps of Engineers, grant any permission required pursuant to section 14 of the Rivers and Harbors Act of 1899 and codified in section 48 of title 33 of the United States Code.
29. The Department is directed to enter into agreements with landowners for the purposes of planning and installation of the Emergency Drought Barriers in 2015 to the extent necessary to accommodate access to barrier locations, land-side and water-side construction, and materials staging in proximity to barrier locations. Where the Department is unable to reach an agreement with landowners, the Department may exercise the full authority of Government Code section 8572.
30. For purposes of this Executive Order, chapter 3.5 (commencing with section 11340) of part 1 of division 3 of the Government Code and chapter 5 (commencing with section 25400) of division 15 of the Public Resources Code are suspended for the development and adoption of regulations or guidelines needed to carry out the provisions in this Order. Any entity issuing regulations or guidelines pursuant to this directive shall conduct a public meeting on the regulations and guidelines prior to adopting them.

31. In order to ensure that equipment and services necessary for drought response can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended for directives 17, 20, and 24. Approval by the Department of Finance is required prior to the execution of any contract entered into pursuant to these directives.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1<sup>st</sup> day of April 2015.

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EDMUND G. BROWN JR.  
Governor of California

ATTEST:

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ALEX PADILLA  
Secretary of State

**EXHIBIT "C"**

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,  
STATE OF CALIFORNIA

R-15- 59

RESOLUTION IMPLEMENTING STAGE II EMERGENCY WATER CONSERVATION  
MEASURES FOR ALL WATER DISTRICTS GOVERNED BY  
THE BOARD OF SUPERVISORS

WHEREAS, Section 5-3409 of the Ordinance Code of San Joaquin County empowers the Board of Supervisors to declare the existence of a water emergency and implement additional conservation measures when necessary and proper to protect and conserve the water supply for human consumption, sanitation, and fire protection; and,

WHEREAS, on August 12, 2014, the Board of Supervisors approved Resolution R-14-130 declaring that a water emergency exists and implementing Stage I Emergency Water Conservation Measures for all Water Districts governed by the Board; and,

WHEREAS, the Governor of the State of California has issued an Executive Order on April 1, 2015, directing additional Statewide water conservation measures to be implemented; and,

WHEREAS, the Board of Supervisors has determined that current drought conditions require additional restrictions on water use to conserve water supply for human consumption, sanitation, and fire protection.

NOW, THEREFORE, IT IS HEREBY DECLARED AND ORDERED that Stage II Emergency Water Conservation Measures, as enumerated in Section 5-3412 of the Ordinance Code of San Joaquin County, are mandatory for all customers of all Water Districts governed by the Board of Supervisors of the County of San Joaquin, State of California.

IT IS FURTHER DECLARED AND ORDERED that said water emergency shall be deemed to continue to exist until its termination is declared by the Board of Supervisors of the County of San Joaquin, State of California.

PASSED AND ADOPTED this 5th day of May, 2015, by the following vote of the Board of Supervisors, to wit:

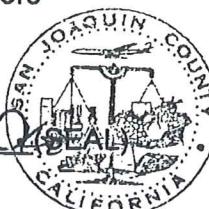
AYES: Winn, Elliott, Villapudua, Bestolarides, Miller

NOES: None

ABSENT: None

ATTEST: MIMI DUZENSKI  
Clerk of the Board of Supervisors  
County of San Joaquin,  
State of California

By Mimi Duzenski  
Clerk



KATHERINE M. MILLER, Chair  
Board of Supervisors  
County of San Joaquin,  
State of California

**EXHIBIT "D"**

## 5-3402 - CONSERVATION OF WATER.

It shall at all times be unlawful for any person within the boundaries of any Water District to use water for any of the following:

- (a) For exterior landscape, garden, or pasture irrigation including, but not limited to, public, private and commercial locations as follows:
  - (1) Irrigation shall be prohibited between the hours of 11:00 a.m. to 6:00 p.m.
  - (2) Exceptions to the above regulations:
    - (i) Drip and/or mist irrigation systems.
    - (ii) Other users which cannot reasonably comply with the above regulations due to normal hours of use or type of use of the area to be irrigated may be excepted upon approval by the Director of a water conservation plan which meets the goals of reduction and conservation.
- (b) Fail to repair water leaks, breaks or malfunctions within the water user's plumbing or distribution system for any period of time within which such break or leak should reasonably have been discovered and corrected. It shall be presumed that a period of twenty-four (24) hours after the water user discovers such break, leak or malfunction, or receives notice from the County, any water provider or enforcement authority of such condition, whichever occurs first, is a reasonable time within which to correct such condition or to make arrangements for correction.
- (c) To use water for washing vehicles or boats, or cleaning buildings or mobile home exteriors without an automatic shut-off nozzle on the hose.
- (d) The operation of any automated commercial car wash unless at least twenty percent (20%) of the soap/water for such use is reclaimed. For existing automated commercial car washes, if a reclaimed water system cannot be installed, the car wash operator shall submit a plan satisfactory to the Director to modify operation of the facility to reduce its usage of water by at least twenty percent (20%) of its usage during the same month of the prior year for comparable business volume. If there is no history of prior use, the operator shall provide to the Director data comparable to such history to establish its base monthly usage.
- (e) Serving water to restaurant customers except upon request.
- (f) Repealed by Ord. 3833.
- (g) Use of water in publicly displayed ornamental fountains in public and commercial establishments, except for recycled or recirculated water.
- (h) Use of water to wash driveways, sidewalks, patios, parking lots, aprons and other similar exterior surfaces is prohibited except for sanitation, public health and safety, and fire protection purposes.
- (i) The refilling of all existing swimming pools and the filling of new swimming pools, whether public, private or commercial within a Water District, or area that has a nonmetered water system, unless payment of a water use fee equivalent to the current cost to produce water in the Water District (as determined by the Director) for the estimated swimming pool capacity is paid, prior to the refilling or filling of pools, to the District or to the area in which the swimming pool is located.

The indiscriminate running of water or washing with water not otherwise prohibited above which is without reasonable purpose and which is evidenced by the runoff of water off the property or into drainage facilities for more than ten (10) minutes.

- (k) Use of water from fire hydrants without permission from the governing agency or purveyor of water or fire protection agency which has jurisdiction over the hydrant.
- (l) Use of water for dust control purposes except for recycled, or other nonpotable water, except for health or safety purposes.

(Ord. No. 4450, § 1, 8-12-2014)

#### 5-3411 - STAGE I EMERGENCY WATER CONSERVATION MEASURES.

During Stage I of a water supply shortage, the shortage is minor, and a ten percent (10%) or greater reduction in water usage is the goal.

- (a) All requirements of 5-3402 apply, and in addition, landscape, garden, and pasture irrigation shall be limited to a maximum of three days per week, when necessary, and shall be based on the following odd-even schedule:
  - (1) Customers with street addresses ending with an even number may irrigate only on Wednesday and/or Friday and/or Sunday;
  - (2) Customers with street addresses ending with an odd number may irrigate only on Tuesday and/or Thursday and/or Saturday;
  - (3) No irrigation will be permitted on Mondays.
  - (4) Watering of landscapes at times and on days other than those specified in this section or during high winds that cause water to blow away from the landscapes being watered is prohibited.
- (b) Draining and refilling of pools, spas and ponds shall be allowed for health, maintenance or structural considerations, after approval by the Public Works Director. Customer requests for approval must be in writing to the Director.
- (c) Washing of vehicles, boats, equipment, etc. shall be accomplished under the following restrictions:
  - (1) Water buckets shall be utilized;
  - (2) Water hoses with automatic shutoff devices may be used for rinsing for duration not to exceed three minutes.
- (d) Restrictions in this stage do not apply to recycled water, or water delivered to a site from a source other than a Water District.

(Ord. No. 4450, § 1, 8-12-2014)

#### 5-3412 - STAGE II EMERGENCY WATER CONSERVATION MEASURES.

During Stage II of a water supply shortage, the shortage is moderate, and a twenty percent (20%) or greater reduction in water usage is the goal.

- (a) All requirements of 5-3402 and 5-3411 apply, except that:
  - (1) landscape, garden, and pasture irrigation will be limited to two days per week with street addresses ending in an even number watering on Wednesdays and/or Sundays and street addresses ending in an odd number watering on Tuesdays and/or Saturdays.

- (b) The addition of water above the minimum level necessary to comply with the health requirements for pool, hot tub or jacuzzi circulation, public or private (that is, adding water to bring the level to the top, where splash-out occurs) is prohibited.
- (c) Restaurants shall post at every table and in restrooms notice of water emergency conditions and water restrictions. Acceptable methods of notification to patrons include notices or table tents placed on the tables or in the menus and in restrooms in a form approved or provided by the Director.
- (d) The owner and/or manager of every hotel, motel, inn, guest house, and every other short- term commercial lodging shall post notice of water emergency condition information in every guest room, in a form approved or provided by the Director.
- (e) Restrictions in this stage do not apply to recycled water, or water delivered to a site from a source other than a Water District.

(Ord. No. 4450, § 1, 8-12-2014)

**EXHIBIT "E"**

## WATER &amp; DROUGHT

JUNE 22, 2015

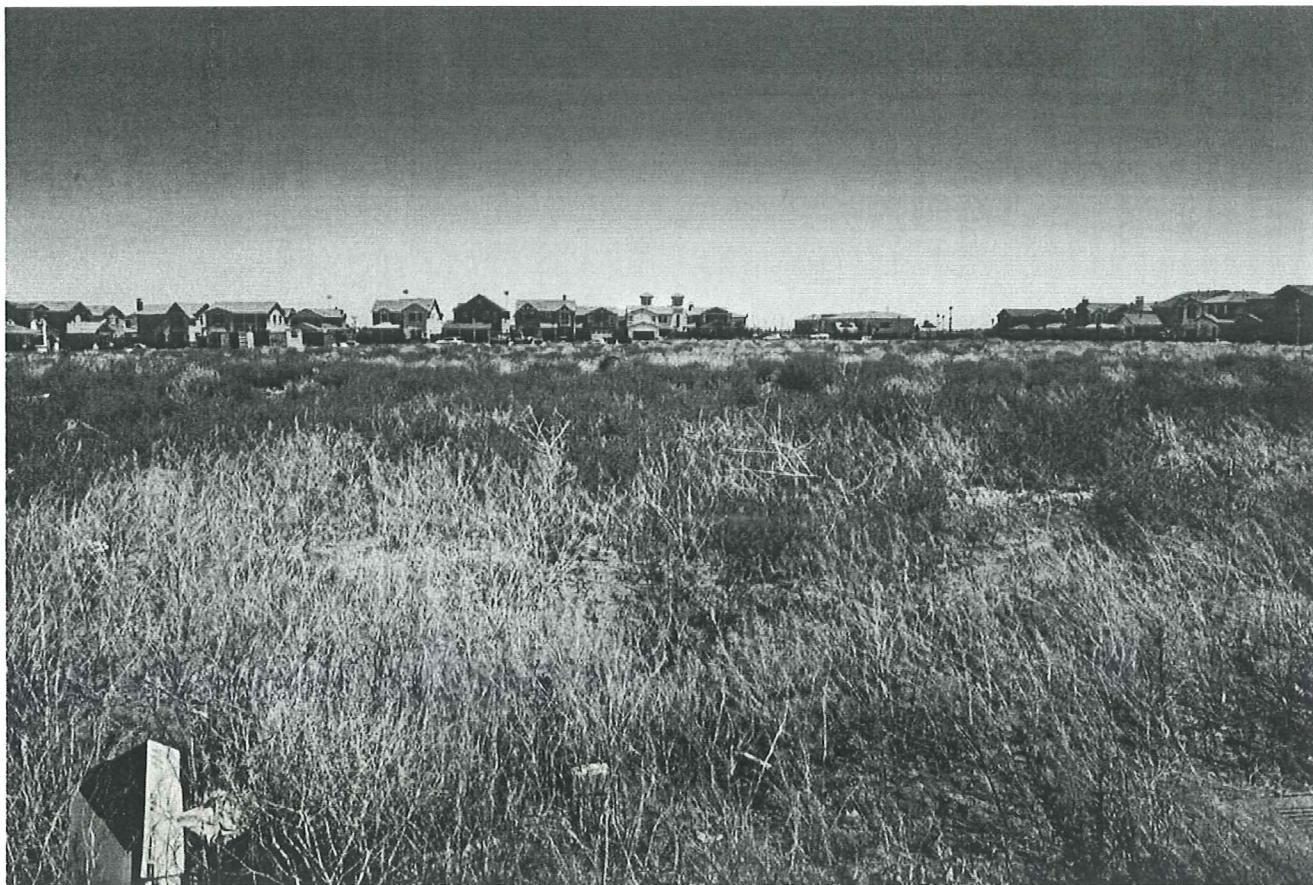
# Threatened with water shutoff, Mountain House lands potential supply

## HIGHLIGHTS

Commuter suburb could see its water supply cut off because of state cutbacks

Lawns would go brown, construction on new homes could stop

Owner CalPERS has seen its investment plummet



Empty lots in Mountain House like this one on Monday would remain undeveloped if the community is unable to secure a source of water. | **Manny Crisostomo** - mcrisostomo@sacbee.com

BY DALE KASLER

*dkasler@sacbee.com*

**MOUNTAIN HOUSE** — This East Bay bedroom community was one of the hardest-hit communities in America when the real estate bubble burst, a disaster that made Mountain House the most “underwater” community in America.

Being underwater is the least of Mountain House’s problems today. Built at a cost of more than \$1 billion by CalPERS a decade ago, the community just west of Tracy is now struggling to get through one of the biggest water shortages facing any urban area in the state.

Mountain House’s crisis came when its sole water source, the nearby Byron Bethany Irrigation District, had its water rights cut off a little more than a week ago by the State Water Resources Control Board. The board ordered 114 senior water rights holders to stop pulling water out of rivers and streams, the first time that’s happened since the drought of 1977.

On Monday, officials with the Mountain House Community Services District disclosed a tentative water purchase that would get the community of 11,000 “through the end of the year,” said district general manager Edwin Pattison. The deal still has to be approved Tuesday by the seller, the nearby South San Joaquin Irrigation District, which is facing water shortages of its own.

“We’ve curtailed our growers and the cities we serve,” said South San Joaquin’s general manager, Jeff Shields. “It’s a difficult decision for the board.”

South San Joaquin’s urban customers include Tracy, Lathrop and Manteca. The price for the 1,800 acre-feet of water involved in the purchase wasn’t disclosed. An acre-foot is 326,000 gallons.

At the very least, state officials say Mountain House won’t go dry, even if there’s no deal with South San Joaquin. The state has a “health and safety” exemption for communities with no alternative water supply. The exemption keeps water flowing to homes, but bans outdoor irrigation and prevents communities from hooking up new customers.

“The water won’t be turned off,” said Tim Moran, spokesman for the state water board, which made the decision to cut off senior water rights.

Pattison, a hydrologist by profession, said Mountain House has 12 million gallons of water

stored, which amounts to a week's supply. "I filled up the tanks," Pattison said. That will give Mountain House a few days to figure out an alternate plan in case the deal with South San Joaquin doesn't materialize.

But if it can't secure a reliable water supply from South San Joaquin or some other provider, the community's lawns would rapidly turn brown and construction on dozens of new homes could stop.

That could bring fiscal disaster for the community, which is \$350 million in debt and depends on a growing population to make ends meet. "Our financial model is a function of orderly development," Pattison said.

Pattison said he couldn't rule out continuing to use surface water and possibly challenging the state's legal authority. The Mountain House board of directors agreed Monday to reimburse the Byron-Bethany district in case it gets fined for continuing to ship water to Mountain House. The state has said it will fine violators up to \$2,500 per acre-foot.

A cut-off of water to this commuter outpost east of Tracy would also be a huge setback for the California Public Employees' Retirement System. The nation's largest public pension system sank more than \$1 billion into Mountain House in 2004, figuring it would cash in on the eastward migration of Bay Area residents seeking cheaper housing.

The investment collapsed when the housing market fell apart. In 2010, CalPERS valued its Mountain House investment at \$90 million. At one point in late 2008, some 89 percent of the home mortgages in Mountain House were underwater – that is, the owners owed more than their homes were worth. No city in America had a higher percentage.

Since then, housing values have recovered, and many homes are now selling in the \$400,000-to-\$500,000 range. Last summer, CalPERS said its Mountain House investment was now worth \$280 million, and pension fund officials gleefully participated in the ribbon-cutting of the community's first high school.

Now comes the water crisis. Pattison said he appreciates the "irony" of a once-underwater community now scrounging for water.

"Mountain House has turned a corner," he said. "But this man-made water crisis ... is putting that recovery at risk." He called the situation a potentially graver threat to Mountain House's future than the housing bust.

Joe DeAnda, a spokesman for CalPERS, said the pension fund is monitoring the situation but wouldn't comment further.

Pattison has spent the past couple of weeks looking for alternative water supplies, a search made all the more difficult as the drought's fourth year progresses. With supplies tightening, few districts are interested in selling. Complicating matters is that several districts are suing the state over water-rights curtailments, and agreeing to sell some water could undermine their legal position, Pattison said.

One of those suing the state is the South San Joaquin Irrigation District, which has the tentative deal with Mountain House.

*Editor's note (June 23): This version was updated to note that Mountain House has 12 million gallons of water stored, which amounts to a week's supply.*

*Dale Kasler: 916-321-1066, @dakasler*

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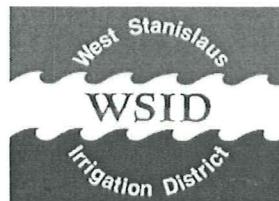
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**EXHIBIT "F"**



Westlands Water District



July 7, 2015

Mr. Ron Milligan, Operations Manager  
Central Valley Operations Office, CVO-100  
2800 Cottage Way  
Sacramento, California 95825-1898

Dear Mr. Milligan,

We understand that these are challenging times for all Central Valley Project (CVP) water users, and we are eager to assist in the implementation of an Operations Plan (Plan) that serves the collective needs of all water users. Further, it is our understanding that the operational objectives of the Plan are:

1. Successful implementation of the Sacramento River Temperature Management Plan.
2. Provide summer water to meet Exchange Contractor irrigation demands, primarily by borrowing water currently stored in San Luis Reservoir by other districts.
3. Pump 140 TAF of north of Delta (NOD) transfer water, backed up in Shasta, during an expanded transfer window.
4. Timely return of all water borrowed from districts that have water stored in San Luis Reservoir.
5. Deliver water to south of Delta refuges in the fall.
6. Ensure scheduled deliveries to Upper Delta Mendota water users.
7. Manage low point to protect essential deliveries to the San Felipe Division.

We do appreciate the complex physical and regulatory environment in which the Plan has been developed and in which it will be implemented over the balance of the water year. We also understand that planning resources are spread exceedingly thin. However, given that the borrowing referenced above has already commenced, we believe it is critical that return commitments be clarified and memorialized now.

Following an allocation of only 20% in 2013, Ag service contractors have struggled with two successive years of zero CVP allocation, while M&I allocations have been at 50% and 25% the past two years. The acquisition of very expensive supplemental water has been critical to our survival, and to the best of our ability we did plan ahead,

stretching both water and financial portfolios to the breaking point. All of this water has been purchased by, or on behalf of, our water users and is not water we own.

As was the case at this time last year, there would be no federal water in SLR for Reclamation to borrow if not for M&I allocations and the supplemental water purchased at great expense by the CVP districts. This year, the stakes are even higher and the hydrologic environment even more uncertain. Nonetheless, the Plan contemplates borrowing this critical water to meet the summer demands of others.

Fairness and equity dictate that any and all such borrowed water must be returned timely and without reservation. We are not so presumptuous as to assume we know the best way to accomplish such assurance but we collectively propose the following:

- Borrowed water must be returned timely as necessary to meet the needs of those from which the water is borrowed.
- Return of this water must not impede delivery of NOD transfer water currently stored in Shasta Reservoir.
- Return of the borrowed water should be unconditional and not satisfied by supplies that would otherwise be available to support a 2016 allocation to SOD Ag service or M&I contractors. This should be supported by something equivalent to a transfer or refill agreement.
- Arrangements and assurances that borrowed water will be returned must be memorialized.

We want to continue our support and facilitation of a plan that works for everyone. At the same time, we need to address these matters before our critical supplemental supplies are too far exhausted by the current demands of other users. We look forward to timely and productive discussions on this issue.

Sincerely,



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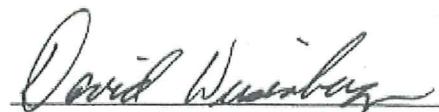
Lon Martin, General Manager  
San Luis Water District



Jose Gutierrez, Deputy General Manager  
Westlands Water District



Anthea G. Hansen, General Manager  
Del Puerto Water District



David Weisenberger, General Manager  
Banta Carbona Irrigation District



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Dennis Falaschi, General Manager  
Panoche Water District



---

Bobby Pierce, General Manager  
West Stanislaus Irrigation District



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Rick Gilmore, General Manager  
Byron Bethany Irrigation District



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Peter M. Rietkerk, General Manager  
Patterson Irrigation District

CC:

David Murillo, Regional Director USBR  
Pablo Arroyave, Deputy Regional Director USBR  
Dan Nelson, San Luis & Delta-Mendota Water Authority  
Steve Chedester, Exchange Contractors  
Chris White, Central California Irrigation District  
Cindy Kao, Santa Clara Valley Water District  
Jeff Cattaneo, San Benito County Water District



**Letter OR3**

**Horizon Planet**

**Brigit S. Barnes & Associates, Inc. on behalf of Horizon Planet**

**July 16, 2015**

**Response OR3-1:** The Commentor notes that this letter is intended to be a supplement to their previously submitted March 3, 2015 Comment Letter. The Commentor notes that "Horizon's prior comments have not been addressed by the City, nor has the City or applicants-to Horizon's knowledge-taken action to address the failure to evaluate the provision of water to the Project..." To the contrary, as demonstrated by the content of this Recirculated Subsequent EIR and the responses to previously submitted comments addressed herein, the City has taken great care to both revise the previously prepared Water Supply Assessment (WSA) and all prior comments received on the Draft Subsequent EIR. Refer also to Response to Comments OR2-11A and OR2-11B.

**Response OR3-2:** Refer to Response OR2-11B. Also, both the Recirculated Subsequent EIR and the revised WSA address recent water supply developments. The revised WSA addresses the following recent water supply developments:

- ◆ The City's response to the Governor's April 2015 Executive Order B-29-15;
- ◆ The status of the June 2015 SWRCB "notice" sent to BBID ordering BBID to "immediately stop diverting" pursuant to its pre-1914 water rights and requiring that BBID complete an on-line "Curtailment Certification Form" certifying that BBID has ceased all diversions under its pre-1914 water right;
- ◆ The City's evaluation of ability to meet its water demands using only groundwater supplies in any single year without causing long-term impacts to the groundwater basin; and
- ◆ The City's recent actions related to the implementation of the recycled water system.

As described in the revised WSA, the City's 2015 water demands have been reduced in response to the Governor's April 2015 Executive Order B-29-15 mandating 25 percent water conservation statewide. To reduce water use by 25 percent statewide, the SWRCB adopted a regulation which placed each urban water supplier into one of eight tiers which are assigned a conservation standard, ranging between 4 percent and 36 percent. The City of Tracy was placed into Tier 7 with a water conservation standard of 28 percent as compared to 2013 use. In response, in June 2015, City Council authorized the implementation and amendment of the City's Phase III and IV water restrictions (as defined in Chapter 11.28 of the Tracy Municipal Code) to meet SWRCB emergency drought regulations.

The City's current 2015 water conservation efforts and results are an example of the City's ability to implement its Water Shortage Contingency Plan (WSCP) and reduce water demands in the event of an emergency water supply shortage. In May 2015, the City's water demand was 30 percent less than May 2013, and in June 2015, the City's

water demand was 33 percent less than June 2013, indicating the responsiveness of the City's residents to the call for water conservation.

In June 2015, the SWRCB sent BBID a "notice" ordering BBID to "immediately stop diverting" pursuant to its pre-1914 water rights and requiring that BBID complete an on-line "Curtailment Certification Form" certifying that BBID has ceased all diversions under its pre-1914 water right. Several other districts filed suit challenging similar so-called 'curtailment orders' (Districts' Litigation). Later in June, BBID filed suit in Sacramento Superior Court challenging the curtailment order directed to it on multiple grounds including asserted jurisdictional, due process, and water right violations. In early July 2015, the Court issued a temporary restraining order in the Districts' Litigation concluding that the curtailment orders did not comply with due process requirements. The SWRCB rescinded in part the curtailment orders, including the order directed to BBID. In mid July, the SWRCB initiated administrative proceedings against BBID to levy fines. BBID contests the administrative proceedings, asserting that there is sufficient water to divert under its senior water rights. The matter is pending in litigation.

The revised WSA includes information, per a 2015 evaluation by GEI Consultants based upon current groundwater basin conditions, that the City would be able to meet its water demands using only groundwater supplies in any single year without causing long-term impacts to the groundwater basin. A copy of GEI's August 2015 evaluation is included in Appendix C of the revised WSA (Appendix F-2 of this Recirculated Draft SEIR).

**Response OR3-3:** It is acknowledged that the San Joaquin County Board of Supervisors passed a resolution on May 5, 2015 "Implementing State II Emergency Water Conservation Measures for All Water Districts Governed by the Board of Directors", and that the Resolution mandates that all County water districts comply with State II Emergency Water Conservation measures as enumerated by Section 5-3412 of the Ordinance Code of San Joaquin County. As described in the revised WSA, if a future water supply emergency were to occur, or if drought conditions occurred, requiring the City to implement its WSCP, all of the City's customers, including those within the Proposed Project, would be subject to the same water conservation measures and water use restrictions as included in City's WSCP.

**Response OR3-4:** The Commentor states that "the Project's water reliance on BBID as well as recycled water is problematic and uncertain, as pointed out in the DEIR comment letter. Of total water demand, 1,970 AF is recycled water demand. Yet there is no recycled water available today, in the near future, or maybe ever, so total recycled demand must be included in potable project demand."

As stated in Response OR2-11B, the City is planning for recycled water use as described in the WSA (Section 6.4.1, starting on page 51). The City has taken the following actions related to recycled water:

- ◆ The City included projected future recycled water demands and recommended capital improvement projects in both the 2012 Citywide Water System Master Plan and the 2012 Tracy Wastewater Master Plan.
- ◆ In March 2013, the City adopted an updated Recycled and Non-Potable Water Ordinance (codified in the Tracy Municipal Code Chapter 11.30);
- ◆ The City has spent approximately \$85 million at the City's Wastewater Treatment Plant (WWTP) to produce water suitable for recycled use;
- ◆ In December 2013, the City adopted Development Impact Fees to fund recycled water infrastructure and has collected \$1.3 million to date;
- ◆ In April 2015, the City applied for a State funded grant for the construction of recycled water infrastructure and, in August 2015, the City was notified that DWR is recommending that the City be awarded an \$18 million grant for the implementation of the City's recycled water system.

Thus, the City believes the Commentor's statement to be incorrect, and not reflective of the definitive actions the City has taken to facilitate both the supply and delivery of recycled water.

**Response OR3-5:** See response to comment OR3-2 above.

**Response OR3-6:** The letter signed by BBID on July 7, 2015 indicating the severity of the water shortage faced by the district is acknowledged.

**Response OR3-7:** The Commentor notes that the DEIR fails to disclose the uncertainty of water availability, possible impacts and proposes no mitigation measures should the assumed water supply fail to materialize. Notwithstanding that the City strongly disagrees with this inaccurate statement, the WSA has been updated (and attached as Appendix F-2 herein) to provide additional clarification in response to Horizon Planet's comments and to address recent water supply developments. The revised WSA includes information, per a 2015 evaluation by GEI Consultants based upon current groundwater basin conditions, that the City would be able to meet its water demands using only groundwater supplies in any single year without causing long-term impacts to the groundwater basin. A copy of GEI's August 2015 evaluation is included in Appendix C of the revised WSA. Refer also to Response OR2-11B and Response OR3-2.

**Response OR3-8:** Refer to Response OR2-11B. This recirculated DSEIR includes an updated WSA as an appendix to the DSEIR, consistent with SB610 and SB221 requirements under all hydrologic conditions (Normal Years, Single Dry Years, and Multiple Dry Years). The inclusion of future planned water supplies in the WSA is consistent with the Water code, Section 10631(b).

**Response OR3-9:** The Commentor notes that given the "dire water shortages facing the State, Horizon Planet is compelled to reiterate its prior comments that the Project's Water Supply Analysis must be provided as part of the DEIR, and must be revised to reflect inability

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

to rely on BBID and recycled water..." Refer to Response OR3-8 above. This recirculated DSEIR includes an updated WSA as an appendix to the DSEIR (Appendix-), consistent with SB610 and SB221 requirements under all hydrologic conditions (Normal Years, Single Dry Years, and Multiple Dry Years). The inclusion of future planned water supplies in the WSA is consistent with the Water code, Section 10631(b).

Robert Sarvey  
501 W. Grant Line RD.  
Tracy, CA. 95376

RECEIVED  
FEB 09 2015  
CITY OF TRACY

Formal Request for a CEQA compliant notice and comment period

Dear Mr. Dean,

GP1-1 On February 3, 2015 I received a call from Alan Bell informing me that the Tracy Hills Draft EIR had been published in December for comment. He informed me that the comment period ended on February 10<sup>th</sup> and he told me he would send me a CD of the permitting documents. Today is February 10<sup>th</sup> and I have yet to receive any documents from planning and engineering on the Tracy Hills Supplemental EIR. I am surprised that I was not mailed notice of this pending action since I regularly receive postcards from development and engineering normally containing CD's or paper copies of draft EIR'S at the time of issuance .

GP1-2 I researched the City's public notice website and found no public notice for the Tracy Hills EIR.<sup>1</sup> The city has always posted notice of EIR comment periods on its website, for example the Valpico Apartment Project,<sup>2</sup> the Ellis Project,<sup>3</sup> and the City Wide Transportation Master Plan<sup>4</sup> have all been noticed on the City of Tracy's public notice page. For this particular project arguably the largest project in Tracy history the public has not been properly informed of this permitting action. PLEASE RENOTICE THE TRACY HILLS DRAFT EIR IN COMPLIANCE WITH CEQA AND PROVIDE A 30 DAY COMMENT PERIOD.

Thank You,

  
Robert Sarvey

<sup>1</sup> <http://www.ci.tracy.ca.us/index.cfm?navId=450>

<sup>2</sup> <http://www.ci.tracy.ca.us/?navid=2733>

<sup>3</sup> <http://www.ci.tracy.ca.us/?navid=1875>

<sup>4</sup> <http://www.ci.tracy.ca.us/?navid=1787>



RESPONSES TO COMMENT LETTERS FROM THE GENERAL PUBLIC

**Letter GP1**

**Robert Sarvey**

**February 9, 2015**

**Response GP1-1:** On February 2, 2015, Alan Bell from the City of Tracy called the commenter to ask if the commenter would like to be added to future public notices regarding the project. The commenter confirmed he would like his name added for future public notices. The commenter was informed of the DEIR's availability through the City's web site and Mr. Bell offered to send the commenter a CD of the DEIR. On February 10, 2015, Mr. Bell received confirmation that a CD of the DEIR had been mailed to Mr. Sarvey. Additionally, since February 2, 2015, Mr. Sarvey has been sent public notices regarding the project, including notice of the time extension of the DEIR public comment period and the February 25, 2015 Planning Commission meeting regarding the project.

**Response GP1-2:** The DEIR was posted to the City's web site on December 19, 2014. The DEIR was placed at the Development Services Department front counter for public review on or about December 23, 2014. The DEIR and NOA were delivered to the Tracy Public Library on or about December 23, 2014. The NOA was mailed to responsible, trustee or other public agency representatives, property owners in and around the Tracy Hills project area and all other parties who had requested interest in the Tracy Hills project on December 22, 2014. The NOA identified the starting and ending dates of the public comment period and the January 28, 2015 Planning Commission public hearing to receive comments on the DEIR. The DEIR comment period was subsequently extended to March 3, 2015 to accommodate for additional responses that were not received within the initial 30 day comment period.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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**From:** Andy Galligan [<mailto:amgalligan@hotmail.com>]  
**Sent:** Friday, February 27, 2015 11:36 AM  
**To:** William Dean  
**Cc:** Andy Galligan  
**Subject:** Tracy Hills

Feb. 27, 2015

TO Bill Dean at Tracy City Hall:

Dear Bill,

Today's Tracy Press indicated we can comment or question the Specific Plan for the coming Tracy Hills development to you if we do so before March 3. I have only one concern about that future development, and it is this:

GP2-1

It looks to me as if the south and western parts of Tracy Hills development will be in close proximity to Site 300 which has been run by Lawrence Livermore since the 1950s, mainly as an explosive test site. Moreover, some years ago it received monies from The Super Fund to clean up its notable toxicity. Over the years it had used any number of harsh chemicals in its work, chemicals that did pollute some of that area, and that is why it had to be cleaned up. I wonder about its toxicity today, not just the earth but also some of the water supply.

GP2-2

I understand that in the 1980s and 1990s the manager of Site 300, Milt Grissom by name, met with several local folks who were pushing for the Tracy Hills Development and warned them about issues like this. Was this ever adequately taken into account? I do not know, but I hope that big money concerns have not simply swept such warnings and concerns under the rug.

GP2-3

There have been big lawsuits and severe tragedies, such as cancer and deformed fetuses, because people were allowed to live (without warning!) too close to toxic sites. Places like Love Canal in NY, Anniston in Alabama, and Hinkley here in CA come right to mind. I would not want that to happen in our own back yard. I wonder if prospective buyers would have any clue about the history of the area. Truth be told, I would not feel comfortable having my children or grand children or great grand children living in close proximity to Site 300. That is the way I feel.

I am hopeful that you will take my concern under advisement. Thank you.

Andy Galligan

11-402

Letter GP2  
Andy Galligan  
February 27, 2015

**Response GP2-1:** LLNL Site 300 and was indeed comprehensively analyzed and considered in relation to its proximity to the Project Site as part of this SEIR. Section 4.8 Hazards and Hazardous Materials, Pages 4.8-30 to 4.8-32 of the Draft SEIR provide an overview of the Lawrence Livermore National Laboratory's LLNL Site 300. The Draft SEIR identifies that the boundary of Site 300 is over one mile west of the THSP Project Area and approximately 1.5 miles west from the portion of the THSP Project Area proposed for development. The Draft SEIR identifies that Site 300 became a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) site in 1990 when it was placed on the National Priorities List (NPL). The NPL designates the site as a "Superfund" site, which requires the clean-up of sites contaminated with hazardous substances. Remedial activities on Site 300 are ongoing, as identified in the Draft SEIR. Remedial activities are overseen by the federal Environmental Project Agency (EPA), the Central Valley Regional Water Quality Control Board, and the State Department of Toxic and Substance Control (DTSC).

Additionally, the Draft SEIR identifies that LLNL prepared annual environmental reports to record LLNL's compliance with environmental standards and requirements, describe LLNL's environmental protection and remediation protection and remediation programs and present the results of environmental monitoring. The 2012 Environmental Report is the most recent, comprehensive and publically available report. The results of this report are summarized in the Draft SEIR (pages 4.8-32—34), including the extent to which Site 300 groundwater is undergoing cleanup under the CERCLA. As noted on page, 4.8-34, remediation activities removed contaminants from groundwater and soil vapor, and documentation and investigations continue to meet regulatory milestones.

As identified on page 4.8-42 of the Draft SEIR, according to the LLNL 2012 Environmental Report, analytical results and evaluations of air and various waters potentially impacted by LLNL operations showed minimal contributions from LLNL operations. Remediation efforts at Site 300 further reduced concentrations of contaminants of concern in groundwater and soil vapor. Given that this facility has undergone rigorous and comprehensive investigation/characterization, in compliance with all regulations, on-going remediation efforts which have concentrations of contaminants of concern in groundwater and soil vapor, and is located over 1.5 miles to the west of the Project Area, impacts from this facility to the Project site are determined by the Draft SEIR to be less than significant.

**Response GP2-2:** Please see Response to Comment GP2-1, which addresses this comment as well. Additionally it is noteworthy that the commenter specifies a time range of the 1980s to 1990s. As previously noted in Response to Comment GP2-1, on-going hazard evaluation

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

and remediation activities have been occurring at Site 300 since 1990, when it was placed on the National Priorities List.

**Response GP2-3:** Responses to Comments GP2-1 and GP2-2 responds to how the Draft SEIR addresses the commenter's concerns for the safety of potential future occupants of the proposed development in the THSP Project Area. The commenter compares Site 300 to well-known hazardous waste sites in the United States which have impacted local populations and the environment. However, unlike the hazardous waste sites referenced, Site 300 has been recognized as a potential hazardous site and is undergoing clean-up activities prior to an accident occurring. Furthermore, City decision-makers shall determine that a condition requiring all future occupants of proposed development in the THSP Project Area be notified of past and current operations at Site 300 and the on-going monitoring and remediation activities which are also occurring at Site 300 is appropriate for future/prospective homebuyers, though this is not required as a result of the Draft SEIR analysis. Such a condition would not change the analysis or conclusions stated in the Draft SEIR. This response will be forwarded to City decision makers for their consideration.

**From:** Lee Sun [<mailto:ldsun2013@gmail.com>]

**Sent:** Friday, February 27, 2015 8:30 AM

**To:** William Dean

**Subject:** Tracy Hills

Dear Mr Dean:

GP3-1

We are experiencing peoples are moving to this part of CA like Mountain house and Lathrop. Certainly; Tracy Hills can also be a good place to compete for this great opportunity. Close to I-580 certainly an advantage for people needs to travel to Bay area. I strongly encourage the city to move forward with the project. I do believe it is a positive move. Thank you for your attention. Peace.

Pastor Sun 孫立德

泉谷華人宣道會 - Tracy, CA

Spring Valley Chinese Alliance Church

306 W. Eaton Ave. Tracy, CA 95376

church website: [www.SVCCC4God.org](http://www.SVCCC4God.org)

(Mobile) 248-885-2109, (Home) 804-212-2084

[ldsun2013@gmail.com](mailto:ldsun2013@gmail.com)



Letter GP3  
Pastor Sun  
February 27, 2015

**Response GP3-1:** The letter is in support of the proposed project. Comment noted.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

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**From:** [dalayne1@aol.com](mailto:dalayne1@aol.com) [mailto:[dalayne1@aol.com](mailto:dalayne1@aol.com)]

**Sent:** Saturday, February 28, 2015 11:44 AM

**To:** William Dean

**Subject:** Tracy Hills

Mr Dean,

GP4-1 After reading the article about Tracy Hills in the Tracy Press, it appears that the issue of the airport has once again been pushed aside as though it was of no consequence. Our airport has the capability of catering to corporate aviation, and we are finally starting to get some large businesses in the area that might very well be interested in having a nearby airport they can utilize. If not they will be forced to go to Livermore or Stockton. A low traffic airport would be appealing to those companies that have a need or desire to use such an airport. It can be a factor in them bringing their company here.

GP4-2 Shouldn't Tracy be doing everything it can to bring that corporate aviation here? Building a major development in the primary takeoff flight path is asking for trouble. People will buy these houses having no idea the house is in that takeoff flight path (the noisiest part of any flight, by the way). As has been proven many times over in other cities, complaints of noise begin. Here in Tracy we already have complaints about aircraft from the neighborhood just north of Linne Rd, and it is not even directly under the primary flight path. Also, there is always the possibility of tragedy, with an aircraft losing power and crashing into the neighborhood. These issues should no be taken lightly. In the end it could wind up shutting down an airport that has the potential to be a draw for business.

GP4-3 Please don't let development outweigh the true needs of our city. We need businesses to employ people, and some of them may need a nearby convenient airport. Tracy doesn't **NEED** another new housing development. Our city services struggle to deal with the city the size it is now, why increase the load?

Sincerely,

David Layne



Letter GP4  
David Layne  
February 28, 2015

**Response GP4-1:** The comment is noted. However, the evaluation of the capability or future expansion of the Tracy Municipal Airport to accommodate corporate aviation is not a part of the proposed project and therefore is not addressed in the DSEIR. Such discussions occur during updates to the City's Airport Master Plan, which is not currently underway or a part of this Project.

**Response GP4-2:** Pages 4.10-14 to 4.10-17 of Section 4.10, Land Use, of the DSEIR address the proposed Project in relationship with the Tracy Municipal Airport. The DSEIR finds that the proposed locations of THSP Project land uses in the Outer Approach/Departure Zone 4 and Traffic Pattern Zone 7 are in conformance with the Airport Land Use Commission's (ALUC) Airport Land Use Compatibility Plan (ALUCP). The DSEIR identifies a conflict of allowable land uses within the M-1 Light Industrial designation, the Inner Approach/Departure Zone 2, and the Inner Turning Zone 3; this is identified as a potentially significant impact. Because of the potential conflict with the San Joaquin Airport Land Use Compatibility Plan or the ALUCP, Mitigation Measure 4.10-1 requires that all tentative and final maps within the THSP Project Area conform to the provisions of the 2009 ALUCP (or the ALUCP in effect at the time of Project submissions) and that all proposed schools within a two-mile radius of the airport runway must obtain approval from the State Department of Transportation Division of Aeronautics. The DSEIR concludes that implementation of this mitigation measure would ensure that potential impacts regarding compatibility with the Tracy Municipal Airport are mitigated to a less than significant level.

With respect to the commenter's concerns regarding potential noise or safety impacts to future development based on proximity to the airport, the 2011 City of Tracy General Plan identifies the THSP Project Area as an area suitable for residential, commercial, and industrial development. As identified on in Section 4.11, Noise, page 4.11-25, a small portion of the Specific Plan Area is located within the 55 Community Noise Equivalent Level (CNEL) Airport Noise Contour. CNEL is a rating of community noise exposure to all sources of sounds that differentiates between daytime, evening, and nighttime noise exposure. However, it should be noted that this portion of the Specific Plan Area is proposed for light industrial uses, which are not considered sensitive receptors. As such, the Tracy Municipal Airport would not create a significant noise impacts to residents, employees, and users of the Project site. Impacts would be less than significant.

**Response GP4-3:** Final project approval and consideration of the merits of the project ultimately would be made by City decision makers. The purpose of an EIR is to inform the public and decision makers of potential environmental impacts of a project in order that the decision makers make the most informed decisions. The 2011 City of Tracy General Plan identifies the

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

THSP Project Area as an area suitable for residential, commercial, and industrial development. The Applicant will be required to pay its fair share for City services, pursuant to the mitigation measures included in the DSEIR. Please see Section 4.12, Public Services and Utilities, which includes Mitigation Measures 4.12-1 through 4.12-8b, on pages 4.12-37 to 4.12-39. These mitigation measures provide requirements for the THSP Project to reduce potential impacts to public services and utility providers, which addresses the commenter's concerns on potential impacts to City services.

**From:** Kristina Hansen [<mailto:88stafford@gmail.com>]

**Sent:** Sunday, March 01, 2015 10:30 AM

**To:** William Dean

**Subject:** Tracy Hills Project

Dear Mr. Dean,

I read an article in the Tracy Press regarding pushing forward on the development of Tracy Hills. In my opinion, waiting and having some firm answers on very important matters, such as roads, parks, and schools would be in Tracy's best interest. If this developer backs out, there will be plenty more. That area of land is a gold mine.

GP5-1

Items to consider:

Roads - Especially Corral Hollow; the road is already in much disrepair heading South past Edgewood; not to mention how narrow it is; Also, there is quite a bit of congestion during morning, evening and church commute times at the intersection of Valpico and Corral Hollow; adding 5,000 plus new homes will make that intersection a nightmare

GP5-2

Parks - what has the developer offered? It seems the Developer should be required to build a minimum of 1 park per 500 homes.

GP5-3

Schools - what has the developer offered? The River Island Community built a school first. It seems only natural a school should be planned and if not under construction before the first set of families move in.

GP5-4

Environmental needs - is the developer willing to consider some other landscape other than sod? Grass takes quite a bit of water which we don't have.

Also, is the developer willing to offer solar panels as an option to home owners?

GP5-5

I work in the Jefferson School District and reside in the Madison Park Subdivision, so I travel south on Corral Hollow daily. As a school teacher, I think making sure resources are available to the families before they move in is essential. Looking at the big picture and slowing down to ensure the best for current residents and future residents of Tracy is what should drive the decision making.

Thank you for listening,



Kristina Hansen  
Tracy Resident for 11 years



Letter GP5

Kristina Hansen

March 1, 2015

**Response GP5-1:** Per Mitigation Measure 4.13-5b of the DSEIR, roadway improvements are planned and will be fully funded by the City of Tracy Traffic Impact Fee Program to construct Corral Hollow Road as a future four-lane facility, which would improve capacity to maintain acceptable levels of service standards per the City General Plan requirements.

The DSEIR also identifies mitigation for the intersection of Valpico Road and Corral Hollow Road as illustrated in Mitigation Measure 4.13-5a. Implementation of this mitigation measure would result in an acceptable delay and level of service (LOS) of 14.2 s/veh (B) in the AM peak hour and 27.1 (C) in the PM peak hour.

**Response GP5-2:** As identified on page 4.12-30 within Section 4.12 (Public Services and Utilities) of the DSEIR, the Project proposes three acres of neighborhood park land and one acre of community park land per 1,000 people. Neighborhood and community parks would be distributed throughout the residential areas of the Project. Active play and sports parks are proposed by the Project and may feature play fields, ball fields, children play areas, picnic areas, tennis courts, and open lawn areas. Park features may be interconnected by nature walks and bikeways within the greenways and parkways. With the provision of three acres of neighborhood park land and one acre of community park land per 1,000 people, the Project meets the City's General Plan adopted requirement of 4 acres of parks per 1,000 residents. The City's General Plan requirement is the threshold required for the Project, as opposed to the commenter's suggested 1 park per 500 homes threshold.

**Response GP5-3:** As identified on pages 4.12-29 and 4.12-30 within Section 4.12 (Public Services and Utilities) of the DSEIR, based on Jefferson School District generation factors, 2,420 grade K-5 and 1,100 grade 6-8 students would be generated by buildout of the proposed land uses of the Project.

The Project plans to construct three 12-16 acre elementary schools (K-8) located throughout the Plan Area, although the final number and locations of elementary schools shall be determined in accordance with the Jefferson School District. Additionally, the Project would include the development of two interim school sites for the initial residents of the THSP Project Area until the permanent schools are fully developed. The commenter suggests that schools should be planned or even under construction before the first set of families associated with the Project occupy a home within the proposed development. A identified herein, schools have been planned at the initial stages of the proposed development and two interim school sites are planned for construction for the initial residents of the THSP Project Area.

**Tracy Hills Specific Plan  
Recirculated Draft Subsequent EIR**

Furthermore, each individual development application within the THSP Project Area would be subject to the requirement to pay the applicable impact fee subject to school mitigation agreements with the Tracy Unified School District and Jefferson School District. Under Section 65996 of the California Government Code, the payment of such fees is deemed to fully mitigate the impacts of new development on school facilities. Therefore, through the payment of school impact fees and the planned construction of temporary and permanent schools within the THSP Project Area in conjunction with the Jefferson School District, the Project would reduce the potential to adversely impact area schools.

**Response GP5-4:** The comment is acknowledged and will be forwarded to decision makers for consideration in individual development applications associated with buildout of the THSP Project Area. Per Executive Order B-29-15 by the Governor of the State of California issued on April 1, 2015, irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems will be prohibited. Therefore, the commenter's suggestion for use of landscaping other than with sod/grass can be expected to be addressed in the review of individual development applications.

**Response GP5-5:** The comment is noted. The City is committed to making informed decisions when considering project applications, such as the Proposed Project. The purpose of the EIR process is to provide City decision makers with information in order for the decision makers to make the most informed decisions.

## Comments of Robert Sarvey on the Tracy Hills 2014 DEIR

Mr. Dean,

GP6-1 Thank you for the opportunity to comment on the Tracy Hills Specific Plan Draft Subsequent Environmental Impact Report SCH# 2013102053. I appreciate the time extension granted for comments but as outlined below without the development agreement associated with this project is impossible for the public to effectively analyze the proposal. Please conclude your negotiations on the development agreement and once again issue this DEIR for public comment and review with the development agreement.

GP6-2 The development agreement is not presented.

According to the 2014 DEIR, “ The Project would involve the adoption of a General Plan Amendment and the amendment of the 1998 Tracy Hills Specific Plan in the form of the comprehensive update to the 1998 THSP; the **approval and implementation of a development agreement(s)**; approval of a vesting tentative map application for Phase 1a; approval of the Tracy Hills Storm Drainage Master Plan; subsequent implementation of the THSP including subdivision maps, improvement plans and building permits, and other development within the THSP Project Area consistent with the standards specified within the THSP. In order to effectively evaluate this project the entire project must be presented to the public for consideration. **The DEIR does not present the development agreement even though the DEIR admits that approval and implementation of a development agreement is part of the project.** . The DEIR states that, “The terms of the development agreement do not implicate environmental impacts”<sup>1</sup> The terms of the development agreement provide the funding for mitigation measures which are designed to reduce significant impacts to environmental resources. Significant impacts to traffic and transportation, public services including police and fire, impacts to water resources, park construction and maintenance, road construction and improvements all rely on mitigation measures which will be funded and implemented through

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<sup>1</sup> DEIR Page 3-55

GP6-2  
Cont.

the development agreement. The project generates no property tax to the City of Tracy to fund these improvements and services so the mitigation provided is reliant on the terms of the development agreement. For example the operation of the police department is funded by the general plan. Prior to Measure E property tax revenue provided approximately 60% of General fund revenue.<sup>2</sup> Without the property tax revenue for Tracy Hills each resident will shift the costs of operating the police department to existing residents.<sup>3</sup> New development is supposed to pay for itself new development is not supposed to be subsidized by existing residents. Without the development agreement the public cannot determine if the Tracy hills Project will mitigate its impacts to police operations or any other program administered by the city that is financed through property taxes. Therefore the public cannot determine whether the impact of Tracy Hills Project on government services will be adequately mitigated. **The city must present the development agreement with the DEIR so the public can determine if in fact the project will be effectively mitigated.** After that the City must once again provide a notice and comment period once the public has complete information.

The project description is inadequate.

GP6-3

The DEIR alleges to be the, “Tracy Hills Specific Plan Draft Subsequent Environmental Impact Report.” The DEIR indicates on page 2-4 that the EIR discusses only the environmental impacts of phase 1 of the project because similarly-detailed development plans have not yet been prepared for the subsequent phases of the THSP. Phase 1 includes the development of residential housing and a mixed use business park. When reviewing the DEIR other than the planned residential portion of phase 1 similarly-detailed development plans have not yet been prepared for the mixed use business park proposed for phase1. This is inconsistent with statements in the DEIR that claim the DEIR will, “comprehensively evaluate the potential environmental impacts of the phase 1 of THSP herein.”<sup>4</sup>

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<sup>2</sup> 2013/2014 City of Tracy Budget 2013 - 2014 ADOPTED BUDGET Page 77 of 457

<sup>3</sup> The January 1997 Tracy Hills DEIR on page 2.27 states that in order to maintain current service level ratios, the proposed project will generate the need for approximately 19 additional sworn patrol officers, and may create additional demands upon the existing administrative unit and capital facilities of the Tracy Police Department this is a significant project impact.

<sup>4</sup> 2014 DEIR Page 3-3

GP6-3  
Cont.

Other than the residential portion of phase 1 of the project the DEIR cannot and does not provide a description of the mixed use business park. It cannot because it doesn't know what businesses will be constructed so it cannot analyze and mitigate those environmental impacts of that portion of phase 1. The project lacks specificity. The DEIR is inadequate to properly analyze phase 1 of the project and certainly is not useful in an analysis of the entire project. The DEIR would properly be titled the Tracy Hills Draft Subsequent Environmental Impact Report for Phase 1 of residential portion of the Tracy Hills Project. As with most projects in Tracy it is likely that only the residential portion of the project will be constructed and the mixed use business park is a myth. Can you say Ellis Aquatic Center, Gold Rush City, or Gateway Business Park.

GP6-4

The DEIR description of baselines and impacts is inadequate.

In many places the DEIR offers no analysis but instead refers to analyses performed in the general plan or some other master plan that indicates no significant impacts. The DEIR does not define the existing baseline or provide any analysis of the THSP impacts to that baseline. For example impacts to Fire Services, Police Services, and schools are not analyzed in the DEIR they are merely considered insignificant because the general plan concludes that at full build out there will be no significant impacts.<sup>5</sup> The city must now go back to the drawing board and craft a CEQA equivalent environmental document for the public to assess. The new document must include the development agreement, and assessment of current conditions, the impact of the project on that baseline and all feasible mitigation measures. And this time please post the notice on the city website.

#### 4.1 AESTHETICS

GP6-5

The DEIR concludes that the project would have a significant and unavoidable impact to visual resources. Under CEQA when a project has a significant impact all feasible mitigation measures must be adopted. The Reduced Density Alternative is considered the environmentally superior alternative and would lower impacts to visual resources. Due to the highly visible hillside location of some portions of proposed development and the designation of Interstate 580

<sup>5</sup> 2014 DEIR Page 504 of 926

GP6-5 and Corral Hollow Road as scenic routes the project could minimize visual impacts by avoiding construction of homes on the scenic hillsides.

## 4.2 AGRICULTURAL RESOURCES

GP6-6 Loss of farmland has been particularly severe in San Joaquin County, where approximately 15,000 acres of high quality farmland more than in any other county in California were developed between 1990 and 2004. This loss of high quality farmland accounted for 76 percent of all the land urbanized in the county over the same period.<sup>6</sup> There are approximately 4,000 acres of Prime Farmland, Farmland of Statewide Importance, and Farmland of Local Importance within the Tracy area.<sup>7</sup> The 2014 DEIR for Tracy Hills proposes to convert 2,711 acres of farmland which is approximately 68% of the available farmland in the sphere of influence into urban uses and 100 % of the farmland within the Tracy city limits. The city of Tracy ordinance 13.28.040 establishes a Farmland Mitigation Fee. Section 13.28.020 - Purpose and findings (a) of the ordinance provides that: *“In order to implement the goals and objectives of the City's General Plan and to mitigate impacts caused by new development within the City, an agricultural mitigation fee is necessary. The purpose of the agricultural mitigation fee is to mitigate the loss of productive agricultural lands converted for urban uses within the City by permanently protecting agricultural lands planned for agricultural use and by working with farmers who voluntarily wish to sell or restrict their land in exchange for fair compensation.”*

The ordinance finds that it is necessary to provide the fee because:

- 1) San Joaquin County farmland is of highly productive quality,
- 2) The City is surrounded by productive farmland on all sides,
- 3) The continuation of agricultural operations preserves the existing landscape, and environmental and aesthetic resources of the area;
- 4) The Tracy General Plan sets forth policies to preserve productive farmland, including the development of a program to secure permanent agriculture on lands designated for agriculture in the City and/or County General Plan;
- 5) California is losing farmland at a rapid rate
- 6) Loss of farmland to development is irreparable and agriculture is an important component of the region's economy and rural community character; and

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<sup>6</sup> City of Tracy SUSTAINABILITY ACT PLAN Page 31 of 133

<sup>7</sup> City of Tracy SUSTAINABILITY ACT PLAN Page 22 of 133

7) Losing agricultural land will have a cumulatively negative impact on air quality, traffic, noise, public services demands, and aesthetics in the City and in the County of San Joaquin.

The ordinance also finds that, **“Loss of agricultural land is consistently determined to be a significant impact under the California Environmental Quality Act (CEQA) in development projects.** Despite recognizing all of these important goals and that the loss of 2,711 acres of farmland is a significant impact under CEQA the City Farmland Mitigation Ordinance carves out an exception for Tracy Hills contrary to CEQA. The Tracy Hills project doesn’t have to pay the farmland mitigation fee unless it receives any SSJID water, in which case the project would be subject to the agricultural mitigation fee of Two Thousand and no/100ths (\$2,000.00) Dollars per acre for every acre of prime farmland in that project converted. But section **4.3.2 of the 2014 DEIR states that, “The potable water supply for Tracy Hills will come from a combination of sources including Byron Bethany Irrigation District pre-1914 and Central Valley Project water as well as other City sources.”** The Tracy Hills Project will use water sources other than BBID water so in fact the project is required to mitigate prime farmland under the City’s non CEQA complaint Farmland Ordinance.

The 2014 Tracy Hills DEIR only proposes to provide the farmland mitigation fee for prime farmland. The 2014 Tracy Hills DIER only considers 25 acres of the 2,711 acres it proposes to convert as prime farmland with the rest being grazing land. The January 1997 Tracy Hills DEIR impact 4.-3-1 states that the Tracy Hills Specific Plan will result in the conversion of approximately 615 acres of Class I and II Soils. The FEIR should clarify that there are 615 acres of prime farmland in the project area not 25 that need to be mitigated for a fee of \$2,000 X 615 acres which is \$ 1,230,000.<sup>8</sup>

#### Loss of Farmland of Local Importance must mitigated

The 2014 Tracy Hills DIER only considers 25 acres of the 2,711 acres it proposes to convert as prime farmland with the rest being Farmland of Local Importance.<sup>9</sup> The 2014

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<sup>8</sup> City Ordinance Farmland Mitigation ordinance requires provides an exception for Tracy Hills that is contrary to CEQA. It allows Tracy Hills to not mitigate its Farmland Impacts if **4.3.2 Sources of Supply** The potable water supply for Tracy Hills will come from a combination of sources including Byron Bethany Irrigation District pre-1914 and Central Valley Project water as well as other City sources.

<sup>9</sup>California Government Codes Section 56064 defines “Prime agricultural land” as follows:

GP6-6  
Cont.

Tracy Hills DEIR does not propose to mitigate the other 2,686 acres it characterizes as Farmland of Local importance. Farmland of Local Importance is land that is important to the local agricultural economy. It is determined by each county's board of supervisors and a local advisory committee. The 2014 DEIR states that even with the proposed mitigation measures impacts to Prime Farmland and Farmland of Local Importance is a significant impact.<sup>10</sup> Pursuant to State *CEQA Guidelines* Sections 15002, 15021, and 15126.4, mitigation measures are required when significant impacts are identified. Despite admitting that the loss of Farmland of Local importance is a significant impact under CEQA the DEIR does not provide for the project proponent to pay the agricultural mitigation fee to offset this significant impact. The city must require the project applicant to pay the \$2,000 an acre mitigation fee for all agricultural lands converted to urban uses by the proposed project in order to comply with CEQA.

#### Agricultural Revenue

GP6-7

The DEIR does not discuss the potential agricultural revenue that is lost from the conversion of 2,711 acres of agricultural land. The DEIR does not quantify the air quality benefits the aesthetic value or any other environmental qualities of the farmland that it proposes to convert.<sup>11</sup> The City of Tracy Sustainable Action Plan target 11 calls for, "Any loss of such farmland inside of the SOI is offset by mitigation fees to a qualified agriculture preservation

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Prime agricultural land means an area of land, whether a single parcel or contiguous parcels, that has not been developed

for a use other than an agricultural use and that meets any of the following qualifications:

- ◆ All land that qualifies for rating as Class I or Class II in the Natural Resource Conservation Service Land Use Capabilities Classifications;
- ◆ Land that qualifies for rating 80 through 100 in the Storie Index Rating (a numerical value indicating the relative suitability of a soil group for general agricultural practices);
- ◆ Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre, as defined by the United States Department of Agriculture;
- ◆ Land planted with fruit- or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and will normally return during the commercial bearing period from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre; and
- ◆ Land that has returned from the production of unprocessed agricultural plant products a gross value of not less than four hundred dollars (\$400) per acre per year for three of the previous five calendar years.

<sup>10</sup> 2014 DEIR Page 188 of 926

<sup>11</sup> The Farmland provides air quality benefits, aesthetic value, agricultural revenue, an irreplaceable source of food and fiber.

GP6-7 trust, such as the Central Valley Farmland Trust, at a ratio related to every acre that is lost.”<sup>12</sup> Cont. CEQA and the City of Tracy’s Sustainable Action Plan require the developer to pay \$2,000 for all 2,711 acres that is being proposed to be converted from agricultural use.

GP6-8 Reducing Farmland Loss by Increasing Development Density

The underlying causes of farmland loss in California are rapid population growth and the inefficient use of land. Tracy Hills presents a massive conversion of agricultural land to residential housing. The DEIR entails the construction of 5,499 homes on 1,638 acres or a density of one dwelling unit per .30 of an acre. In contrast, recent development in Sacramento County, an acknowledged leader in efficient growth, accommodates 20 people per acre. Some of the significant impact from the conversion of farmland can be avoided by increasing the density of the Tracy Hills development and utilizing less farmland to accomplish the same development.

The diversion of water to Tracy Hills impacts agriculture

GP6-9 The use of 4,000 to 6,000 acre feet of surface water in the Tracy Hills Development will divert the same amount of water from agricultural users. The governor has declared a state of emergency due to drought. The City of Tracy has been told to expect half their normal supply from the Bureau of Reclamation for 2015.<sup>13</sup> The DEIR does not discuss the water diversion impact on agriculture in the Tracy area and the county. The United States Bureau of Reclamation announced February 27<sup>th</sup> that local farmers and water districts with federal contracts will get no water from it this year.<sup>14</sup> With the possibility of another year of drought looming more likely, especially after the lack of rainfall in January, the State Water Resources Control Board has warned that everyone pumping water out of the rivers could, for the first time in history, be restricted this year.<sup>15</sup> The diversion of water for Tracy Hills is a significant impact that must be discussed in the FEIR. The economic impact from the fallowing of crops from the THSP diversion of water should also be quantified in the FEIR.

<sup>12</sup> City of Tracy SUSTAINABILITY ACTION PLAN Page 38 of 133

<sup>13</sup> <http://www.kcra.com/news/california-farmers-wont-get-federal-water/24602778>

<sup>14</sup> [http://www.goldenstatenewspapers.com/tracy\\_press/news/no-federal-water-for-valley-farmers/article\\_9156fcb6-c144-11e4-8d9a-57802aa9c93d.html](http://www.goldenstatenewspapers.com/tracy_press/news/no-federal-water-for-valley-farmers/article_9156fcb6-c144-11e4-8d9a-57802aa9c93d.html)

<sup>15</sup> [http://www.goldenstatenewspapers.com/tracy\\_press/our\\_town/more-farmers-could-face-water-use-limits/article\\_60f3f8da-a812-11e4-93aa-af09314758d0.html](http://www.goldenstatenewspapers.com/tracy_press/our_town/more-farmers-could-face-water-use-limits/article_60f3f8da-a812-11e4-93aa-af09314758d0.html)

Tracy Hills also impacts adjacent agricultural resources.

GP6-10 Grazing land west of the THSP Project Area will experience negative impacts on grazing activities from implementation of the Project such as limiting access to the grazing land, and exposure to noise or other irritants from the proximity of new urban areas to grazing cattle. Therefore, impacts on agricultural activities - including impacts caused from development within Phase 1a - on the adjacent land would be significant.<sup>16</sup> The DEIR fails to discuss the odors, noise, and dust that will impact the THSP from adjacent farming activities.

#### 4.3 AIR QUALITY

GP6-11 The air quality analysis for the project demonstrates how the DEIR does not define, analyze or provide mitigation for any part of the project but phase 1 residential construction. As the DEIR states, “It should be noted that the SCREEN3 model was utilized in lieu of the more robust AERMOD and Industrial Source Complex (ISC) model in order to account for worst-case conditions **since precise on-site activity is unknown at this time.**<sup>17</sup>” The only activity known is the construction of residential housing in phase 1, the activities at the mixed use business park are speculative and the DEIR does not even adequately describe those activities and cannot analyze even the entire phase 1 of the proposed project.

#### Construction Emissions

GP6-12 The 2014 Tracy Hills DEIR in Table 4.3-7: Phase 1a Construction Emissions uses a piece meal analysis and attempts to isolate construction emissions from phase 1 of the project and thereby claim that the construction emissions of PM-10, PM 2.5, NOX and ROG are less than significant. The construction emissions of the entire project are depicted in Table 4.3-8: THSP Build out Operational Emissions. That table demonstrates that the construction emissions impact of the entire project which must be analyzed under CEQA is significant for all pollutants except SO2. This piece meal approach used throughout this DEIR leads to conclusion that phase 1 impacts are not significant when viewed in isolation. CEQA does not allow for a piece meal analysis which analyzes portions of the project instead of **the entire project to demonstrate an impact as less than significant. When analyzing the entire project build out the DEIR**

<sup>16</sup> 2014 DEIR Page 186 of 926

<sup>17</sup> 2014 THSP DEIR page 220 of 926

GP6-12

Cont.

**correctly concludes that** “emissions from these construction criteria pollutants would exceed SJVAPCD thresholds, a *Significant and unavoidable* impact would occur. Mitigation measure 4.3-1c should be deleted in its entirety because we know that the project in total exceeds the significance levels and therefore all phases of the project are subject to the requirements of the indirect source rule even if some components of the project are not.

~~4.3-1c Prior to the issuance of any grading permit, the City shall confirm that the Project complies with the SJVAPCD Rule 9510, Indirect Source (ISR). If feasible measures are not available to meet the emissions reductions targets outlined in Rule 9510, then Project applicants shall pay an in-lieu mitigation fee to the SJVAPCD to offset the Project's emissions related impacts. If in-lieu fees are required, Project applicants shall coordinate with the SJVAPCD to calculate the amount of the fees required to offset the Project's impacts. The applicant shall document, to the City's reasonable satisfaction, its compliance with this mitigation measure.~~

GP6-13

The FEIR must include all feasible mitigation measure as CEQA requires for an impact that is significant and unavoidable. The DEIR proposes Mitigation Measures 4.3-1b which requires the use of CARB certified Tier 3 off-road engines (for equipment greater than 50 horsepower) and requires all construction equipment to be outfitted with Best Available Control Technology (BACT) devices certified by CARB. The FEIR must change the base off-road engine requirement from U.S. EPA/ARB onroad diesel engine Tier 3 to Tier 4. This updated requirement could reduce the PM10 and diesel particulate matter emissions from the off-road equipment by as much as 90 percent over the build out of the THSP and reduce the NOx emissions up to 80 to 90 percent depending on the amount of full Tier 4 versus interim Tier 4 (Tier 4i) off-road engines that are used during construction and grading. This is feasible mitigation that could limit the significant impact and possibly avoid it. Mitigation Measures 4.3-1b must be modified to reflect the update to Tier 4 requirements for off road engines.

4.3-1b The following measures shall be implemented during construction to reduce NOx related emissions. They shall be included in the Grading Plan, Building Plans, and contract specifications. Contract specification language shall be reviewed by the City prior to issuance of a grading permit.

◆ Use of construction equipment rated by the United States Environmental Protection Agency (EPA) as having ~~Tier 3~~ Tier 4 or higher exhaust emission limits for equipment over 50 horsepower that are onsite for more than 5 days, if available and feasible. ~~Tier 3~~ Tier 4 engines between 50 and 750 horsepower are available for 2006 to 2008 model years. After January 1, 2015, ~~encourage~~ require the use of equipment over 50 horsepower that are on-site for more than 5 days to meet the Tier 4 standards, ~~if available and feasible~~. A list of construction equipment by type and model year shall be maintained by the construction contractor onsite, which shall be available for City review upon request.

GP6-14

Construction dust is a serious health problem.

GP6-14  
Cont.

According to the DEIR Dust (larger than 10 microns) generated by construction usually becomes more of a local nuisance than a serious health problem. The DEIR fails to discuss that disturbing the dust also exposes residents to Valley Fever Spores. In 2009 San Joaquin County had just 27 cases, in 2010 there were 46, but in 2011 that number nearly tripled to 123 cases. The City of Tracy may be the most affected city in the County for Valley Fever.<sup>18</sup> Tracy Hills proposes to do massive amounts of grading on 2,711 acres within the Tracy City Limits. The DEIR should propose suspending construction activities when winds exceed 10 miles an hour to protect residents from exposure to Valley Fever. Construction fugitive dust emissions also exacerbate asthma and allergies. The project is expected to build out over many years so construction dust is a serious health issue.

GP6-15

The entire THSP is subject to SJVAPCD Rule 9510.

The DEIR states that, as part of the development process for future phases of the THSP, each applicant would be required, to the extent specific development at issue is subject to Rule 9510, to prepare a detailed air impact assessment (AIA). To the extent applicable under Rule 9510 for each such individual development, the SJVAPCD would require calculation of the construction and operational emissions from the development. The DEIR attempts to tier the project and avoid the requirements of Rule 9510 by piece-mealing the analysis. This massive project is subject to Rule 9510 in its entirety. The FEIR should require all phases of the development to mitigate under rule 9510 as a single project.

#### Operational Emissions

GP6-16

Mitigation of the THSP Air Quality emissions

According to the DEIR, “the Project’s impacts on regional air quality, with respect to emissions of criteria pollutants, would remain significant and unavoidable since the Project’s emissions would contribute to region-wide emissions that cause exceedances of the federal and state O3, PM10, and PM2.5 standards.” Pursuant to State CEQA Guidelines Sections 15002, 15021, and 15126.4, mitigation measures are required when significant impacts are identified.

<sup>18</sup> <http://sacramento.cbslocal.com/2012/06/18/valley-fever-on-rise-in-san-joaquin-county/>

GP6-16  
Cont.

The reduced density alternative 3 reduces overall trips generated by the Project by approximately 40 percent.<sup>19</sup> This is a feasible alternative that can be adopted to reduce the air quality impacts of the project. Another alternative is to choose land which is actually contiguous with other parts of the City. The Tracy Hills Projects has no connection to any part of the city and it creates more VMT, more energy to process wastewater and supply potable water. It requires the extensive construction and operation of wastewater and storm drainage facilities to service the project which create air quality impacts.

#### **The Project is not consistent with general plan policies related to air Quality**

GP6-17

General Plan policies have been adopted which address the city's objectives and policies for reducing air quality impacts. Objective AQ-1.1 provides that the city improve air quality and reduce greenhouse gas emissions through land use planning decisions. It would be hard to imagine a worse land use plan than the Tracy Hills development for impacts to air quality. Thousands of acres of undeveloped land exist in the city's sphere between the proposed development and the city's core services, shopping and governmental services. The Tracy Hills development because of its location increases Vehicle Miles Traveled (VMT). Vehicles are the primary source of air pollution from any development. The city could develop several of the urban reserves that are actually much closer to the city's core.

Tracy Hills location in relation to the wastewater treatment plant is the farthest point in the city limits from the plant. This requires extensive energy to pump the effluent to the wastewater treatment plant than would not be necessary if the city chose to develop an urban center closer to the plant. The energy necessary to pump the treated effluent creates substantial air quality impacts which could be avoided through better land use planning. Police patrols will be further from their central downtown headquarters requiring more miles to be travelled by the police increasing air quality impacts. The THSP does not conform to Objective AQ-1.1 of the city's general plan.

Air Quality Policy P14 of the City's General plan provides that, "Developments that significantly impact air quality shall only be approved if all feasible mitigation measures to avoid, minimize or offset the impact are implemented. The Tracy Hills DEIR concludes that air

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<sup>19</sup> 2014 DEIR Page 23 of 926

GP6-17 Cont. quality impacts are significant and unavoidable but the DEIR does not implement all feasible mitigation measures. For example the projects Phase 1 tentative map consists of meandering streets with no central grid pattern which would reduce VMT. The reduced density alternative 3 reduces overall trips generated by the Project by approximately 40 percent but the DEIR does not propose it.<sup>20</sup> The project sprawls over 2,711 acres and could be compressed and reduce its air quality impact. There are many more feasible mitigation measures which could be implemented.

GP6-18 Health Risk Assessment

California Code of Regulations, Title 14 (the CEQA Guidelines), Section 15126.2(a) recommends that significant environmental effects of a project be assessed when a project brings development and people into an affected area. A health risk assessment was performed to determine if residents near Highway 580 would be exposed to significant health risks from vehicle emissions. The analysis failed to utilize the most recent version of newly proposed OEHHA methodology (OEHHA 2014) and the most recent toxicity values (OEHHA 2014; EPA 2014)

Further the modeling assumed that only adults would be exposed and that the majority or the time those adults would remain indoors. The proper analysis would use the new risk values from OEHHA which contain risk values for children. Obviously children would not remain indoors all day and their breathing patterns are much more accelerated. Contrary to guidelines furnished by the SJVAPCD the health risk assessment also adjusted lifetime risk values for residents. These non-approved methods still showed that without mitigation the risk is 17 in a million which is above the significance level. Needless to say using incorrect modeling procedures and risk values and adjusting lifetime exposure risks renders the health risk assessment meaningless.

GP6-19 4.7 GREENHOUSE EMISSIONS

The DEIR concludes that the project's GHG emissions will be a significant and unavoidable impact under CEQA. An impact occurs if the project is not in conformance with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs.

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<sup>20</sup> 2014 DEIR Page 23 of 926

GP6-19  
Cont.

Under CEQA, the SJVAPCD is the expert commenting agency on air quality and GHG emissions within its jurisdiction or impacting its jurisdiction. The SJVAPCD adopted the *Climate Change Action Plan* in August 2008. The *Climate Change Action Plan* was developed to assist local land use agencies and businesses in complying with state requirements. The SJVAPCD GHG Guidance establishes standards that require projects to reduce their GHG emissions by at least 29 percent from Business as Usual (BAU) levels, through the application of Best Performance Standards (BPS) or other mitigation measures, to achieve a less than cumulatively significant impact under CEQA. To have a less-than-significant individual and cumulative impact on global climate change, projects must be determined to have reduced or mitigated GHG emissions by 29 percent, consistent with the GHG emission reduction targets established in CARB's AB 32 Scoping Plan. According to the 2014 DEIR the project even with all identified mitigation measures the project would reduce GHG emissions by only 29,566.80 MTCO<sub>2</sub>eq/yr which is only 16.41 percent of the project GHG emissions at full build out. The project does not comply with the SJVAPCD guidelines requiring a 29% reduction and also does not comply with CEQA. The DEIR also assumes that even with implementation of Mitigation Measure 4.7-1 for Phase 1 only a 12.62 percent reduction in GHG emissions would occur from the "business as usual" condition. Therefore, the Project would not achieve the SJVAPCD's 29 percent GHG significance threshold under phase 1 or full build out. The Reduced Density Alternative is considered the environmentally superior alternative. The reduced density alternative 3 reduces overall trips generated by the Project by approximately 40 percent.<sup>21</sup> This would enable the project to achieve the SJVAPCD's 29 % GHG emission reduction guideline and the project would then comply with CEQA. The reduced density alternative must be adopted to comply with CEQA.

GP6-20

#### Leap Frog Development and GHG emissions.

Land use planning decisions, such as discouraging leap-frog development, and creating favorable jobs to housing ratios can significantly reduce VMT and the associated GHG

<sup>21</sup> 2014 DEIR Page 23 of 926

emissions.<sup>22</sup> These are the number 1 priorities in the Tracy General plan *Objective AQ-1.1 Improve air quality and reduce greenhouse gas emissions through land use planning decisions.*

The Tracy Hills Project is the poster child for leap frog development. The Tracy Hills project is not contiguous to any development in Tracy therefore its location drastically increases the Vehicle Miles Traveled (VMT) by future residents leading to increased GHG emission. Choosing another one of the urban reserves located contiguous to other developments in Tracy will drastically lower VMT and perhaps even achieve the 29% reduction in GHG emissions required by the SQVAPCD. The THSP is not consistent with General plan objective Q 1.1 Policy P1 which prescribes that The City shall promote land use patterns that reduce the number and length of motor vehicle trips.

The other factor is the City of Tracy's jobs to housing imbalance. The city of Tracy has the sixth longest commute in the United States according to Forbes magazine of 41 minutes flat.<sup>23</sup> While the City of Tracy has experienced strong employment growth over the last several years, the city's population has grown at a faster pace than its employment. Much of this residential growth is attributable to households with workers employed in the Bay Area, especially Alameda County. Concomitantly, Tracy's housing prices are so high that many of the predominantly low-wage workers of jobs based in Tracy must commute in from elsewhere in San Joaquin County. Only 20 percent of Tracy's resident workforce is employed within the city. This is due to the failure of city officials and planners who keeps approving high priced housing while supplying only low wage warehouse and service jobs. As stated above 20 percent of Tracy's resident workforce is employed within the city, significantly less than the 73 percent that would be predicted if Tracy's jobs-housing ratio were the only factor determining where residents work. One mechanism for reducing in- and out-commuting in the future is to foster a strong match between the skills of Tracy's residents and the training and educational requirements of Tracy's jobs. Highly trained or educated residents are unlikely to hold jobs for which they are overqualified, while residents with low levels of education are unlikely to be offered jobs with high training requirements. Consequently, the distribution of educational attainment of residents should closely resemble the occupational requirements of key industrial sectors for there to be a good skills-jobs match. In general, the occupations in Tracy's key

<sup>22</sup> **Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA Page 7**

<sup>23</sup> <http://xfinity.comcast.net/slideshow/news-americasworstcommutes/6/>

GP6-21  
Cont.

sectors do not have high training or educational requirements, with a majority requiring no post-secondary education. In comparison, in 2008, 55 percent of Tracy's resident workforce had some post-secondary education, including 20 percent that held bachelor's degrees or higher. This suggests that a potential source of mismatch between Tracy's jobs and residents is that the resident workforce may be "overqualified" for employment in the largest and most rapidly-growing sectors of the local economy.<sup>24</sup>

The 2014 Tracy Hills DEIR provides no specific job opportunities to help correct this imbalance. The THSP violates General Plan Q1.1 Policy P2: which provides, "*To the extent feasible, the City shall maintain a balance and match between jobs and housing*". Residents of Tracy have heard for years about high paying jobs at the Gateway Business Park and other highly touted job creation centers only to be provided with more low paying warehouse and service jobs. There is no evidence in the DEIR that Tracy Hills will provide any jobs that will allow Tracy residents to afford the high housing prices in Tracy with the current median housing price being \$385,000.

GP6-22

Converting agricultural Land to urban uses has a GHG impact.

Converting agricultural land to residential housing also has a GHG impact. Agriculture acts as a GHG sink as plants utilize the CO<sub>2</sub>. Removing the agricultural lands has a double effect of reducing the carbon sink from agriculture and increasing the GHG emission from the inefficient land use pattern that is the leap frog development called Tracy Hills.

GP6-23

All Feasible mitigation measures to reduce GHG emissions are required

The DEIR states that impact to GHG emissions will be significant and unavoidable. CEQA requires all feasible mitigation measures when a project has a significant impact. There are additional feasible mitigation measures available:

- 1) Require Phase 1 of the Tracy Hills Project to include a school. The Tracy Hills DEIR proposes school construction when over 800 students are generated.<sup>25</sup> Requiring Tracy Hills to construct its own school will lower VMT and traffic congestion at other established schools in Tracy lowering GHG emissions.

<sup>24</sup> City of Tracy Sustainable action plan Page 36 of 133

<sup>25</sup> DEIR page 3-21

GP6-23  
Cont.

- 2) Requiring 50% of the housing erected in the Tracy hills Project to be Affordable housing could lower VMT by providing houses which are affordable by Tracy residents with their low paying warehouse and service jobs.
- 3) Requiring Tracy Hills to provide a technology park with high paying jobs before residential housing is allowed to be constructed.
- 4) Require Tracy Hills to develop its own wastewater treatment plant as envisioned in the 1997 DEIR. This would reduce the pumping of wastewater 7 miles to the existing wastewater treatment plant.

GP6-24 Governmental Services

#### Libraries

The DEIR states that it is not anticipated that the Project would affect library services, therefore, no or minimal discussion is included in this section. Does the DEIR assume that Tracy Hills residents don't read? It has been known for many years that the library is in need of expansion to serve the residents of Tracy. With no property tax revenue to the City of Tracy, Tracy Hills residents will use the Tracy Library without contributing to the portion of the library's budget that is funded by City of Tracy property taxes. One more expense that the Tracy Hills residents will transfer to existing residents who have already paid to construct the library.

GP6-25 Police Services

The DEIR states that the THSP would be required to pay the applicable impact fees, which ensure payment of a proportionate share toward the planned facilities. What the DEIR fails to discuss the funding of operations of the city's police department. Despite the citizens approving Measure E in 2010 to increase sales taxes  $\frac{1}{2}$  percent to support public safety the Tracy Police department has experienced a decline in personnel from a 154.9 employees in 2009 to 129.51 employees in 2014 a decrease of 17% of its allocated personnel with only 59.1 sworn officers.<sup>26</sup> TPD's primary funding source is the City's General Fund, which is derived from property taxes, sales tax revenue, and user fees.<sup>27</sup> Property taxes make up approximately 60% of general fund revenues pre Measure E.<sup>28</sup> The Tracy Police Department had a budget of

<sup>26</sup> 2013/2014 City of Tracy Budget page

<sup>27</sup> 2014 DEIR Page 4.12-2

<sup>28</sup> [www.ci.tracy.ca.us/documents/Comprehensive\\_Annual\\_Financial\\_Report\\_Year\\_Ended\\_June\\_30\\_2014.pdf](http://www.ci.tracy.ca.us/documents/Comprehensive_Annual_Financial_Report_Year_Ended_June_30_2014.pdf) Page 192 of 214

GP6-25  
Cont.

\$21,582,841 in 2014.<sup>29</sup> Tracy Hill pays no property taxes so it will not support the operations of the Tracy Police Department. The 1997 DEIR predicts that the THSP will create a need for an additional 19 sworn officers which is 32 % more sworn officers than the PD currently employs. One could expect that the additional officers will increase the PD budget requirements by 32% or \$6,905,509. Tracy Hills provides no property tax to the city so 60% or \$4,143,305 of those annual PD operational costs will be shifted to other city residents. The development agreement is allegedly supposed to address this issue but the development agreement has not been presented for the public to analyze the THSP impacts on police services. These impacts cannot be assessed with the current documents provided by the city. The development agreement the most important mitigation measure must be provided for the public to review to ensure that the existing residents will not be supporting the police services to Tracy Hills.

The DEIR relies on the General Plan EIR analyses which conclude that the long-term development of the City of Tracy would have no significant impacts to police protection. The general plan EIR does not anticipate each individual development impacts particularly a development that pays no property taxes to support the operations of the Tracy PD. That is the purpose of the specific plan and the 2014 THSP DEIR fails to provide an adequate description of the impacts of the project and fails to provide any mitigation for the THSP significant impacts to police services.

GP6-26

### Fire Services

Fire services are to be provided by the South County Fire Authority. The SCFA has had its staffing reduced from 84 firefighter in 2009 to 75 firefighter in 2014 an 11% decrease in personnel. The DEIR does not discuss funding of fire department services but it is clear that the SCFA is in financial distress. The SCFA has recently lost the fire service contract for Mountain House and the budgetary implications have not been analyzed. The DEIR analysis is not THSP specific but merely states that, “*The General Plan EIR analyzed the long-term development of the City of Tracy and found that no significant impacts to fire protection and emergency medical service facilities would occur with implementation of the General Plan.*” This lack of analysis is

<sup>29</sup> [www.ci.tracy.ca.us/documents/Comprehensive\\_Annual\\_Financial\\_Report\\_Year\\_Ended\\_June\\_30\\_2014.pdf](http://www.ci.tracy.ca.us/documents/Comprehensive_Annual_Financial_Report_Year_Ended_June_30_2014.pdf) Page 190 of 214

GP6-26  
Cont.

fatal to the EIR. While the city of Tracy has expanded its population to 84,000 people it has only 4 operable fire stations. In contrast in 1997 the city had three fire stations for a population of 30,000 people. It is clear Tracy Fire has not kept up with growth. The Tracy Rural Fire Department the other component of the SCFA had 4 fire stations in 1997 and now has three with one station now inside the city limits despite being purchased and funded by Tracy Rural. The DEIR needs to discuss the existing lack of personnel and stations. The DEIR proposes a mitigation measure which requires a fire house to be constructed and all necessary apparatus to be supplied but it does not state who is responsible to pay for the new fire house and equipment and who will pay to staff it. The 2007 Kirchoff report recommended that two fire stations be established for the THSP but the DEIR does not discuss this recommendation. Clearly the DEIR analysis is inadequate in describing the existing conditions and does not provide a clear picture on how personnel and improvements will be funded.

GP6-27

### Schools

The THSP DEIR analysis is so poor that it states, “*The General Plan EIR analyzed the long-term development of the City of Tracy and found that no significant impacts to police protection would occur with implementation of the General Plan. As this is the baseline for the evaluation of cumulative impacts and the Project would not result in substantial growth beyond that envisioned by the General Plan, nor were any significant impacts found relative to the provision of school facilities, cumulative impacts relative to school facilities are Less-than-significant.*” That statement literally sums up the usefulness of the DEIR. The DEIR does not even propose a school in the phase 1 construction plans. Instead the developer intends to impact the Hawkins elementary school until the development generates 800 students. Impacts generated by additional students from the phase 1 development are not mitigated. The Tracy Hills previous owner had a mitigation agreement with the school district but the DEIR fails to include or discuss it.

GP6-28

### Parks

Park maintenance is performed by the public works department and funded by the general fund. Park maintenance for the fiscal year 2013/2014 was \$ 1,897,990. The DEIR states, “After dedication to the City, most park and recreation facilities will be under the jurisdiction of the City Public Works Department and will be operated and maintained by the

GP6-28  
Cont.

City for the enjoyment of the residents of Tracy.”<sup>30</sup> Just like police services park maintenance is funded through the general fund. As stated before Tracy Hills will pay no property taxes to the city so the 60% of the maintenance of Tracy Hills parks will be shifted to existing residents unless the development agreement provides that funding. Once again without the development agreement presented the public is unable to evaluate who will pay for park maintenance and the financial burden it imposes. As stated before the DEIR is inadequate without the presentation of the development agreement and a formula to provide funding from the Tracy Hills residents for park maintenance.

GP6-29 Water Treatment Facilities

According to the DEIR the Water facility needs for the ultimate build out of the Project include an expansion and upgrade of the City of Tracy storage and pumping facilities, transmission, and distribution facilities.<sup>31</sup> The DEIR provides that the applicant is required to pay the appropriate development fee as contemplated by the WSMP. The DEIR does not provide an analysis which demonstrates that these facilities which will be constructed exclusively for the benefit of Tracy Hills residents will be adequately financed by the WSMP development fee. The DEIR should estimate the cost of the needed upgrades and the potential development fees revenues assessed on Tracy Hills residents to demonstrate that the revenue is adequate to construct these facilities and that no costs will be transferred to existing residents.

GP6-30 Wastewater Facilities

The 2014 DEIR on page 1-35 identifies Impact 4.12-5: which concludes that the Tracy Hills Project would generate a demand for wastewater treatment capacity that is currently not available and thus a potentially significant. Mitigation measure 4.12-7a provides that: If the City determines, based on technical and legal constraints and other relevant data, that existing capacity is available to serve the development at issue, then no further mitigation is required. However the existing residents have already financed the current expansion of the wastewater treatment plant. Mitigation measure 4.12-7a allows Tracy Hills resident to not contribute their

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<sup>30</sup> DEIR Page 3-210

<sup>31</sup> DEIR Page 3-40

GP6-30  
Cont.

fair share to the cost of the Tracy Wastewater Treatment Plant Phase 1B expansion project which was completed in 2008 at a cost of 80 million dollars. This represents a cost shift to existing residents to provide wastewater facilities for the Tracy Hills Development. Tracy Hills should provide their own wastewater treatment plant as envisioned in the 1998 approvals or in the alternative Tracy Hills can pay the fair share of the 2008 wastewater treatment plant expansion. Currently the upgrade costs each Tracy resident approximately \$1000 a person not including financing charges on the bond issue. At build out with a population of 19,000 Tracy Hills should pay its fair share of the Wastewater Treatment Plant1 b expansion of approximately 19 million dollars.

GP6-31

#### Strom Drainage

The DEIR states that the Storm Drainage System will be owned, operated, and maintained by the City of Tracy. Since Tracy Hills provides no property tax money to the city and approximately 60% of the city's pre Measure E general fund revenues are derived from property taxes where will the funds to maintain and operate the Tracy Hills storm drainage system come from.

### 4.8 HAZARDS AND HAZARDOUS MATERIALS

GP6-32

#### Air Transportation of Explosives to Site 300

Up to 1000-kg shipments of high explosives are transported by air to the Tracy Municipal Airport and then trucked to LLNL Site 300 approximately once a month. The Livermore airport would not allow such shipments due to the possible danger posed by an accident involving an aircraft transporting up to 1,000 kg of high explosives. There is the potential for an aviation incident involving Tracy Hills residents. LLNL assessed the potential for an accident involving explosives transported to the Tracy Airport. The aircraft in the scenario was assumed to be carrying at least 300 lb of fuel in its tanks. The high explosive on board was assumed to be 1000 kg (2200 lb) of LX-10 with a TNT equivalent of 1.32, which is equal to 1320 kg (2910 lb) of TNT. The scenario assumed that an aircraft carrying a shipment of LX-10 explosive for LLNL **Site 300 crashes enroute near final approach to the Tracy Municipal Airport**. The onboard fuel ignites and the combustion causes the LX-10 on board to explode from the heat. The

GP6-32 Cont. explosive force of the LX-10 alone would create a blast force of 1 psi or more out to a radius of 490 ft. Such a force would damage a standard house enough to render it uninhabitable. A blast force of 10 psi or more would extend out to a radius of about 120 ft; 10-psi peak positive overpressure would be sufficient to raze a house to the ground. This is a significant impact which the 2014 DEIR fails to analyze or discuss.

GP6-33 Transportation of explosive materials by Truck to site 300.

Another possible risk of upset includes the transportation of high explosives on Highway 580 or on Corral Hollow in route to Site 300. Trucks regularly transport high explosives down 580 to Site 300 and that risk has also been analyzed by LLNL. Although an airplane crash of fuel and explosives would cause a larger radius of destruction, an accidental explosion of a smaller amount of explosives could cause more loss of life if the accident occurred in a congested corridor such as Interstate 580 east of the LLNL Livermore site. The FEIR needs to discuss these potential upset conditions and discuss mitigation since Highway 580 and corral Hollow Road will become more congested as Tracy Hills builds out. This is a significant impact under CEQA.

GP6-34 Development of the Tracy Hills Project would expose residents to pesticides.

The 2014 DEIR fails to provide any crop history for the agricultural land the project is proposing to utilize. Many past pesticide applications may contaminate the soil. The grading of the land could cause airborne particles containing past applications of DDT and other dangerous pesticides. The DEIR fails to address this potentially significant issue with crop histories and adequate environmental assessment of potential pesticide residues in the farmland.

GP6-35 Explosives Testing

The 2014 DEIR discusses impacts from blasting activities at Site 300. The 2014 DEIR concludes that due to the distance from Site 300 to the nearest THSP Project Area boundary (approximately 1.33 miles, or 7,000 feet), and the fact that Site 300 predominantly conducts noise-generating explosive tests indoors, noise impacts to future residents of the THSP Project Area and Phase 1a would be *Less-than-significant*.

While the DEIR admits that explosive testing occurs outside it also dismisses that noise impact. What the DEIR fails to acknowledged is that the contained firing facility can only

GP6-35  
Cont.

handle explosive charges up 60 kilograms (kg) of cased explosive charges.<sup>32</sup> Larger tests must be conducted outdoors. LLNL has previously applied for permits to test up to 1,000 pound of high explosives including 450 pounds of depleted uranium and small amounts of tritium. It is surprising that the city who supported the increased testing limits<sup>33</sup> and the Tracy Hills developers who opposed it would turn a blind eye to that fact. In fact Tracy Hills attempted to prevent LLNL from getting a permit for bombs up to 1,000 pounds in a permit appeal at the SJVAPCD. Tracy Hills dropped out of the proceeding why no one knows. Fortunately a local resident was able to prevail and prevent the testing of explosive charges up to 1,000 pounds. There is nothing to prevent LLNL from conducting outdoor tests and the testing has a long history of breaking windows<sup>34</sup> and startling residents as far as 5 miles away.

GP6-36

Another source of blasting operations that the DEIR completely ignores occurs at SRI International which is located very close to the Tracy Hills development. SRI's tests include examining missile components, simulating natural gas pipeline ruptures, and calibrating explosives for safety-classification purposes, among others. In August of 2012 SRI executed a blast which shook residents in Tracy up to 5 miles away. One woman living near Valpico Road said she and friends **living 3 to 5 miles from the testing grounds heard a loud explosion. Two others who reported hearing the boom said their houses shook.**<sup>35</sup> Charges as small as 16 pounds at SRI's facility have been proven to create blast overpressure that will shatter windows and damage homes. The DEIR statement that the Tracy Hills residents will be over 7,000 feet away from Site 300 does not apply to SRI. Residents 5 miles away from the facility experienced large noises and shaking of their homes.

GP6-37

Site 300 controlled burns

Another issue the 2014 THSP DEIR fails to discuss is the annual controlled burns at Site 300. These controlled burns can be a nuisance to future Tracy Hills residents. Also the controlled burns present a hazard as they can vaporize depleted uranium and tritium deposits that

<sup>32</sup> <https://str.llnl.gov/str/Baker.html>

<sup>33</sup> [http://www.goldenstatenewspapers.com/tracy\\_press/council-gives-support-to-explosion-increases/article\\_8165bcdf-03a2-5390-9450-9edcf1088650.html](http://www.goldenstatenewspapers.com/tracy_press/council-gives-support-to-explosion-increases/article_8165bcdf-03a2-5390-9450-9edcf1088650.html)

<sup>34</sup> [http://www.goldenstatenewspapers.com/tracy\\_press/council-gives-support-to-explosion-increases/article\\_8165bcdf-03a2-5390-9450-9edcf1088650.html](http://www.goldenstatenewspapers.com/tracy_press/council-gives-support-to-explosion-increases/article_8165bcdf-03a2-5390-9450-9edcf1088650.html)

<sup>35</sup> [http://www.goldenstatenewspapers.com/tracy\\_press/archives/explosion-shakes-some-in-city/article\\_dc762589-6df3-50ea-adc2-e575f7194e1d.html](http://www.goldenstatenewspapers.com/tracy_press/archives/explosion-shakes-some-in-city/article_dc762589-6df3-50ea-adc2-e575f7194e1d.html)

GP6-37 have accumulated over 60 years of testing. . Residents of Tracy Hills may be exposed to these  
Cont. radio nuclides and no testing has been performed to assess the health risk from such activities.

GP6-38 Risk of Trespass onto dangerous facilities.

The location of the project adjacent to the aqueduct, Site 300, SRI International and the railroad presents a significant opportunity for trespass and potential harm to residents particularly children in the Tracy Hills development. Fencing is the only real solution but may not be feasible for all the hazards due to biological issues. Keep out signs are a relatively ineffective deterrent. Impacts' resulting from the exposure of people or property to a potential risk associated with trespass onto the adjacent explosive testing facilities is a significant and unavoidable impact which the FEIR must consider.

GP6-39 Train Blast Zone

According to the California Energy Commission, oil shipments by railroad into California hit an all-time record this year, with nearly 285 million gallons arriving by train in the past 12 months – up from just two million only four years ago. Much of the oil shipped is either extremely toxic and heavy Canadian tar sands oil or the Bakken crude responsible for major explosions and fires in derailments across the continent. These oil laden trains do pass through Tracy and the project site. The entire project is within the blast zone for crude oil rail shipments.<sup>36</sup>

GP6-40 Aqueduct

Comments by the CDWR on the 1997 DEIR indicated that they believe seismic events from local and regional faults (e.g., the Greenville fault approximately 7 miles west and the Calaveras and Hayward faults approximately 13 and 21 miles west, respectively) could cause a failure of the aqueduct.<sup>37</sup> The DEIR recognizes Impact 4.8-5 which identifies that implementation of the proposed school may be subject to a breach or rupture of the California Aqueduct. The DEIR does not discuss failure of the Aqueduct due to seismic activity.

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<sup>36</sup> <http://explosive-crude-by-rail.org/>

<sup>37</sup> APPENDIX E-2 LIQUID PETROLEUM PIPELINE RISK AND CALIFORNIA AQUEDUCT FLOOD RISK FOR THE PROPOSED TRACY HILLS SCHOOL SITE Page 3

GP6-41

### Oil Pipeline Hazard Assessment

The pipeline hazard assessment is an incomplete analysis that marginalizes 6 significant pipeline incidents on the petroleum lines that run through the THSP that have occurred in recent years. The risk assessment reports the significant leaks but because there was no fire or explosions dismisses them as insignificant. What the analysis fails to consider all six of these pipeline leaks occurred in uninhabited areas where no source of ignition exists. The THSP proposes to locate as 5,466 homes in close proximity to these oil pipelines providing an ignition source. Additionally the Placeworks risk assessment only provides the probability of a fatality and does not include risk assessments for property damage, environmental contamination and injury which have a much larger probability of occurring.

GP6-42

The pipeline assessment done by Placeworks does admit that, “There have been a few incidents of releases from the crude oil pipelines in the vicinity of the Plan area in the PHMSA database.” According to their assessment, “On December 4, 2003, the Chevron crude oil pipeline was accidentally struck by a tractor working on farmland on the property just north of the proposed Cordes Ranch development. Approximately 750 barrels (31,500 gallons) of crude oil were released. The oil soaked into 16,667 cubic yards of soil.” “Another incident occurred on July 8, 2003 between Corral Hollow Road and Tracy Boulevard, which is southeast of the Plan area. The cause of the release was also third party damage; a total of 35 barrels of crude oil was released with the recovery of 30 barrels.” There was a report of a release from this pipeline on December 4, 2007 due to external corrosion approximately 0.3 mile south of Bird Road in Tracy. It involved the release and recovery of 4 barrels (168 gallons) of crude oil; the pipeline was subsequently repaired.”

GP6-43

The Placeworks assessment also describes three more incidents that occurred on the Shell Oil Pipeline, “There have been three incidents involving the Shell crude oil pipeline in the vicinity of the Plan area. The first incident occurred on December 21, 1994, at the time that Texaco was listed as the pipeline owner/operator. The incident involved third party damage of the pipeline at the Corral Hollow Landfill and resulted in a loss of 550 barrels of crude oil, with 535 barrels recovered. The second incident occurred near the intersection of S. Bird Road and Interstate I- 580 on April 17, 2007 resulting from a longitudinal break in the pipeline due to corrosion. Approximately 428 barrels were released and flowed down an embankment onto the shoulder of I-580 and onto the roadway, resulting in a traffic snarl during afternoon commute

GP6-44

hours. About 9,500 cubic yards of impacted soil were subsequently remediated and removed. Finally, an equipment malfunction at a location north of the Plan area resulted in a minor release of 2 barrels of crude oil on October 5, 2008. Placeworks notes that no ignition, explosion, fire, or evacuation occurred as a result of any of these releases.<sup>38</sup> What Placeworks doesn't note and the most important factor is there was no source of ignition near these leaks. That will change when Tracy Hill is constructed. Despite having six leaks in the span of only a few years the DEIR proposes setbacks from the Phillips 66 pipeline of only 10 feet. The setback from the Shell crude oil pipeline is proposed to be only 16 feet and the setback for the Chevron oil line is proposed to be 25 feet. With six leaks occurring in just over a few years the pipeline setbacks should be expanded to a minimum of 50 feet just to protect the pipeline from damage.

GP6-45

#### Line 002 24 inch natural gas pipeline

Line 002 is a 26 inch diameter natural gas pipeline that was installed in 1971. The coating on L-002 is a double tape wrapped coating which no longer meets Federal standards because it is prone to corrosion. The pipeline thickness is .322 inches. The maximum allowable operating pressure for the line is 890 PSIG. Recent pipe-to-soil data have indicated corrosion on Line 002 within the Tracy area. A smart pig examination was performed in 2001 which indicated that the line had wall loss of up to 78%. Subsequent examination by PG&E revealed that actual wall loss was 61%. PG&E realized that the area found was unacceptable and lowered the operating pressure to 530 psig and performed repairs on the pipeline. While Placeworks reports that Line 002 has experienced no leaks Placeworks is wrong. The pipeline has experienced two leaks in the Tracy Hills Project Area one in 1997 and one in 1999.

The pipeline under integrity management guidelines is supposed to be inspected by a smart pig every seven years. But like most integrity management guidelines PG&E has ignored the pipe was last inspected in 2006 nine years ago. At the time in 2006 when the pipeline was inspected wall loss of up to 62% s was discovered but no repairs were performed.

#### Water Supply Assessment

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<sup>38</sup> APPENDIX E-3 PIPELINE SAFETY HAZARD ASSESSMENT, TRACY HILLS SPECIFIC PLAN. PREPARED BY PLACEWORKS. DATED OCTOBER 2014 Page 10

Recent announcements by the Bureau of Reclamation render the water supply assessment unreliable. The Tracy Press reports that Steve Bayley Tracy's water expert expects the city to receive half of its Delta-Mendota Canal allocation, 5,000 acre-feet, in addition to 8,500 acre-feet of Sierra runoff water from the Manteca-based South San Joaquin Irrigation District.<sup>39</sup> Other sources have completely dried up. According to the Bureau of Reclamation water users without pre-1914 or riparian rights would be curtailed first, followed by those with senior rights.<sup>40</sup> If pre-1914 water rights are curtailed Tracy will be in serious trouble and will not have enough water for current residents much less Tracy Hills residents. John Herrick, general counsel of the South Delta Water Agency, said that although similar warnings were issued last year about water pumped from rivers, they were never implemented for senior water-rights users. "This year, everyone taking surface water could be curtailed or even shut down," Herrick said. "We don't know that will happen, but we consider it a very serious situation."

Respectfully Submitted,

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Robert Sarvey

<sup>39</sup> [http://www.goldenstatenewspapers.com/tracy\\_press/our\\_town/more-farmers-could-face-water-use-limits/article\\_60f3f8da-a812-11e4-93aa-af09314758d0.html](http://www.goldenstatenewspapers.com/tracy_press/our_town/more-farmers-could-face-water-use-limits/article_60f3f8da-a812-11e4-93aa-af09314758d0.html)

<sup>40</sup> [http://www.goldenstatenewspapers.com/tracy\\_press/our\\_town/more-farmers-could-face-water-use-limits/article\\_60f3f8da-a812-11e4-93aa-af09314758d0.html](http://www.goldenstatenewspapers.com/tracy_press/our_town/more-farmers-could-face-water-use-limits/article_60f3f8da-a812-11e4-93aa-af09314758d0.html)

**Letter GP6**

**Robert Sarvey**

**March 3, 2015**

**Response GP6-1:**

Comment noted. Section 3.3.5 of the DSEIR includes a description of the basic terms of the proposed Development Agreement (DA). The intent of the DA is to provide the Applicant with substantial assurance that the proposed project can be completed “in accordance with existing policies, rules and regulations, and subject to conditions of approval” (Gov’t Code Section 65864(b)). Although the DA has not yet been fully negotiated, the purpose of identifying the basic terms, as described on page 3-55 of the DSEIR, is to disclose what environmental impacts, if any, would be associated with the implementation of items identified in the DA and to what degree said items would require evaluation in the DSEIR. This disclosure is provided such that the public and the decision makers are informed as to the potential environmental impacts of entering into such an agreement. As noted on page 3-55, the DA would lock in the rules at execution of the agreement for a term of 25 years, and serve as the mechanism for determining the provisions for the funding of improvements related to infrastructure and public service needs. All of the infrastructure improvements and public services required of the proposed Project are described in detail throughout Section 4 of the DSEIR. No additional or new environmental impacts would be generated by the approval and subsequent implementation of the terms being contemplated under the DA as of the published date of this DSEIR. If through the negotiation process, the DA is modified in a manner that would potentially generate new impacts, increase the severity of impacts previously identified or is modified in such a substantive manner as to render the description of terms currently in the DSEIR as inadequate and thereby not allowing for meaningful public review, the City could require additional environmental review.

**Response GP6-2:** Please refer to the response to Comment GP6-1.

**Response GP6-3:**

The Draft SEIR thoroughly analyzes impacts associated with all development proposed within the THSP, including the mixed use business park proposed as part of Phase I. Impacts associated with development of the mixed use business park are included in Chapters 4.1 through 4.13 of the Draft SEIR. While the City does not currently have specific business applications pending for the proposed business park, the Draft SEIR analysis relied on the permitted uses for the mixed use business park land use designation as well as calculating development based on a 0.20 FAR (floor area ratio). In a maximum buildout scenario, there is potential for over 1.59 million square feet of business park uses to be potentially constructed. This calculation was utilized to determine impacts associated with air quality, noise, traffic, and greenhouse gas emissions. Additionally, the business park area is designated to allow a mix of development to provide market flexibility for a broad array of commercial, institutional and business uses to serve the community and provide local employment opportunities. The primary land uses are intended to be focused on job generating land uses such as administrative and corporate offices and commercial uses of the project.

**Response GP6-4:** As discussed on page 4.10-14 of the Draft SEIR, the 2011 update of the General Plan identified the potential development (location, range, mix and intensity of development) allowed within the THSP. The changes proposed by the comprehensive update to the 1998 THSP are not substantive in nature, (i.e., do not expand the development footprint, or overall density or intensity of development) and thus, are no greater in magnitude than the impacts anticipated and evaluated in the 2011 General Plan for the THSP Area. Reliance on the General Plan and General Plan EIR for supplemental information and analysis for the proposed THSP is not only appropriate, but also reduces redundancy in environmental analysis. Additionally, a description and assessment of existing environmental conditions both on- and off-site are located in numerous places throughout the Draft SEIR, including the beginning of each of the analysis chapters. Refer to Chapters 4.1 through 4.13 of the Draft SEIR.

Finally, the full Draft SEIR was made available electronically on the City's website on December 19, 2014, and remains available today.

**Response GP6-5:** The Reduced Density Alternative is described in Chapter 7.3 of the DSEIR. As noted in Section 7.3 of the DSEIR impact analysis, Alternative 3 (Reduced Density Alternative) could minimize potentially significant impacts on the site character, if the development footprint is reduced. However, in relation to current conditions, this alternative would still alter the scenic character of the site and resulting impacts would remain significant and unavoidable as with the Project.

**Response GP6-6:** The first part of Mr. Sarvey's comment relates to the loss of farmland in San Joaquin County between 1990 and 2004. These first few sentences of his comment do not raise any questions germane to the DSEIR analysis, and therefore are noted.

The City's Municipal Code identifies the Project site as exempt from the City's adopted fee. While not required, the Applicant has agreed to payment of the fee as described herein, and within Mitigation Measure 4.2-1 of the DSEIR. Therefore, Section 4.2, Agricultural Resources, Mitigation Measure 4.2-1 requires the Applicant to pay the agricultural mitigation fee adopted by the City for each acre of Prime Farmland to be developed. Additionally, as outlined in Mitigation Measure 4.2-1, the measure also requires the Applicant to pay the agricultural mitigation fee for each acre of Farmland of Local Importance that has been actively farmed and is to be developed. The fees would be collected by the City at the time building permits are issued for site-specific development projects, or as otherwise required by the City.

With respect to the number of acres identified in each farmland classification, the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) prepares maps and statistical data used for analyzing impacts on California's agricultural resources. Agricultural land is rated according to soil quality and irrigation status, with the best quality land rated as Prime Farmland. The maps are typically updated every two years with the use of a computer mapping system, aerial imagery, public review, and field reconnaissance. However, the map for San Joaquin County is from 2012. In order for land to be shown on FMMP's Important Farmland Maps as

Prime Farmland and Farmland of Statewide Importance, land must meet both the following criteria<sup>1</sup>:

1. The land has been used for irrigated agricultural production at some time during the four years prior to the Important Farmland Map date. Irrigated land use is determined by FMMP staff by analyzing current aerial photos, local comment letters, and related GIS data, supplemented with field verification, and;
2. The soil must meet the physical and chemical criteria for Prime Farmland or Farmland of Statewide Importance as determined by the USDA Natural Resources Conservation Service (NRCS). NRCS compiles lists of which soils in each survey area meet the quality criteria. Factors considered in qualification of a soil by NRCS include:
  - ◆ Water moisture regimes, available water capacity, and developed irrigation water supply
  - ◆ Soil temperature range
  - ◆ Acid-alkali balance
  - ◆ Water table
  - ◆ Soil sodium content
  - ◆ Flooding (uncontrolled runoff from natural precipitation)
  - ◆ Erodibility
  - ◆ Permeability rate
  - ◆ Rock fragment content
  - ◆ Soil rooting depth

The most recent (2012) San Joaquin County Important Farmland Map identifies the Project Area to include 25 acres of Prime Farmland (as shown in Figure 4.2-1 in the DSEIR). In determining whether impacts to agricultural resources are significant, the analysis in the DSEIR relied upon the 2014 CEQA Guidelines which use the following threshold as an indicator for a significant impact:

“Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.”

Since the most recent FMMP (2012) map identifies approximately 25 acres of Prime Farmland within the Project Area, and does not identify any Unique Farmland, or Farmland of Statewide Importance within the Project boundaries, the determination was made that the agricultural mitigation fee would be paid for those 25 acres of Prime Farmland. As mentioned above, the Applicant has also agreed (but is not required by CEQA) to pay the agricultural mitigation fee for each acre of Farmland of Local Importance that has been actively farmed and is to be developed. The mitigation for

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<sup>1</sup> State of California, Department of Conservation. Farmland Mapping and Monitoring Program. *Prime Farmland as Mapped by FMMP*. Accessed March 16, 2015. [http://www.conservation.ca.gov/dlfp/fmmp/overview/Pages/prime\\_farmland\\_fnmp.aspx](http://www.conservation.ca.gov/dlfp/fmmp/overview/Pages/prime_farmland_fnmp.aspx)

Prime Farmland, Farmland of Local Importance, and Grazing Land can be found on page 4.2-11, under Mitigation Measure 4.2-1.

**Response GP6-7:** One of the purposes of the DSEIR is to identify potentially significant environmental effects of proposed Project activities. The discussion of potential loss of agricultural revenue due to the conversion of agricultural land is not within the scope of the DSEIR. The analysis provided in Section 4.2 of the DSEIR addresses the impacts on the environmental and/or physical loss of agricultural resources due to Project implementation. The acreage devoted to active farming (approximately 214 acres) and/or which produces a revenue source is inconsequential given that there is limited (or in most cases, no) irrigation available which limits the ability to farm the site. The DSEIR discusses air quality impacts in Chapter 4.3, Air Quality and aesthetic impacts in Chapter 4.1, Aesthetics.

The City of Tracy Sustainable Action Plan Target Numbers 10 and 11 state the following:

- ◆ Target #10: No loss of Prime Farmland, Farmland of Statewide Significance or Unique Farmland outside of the City's Sphere of Influence (SOI).
- ◆ Target #11: Any loss of such farmland inside of the SOI is offset by mitigation fees to a qualified agriculture preservation trust, such as the Central Valley Farmland Trust, at a ratio related to every acre that is lost.

The commenter is correct that Target 11 applies to the proposed Project. However, Target 11 references back to Target 10 to identify which classifications of farmland must pay mitigation fees: Prime Farmland, Farmland of Statewide Significance or Unique Farmland. As addressed in the DSEIR, the Project site contains 25 acres of Prime Farmland. The loss of farmland referred to in Target #11 (inside the SOI) is described in Target #10 (outside the SOI) as Prime Farmland, Farmland of Statewide Significance or Unique Farmland. As mentioned in response GP6-6, Mitigation Measure 4.2-1 requires the Applicant to pay the agricultural mitigation fee for the 25 acres of Prime Farmland within the City's SOI, and within the Project Area. There is no Farmland of Statewide Significance or Unique Farmland (as identified by the California Department of Conservation, FMMP) within the Project Area.

**Response GP6-8:** The THSP includes a range of housing densities ranging from 0.5 dwelling units per acre (du/ac) up to 25 du/ac. The commenter is correct that the majority of the proposed residential development would be between 2.1 to 12.0 du/ac. It should be noted that the THSP is consistent with the development density and intensity assumptions in the City's General Plan, as well as the infrastructure and public service projections identified in the City's Infrastructure Master Plans and the City's General Plan. It should be noted that the 1998 Tracy Hills Specific Plan EIR found that an Increased Density alternative was not environmentally superior to the proposed 1998 project. Final project approval and consideration of merits of the project ultimately is a decision by City decision makers.

**Response GP6-9:** The commenter erroneously states that there will be impacts to agriculture from the water deliveries to Tracy Hills.

The May 2003 “Agreement Between the Department of Water Resources of the State of California and the Byron-Bethany Irrigation District regarding the Diversion of Water from the Delta” and the April 2014 “Long-term Contract Between the United States and the Byron Bethany Irrigation District Providing for the Exchange of Non-Project Water for Project Water” (included in Appendix A of the WSA) and associated December 2013 Finding of No Significant Impact (FONSI-09-149) provide for reliable delivery of water to that portion of the project identified to use BBID pre-1914 water. The FONSI 09-149 concluded that there would be no significant impacts to agriculture from the delivery of BBID water to Tracy Hills.

**Response GP6-10:** The DEIR states on page 4.2-10 that grazing land west of the THSP could experience negative impacts on its agricultural activities from implementation of the Project, which would therefore have significant impacts on agricultural activities on the adjacent land. However, Mitigation Measure 4.2-2 would reduce this impact to a less than significant level. Mitigation Measure 4.2-2 states:

“As construction occurs along the Specific Plan Area boundary, buffers such as roadways, building setbacks, and parking areas, shall be required prior to occupancy of those structures, in compliance with General Plan Policy OSC-2.2 P1.”

The commenter states the “DEIR fails to discuss the odors, noise, and dust that will impact the THSP from adjacent farming activities”. Implementation of the buffers required in Mitigation Measure 4.2-2 would reduce any potential impacts between the THSP and grazing lands to a less than significant level.

Recent CEQA case law has held that CEQA requires the lead agency to analyze the impacts of a project on the environment, not the impacts of the environment on the project (Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455; South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1617.). Also, see Response RA6-2.

Furthermore, in addition to the buffers, provided for in Mitigation Measures 4.2-2, that would reduce exposure to fugitive dust, the agricultural uses would be subject to SJVAPCD Rule 8081, which limits fugitive dust emissions from agricultural sources. Rule 8081 includes measures for proper handling of bulk materials, cleaning trackouts onto paved roads, and fugitive dust management plans for unpaved roads and unpaved vehicle/equipment traffic areas. Furthermore, compliance with Rule 8011 (Regulation VIII General Dust Control Requirements) would also be required.

The agricultural uses typically associated with odor concerns (as identified by the SJVAPCD Guide for Assessing and Mitigating Air Quality Impacts [2015]) include composting facilities and dairies/feed lots. The nearby agricultural areas do not include

dairies or composting facilities. Therefore, odors from agricultural areas would not be significant.

Regarding noise impacts from the agricultural areas, the ambient noise measurements indicated that agricultural related noise was not a significant contributor to the noise levels in the project area. Roadway/traffic noise was the predominant noise source; refer to DEIR Table 4.11-4. Thus, the adjacent farming activities would not significantly impact the THSP Project.

**Response GP6-11:** As the Tracy Hills Specific Plan contemplates a multiple phased development over a 25 year period. As such, the details of the future development phases are not known at this time. It should be noted that the DSEIR includes both a project and program level analysis for the THSP. A project level analysis was conducted for Phase 1a and a program analysis was conducted for the subsequent phases.

Per Section 15168 of the CEQA Guidelines, a Program EIR may be prepared for a series of actions that can be characterized as one large Project and are related. Subsequent activities in the program must be examined in the light of the Program EIR to determine whether an additional environmental document must be prepared.

When individual activities within the program are proposed (e.g., development of future phases), the lead agency would be required to examine the individual activities within the program to determine whether their effects were fully analyzed in the Program EIR. If the activities would have no effects beyond those analyzed in the Program EIR, the lead agency could assert that the activities are merely part of the program, which had been approved earlier, and no further CEQA compliance would be required.

Please also refer to the response to Comment GP6-3.

**Response GP6-12:** The construction emissions analysis in Section 4.3, *Air Quality*, quantifies emissions associated with all phases and construction years of the proposed project. Table 4.3-7 depicts the construction emissions associated with development of Phase 1a of the Tracy Hills Specific Plan. Table 4.3-6 depicts construction emissions associated with the subsequent construction phases that would be associated with buildup of the Specific Plan. As described in the DSEIR, it should be noted that the emissions in Table 4.3-6 are based on conservative applicant estimates of a worst-case scenario and are subject to validation by the City when specific development would occur.

Piecemealing involves dividing a project into smaller projects to qualify for one or more exemptions. The DSEIR reports emissions associated with all phases and construction years anticipated for development of the Specific Plan (Phase 1a and subsequent phases). Therefore, the approach is not piecemealed. The SJVAPCD's construction thresholds are based on annual emissions (tons per year). As anticipated by the Specific Plan and depicted in the DSEIR, the years where Phase 1a construction would occur would not overlap with the subsequent development phases. Therefore, the annual emissions associated with Phase 1a would not change. The DSEIR specifies that

although Phase 1a construction emissions would not exceed SJVAPCD thresholds, construction of the subsequent phases would potentially exceed SJVAPCD thresholds. Mitigation Measure 4.3-1c is included in the Dr DSEIR per SJVAPCD requirements (refer to Response RA6-12).

**Response GP6-13:** DSEIR Section 4.3 includes all feasible mitigation measures to reduce the identified air quality impacts. It should be noted that while CARB certified Tier 3 off-road engines are considered feasible, Tier 4 engines are not in widespread use and may not be available and are not considered feasible. It should be noted that construction of the THSP would occur over approximately 15 years. Over the course of this time, more Tier 4 engines would become available and would be integrated into the construction equipment fleet. The number and type of Tier 4 engines would depend on what is available to the contractor and the construction year. It should be noted that the Project is required to comply with SJVAPCD Rule 9510, which requires a 20 percent reduction of construction-exhaust NO<sub>x</sub> and a 45 percent reduction of construction-exhaust PM<sub>10</sub>. SJVAPCD Rule 9510 also includes the payment of off-site mitigation fees for both construction and operations.

**Response GP6-14:** As discussed in the DSEIR Section 4.3, the Project would be required to comply with SJVAPCD Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions). Regulation VIII requires watering and other dust prevention measures. Compliance with the dust prevention measures of Regulation VIII (e.g., watering, use of ground cover, storage pile stabilization, cleaning haul roads, covering transported materials, etc.) would also reduce the spread of valley fever spores. Compliance with SJVAPCD Regulation VIII is required by DSEIR Mitigation Measure 4.3-1 and would minimize construction dust and valley fever impacts.

**Response GP6-15:** As described in DSEIR Section 4.3 and Mitigation Measures 4.3-1ca and 4.3-2, the entire Project would be required to comply with SJVAPCD Rule 9510. Refer to Response GP6-12 regarding piecemealing. As stated on DSEIR page 4.3-27, Phase 1a would also be required to comply with SJVAPCD Rule 9510.

**Response GP6-16:** DSEIR Section 4.3 requires the project to implement Mitigation Measure 4.3-2, which requires compliance with SJVAPCD Rule 9510. Rule 9510 requires a reduction of operational NO<sub>x</sub> emissions by 33 percent and operational PM<sub>10</sub> emissions by 50 percent over 10 years.

Furthermore, the Project is also required to implement Mitigation Measure 4.7-1, which specifies various measures to reduce operational emissions, including providing transit usage and opportunities, improving pedestrian accessibility, providing mixed-use, improving destination accessibility, providing traffic calming measures, installing high efficiency lighting, and installing energy efficient appliances. Mitigation Measure 4.7-1 also requires the implementation of feasible SAP measures and other measures to reduce emissions.

As described in DSEIR Section 7 (Alternatives), the Reduced Density Alternative (Alternative 3), is considered the environmentally superior alternative. Alternative 3 marginally reduces some impacts due to the reduced development intensity potential. However, Alternative 3 does not fully meet several project objectives, including implementation of the City's General Plan Area of Special Consideration Number 8: Tracy Hills Specific Plan Area. Additionally, this alternative would avoid significant and unavoidable Project impacts with respect to air quality, greenhouse gas emissions, and noise.

The Alternative Site Alternative was also considered in Section 7 of the DSEIR. However, this alternative was rejected because the Project Area has already been contemplated by the General Plan for future development. Additionally, extensive planning efforts have included the adoption of the 2011 revised General Plan (which anticipated build out of the THSP) and the Project Area is currently designated "Tracy Hills Specific Plan" on the City of Tracy Zoning Map. The City's master plans of infrastructure (which serve to implement development under the General Plan) have accommodated the development density and pace of development identified in the THSP. Also, the Project Area is largely within the control of the Project Applicant and there are no other sites of this size within the City or the City's sphere that the Project Applicant would be able to reasonably acquire, control, or otherwise have access to that would meet the basic objectives of the Project. Pursuant to Section 15126.6(f) (1) of the CEQA Guidelines, "among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent)."

**Response GP6-17:** As described in DSEIR Section 4.3, the THSP is intended to meet the General Plan goals, objectives, policies, and actions related to the balanced and orderly pattern of growth, the maintenance of the small-town character, and the planned growth within the sphere of influence (SOI). The amount of new residential growth (maximum of 5,499 residential units) and commercial, office and industrial land use growth (approximately 2,731.6 gross acres with up to 5.7 million square feet of space) facilitated by the Project would be within the range of development planned for in the City's General Plan. The General Plan identifies an increase of 600 residential units in the City per year, which on average over time is the maximum increase allowed by the growth management ordinance (GMO). Of these, 5,499 units are anticipated in the THSP site as part of the THSP Area. The THSP has been identified within the City of Tracy General Plan and it is anticipated that the THSP would be consistent with the anticipated growth within the City.

Regarding the Project's proximity to the wastewater treatment plant, as the THSP was anticipated in the General Plan and the City's Infrastructure Master Plans, the Project is also included in the Citywide Wastewater Master Plan. Per the *City of Tracy Citywide Water System Master Plan/Tracy Wastewater Master Plan Initial Study/Mitigated Negative*

*Declaration* (November 2012), impacts associated with accommodating future development would be less than significant.

As described in Response OR2-12e, the City's projected job growth is anticipated to outpace available housing, and additional housing units would be needed. The addition of housing in proximity to the planned employment growth in the City would improve the City's jobs/housing balance and reduce commute distances and times (i.e., reducing vehicle miles traveled [VMT]). Furthermore, the Project is also required to implement Mitigation Measure 4.7-1 to reduce vehicle trips and VMT. Mitigation Measure 4.7-1 includes various measures to reduce operational emissions, such as providing transit usage and opportunities, improving pedestrian accessibility, providing mixed-use, improving destination accessibility, providing traffic calming measures.

Also, refer to Response GP6-16, above. The Reduced Density Alternative was determined to be the environmentally superior alternative. However, this Alternative also does not fully meet several project objectives.

**Response GP6-18:** As previously identified in the DSEIR, CEQA case law has held that CEQA requires the lead agency to analyze the impacts of a project on the environment, not the impacts of the environment on the project (Ballona Wetlands Land Trust v. City of Los Angeles (2011) 201 Cal.App.4th 455; South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604, 1617.); also refer to Response RA6-2. However, in the interest of full disclosure, an addendum to the Health Risk Assessment (HRA) included in the DSEIR has been conducted and identifies the impact to all prospective on-site residential uses for the entire Project as a function of exposure to pollutants from I-580, Union Pacific Railroad, and from activity associated with proposed industrial facilities within the THSP. Additionally, the HRA addendum also evaluates impacts to off-site residential, workers, and schools as a function of exposure to diesel particulate matter (DPM) associated with trucking activity that would serve the industrial uses of the THSP (mixed use business park and light industrial).

Furthermore, contrary to the statements in the comment, the latest regulatory guidance from SJVAPCD, OEHHA, and USEPA were used in the analysis. It should be noted that the HRA addendum includes a risk evaluation for children. The results of the HRA addendum indicate that the impact to off-site residents, schools, and workers associated with diesel trucks and associated DPM emissions resulting from ongoing operations of industrial land uses proposed by the Project will be less than significant and no mitigation is required. The supplemental assessment serves the SJVAPCDs request to assess potential risks based upon worst-case development assumptions.

Regulatory guidance from SJVAPCD, OEHHA, and USEPA assumes that source-receptor locations are static, whereby exposures are assumed to be continuous based on the averaging time under consideration. It is important to note that the analysis assumes a "static" exposure scenario of constant exposure 24 hours per day, 7 days per week for a long-term duration (70 years). Notwithstanding, the time spent indoors at residences is over 90 percent of the 24 hour day. The latest version of the U.S. EPA's *Exposure*

*Factor Handbook: 2011 Edition* includes empirical data that suggests on average over 21 hours per day are spent indoors at the residence for all age groups; also refer to Response RA6-9. As such, there is substantial evidence that supports that people do in fact spend the vast majority of time inside their homes. The comment provides no evidence to refute this claim and support their generalized statement that people do not stay inside their home all the time. As noted in the DSEIR, the HRA addendum, and above, impacts associated with the lifetime risk exposure would be less than significant.

**Response GP6-19:** As noted in the comment, the DSEIR determines that implementation of all feasible mitigation measures would achieve a reduction of 16.41 percent, which would fall short of the SJVAPCD's 29 percent threshold despite the implementation of all feasible mitigation measures. This impact is determined to be significant in the DSEIR.

Also, refer to Response GP6-16, above, regarding the Reduced Density Alternative. It should be noted that the SJVAPCD's 29 percent reduction threshold requires a 29 percent reduction from the project's business as usual emissions. The Reduced Density Alternative achieves a 40 percent reduction from the proposed project (not from business as usual) because it would include far less development. As described in the DSEIR, this alternative would not meet several of the project's objectives.

**Response GP6-20:** The Project would be consistent with the development patterns and growth projections for the area. As described in the DSEIR, the THSP has been identified within the City of Tracy General Plan and infrastructure plans, and it is anticipated that the THSP would be consistent with the anticipated growth within the City.

Additionally, refer to Response OR1-6. The City is projected to experience growth in jobs by the TMP horizon year 2030 and buildout in 2050. In 2030, the TMP anticipates 40,506 houses and 64,182 jobs (a jobs:housing ratio of 1.58). By 2050 the TMP anticipates 43,557 houses and 184,003 jobs (a jobs:housing ratio of 4.22). The City's projected job growth is anticipated to outpace available housing, and additional housing units would be needed. The addition of housing in proximity to the planned employment growth in the City would improve the City's jobs/housing balance and reduce commute distances and times (i.e., reducing vehicle miles traveled [VMT]). Refer to Response GP6-17, above, regarding consistency with the General Plan. Also, refer to Response OR1-7. As documented in Table 4.7-7 of the DSEIR, the proposed Project would be consistent with the applicable measures in the City's Sustainability Action Plan.

**Response GP6-21:** Refer to Responses OR1-6 and GP6-20. The anticipated job growth in the City would outpace available housing. Implementation of the THSP would improve the City's projected jobs/housing balance.

**Response GP6-22:** It should be noted that agricultural land is not necessarily a GHG/CO<sub>2</sub> sink. According to the U.S. EPA, various management practices for agricultural soils can lead to production and emission of GHGs such as nitrous oxide (N<sub>2</sub>O) including fertilizer application to methods of irrigation and tillage. Livestock, especially cattle, produce

methane (CH<sub>4</sub>) as part of their digestion. This process is called enteric fermentation, and it represents almost one third of the emissions from the agriculture sector. Furthermore, the way in which manure from livestock is managed also contributes to CH<sub>4</sub> and N<sub>2</sub>O emissions.<sup>2</sup> Therefore, removing agricultural lands would reduce the Project's overall increase in GHG emissions over existing conditions.

**Response GP6-23:** As noted in Response GP6-16, DSEIR Section 4.7 requires the project to implement Mitigation Measure 4.7-1, which specifies various measures to reduce operational emissions, including providing transit usage and opportunities, improving pedestrian accessibility, providing mixed-use, improving destination accessibility, providing traffic calming measures, installing high efficiency lighting, and installing energy efficient appliances. Mitigation Measure 4.7-1 also requires the implementation of feasible SAP measures and other measures to reduce emissions.

As described in DSEIR Section 3.0, the Project is anticipated to include three potential elementary school (K-8) sites located within the Specific Plan area but the final number and locations of elementary schools would be determined in accordance with the Jefferson School District Facilities Master Plan as the Specific Plan is built out. The THSP may also include the use of two interim school sites to support the development. The purpose of the interim school sites would be to provide school services to the initial residents of the THSP Project Area until the permanent schools are fully developed. The initial "interim" students for the Project's Phase 1a would be housed in existing facilities currently proposed at Hawkins Elementary School until the permanent school is constructed in Tracy Hill Phase 1a. Hawkins Elementary is currently utilized for this upcoming school year as the interim school site for the Jefferson Elementary School as it is being reconstructed. It should be noted that Hawkins Elementary School is approximately three miles from Phase 1a.

According to the California Air Pollution Control Officers Association (CAPCOA) GHG Quantification Report, the integration of affordable housing reduces VMT related emissions by 0.04 to 1.2 percent. As indicated in DSEIR Section 4.7, transportation emissions make up of 64 percent of the operational emissions. Therefore, including affordable housing has the potential to reduce THSP GHG emissions by 0.26 to 0.77 percent. As a result, requiring 50 percent of the housing in the THSP may not be feasible and would not have a significant contribution (less than one percent) towards achieving the SJVAPCD's GHG reduction threshold.

As indicated in Response GP6-20, jobs growth within the City is projected to outpace available housing. Therefore, including a technology park (i.e., additional jobs) within the City would exacerbate the jobs/housing imbalance. THSP Housing is needed within

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<sup>2</sup> U.S. Environmental Protection Agency, *Sources of Greenhouse Gas Emissions, Agriculture Sector Emissions*, April 9, 2015. Available at: <http://epa.gov/climatechange/ghgemissions/sources/agriculture.html>, accessed on April 9, 2015.

the City to achieve a jobs/housing balance. Furthermore, improving the City's housing supply would drive down housing costs and improve affordability.

Refer to response GP6-17, above, regarding the wastewater treatment plant. As described above, the THSP was anticipated in the General Plan and the City's Infrastructure Master Plans, the Project is also included in the Citywide Wastewater Master Plan. The addition of a wastewater treatment plant would not provide a meaningful reduction to the Project's GHG emissions.

**Response GP6-24:** The commenter disputes that the THSP would not affect library services and erroneously states the THSP is exempt from property taxes payable to the City to support public services such as the public library. The THSP area was previously annexed in 1998 and is located within the Tracy City limit as noted in the Land Use and Planning Section 4.10-8. The City operates under property tax sharing agreements with the County of San Joaquin. There are many of these agreements in place covering various geographical areas of the City, which contain different provisions negotiated at different times under different circumstances. When the Project site was annexed in 1998, it was under a property tax sharing agreement that provided that for a *portion* of Tracy Hills area the tax split was 100% to the County of San Joaquin and 0% to the City and the remaining portion of the Project area was different with a higher than 0% going to the City. The Project Applicant is proposing to help fund their share of services through a Community Facilities District, given the property tax sharing agreement in place with the City for the proposed Project.

**Response GP6-25:** The commenter states the THSP would impact police protection as a result of THSP property owners being exempt from paying property taxes, with property taxes being a primary funding source for police services. This is an inaccurate statement and is addressed in Response GP6-24, which states that when the Project site was annexed in 1998, it was under a property tax sharing agreement that provided that for a *portion* of Tracy Hills area the tax split was 100% to the County of San Joaquin and 0% to the City and the remaining portion of the Project area was different with a higher than 0% going to the City. Additionally, the City requires that all new development pay Public Facilities Impact Fees in order to offset impacts associated with increasing the City's demand for public services. In accordance with this requirement, the Applicant is required to pay the applicable impact fees associated with police protection as outlined in Mitigation Measure 4.12-2b on page 4.12-44 of the DEIR.

The commenter states the development agreement was not presented for the public to analyze the THSP impacts on police services. The development agreement is still being drafted and is not yet complete, however the major term points are included in the DEIR. Additionally, the terms of the development agreement between the City of Tracy and the applicant do not implicate environmental impacts. As a result, no further analysis is required of the DA. If the major term points are at any time revised, the revised terms will be reviewed against the content, parameters and thresholds of this EIR to determine whether subsequent environmental analysis is required.

The commenter questions the reliance of the THSP DEIR on the City of Tracy General Plan EIR as the General Plan EIR does not anticipate each individual development, and in particular a development that does not contribute to local taxes to support services. Reliance on the General Plan and General Plan EIR for supplemental information and analysis for the proposed THSP is not only appropriate, it also reduces redundancy in environmental analysis. Additionally, as discussed earlier in this response, the THSP area is subject to local taxes, as described above in GP6-24. Refer to Chapters 4.1 through 4.13 of the Draft SEIR. As discussed on page 4.10-14 of the Draft SEIR, the 2011 update of the General Plan identified the potential development and development intensity allowed within the THSP. The changes proposed by the comprehensive update to the 1998 THSP are not substantive in nature, (i.e., do not expand the development footprint, or overall density or intensity of development) and thus, are no greater in magnitude than the impacts anticipated and evaluated in the 2011 General Plan for the THSP Area.

**Response GP6-26:** The commenter states the THSP would impact fire protection through lack of funding. Funding for public services is addressed in Responses GP6-24 and GP6-25. The City of Tracy has planned for any costs associated with Tracy Hills as discussed in the Final Citywide Public Safety Master Plan (page 2), which identifies a new fire station within the Tracy Hills development. Additionally, the City requires that all new development pay Public Facilities Impact Fees in order to offset impacts associated with increasing the City's demand for public services. In accordance with this requirement, the Applicant is required to pay the applicable impact fees associated with fire protection as outlined in Mitigation Measure 4.12-1 on page 4.12-44 of the DEIR.

The commenter mentions the 2007 Kirchoff report was not considered in the DEIR. The THSP DEIR does not consider the 2007 Kirchoff report as it relies on the more recent City of Tracy General Plan (2011) as the guiding document of future planning for the City of Tracy.

**Response GP6-27:** The commenter notes an error in the DEIR on page 4.12-42 in the paragraph discussing cumulative impacts on schools. The sentence should read "The General Plan EIR analyzed the long-term development of the City of Tracy and found that no significant impacts to schools would occur with implementation of the General Plan." Refer to page 4.12-41 of the revised and recirculated SEIR for the text change.

The commenter erroneously notes an elementary school is not proposed in the Phase 1a construction plans. Page 4.12-34 of the DEIR states *"Phase 1a of the Project includes an elementary school site that lies between I-580 and the California Aqueduct and between Corral Hollow Road and the future Lammers Road extension to accommodate the above mentioned new student population."* Furthermore, the development application for the school would be subject to the requirement to pay the applicable impact fee in accordance with SB 50. Under Section 65996 of the California Government Code, the payment of such fees is deemed to fully mitigate the impacts of new development of school facilities. Additionally, each individual development application would be subject to the requirement to pay the applicable impact fee subject to school mitigation agreements with TUSD and Jefferson

School District. Under Section 65996 of the California Government Code, the payment of such fees is deemed to fully mitigate the impacts of new development on school facilities.

**Response GP6-28:** This comment is regarding maintenance of the public parks within the THSP and how those maintenance activities are funded. As stated in the Draft SEIR on page 3-21, most of the park and recreation facilities in the THSP shall be dedicated to the City and will then be under the jurisdiction of the City Public Works Department and will be operated and maintained by the City utilizing funds through the CFD. The commenter states the maintenance of the parks would not be supported by the residents of the THSP as the THSP would not pay property taxes. This is an inaccurate statement and is addressed in Response GP6-24, which states that when the Project site was annexed in 1998, it was under a property tax sharing agreement that provided that for a *portion* of Tracy Hills area the tax split was 100% to the County of San Joaquin and 0% to the City and the remaining portion of the Project area was different with a higher than 0% going to the City.

The commenter states the development agreement was not presented for the public to analyze the THSP impacts on park funding and maintenance. The development agreement is still being drafted and is not yet complete, however the major term points are included in the Draft SEIR. Additionally, the terms of the development agreement between the City of Tracy and the applicant do not implicate environmental impacts. As a result, no further analysis is required of the DA. If the major term points are at any time revised, the revised terms will be reviewed against the content, parameters and thresholds of this EIR to determine whether subsequent environmental analysis is required.

**Response GP6-29:** The commenter states the DEIR does not provide an analysis that demonstrates water facility infrastructure would be adequately financed by the WSMP development fee. The commenter also states the DEIR should estimate the cost of water infrastructure upgrades. Page 8-2 of the WSMP states "*costs for infrastructure to serve the Tracy Hills development will not be included in this Citywide Water System Master Plan. Instead, costs for Tracy Hills infrastructure will be evaluated in conjunction with the revised Tracy Hills Master Plan and subsequent evaluations to be prepared for the Tracy Hills development*". The DEIR does state on page 4.12-39 regarding water infrastructure "*To avoid additional impacts and ensure construction, the Project shall be required to pay appropriate development impact fees. Payment of these development impact fees would reduce this potentially significant impact to a less than significant level.*" The City of Tracy will determine what development fees are appropriate to ensure the construction of the needed water infrastructure. The Project Applicant would be required to either construct the necessary facilities or pay fees to the City for construction. Additionally, section 15131(a) of the *CEQA Guidelines* states that economic or social effects of a project shall not be treated as significant effects on the environment and that the focus of the analysis shall be on the physical changes taking place.

**Response GP6-30:** The commenter states MM4.12-7a, regarding wastewater treatment facilities, does not require the Project to contribute its fair share to the cost of the Tracy Wastewater Treatment Plant Phase 1B expansion project. State CEQA Guideline 15064(e) states:

Economic or social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment... If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant.

This comment refers solely on economic effects and does not address environmental or physical concerns, nor does it demonstrate an adverse effect on people. Furthermore, the THSP area was previously annexed in 1998 and is located within the Tracy City limit as noted in the Land Use and Planning Section 4.10-8. As such, property owners within the THSP are subject to property and other taxes in support of public services, including wastewater treatment.

**Response GP6-31:** The commenter is correct in stating that the storm drainage system would be owned, operated, and maintained by the City of Tracy, however the commenter is incorrect regarding the payment of property tax by THSP residents. As stated in Response GP6-29, and reiterated in Response GP6-30, the DEIR is required to assess the economic or social effects as significant impacts insofar as those effects have an adverse effect on the environment or on people. This comment refers solely on economic effects and does not address environmental or physical concerns, and does not demonstrate an adverse effect on people. Furthermore, the THSP area was previously annexed in 1998 and is located within the Tracy City limit as noted in the Land Use and Planning Section 4.10-8. As such, property owners within the THSP are subject to property and other taxes in support of public services, including the storm drainage system.

**Responses GP6-32/33:** As identified in Section 4.8, Hazards and Hazardous Materials, the DSEIR acknowledges the proximity of Site 300 to the THSP Project Area. Site 300 occupies 10.9 square miles and its boundary is over one mile west of the THSP Project Area, approximately 1.5 miles from the portion of the site proposed for development. LLNL conducts continuous environmental monitoring of its activities and operations, including monitoring for soil and groundwater contamination.

The transport of hazardous materials to Site 300 by way of the Tracy Municipal Airport, as with the transportation of all hazardous materials, is regulated by the U.S. Department of Transportation (Title 49 of the Code of Federal Regulations), the California Highway Patrol (Title 13 of the California Code of Regulations), and the California State Fire Marshall (Title 19 of the California Code of Regulations). In addition, in order to operate in the State of California, all hazardous materials transporters must be registered with the California Department of Toxic Substances Control (DTSC). These regulations minimize the potential for aviation and traffic

incidents involving hazardous materials. Future Tracy Hills residents would be protected by current regulations in place.

The regulations require registration of hazardous materials transporters, manifesting procedures for hazardous materials transport, operational procedures for transport, and requirements for the condition of vehicles and containers used to transport hazardous materials. Compliance with existing regulations regarding the transport of hazardous materials and adherence to existing truck routing patterns would prevent potential significant adverse impacts associated with accidents and spills.

LLNL prepares annual environmental reports to record LLNL's compliance with environmental standards and requirements, describe LLNL's environmental protection and remediation programs and present the results of environmental monitoring. The 2012 Environmental Report is the most recent, comprehensive and publicly available report provided to the City from LLNL. Additionally, LLNL's environmental reporting includes compliance monitoring regarding the transport of explosive materials to and from Site 300.

Furthermore, the Proposed Project's establishment of residential units in the THSP Project Area which may result in the exposure of persons to potential risks associated with situations as identified by this comment is a part of the larger consideration for the City decision makers to approve proposed uses in the THSP Project Area.

**Response GP6-34:** Thirteen Phase I Environmental Site Assessments (ESA) have been prepared for the majority of the THSP Project Area. The objective of the Phase I ESAs were to identify any recognized environmental conditions (RECs) associated with the Project, which would include former pesticide use on areas of the THSP Project Area. Among the many environmental issues that are evaluated during the Phase I process is historical and/or current agricultural use. The Phase I reports identified that a majority of the site has historically been used for grazing uses and not crop production. Therefore, there would be no historical use of pesticides on the former grazing areas. Moreover, any portion of the THSP Project Area that will be developed must comply with the United States Environmental Protection Agency (USEPA) Region IX, January 2015 Regional Screening Levels (RSLs), which are used by the California Department of Toxic Substances Control to determine whether or not soil contamination must be remediated before developed. Therefore, contrary to the comment, the potential for former pesticide use has been adequately considered in the DSEIR. The commenter's concerns will be further addressed through the standard environmental assessment and cleanup process if potential contaminants, including pesticides, are identified.

**Response GP6-35:** As noted in the DSEIR, explosives testing at Site 300 generates significantly audible noise. Section 4.11, Noise, of the DSEIR acknowledges that noise from explosive testing at Site 300 would be being potentially audible from locations in the THSP Project Area. To minimize noise impacts to adjacent neighbors, Site 300 constructed the Contained Firing Facility in 2000, as identified on page 4.11-23 of the DSEIR. This concrete-reinforced, 28,000-square-foot facility allows the LLNL to conduct explosives

tests indoors. The DSEIR notes that Site 300 does conduct intermittent outdoor tests; Site 300 staff monitors the atmosphere to determine when conditions are best for minimal sound travel. Due to these ongoing procedures and the distance from Site 300 to the THSP Project Area, the DSEIR finds that noise impacts to future residents of the THSP Project Area would be less than significant.

**Response GP6-36:** It is acknowledged that the DSEIR does not specifically identify potential noise generation emanating from the SRI International testing facilities located within the vicinity of the THSP Project Area. However, as with potential noise impacts from Site 300 (see response to GP 6-35), potential noise impacts from SRI International would be less than significant due to distance from the THSP Project Area. As addressed in Section 4.11. Noise, of the DSEIR, existing San Joaquin County noise regulations and standards will continue to apply to the SRI International testing facilities and potential noise violations from this site, or any other within the County limits..

**Response GP6-37:** It is acknowledged that the DSEIR does not specifically discuss potential impacts resulting from prescribed burns conducted at Site 300 on future occupants of the THSP Project Area. However, according to the *LLNL Environmental Report 2012*, LLNL air emissions are regulated by the U.S. Department of Energy (Title 40 of the Code of Federal Regulations 61, Subpart H – the NESHAPs section of the Clean Air Act; applicable portions of the DOE Order 458.1 and ANSI standards). LLNL continuously samples its air emissions to evaluate its compliance with local, state and federal laws and regulations. According to the *LLNL Environmental Report 2012*, LLNL operations involving radioactive materials had minimal impact on ambient air during 2012. The 2012 report states, “the measured radionuclide particulate and tritium concentrations in ambient air at LLNL and Site 300 were all less than one percent of the DOE primary radiation protection standard for the public (DCS).”

In addition Section 4.8, Hazards and Hazardous Materials, the DSEIR concluded that the potential impacts from hazardous materials remain less than significant based on Site 300’s location of over one mile west of the THSP Project Area, approximately 1.5 miles from the portion of the site proposed for development, and existing environmental monitoring requirements for Site 300.,

**Response GP6-38:** While it is acknowledged that potential safety issues can arise when people trespass or place themselves in a harmful situation or location. However, it is beyond the scope and speculative for an EIR to predict future safety events and potential risks associated with trespassing situations. The proposed Project’s establishment of residential units in the THSP Project Area which may result in the exposure of persons to potential risks associated with trespassing situations is a part of the larger consideration for the City decision makers to approve proposed uses in the THSP Project Area.

**Response GP6-39:** As is acknowledged by the commenter, trains pass through communities every day, and some of these trains do transport oil. As addressed in the response to comments GP 6-32 and -33, the transport of hazardous materials is regulated by the U.S. Department of Transportation (Title 49 of the Code of Federal Regulations and the California State

Fire Marshall (Title 19 of the California Code of Regulations). In addition, in order to operate in the State of California, all hazardous materials transporters must be registered with the California Department of Toxic Substances Control (DTSC). The regulatory framework for transporting hazardous materials is regulated by the above agencies not the nonprofit organization, ForestEthics who authored the website (<http://explosive-crude-by-rail.org/>) cited by the commenter.

The regulations require registration of hazardous materials transporters, manifesting procedures for hazardous materials transport, operational procedures for transport, and requirements for the condition of vehicles and containers used to transport hazardous materials. Compliance with existing regulations on the transport of hazardous materials would minimize significant adverse impacts associated with accidents and spills, and possible explosions. Furthermore, due to these current regulations, future Tracy Hills residents would be at no greater risk to train derailments than any other residential development located in the proximity of rail anywhere else in the country.

**Response GP6-40:** In response to the commenter's statement that the DSEIR does not include sufficient discussion of potential failure of the aqueduct due to seismic activity, a *Seismic-Fault and Earthquake-Evaluation of the California Aqueduct, Delta-Mendota Canal, and Aqueduct Check Structures, Adjacent to the Proposed Tracy Hills Development Study*, was prepared by Wilson Geosciences, Inc. (April 2015). This study was prepared in support of the conclusions identified in the DSEIR and does not identify any previously unidentified impacts.

The Central Valley/San Joaquin Valley lies within a seismically active area as does almost all of California. The four facilities evaluated in the study were constructed in the 1960s and 1970s using the standard design practices of the State of California at that time. Seismic design has become a very important aspect of facilities design in California over the past 40 years or so. The California Department of Water Resources (CDWR, 2012) has recently evaluated facility types within the statewide water conveyance system and provided some guidelines describing their levels of risk related to earthquake loading (ground shaking/acceleration). This study determines the potential seismic parameters for several locations along the subject facilities and compares these results to risk levels considered acceptable by the State. Likewise, commonly used analytical processes from the United States Geological Service (USGS) and the California Transportation Department (Caltrans) are used in the study to determine the potential seismic parameters for the proposed development area. Also USGS predictions for the blind thrust fault system beneath the Specific Plan area are considered.

Comments by the CDWR indicate that they believe seismic events could cause a failure of the California Aqueduct (i.e., this cannot be precluded). The CDWR indicates that an aqueduct failure could generate a maximum flow from the California Aqueduct at this location of 10,300 cubic feet per second (cfs) with an initial surge equaling almost 25,000 cfs, thereby posing a risk to persons and property situated down slope (north) of the Aqueduct. It is inferred that this conclusion would also apply to the Delta-Mendota Canal and, depending upon conditions, the Check 2 and 3 structures. It is

therefore believed that severe seismic shaking would be the primary natural hazard that would impact the California Aqueduct, canal, and check structure locations.

Flooding is the primary concern should the Aqueduct, canal, or check structures fail adjacent to the THSP area. Both the California Aqueduct and Delta-Mendota Canal were evaluated for seismic ground shaking at the proposed development area. Development is proposed down slope (north) from the California Aqueduct, but not the Delta-Mendota Canal. Therefore, there should be no significant impact on the proposed development area in the event of a failure of the Delta-Mendota Canal. It is understood that water levels are similar to the California Aqueduct, at or below surrounding topography. Flooding, rapid water flow and erosion concerns are not believed to be potential risks at locations adjacent to and higher in elevation than the Aqueduct or canal. Any minor up slope affects (e.g., headward erosion, ground saturation) of a breach in the Aqueduct or canal should be contained within the 100-foot- wide “buffer” area bordering the Aqueduct and the canal. Therefore, the area of concern due to a potential Aqueduct or canal failure is located between the California Aqueduct and the Delta-Mendota Canal.

With regard to flooding down slope (north) from the Aqueduct, the Aqueduct’s trapezoidal design carries water below grades adjacent to the proposed development area as opposed to a levee type system, which stands above surrounding topography. As shown in the study, a characteristic cross-section near Corral Hollow Road shows the Aqueduct level is at roughly elevation 241- to 242-feet. On the down slope (north) side, flooding could occur as the ground adjacent to the Aqueduct becomes saturated, the ground settles, and water seeks lower elevations to the north farther from the Aqueduct. There is no reasonable scenario where a breach in the Aqueduct or canal can raise flood waters to the south side of either the Aqueduct or the canal.

Therefore, the potential for breach or rupture of the Aqueduct based on seismic activity is adequately addressed in the SDEIR.

**Response GP6-41:** The Project’s Pipeline Safety Hazard Assessment (PSHA) was prepared by a qualified, licensed civil engineer with over 20 years of experience in this field who has conducted over 300 similar pipeline assessments. The report describes six pipeline incidents that have occurred in the Tracy area, based on data provided by the Pipeline and Hazardous Materials Safety Administration (PHMSA). Releases that have been reported were associated with the Chevron crude oil and Shell crude oil pipelines. There were no reported incidents for the Phillips 66 crude oil pipeline. The Phillips 66 crude oil pipeline would bisect the THSP Project Area.

The commenter states that the reason there was no ignition from pipeline releases in the Tracy area is because all of the six pipeline leaks occurred in uninhabited areas where no source of ignition exists. Although there are not as many potential ignition sources in rural areas, of the six incidents, three involved third party damage with tractors and construction equipment, which could provide ignition sources in the event of a release. Additionally, vehicles traveling along I-580 would be potential sources of ignition for a

spill from the Shell crude oil pipeline. Therefore, the statement that there were no potential ignition sources in the vicinity of all six release events is invalid.

The point of highlighting within the PSHA the lack of ignition from the six release events was to illustrate the difference between crude oil pipelines and natural gas pipelines, which are more likely to ignite in release events. From the PHSMA database of all reported incidents from 2010 to present, there were 124 incidents involving crude oil pipelines in right-of-ways. Only one incident involved ignition, which equates to a less than 1% probability of ignition, and none of the incidents resulted in fatalities or injuries. Many of these incidents occurred in urbanized areas, thus, it is not a lack of ignition sources that resulted in this outcome, but the fact that crude oil is less likely to ignite than natural gas.

It is acknowledged that the PSHA only addresses the probability of fatality associated with release events as current risk assessment methodology for pipeline hazard assessments does not include assessments of property damage or environmental contamination, because these potential impacts vary greatly depending on the location of the spill, volume of oil spilled, proximity to rivers and streams, weather conditions, biodegradation, and other factors which result in potential impacts being unquantifiable. Therefore, pipeline risk assessments, including the PSHA prepared for the Project, focus on potential impacts as well as the potential for ignition, resulting in an ignition situation which could affect adjacent residential structures. The results of the Project's PSHA indicate that the pipeline setbacks provided in the PSHA would be sufficient to protect occupants in the THSP Project Area.

**Response GP6-42:** The comment is acknowledged. The incidents listed did occur in the THSP Project Area as identified in the PSHA.

**Response GP6-43:** The comment is acknowledged. The incidents listed did occur in the THSP Project Area as identified in the PSHA.

**Response GP6-44:** The comment is acknowledged. The incidents listed did occur in the THSP Project Area as identified in the PSHA. Furthermore, as discussed in Response GPS-41, the results of the Project's PSHA indicate that the pipeline setbacks provided in the PSHA would be sufficient to protect occupants in the THSP Project Area.

**Response GP6-45:** Information is provided by the commenter on the configuration and operation of a natural gas pipeline in the THSP Project Area (Line 002); however, no specific comments on the PSHA or the SDEIR are provided. The commenter states that the pipeline risk assessment erroneously indicated that the natural gas pipeline had experienced no leaks by stating two leaks had occurred in 1997 and 1999. These incidents were not included in the Project's pipeline risk assessment as they were not recorded in the California natural gas pipeline database or the Pipeline and Hazardous Materials Safety Administration database, both of which were accessed for preparation of the Project's PSHA. However, further investigation, provided in the ruling on motion to subpoena PG&E for the Mariposa Energy Project (2011), indicated that the two leaks

were caused by gunshots, and not corrosion. Therefore, the occurrence of these two leaks should not be associated with the potential for corrosion-related pipeline leaks. Furthermore, in this ruling a pipeline safety engineer and a mechanical engineer with the California Energy Commission both testified that the pipeline in question was constructed and operated in accordance with CPUC General Order 112 standard and the CFR Parts 190-192 standards. Additionally, as the pipeline was constructed in the 1970s, it complies with modern construction codes. The pipeline has been pressure tested and repairs to it were made in 2001. The commenter includes a comment on the integrity management guidelines of PG&E; however, this is not a specific comment on the PSHA or the SDEIR and is not further addressed.

Also of note, the pipeline in question is located within a corridor with another natural gas pipeline and a crude oil pipeline. Although this group of pipelines poses potential risk to future occupants of the THSP Project Area, this specific area is zoned for light industrial uses, which has fewer hours of occupancy than residential land use and, therefore, lower risk to people. The pipelines easement cuts through the very northeast corner of the THSP Project Area, where there are additional restrictions on development based on proximity to the Tracy Municipal Airport. Additionally, the recommendation to provide a setback distance of 25 feet from the centerline of any pipeline within the easement will provide a further reduction in potential risk.

**Response GP6-46:** The Water Supply Assessment (WSA) prepared for the Tracy Hills project adequately analyzes the existing and planned future water supply for the project. The inclusion of future planned supplies in the WSA is consistent with the Water Code as follows:

Section 10631 (b): Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments as described in subdivision (a).

The WSA utilizes the assumptions adopted in the City's 2010 Urban Water Management Plan (UWMP) and states that hydrologic conditions and supply deliveries vary from year to year. Section 5.3 of the WSA (on page 22) states that additional water conservation may be needed in response to multiple dry years or other water supply shortages. Water conservation by the City's water customers in 2014 exceeded the assumptions in the City's 2010 UWMP. Also, as described in the WSA, the City has a Water Shortage Contingency Plan which it can implement were there to be water supply shortage due to extreme dry conditions or other water supply emergencies.

The statement "Other sources have completely dried up." is erroneous. As described in Section 6.1.2 of the WSA (starting on page 33), in recent years the City has received water supplies from the South San Joaquin Irrigation District (SSJID) South County Water Supply Project (SCWSP) which have exceeded the City's allotment. In 2015, the City is anticipating receiving 10,000 af from the SSJID SCWSP. As described in Section 6.1.3 of the WSA (starting on page 28), the City has groundwater resources with a sustainable yield of 9,000 af/yr. In 2001, the City performed a technical analysis and environmental review that shows that up to 9,000 afa can be pumped from the

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groundwater basin. The 2001 Estimated Groundwater Yield Study and associated City of Tracy Groundwater Management Policy Mitigated Negative Declaration dated April 2001 is included in Appendix C of the WSA. The WSA further describes the City's 1996 adoption of the Northern Delta-Mendota Canal Groundwater Management Plan, the City's May 2012 adoption of the revised Northern Delta-Mendota Canal Groundwater Management Plan, and the City's participation in the Tracy Sub-basin Groundwater Management Plan (copies of which are included in Appendix C of the WSA). The City's historical groundwater pumping is shown on Figure 6 of the WSA and shows that groundwater pumping in 2001 was 7,321 af, 2002 was 7,802 af, 2003 was 6,847 af, and 2004 was 7,176 af. This pumping occurred with no negative environmental impacts. The groundwater levels are currently high compared to past years due in part to decreased pumping by the City in recent years.

The SWRCB order referenced in the comment was a generic order requiring certain water right holders to provide information to the SWRCB. It was not a challenge to their water rights. The SWRCB has not curtailed senior water rights such as BBID's pre-1914 right.