

Residential and Open Space on the City's General Plan land use diagram.

- The proposed project would also revise approximately 50 acres along Rivera Road from Highway Commercial to Business Park.
- The special area policy for Lower Lagoon Valley, establishing a limit of 730 residential units, would be amended to allow up to 1,325 units." DEIR at 3-36.

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In addition, the General Plan Parks and Recreation, transportation and circulation and other diagrams must be amended to conform to the project. These are significant policy changes to the City's General Plan and *should be considered as part of a General Plan Update*, rather than as changes to *conform* the City's General Plan to this specific project proposal. For these reasons, the City should postpone any further consideration of the proposed project until a legally adequate General Plan is in place.

Finally, further consideration of any project on the site should be postponed until the project applicants redesign the project so that it reduces or eliminates the 14 identified significant and unavoidable impacts, not including significant and unavoidable cumulative impacts and other significant impacts omitted by the DEIR. This level of impact cannot be offset by overriding considerations.

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II. THE DEIR IS INADEQUATE UNDER CEQA

The DEIR is inadequate. Specifically, an EIR must provide enough analysis and detail about environmental impacts to enable decision-makers to make intelligent judgments in light of the environmental consequences of their decisions. See CEQA Guidelines § 15151; Kings County Farm Bureau v. City of Hanford, 221 Cal.App.3d 692 (1990). Under the law, the lead agency must make a good faith effort to fully disclose the environmental impacts of the project. This requirement cannot be met unless the project is adequately described and existing setting information is complete. See County of Inyo v. City of Los Angeles, 71 Cal.App.3d 185, 199 (1977). Both the public and decision-makers need to fully understand the implications of the choices presented by the project, mitigation measures, and alternatives. See Laurel Heights Improvement Ass'n v. Regents of University of California (Laurel Heights I), 6 Cal.4th 1112, 1123 (1988). The DEIR fails to provide sufficient information to enable informed decision-making by the City, the public, and the permitting agencies.

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The DEIR is intended to cover all necessary approvals for the project. Many of the most significant impacts will be irreversible after rough grading has occurred. Thus, detailed information concerning project level impacts must be provided at this stage of project consideration so that the City, the agencies and the public can fully understand the impacts of the proposed project and alternatives. Deferral of information concerning project-related and

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cumulative impacts, mitigation measures and alternatives is improper and unacceptable given the types of activities and irreversible environmental harm that will result from the initial approval of the project by the City Council.

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A. The DEIR Fails to Adequately Describe the Project and Project Setting

The DEIR fails to describe the project and its setting accurately and completely. It omits key project features that have the potential to result in significant impacts. The CEQA Guidelines define “project” as “the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately . . .”. CEQA Guidelines § 15378. Among other components, an EIR’s project description must contain a “general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.” CEQA Guidelines § 15124(c). As the Court of Appeal has noted, “The defined project and not some other project must be the EIR’s bona fide subject.” County of Inyo, 71 Cal.App.3d at 185. An accurate and complete project description is indispensable because, “[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” Id. at 192.

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The DEIR also fails to provide an adequate description of the setting for the project. Such a failure is fatal under CEQA. CEQA and the CEQA Guidelines mandate that an EIR include a description of “the physical environmental conditions in the vicinity of the project . . . from both a local and a regional perspective . . . Knowledge of the regional setting is critical to the assessment of environmental impacts.” CEQA Guidelines §§ 15125(a) and (c). This requirement derives from the principle that without an adequate description of the project’s local and regional context, the EIR, and thus the decision-makers and the public who rely on the EIR, cannot accurately assess the potentially significant impacts of the proposed project.

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The DEIR fails to describe key aspects of the proposed project with the potential to result in significant environmental impacts. Additionally, it fails to describe accurately and completely the environmental setting impacted by the project. Accordingly, potentially significant environmental impacts cannot be adequately analyzed or addressed by the DEIR and, for this reason, the DEIR is fatally deficient under CEQA. Specific defects in the project description and setting include, but are not limited to the following:

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First, the DEIR fails to include information concerning grading necessary to construct the project as proposed. The DEIR states that cut and fill will be balanced on site, but fails to provide illustrations and information to document this statement. The lack of adequate

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information is noted in the DEIR:

“Because mitigation measures are conceptual and not based on a site-specific geotechnical report, and because portions of the Proposed Project would be located on a geological or soil unit that is unstable, the Proposed Project could expose people and structures to potential hazards.” DEIR at 4.12-18.

“The detailed FEMA analysis of the floodplain within the Lower Lagoon Valley was limited to the Lagoon Drain downstream of the Lagoon Valley Lake. As a result, the delineation of the 100-year floodplain indicated on the FEMA maps is only approximate.” DEIR at 4.11-17. Based on this information, the DEIR states that the business park area will need to be elevated approximately 1 foot and the residential areas 4 feet, but further studies need to be performed to verify the underlying assumptions. See DEIR at 4.11-17.

Clearly, the information in the DEIR is subject to major revision as adequate information is developed concerning these critical aspects of project development. Thus, the DEIR fails to provide sufficient information at this point on which to base informed decisions concerning site grading, landform alteration, potential need for off-site fill and the like. Please respond to the following questions in the response document:

- What amount of cut and fill is required to construct the project? Specifically, how much fill is needed to elevate the business and residential areas above floodplain level? Can these estimates be certain when only a partial delineation of the floodplain has been completed? Where will this fill come from? Is on-site fill available and suitable for this purpose? If additional information about the site’s soil and landslide conditions is needed to determine this, it should be provided in a revised DEIR, rather than following approval of the project and a development agreement.
- Have the soils been adequately tested to be sure that on-site soil is adequate for fill purposes? If the answer is yes, please point to this information in the DEIR, or provide it in the response document. If not, please provide information documenting the statement that soils will not be required to be hauled off-site for disposal or on-site for fill.
- What are the size of cuts and fills in feet? This information is best presented on a graphic with cross sections noting the height and depth of cut and fills.
- Where will spoils sites be located, if any?

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- What is the estimated extent of grading required to remediate the 21 landslides identified in the preliminary report? Please provide additional information concerning the likely worst case grading plan needed to render these areas safe for residential development. DEIR at 4.12-18.
- Please indicate on a site plan those lots that coincide with landslides. Figure 4.12-3 does not contain the lot information. Is it possible to relocate or retire these lots to avoid extensive remediation? What specific resources will be impacted as a result of fully remediating these 21 and possibly other landslides? Are there likely to be other geotechnical problems (e.g. additional landslides, other hazards) identified when additional reports are submitted? If so, shouldn't this information be presented prior to the certification of the EIR and project approval? If not, why should the public be reassured that this information will not lead to additional significant impacts?
- How will the homeowners association fund monitoring on-site geologic conditions in perpetuity? How much will this cost per year? Who will pay for any downstream geotechnical problems that occur from faulty grading? What amount of cash reserves are typically held by HOA's for this purpose? Are sufficient?
- Finally, it would be helpful for decision-making purposes to have a readable site plan with numbered lots overlain on significant site constraints, such as landslides, vernal pools, etc., so that modifications to the Specific Plan can be informed. Please provide such graphics in a revised document.

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Second, according to the DEIR, the project will require major general plan amendments and rezoning in order to be consistent with the City's General Plan and zoning ordinance.

The DEIR fails to include a complete description of these amendments required for project approval. Preparation of a revised and clarified section concerning general plan and zoning consistency is warranted. In addition, a revised project description must include any required text changes to these documents needed for conformity, as well as detailed maps comparing current zoning and general plan land uses with proposed zoning and land uses. A revised analysis must state whether any of the proposed zone or general plan amendments will result in significant impacts (e.g. related to changes in land use, precedent for growth beyond the project, etc.). The consistency "analysis" included in Appendix C fails to provide adequate information concerning conforming amendments and map changes. Specifically, the consistency discussion in the DEIR contains simplistic and conclusory statements, instead of analysis, concerning project consistency with the general plan.

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In short, a revised project description must respond to the following questions: What are the specific zone changes required to support findings of project consistency? Will any of these

zone changes result in inconsistencies between the zoning and the General Plan? What specific General Plan map and text changes are needed for project consistency with the General Plan? Please provide detailed text changes in a revised DEIR. Will any of these changes result in additional significant impacts, and if not, why not?

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Third, the DEIR lacks a complete description of proposed uses at the project site. Specifically, the DEIR fails to describe key aspects of the proposed project. A revised project description must include complete information concerning:

- 1) Specific recreation uses proposed for open spaces and parks. For example, what are the specific recreation uses proposed for open space and park lands. Will proposed trails impact any sensitive resources? How close to the lake and other sensitive biological areas will trails be placed? How many visitors, and car trips, are expected to be generated by open space and recreational uses? Were these trips included in the analysis of traffic for the project? If so, how many total trips were assumed for these uses? What trip generation factors were used for recreation uses (by use/peak period/total)?
- 2) The cost of the new homes and whether they are expected to serve a local need or regional need for housing?
- 3) The number of second units that could be built under City and State law? Were traffic trips from these additional units, if any, included in the traffic analysis? If not, a revised analysis may be required.
- 4) The number and location of churches and schools, both of which can generate significant traffic and noise;
- 5) The number and location of fast-food and other specific commercial uses that have the potential to generate significant peak-period traffic and “nuisance impacts.” (e.g. trash which can make its way into the Lake and open space areas, etc.). To the extent that some types of commercial uses generate unacceptable levels of traffic (e.g. fast food establishments), the Specific Plan can prohibit those uses. To the extent they are permitted, the impacts of these uses must be analyzed in the DEIR.
- 6) A graphic illustrating those lots and project features located in terrain which will require retaining walls, fill to avoid flooding (and amount of fill or height of foundations), or other features to mitigate potential impacts from flooding or site geologic conditions. Where are retaining walls likely to be located? A revised visual analysis should include these project features and analyze their impacts.
- 7) A graphic identifying building envelopes on each lot. Again, because this project includes a revised development agreement, it is inappropriate to postpone disclosure of this information. Based on this graphic, new information about the level of impacts associated with site coverage and grading should be developed.
- 8) The *specific means by which* the project will ensure that no hazardous materials/pollutants reach any wetlands, riparian areas and the Lake from the golf

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course or other landscaped areas. This information must include how the mechanisms will be funded in perpetuity, how water quality will be monitored and by whom, as well as other details of the program. If the Regional Water Quality Control Board staff are involved in the monitoring program, a letter should be included in the Final EIR from the Board stating that they have the funding and staff time available for such continuous monitoring and reporting. If an independent firm will be used, it is imperative that they be accountable to the City, the Regional Board *and the public*, and that their monitoring and reporting efforts be independent of the development interests (e.g. a program be established that is bonded so that it can be done in perpetuity and as determined necessary by the City and the independent experts).

- 9) Again, a revised DEIR or FEIR should also include a large color graphic that clearly numbers each lot so that commentors and decision-makers can readily refer to lots that should be relocated or eliminated due to impacts and/or site constraints. All graphic information concerning site constraints and resources should be keyed to this map.

This information is relevant to a number of impact analyses including, but not limited to: demand for services, traffic, jobs-housing balance, growth inducement, water quality among other issues. A revised project description must include this information.

Fourth, the project description fails to provide an adequate description of project-related and cumulative construction activities. The DEIR project description includes some information concerning project development phasing, but fails to include any information about: a) the duration and extent of grading activities; b) amount and types of construction equipment for each phase; c) number of construction employees; d) total construction trips, including trips related to equipment, hauling and employee trips; e) location of staging areas and spoils sites; and f) cumulative project construction phasing and activities. Without a description of these activities and phasing, the DEIR cannot adequately identify and analyze environmental impacts to air and water quality, impacts to biological resources, and other impacts associated with construction worker traffic, truck traffic, grading emissions, construction noise and dust. This information must be added to a revised project description and the potential new impacts analyzed in a revised DEIR.

Fifth, the project includes numerous major on-site drainage facilities, including significant new detention basins. Additional information is needed about the size and location of each of these new basins and drainage facilities so that decision-makers and the public can evaluate the potential impacts of these project features. Again, these should be shown on a graphic that also contains information about key site constraints and hazards, such as landslides.

Sixth, the project requires the business park to be raised approximately 1 foot to avoid flooding and the residential areas to be raised so that is would be 4 feet higher than the estimated 100-

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year water surface elevation in the Lake. DEIR at 4.11-14. The DEIR notes that information in the DEIR is lacking to fully characterize the floodplain: “The detailed FEMA analysis of the floodplain within the Lower Lagoon Valley was limited to the Lagoon Drain downstream of the Lagoon Valley Lake. As a result, the delineation of the 100-year floodplain indicated on the FEMA maps is only approximate.” DEIR at 4.11-17. Based on this information, the DEIR states that the business park area will need to be elevated approximately 1 foot and the residential areas 4 feet, but further studies need to be performed to verify the underlying assumptions. See DEIR at 4.11-17. When will the additional information concerning the full extent of the floodplain be developed? Does the visual analysis take the elevation of the business and residential areas into consideration? If on-site soil is to be used, is it sufficient in quantity and quality for the job? What specific documentation supports these conclusions?

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Finally, in addition to project description information, the DEIR fails to provide all of the setting information necessary to support an adequate analysis of project and cumulative impacts. Setting information missing from the DEIR, which must be included in a revised DEIR includes, but is not limited to, the list below. A revised DEIR should include this information and identify any new significant or more severe impacts as a result of its inclusion.

- a) Detailed information concerning underlying soils characteristics for the entire site. The setting information fails to provide sufficient information to adequately characterize potentially significant impacts of landslides, erosion and sedimentation as a result of site development. Specifically, a revised setting section must include information sufficient to adequately characterize underlying materials and evaluate potential impacts. Absent this information, the true extent of impacts cannot be ascertained. It is not appropriate to postpone the completion of this work because the project will be vested upon approval of the Development Agreement. Based on this information additional mitigation and or project redesign to remove and/or relocate lots and other project features may be warranted to avoid significant erosion and other impacts associated with grading and site remediation.
- b) Sufficiently detailed information about slopes and site elevation. Please include a new and more detailed graphics illustrating slopes/site elevations before and after project grading and project development.
- c) Setting information for biological resources, including wildlife corridors, vernal pools and other habitat for a sufficiently large geographic study area including all similar habitat areas in the region. The DEIR fails to include an adequate regional description of resources related to an adequate map of such resources.
- d) A complete list of cumulative projects for an adequate geographic study area. The DEIR states that the City of Vacaville General Plan and the currently proposed Southtown and Rice-McMurty projects are included in the analysis. However, no information is provided about the total amount and location of development assumed in the cumulative analysis. Nor is a map included indicating where major projects are located. Information about their status is also lacking. Questions that need to be addressed include: What major regional

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projects outside of Vacaville (e.g. the Villages in Fairfield and projects in Dixon) are excluded from the cumulative analysis and why? What are the respective cumulative study areas for each impact (e.g. for Air Quality, Traffic, Biological resources, etc.)? This response should include both maps and project lists if they differ. Other questions related to the cumulative analysis include: What is the exact number of dwelling units and non-residential uses/square footage used in the cumulative analyses? Please break this down by property ownership. Traffic trips for each use/ownership should also be included in a table. If the assumptions for cumulative development vary by impact, breakdowns for each impact (e.g. air quality, traffic, etc., should be provided. Were there assumptions made about total acres of grading? If so, how many acres were considered in the analysis? What about total water use? Sewage generation? These assumptions should be provided in a revised description of the cumulative setting.

- e) The current and projected unmet demand for affordable housing in Vacaville and the region as a result of planned, approved and foreseeable developments.
- f) Information concerning the number of existing and planned “executive homes,” similar to those proposed by the project, in the region, the number of unsold units and the market for new units. Market study and other housing demand information should be provided to support the demand for this type of housing product.
- g) Information concerning the number of existing and planned golf courses in the region. Market study information should be provided to support the demand for another golf course on this site. Market information should also be provided indicating the potential marketability of housing without a golf course, but with additional open space.
- h) Detailed information about any and all road improvements needed to serve the project and cumulative projects.
- i) Complete information about the extent of the floodplain and flooding. The DEIR admits only partial information is provided. DEIR at 4.11-17.
- j) Other setting information necessary to support thorough analyses of project-related and cumulative impacts, including but not limited to a complete description of current and projected phasing for major highway and other infrastructure improvements in the region.

The significance of this missing information is such that the preparation of a revised DEIR is warranted.

B. The DEIR’s Analysis of Environmental Impacts is Inadequate

The DEIR’s analysis of environmental impacts fails to provide the necessary facts and analysis to allow the City, the agencies and the public to make an informed decision concerning the project, mitigation measures and project alternatives. Without such detail, the DEIR is deficient under CEQA. The role of the EIR is to make manifest a fundamental goal of CEQA: to “inform the public and responsible officials of the environmental consequences of their decisions before they are made.” Laurel Heights I, 6 Cal.4th at 1123. To do this, an EIR must contain facts and

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analysis, not merely bare conclusions. See Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 568 (1990). Any conclusion regarding the significance of an environmental impact not based on analysis of the relevant facts fails to achieve CEQA's basic informational goal.

As set forth below, the DEIR is riddled with conclusory statements regarding environmental impacts, unsupported by facts and necessary analysis. Furthermore, the DEIR attempts to defer disclosure of key project components³ and analysis of environmental impacts to a later date. As discussed below, such deferral is not an option. CEQA mandates that environmental impacts be identified and analyzed in the EIR, not at a later date. See Sundstrom v. County of Mendocino, 202 Cal.App.3d 296 (1988) (holding that a negative declaration was invalid when county approved a project while postponing the resolution of uncertainties regarding environmental impacts to a later date). It is particularly important that the DEIR reveal all significant impacts since the project approval will result in a vested right for development.

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1. The DEIRs Analysis of Air Quality Impacts Is Incomplete

The DEIR correctly notes that the project will contribute to both significant and unavoidable construction-period air pollutants and air pollutant emissions from project operations. In addition, cumulative air quality impacts are characterized in the DEIR as significant and unavoidable.

Even though these impacts are characterized as significant and unavoidable, it does not excuse the DEIR from providing adequate information about air pollution sources. For example, the DEIR fails to adequately describe construction activities, and therefore, fails to transparently and fully describe air quality impacts associated with construction activities. The DEIR states that "construction emissions were calculated by estimating the types and number of pieces of equipment that would be used to clear the development area, excavate, and construct the uses and associated support facilities." DEIR at 4.6-11. Where is this information presented in the DEIR or its appendices? If it is not, please provide this information so that the air quality analysis is transparent.

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Another major deficiency in the analysis is the lack of any meaningful analysis of cumulative air quality impacts. A revised environmental document must include such an analysis (e.g. other construction projects in the area generating air pollutants; total cumulative project emissions, etc. for an adequate study area). Moreover, since information is lacking concerning the amount of grading (see above comments), specific sources of cut and fill material and the like, it is also probable that the air quality analysis underestimates potential impacts of project implementation related to moving dirt to elevate the site, remediate landslides and other grading activities.

The air quality section identifies a number of project design characteristics that would

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³ See extensive list of examples of project description and setting information deferred to a later date above.

purportedly help reduce significant air quality impacts of the project, including:

- mix of residential and nonresidential uses that encourage pedestrian and bicycle activity; and
- pedestrian and bikeways, among others.

In an urban setting, nearby jobs that match housing prices and downtown services, residents and workers might be expected to utilize other means of transportation than the automobile. At this site, away from existing services and with freeway access the predominant means of accessing the area, this list is a bit disingenuous. How many auto trips are these site features expected to reduce? What is the relationship of the job salaries and housing prices or will workers/residents be commuting daily to either jobs or home? How many new residents will be expected to live and work on the project site? How many of these will be expected to walk or bike to work? How will the site be redesigned to facilitate bus access? What is the current bus service to the site? What is the projected bus service to the site (please provide specific route, headway and capacity information).

Development trends in the region -- which projects such as this perpetuate -- include the construction of high-end homes serving a “Bay area and beyond” market and an increasing reliance on more remote areas for affordable workforce housing. These trends, which the project contributes to, must be evaluated in terms of the air quality implications over the short- and long-term. If these trends continue and are not addressed by “smarter” planning, commutes both to high end homes and employee residences will increase, with a resulting increase in traffic and air pollution. The DEIR lacks any analysis of these likely “trend” impacts. Nor does the DEIR suggest feasible mitigation measures to address these potentially significant impacts, including, but not limited to: 1) modified General Plan land use designations to require housing to meet local unmet needs; and 2) General Plan policies requiring “infill” projects be development “first” before greenfield development.⁴ What pages in the DEIR *analyze* the air quality, traffic and other impacts associated with increasingly longer commute patterns as a result of trends and the growing gap in housing affordable to Solano County residents and workers? Where is the analysis of the project, local and regional jobs-housing ratio and related environmental impacts?

Numerous mitigation measures are described to address significant air quality impacts including:

- configure parking to minimize traffic interference and delays;
- permit park and ride lots in the business park;
- site design to accommodate bus travel;

⁴ Many cities have “infill first” policies in their General Plans, which require buildout of parcels already surrounded by urban development before greenfield development. See City of Palm Springs General Plan for example: Objective 3.2 and related Policy 3.2.1 states in part: “Infill growth in those areas which already have undergone substantial development prior to encouraging development of outlying areas.”

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- provide bikeway system;
- site design to maximize access to transit;
- etc.

We request that the revised site design called for in the mitigation measures be provided in the response to comments to demonstrate how the project can comply with these and other mitigation measures. Based on this revised site design, please provide estimates of how much pollution reduction can be achieved from each of these measures. Also, please compare the pollution reduction of this revised site design with the alternatives described below.

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Alternatives should be directed at mitigating significant air pollution impacts of the project. For example, a truly mixed use, compact development alternative with a range of housing affordability should be designed and contrasted with the project in terms of air pollution. Such a design would reconfigure land uses around the existing development area (e.g. motel and nursery) and retain more of the site in open space and recreational uses. Also, an infill alternative should be evaluated. See Alternatives Section of this Letter. Would either of these alternatives reduce air pollution to less than significant?

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Finally, because the DEIR fails to provide any information about the balance of jobs and housing for the site, the City or the region, air quality impacts are likely to have been underestimated. A revised DEIR must include such a section.

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2. The DEIR Fails to Analyze Land Use and Planning Impacts Adequately

The DEIR fails to describe all relevant policies and plans, and fails to evaluate the consistency of the project with each policy. Moreover, as noted above, the DEIR's conclusions concerning project consistency with a number of General Plan policies is inaccurate or unsupported by sufficient evidence. A mere statement of consistency is not sufficient to support statements of consistency between the project and a number of policies. A revised DEIR must respond to the following questions:

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- What are the specific inconsistencies between the project as proposed and the various applicable General Plan maps, diagrams and policies? Maps, which provide cross-hatching to indicate inconsistencies between the proposed project and current General Plan, and more detailed analysis in a table form, should be used to respond to this request. In cases where the text refers to mitigation measures or policies necessary for consistency, the text should be revised to include the reasons why the measure or policy results in consistency.

- What are *all* of the general plan amendments (goal, policy, map, other) required for project approval at this time?
- What was the study area used to determine cumulative land use impacts? What projects and total development assumptions were used in the analysis? Does the analysis include the general plans and projects in adjacent cities and unincorporated areas? If not, why not?
- How is the project consistent with applicable plans, policies and regulations of all responsible agencies? A consistency table should be provided in a revised DEIR which includes this information.
- How will project development in advance of the preparation of the Countywide HCP affect the HCP? Prejudge and limit potential “reserve” areas for special status species? Potentially undercut the HCP’s effectiveness to protect species, their habitat and key corridors? Other?

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3. The DEIR Fails to Adequately Analyze Transportation/Circulation Impacts

The DEIR lacks evidence to support its conclusions that impacts to transportation and circulation will be less than significant after mitigation with the exception of impacts to regional roadways. A revised section must answer the following questions:

- What is the breakdown of trips related to construction workers and equipment and for cumulative conditions? Where is this analysis in the DEIR? Trips related to future construction phases (project-related and cumulative) appear not to have been considered. Therefore, total trips appear to be underestimated. A revised analysis must be based on a full accounting for new trips generated by all phases and components of the project including construction and “operations.”
- How will the project support transit? The DEIR fails to disclose that the project’s proposed land use pattern would likely not support sound transportation management practices because of its location, low density and contribution to the suburban sprawl pattern in the region. As a result, the project will perpetuate the exclusive use of automobiles for transportation, the very practice that has contributed to the traffic and air quality problems that are so acute in the area. The DEIR fails to adequately disclose how this pattern of development will continue to frustrate alternatives to the car for transportation.
- When does each of the needed improvements need to be completed for acceptable

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levels of service to be maintained? What is the corresponding timing of raising sufficient impact fees for each improvement? Can the project proceed in advance of needed improvements being in place? If so, under what circumstances? What will be the interim conditions before such improvements are in place and operational? How long will these interim conditions be allowed to exist?

- What are the specific cumulative impacts of needed roadway improvements? The numerous roadway and intersection/interchange improvements related to the project will have both direct and indirect impacts on traffic, grading, air quality, biological resources, water quality and more. Diagrams of each improvement, total amount of grading, cut and fill and other information should be added to a revised analysis of the impacts of these needed improvements.
- Where does the DEIR analyze traffic-related impacts to Lake? (e.g. specific pollution from run-off, etc.).
- What is the average number of “service” trips associated with proposed executive units (e.g. maid service, maintenance, deliveries, etc.)? What is the basis for these trip assumptions – surveys of similar homes? Other sources? How does this compare with assumptions made in the traffic analysis?
- How much will this project generate in traffic mitigation fees? How will those fees be used – (please be project specific)? Will there still be a gap in needed funding to complete traffic improvements necessary to maintain adequate traffic levels of service?

In addition, a revised analysis must include setting information about existing transit service in the area, including, but not limited to: types of transit; routes; headways; capacity and plans for expanded service in the region, City and at the site.

4. The DEIR Fails to Analyze Adequately Impacts to Hydrology, Drainage, Water and Water Quality

Pollution carried by storm water and urban runoff is the largest source of contamination to surface water both in California and nationwide. Construction sites, in particular, have been identified as significant dischargers of polluted storm water, involving high concentrations of silt and turbidity, as well as oil and grease, trash, sewage, and other chemicals used in construction activities and equipment maintenance. Despite this well-known and well-documented problem, the DEIR fails to adequately describe project-related and cumulative construction activities and on-site and off-site drainage “improvements,” both of which could impact the water quality of the area. Moreover, the DEIR fails to describe in sufficient detail the types and amounts of

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contaminants the project will generate.

The DEIR concludes that there will be no significant drainage impacts after mitigation because of a highly engineered system of storm drains, catch basins, and other structures to control drainage and water pollutants. Specific information about the drainage and water quality features and how they will be maintained and monitored over the long-term (including information about the cost of maintenance and monitoring) is essential to determine: 1) whether the extent of drainage alterations is an acceptable project feature; 2), whether the proposed system of drainage features will actually be a viable system over the long-term, and effectively mitigate significant impacts to the natural drainage system; and 3) what impacts the system will have on the environment.

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According to the DEIR, “The Specific Plan includes construction of several detention basins and related drainage facilities that would reduce the water surface elevations within the Lower Lagoon watershed, thus decreas[ing] the potential for flooding.” DEIR at 4.11-17. The DEIR continues: “...development of structures within the floodplain could impede or redirect flood flows, such that additional areas could be inundated.” DEIR at 4.11-17. In short, the DEIR does a better job highlighting missing information than it does providing answers. A revised analysis must include:

- 1) The boundaries of the 100-year floodplain. It is not adequate to defer disclosure and analysis of this information until the Final Map. This project will be “vested” upon Council action on the Development Agreement.
- 2) A revised analysis of the potential impacts of new fill, utilities and structures on environmental resources, including drainages, wetlands, vernal pools, and the Lake.
- 3) A revised analysis of potential impacts associated with alteration of existing drainages in order to develop the project.
- 4) An analysis of how site alterations to drainage, fill, etc., may affect water quality.
- 5) Other information necessary to support a thorough analysis of project-related impacts and mitigation related to hydrology, drainage and water quality.

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The best way to ensure that water quality is maintained is to actually “cluster” the project to reduce overall site coverage. A second way to ensure that water quality is not compromised is to delete golf courses from the project. For both of these reasons, we urge that a revised DEIR give serious consideration to additional alternatives, including, but not limited to: an infill first alternative which directs new growth to meet needs into infill areas, and a truly clustered alternative which significantly reduces the “footprint” of this project.

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Questions concerning hydrology, drainage, and water quality that should be responded to in a revised DEIR or FEIR include, but are not limited to:

- What are the water controls that will ensure no increase in turbidity, sedimentation or other pollutant loads into the Lake?

17-31

- What are the estimated total daily loads of sediment and other pollutants from this project and cumulative development into the Lake? into drainages and wetlands? Please provide this information for all pollutants generated by site development and post development operations of the development and golf course.
- What are the water quality impacts of the golf course? What specific quantities of potential pollutants will be used to maintain the course? What potential pollutants are required to maintain the golf course – rodenticides, pesticides, etc. Where will these materials be stored? Is there a plan for accidental releases?
- What are the cumulative water quality impacts of all cumulative development? Please quantify and identify an adequate study area for this analysis.
- How will water quality measures be paid for 20 years from now and beyond? Is a bond required? If so, how much is the bond? Who will undertake the monitoring and reporting? If water quality is impacted by the project, what steps will be taken to remediate the impact?

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Cont.

Finally, the significance of project-related impacts requires that the analysis of cumulative impacts to drainage and water quality be extensive. The DEIR fails to complete any analysis of these admittedly significant cumulative impacts, yet concludes that cumulative impacts would not be significant.

5. The DEIR Fails to Adequately Analyze and Mitigate Impacts to Biological Resources

The biological analysis section of the DEIR is inadequate for numerous reasons, including, but not limited to the following:

First, the DEIR underestimates the importance of the project site for species habitat and wildlife movement. While the section on cumulative impacts notes the importance of the site in a chain of valleys and indicates that in these islands, there are important resources, the DEIR concludes that all impacts to biological resources – project-related and cumulative – will be reduced to less than significant with mitigation. This conclusion is not supported by evidence that the level of impacts to this “stepping stone” valley will result in retaining its value to the chain. Additional information must be provided concerning both the resources that will be impacted, the impacts of all project-related development and the proposed mitigation measures. Specifically, a revised site plan should illustrate what will be “preserved” and where corridors will be protected from all development incursions as described in Mitigation 5.1-29.

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The following additional questions must be answered in a revised DEIR:

- What research indicates that all key species will utilize golf courses and traverse areas of low density? Information should be provided for each species that may occupy the site, forage on the site or traverse the site.
- What research indicates that additional “corridors” will be sufficient for each species of concern? Please provide a summary of relevant literature to support that conclusion. Also, the corridors called for in Measure 5.1-29 should be illustrated and better defined in the project description.
- What impacts to species and habitat will fill and new structures result in? Specifically, alterations to drainage patterns could in turn result in losses of aquatic habitat and species. The DEIR fails to adequately identify those impacts.

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Second, the DEIR fails to adequately mitigate for the indirect and direct losses of habitat currently occupied by endemic wildlife. Because the DEIR fails to provide adequate mitigation to offset these impacts, project-related and cumulative impacts to biological resources should be identified as significant and unavoidable in a revised DEIR.

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Third, the DEIR fails to identify feasible mitigation measures including, but not limited to:

- 1) Clustering development so that large, unfragmented open space areas remain intact and eliminating the golf course.
- 2) Significantly increasing setbacks (e.g. to 1,000 feet minimum) from development to sensitive habitats on the project site, including the Lake.
- 3) Payment of a substantial open space mitigation fee (open space conversion fee/resource conservation fee). See Exhibit 1, Example Open Space Fees and Implementing Mechanisms.
- 4) Specific mitigation for loss and disturbance of wetlands, vernal pools and riparian habitat. Mitigation measures call for additional information about project impacts and mitigation to be developed after project approval. For example:

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“4.15-2(a) Prior to development or construction activities in the park, open space, or utility corridors, the project applicant shall conduct a survey of all grasslands affected by construction within the Specific Plan boundaries to determine if suitable habitat for vernal pool crustaceans is present...”

The section is rife with other examples of “future” surveys which follow a vested right for project development. Postponing the specifics of mitigation for this

impact and impacts to other biological resources until prior to improvement plan approval will not result in adequate public review of these measures. A revised DEIR must also answer the question why *avoidance of any disturbance of these resources* is not feasible. Currently, many of the mitigation measures are worded “to the extent feasible.” That wording leaves open the possibility that the project will result in greater impacts than implied by the DEIR’s characterization that all biological impacts will be reduced to “Less than Significant” with mitigation. That characterization can only be made if the measures guarantee impacts will be avoided.

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Cont.

For all of the above reasons, a revised DEIR must be recirculated which contains an adequate analysis of project-related and cumulative impacts to biological resources and corridors. In the absence of more specific measures which will insure avoidance of impacts to species and their habitats as well as key wildlife corridors, a revised DEIR must also reclassify many of the impacts to biological resources as Significant and Unavoidable.

6. The DEIR Lacks Any Analysis of Population, Housing and Employment

The DEIR lacks any analysis of population, housing and employment. Where jobs and housing are imbalanced, the result is increased traffic, commute times and other effects that can contribute to the significant impacts of a project.

A revised DEIR must respond to the following questions:

- What assumptions were used to calculate employee-related impacts (e.g. commute times, distances, total trips) on traffic, air quality and noise?
- What is the total estimated current and projected gap in affordable housing units in the region and City? The projected gap should be based on projected total new jobs based on the adopted City General Plan and regional information from ABAG. New jobs should be broken out by type of job and salary range and compared with projected new housing costs (rental and purchase prices) in the region.
- How were the estimated number of construction jobs calculated? Over what period will these employees be working? Where are construction employees expected to reside? What is the cumulative total number of construction employees in the study area during the total construction period for the project?
- What are the likely commute trends in 15 years if the current trends continue in terms of the growing gap between affordable housing and new employment?

17-36

Describe the likely total number of affordable units projected to be built in the region and City over the next 15 years.

- Based on the above, characterize the project-related and cumulative jobs, housing and population impacts on traffic, air quality, etc., and describe any needed mitigation.

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Cont.

See attached illustrative example of a jobs-housing analysis, Exhibit 2. Such a revised analysis must be included in a revised DEIR.

6. The DEIR Defers Information Needed for a Complete Analysis of Impacts

In addition, the DEIR fails to analyze the significance of a number of other potential impacts due to a lack of information. Please include all of the following information in a revised DEIR as the basis for updated impact analyses or explain in the FEIR why this information can be delayed until a later date without compromising the adequacy of the DEIRs disclosure and analysis of impacts:

- Engineering specifications of traffic improvements at a level adequate to support impact analysis and disclosure.
- Extent of the floodplain and project-related and cumulative impacts associated with proposed fill and development in the floodplain.
- Identification of specific construction staging areas, which could contribute to project impacts. It is not sufficient to assert that these areas will be previously impacted. Their size, location and the uses proposed on them and for what duration must be disclosed and considered in revised analyses of impacts related to site disturbance, water quality, traffic, impacts to biological resources, and the like.
- Enumeration of traffic fees (in total dollars, not percent) to be paid by the project broken out by traffic improvement funded and gap in remaining funding. The DEIR/FEIR should also note how the gap in funding will be filled and the timing of completion of each needed improvement.
- Mitigation fee to offset dust impacts, use of the fee and sufficiency of the fee.
- Final drainage report.
- Characterization of soils on site in a final geotechnical subsurface report.

17-37

- Completed SWPPP, without which the adequacy of water quality mitigation cannot be assessed or documented.
- Identification of BMPs and of responsible entities for BMPs
- Golf course management regime (Audubon or otherwise) without which, the potential impacts of the golf course and efficacy of mitigation measures cannot be evaluated or documented.
- Project plans which specify the buildable area of each lot, need for retaining walls, total site grading and the like. This information could result in elimination of lots which necessitate driveways in excess of slope requirements and other constraints. Again, because this project will “vest” with initial approvals, this information MUST be provided and analyzed at this time.
- Completed surveys for species, vernal pools and other biological resources on-site and in areas affected by project development. Mitigation should be avoidance unless there is a reason total avoidance is infeasible. If avoidance is not a feasible option, please indicate the number of units/amount of development that could not occur if avoidance was the policy of the City. An illustration of lots/development that would have to be eliminated would be helpful to this analysis.
- Location of trails and possible impacts on biological resources.
- Location of utilities and related roads and possible impacts on biological resources.
- Project design guidelines including lighting guidelines.

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Cont.

This is an impressive list of information *missing* from the DEIR that must be completed in order for the analysis of impacts to be complete. Each of these missing items has the potential to result in additional or more severe impacts to biological resources, visual resources, water resources, among others. Again, the project will be vested upon initial approval. As such, the specific details of this project must be disclosed and analyzed at this time.

C. The DEIR Fails to Adequately Analyze Cumulative Impacts

The DEIR utterly fails to analyze cumulative impacts in the manner or to the degree required by CEQA. The CEQA Guidelines define cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” CEQA Guidelines § 15355(a). “[I]ndividual effects may be changes

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resulting from a single project or a number of separate projects.” Id.

A legally adequate cumulative impacts analysis views a particular project over time and must consider the impact of the project combined with other projects causing related impacts, including past, present, and probable future projects. Projects currently under environmental review unequivocally qualify as reasonably probable future projects to be considered in a cumulative impacts analysis. See San Franciscans for Reasonable Growth v. City and County of San Francisco, 151 Cal.App.3d 61, 74 & n. 13 (1984). In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. See Bozung v. Local Agency Formation Comm’n, 13 Cal.3d 263, 284 (1975). Alternatively, an EIR may utilize a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or area wide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency. The discussion of cumulative impacts must include a summary of the expected environmental effects to be produced by those projects, a reasonable analysis of the cumulative impacts, and full consideration of all feasible mitigation measures that could reduce or avoid any significant cumulative effects of a proposed project.

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Cont.

The cumulative impacts concept recognizes that “[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum.” Whitman v. Board of Supervisors, 88 Cal.App.3d 397, 408 (1977). The requirement of a cumulative impacts analysis of a project’s regional impacts is considered a “vital provision” of CEQA. Bozung, 13 Cal.3d at 283. Moreover, an EIR must examine not only the anticipated cumulative impacts, but also reasonable options for mitigating or avoiding the project’s contribution to significant cumulative impacts. The DEIR does not come close to meeting these requirements for the reasons described below.

1. The DEIR Fails to Adequately Establish and Support Adequate Cumulative Impacts Analysis’ Geographic Study Areas

A revised DEIR must identify a meaningful geographic study area and projects within that study area as a basis for analyzing cumulative impacts to land use, biological resources, transportation, hydrology and drainage, noise, growth inducement, public services and facilities and visual impacts, among others. The revised DEIR must describe and ideally map the relevant study area for each impact analysis. This DEIR takes a very narrow view of impacts and in every topic area, fails to provide an adequate study area for the assessment of cumulative impacts. For example, for biological resources, the study area should include all areas in the region, which contain the same impacted habitats and species and corridors, at a minimum. Because this valley is part of a chain of valleys, the entire chain is critical to an adequate analysis of impacts. Specifically, a revised cumulative analysis should include a map of this chain of valleys, characterize the biological values of each, *and the threats to each* (e.g. cumulative development and planned

17-39

development in each valley in the chain). Without this analysis, it is not possible to support the conclusion that the significant impacts associated with the proposed development of this particular valley in the chain will be less than significant. Postponing a decision on this project until after completion of the County-wide HCP would greatly assist in the development of adequate biological information to complete this analysis.

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Cont.

For traffic, the geographic study area should at a minimum, include the areas where trips will be initiated and end, including employee trips and recreation trips to the area. To the contrary, the traffic study area barely extends beyond the City. A revised cumulative section should include a detailed description and map of each geographic study area, including, but not limited to: growth inducement, water quality⁵, water supply (including all water source areas), biological resources, jobs-housing balance, traffic, and the like. Questions that the revised cumulative analysis must address include: Why are some major projects in the area excluded, including, but not limited to the North Village project? What major regional projects outside the City are excluded from the cumulative analysis and why (e.g. the Southwest Specific Plan in Dixon, Villages Project in Fairfield)?

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2. The DEIR Fails to Analyze Cumulative Impacts Adequately

In addition to relying on a far too small geographic study area, the level of analysis in the DEIR's cumulative impacts analysis is far too cursory. An EIR must include objective measurements of a cumulative impact when such data are available or can be produced by further study and are necessary to ensure disclosure of the impact. See Kings County, 221 Cal.App.3d at 729. Despite this mandate, the DEIR fails to adequately analyze a number of cumulative impacts, including, but not limited to, impacts to biological resources, water quality and drainage, policy consistency, services, traffic, growth inducement, among others.

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Conclusions reached in the DEIR concerning the significance of cumulative impacts are flawed and devoid of any real analysis, including the lack of adequate study areas. Examples of "conclusory analyses" include, but are not limited to the following:

"Cumulative development in the City of Vacaville could include development of currently undeveloped land. Increasing the amount of impervious surface cover over existing conditions would result in an associated increase in runoff. Runoff could carry increased levels of sediment and urban contaminants that could affect receiving waters quality in the Ulatis Creek Watershed. This is considered a significant cumulative impact." DEIR at 5.1-15 parenthesis excluded.

⁵ The DEIR fails to illustrate the extent of the Ulatis Creek Watershed and to disclose all other potential development that could result in sediment and pollutants in that watershed. This information must be included in a revised DEIR.

“Cumulative development in the City of Vacaville, including the Proposed Project, would increase the demand on police protection services.” DEIR at 5.1-12.

Virtually all other cumulative impacts statements lack any information to support conclusions reached concerning the significance of these impacts. Despite this, the DEIR concludes that most cumulative impacts are reduced to less than significant *with unaccountable and poorly defined* mitigation measures. For example: The DEIR finds that cumulative impacts to loss of regional wildlife and habitat are significant and considerable. The proposed “cumulative” mitigation measure calls for preservation and enhancement of existing natural habitat on-site for resident wildlife and by maintaining corridors for wildlife movement. DEIR at 5.1-20-21. Yet, there are no specifics concerning what this additional cumulative measure actually translates into on the project site and no reasons provided as to how this in combination with other mitigation would result in eliminating significant and considerable cumulative impacts to these resources. Specifically, how would the project be redesigned to meet this measure? How would that redesign reduce significant cumulative impacts to less than significant?

Moreover, there is insufficient information about the resources in other “islands” in the chain of valleys, as well as the threats to each valley, to support a conclusion that these impacts will be rendered less than significant (non considerable) with mitigation. Another example is the DEIR’s conclusion that significant and considerable impacts to runoff and sedimentation/pollution of water quality will be rendered “not considerable” with the future preparation of a drainage master plan and stormwater plans is not supported by analysis or evidence. In particular, the City’s SWMP has not even been approved and specific BMPs have not been identified according to the DEIR (page 5.1-16). Yet these future plans and measures are identified as rendering significant project-related and cumulative impacts less than significant/not considerable. A revised DEIR must include final plans and specific BMPs and state clearly how/why these will render significant impacts to drainage and water quality insignificant.

Again, with respect to each of these conclusory statements, the DEIR lacks analysis and supporting data for the conclusions reached concerning level of impact. A revised DEIR must also acknowledge that many more cumulative impacts are significant than acknowledged by the DEIR, including cumulative impacts to biological resources, water quality, public services, hazards, among others.

Finally, as described above, the DEIR fails to explore the full range of mitigation measures that could potentially reduce cumulative impacts below a level of significance. An EIR must examine reasonable options for mitigating or avoiding the project’s contribution to cumulative impacts. Such measures could include:

- Participation in the regional HCP process and delaying all “greenfield” projects until the HCP is completed;

- Modifications to the General Plan to increase neighborhood friendly infill development to accommodate growth demands in lieu of greenfield development; and
- Adoption of an open space mitigation fee on all new development in the City to raise sufficient funding to purchase additional open space in and around the City.

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Cont.

If these and other mitigation measures for cumulative impacts are not considered feasible and included in a revised DEIR or FEIR, please state why each is not considered feasible.

D. The DEIR’s Discussion of Growth-Inducing Impacts is Inadequate Under CEQA

The DEIR must consider the growth-inducing potential of the project in this undeveloped area. CEQA requires that an EIR include a “detailed statement” setting forth the growth-inducing impacts of the proposed project. See Public Resources Code § 21100(b)(5); City of Antioch v. City Council of Pittsburg, 187 Cal.App.3d 1325, 1337 (1986). The statement must “[d]iscuss the ways in which the proposed project could foster economic growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” CEQA Guidelines § 15126.2(d). It must also discuss how a project may “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively” or “remove obstacles to population growth.” Id.

In this case, the growth inducing analysis fails to adequately analyze the potential growth inducement associated with the project’s new and extended services and infrastructure as well as new residents and employees and the demand for services and facilities by new residents. A revised environmental document must include an adequate analysis of the project’s potential for growth inducement, including, but not limited to the following:

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- a complete list of infrastructure and road improvements funded in part or whole by the project and a determination of whether any of these will support additional growth beyond the project;
- a list of all other infrastructure improvements and expansions necessary to serve the project and a determination of whether any of these will support additional growth beyond the project;
- the status of development permitted on adjacent properties or on the project site under all applicable plan and policies;
- other services in the area which may expand as a result of major new development in the Valley including, but not limited to: business services, retail services, churches, schools, home care services and the like.

If no additional development is contemplated on the project site, a permanent conservation

easement, development agreement or other legal instrument should be included as a mitigation measure to ensure that development on this site is permanently capped.

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A more thoughtful evaluation of these impacts is warranted given the scale of this project and other projects in the region. This analysis should also be used to inform a revised analysis of cumulative impacts.

E. The DEIR Improperly Attempts to Defer Mitigation to a Later Date, Fails to Identify Feasible Mitigation Measures, and Relies on Inadequate Mitigation Measures

CEQA requires that mitigation measures be identified and analyzed. “The purpose of an environmental impact report is . . . to list ways in which the significant effects of such a project might be minimized” Pub. Res. Code § 21061. The Supreme Court has described the mitigation and alternative sections of the EIR as the “core” of the document. Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553 (1990). As explained below, the DEIR’s identification and analysis of mitigation measures, like its analysis throughout, is thoroughly inadequate. An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. See San Franciscans for Reasonable Growth v. City and County of San Francisco, 151 Cal.App.3d 61, 79 (1984). Moreover, an EIR may not use the inadequacy of its impacts review to avoid mitigation: “The agency should not be allowed to hide behind its own failure to collect data.” Sundstrom v. County of Mendocino, 202 Cal.App.3d 296, 361 (1988). Nor may the agency use vague mitigation measures to avoid disclosing impacts. See Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal.App.4th 182, 195 (1996). Lastly, the formulation of mitigation measures may not properly be deferred until after Project approval; rather, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments.” 14 CCR § 15126.4 (a). In the present case, the DEIR does not come close to satisfying these basic CEQA requirements regarding impact mitigation. Most egregiously, it attempts to defer discussion and development of suitable mitigation measures until after the certification of the environmental document and the conclusion of public review.

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1. The DEIR Improperly Defers Identification of Feasible Mitigation

The DEIR impermissibly concludes that the majority of all of the project’s environmental impacts are either less than significant or will be rendered less than significant by mitigation, while at the same time deferring necessary analysis of mitigation measures. Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. See Sundstrom, 202 Cal.App.3d at 306-07. Thus, if an agency fails to investigate a potential impact, its finding of insignificance simply will not stand. Id. Further, CEQA generally requires that all mitigation

17-44

measures be adopted simultaneously with, or prior to, project approval. An agency may defer preparation of a plan for mitigation only when the agency commits itself and/or the project proponent to satisfying specified performance standards that will ensure the avoidance of any significant effects. Id.

In the present case, the DEIR violates CEQA by deferring critical analyses of project impacts and feasible mitigation. The following is a non-exhaustive list of mitigation measures that the DEIR improperly defers to a later date:

- Preparation of a storm drain master plan. MM 4.11-1(a).
- Detailed floodplain delineation. MM4.11-2.
- A SWPPP. MM 4.11-3
- Detailed BMPs. MM 4.11-3
- Erosion control management plan. MM 4.11-4.
- Dam inundation study. MM 4.11-5
- Geotechnical investigation. MM 4.12-3
- Surveys and studies related to biological resources. MM's 4.15-1 to 29.

In addition, lot plans, biological surveys, and many other measures are simply deferred until after initial project approval which will result in vesting development on this site. In each of the above cases of deferring specific mitigation, the DEIR finds that potentially significant impacts will be reduced to less than significant, even where the impact analysis is also deferred. Not only will this render the development of specific mitigation too late for public and decision-maker review to determine the adequacy and efficacy of the measure, this approach is improper under CEQA. Either specific mitigation measures must be developed at this time, based on complete project information and impact analyses, or a number of project-related and cumulative impacts must be listed as Significant and Unavoidable. Such impacts include, but are not limited to impacts to: biological resources, additional traffic impacts, impacts to water quality, transit impacts, growth inducement, impacts associated with lack of affordable housing, among other impacts.

The DEIR's failure to adequately analyze the potentially significant effects of the project, and to design proper mitigation measures prior to project approval, renders the document inadequate and vulnerable to legal challenge. With the DEIR in its current form, decision-makers, the public and permitting agencies cannot evaluate the advisability of project approval.

2. The DEIR Fails to Identify Feasible Mitigation Measures

The DEIR's consideration of mitigation is inadequate because it fails to identify several feasible measures that could reduce or eliminate identified significant impacts. Also, the DEIR fails to identify some impacts, such as impacts to land use, historical resources and water quality among others, as significant, and therefore omits identification of feasible mitigation. Mitigation is

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defined by CEQA as including:

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

CEQA Guidelines § 15370. The DEIR fails to consider measures, which could mitigate in the fashion described above significant impacts in several resource categories, including, but not limited to biology, loss of open space, hydrology and water quality, traffic, affordable housing among others. Furthermore, the DEIR improperly concludes that many impacts, are mitigated to below a level of significance based either on deferred mitigation measures, as discussed above, incomplete and “future” project features, or on mitigation measures of unproven efficacy. These determinations are not supported by substantial evidence.

A partial list of impacts that should be identified as significant and unavoidable in a revised environmental document include, but are not limited to the following: 1) plan and policy inconsistencies; 2) changes in land use and land use compatibility; 3) project-related and cumulative drainage and water quality impacts; 4) impacts to biological species, species habitat and wildlife movement corridors; 5) impacts associated with inadequate affordable housing in the region (air quality and increased traffic); and 6) cumulative impacts associated with increased nighttime lighting, loss of habitat and wildlife movement corridors, water quality and traffic impacts, among others. Growth inducement should also be identified as a significant adverse result of the project unless an adequate analysis proves otherwise. The DEIR does not include sufficient evidence to identify these and other impacts as less than significant after mitigation.

Finally, the DEIR omits feasible mitigation measures for a number of impacts, including the following:

- Inadequate Affordable Housing – A feasible measure would be adoption of a more aggressive affordable housing policy for the City and a requirement to increase the affordability of project housing.
- Loss of Open Space – A feasible measure to offset the loss of habitat and open space would be to place an open space mitigation fee on all developed acres in combination with dedication of high value conservation areas.

Other feasible measures, in addition to those identified above, must be included in a revised DEIR. The efficacy of each measure should also be evaluated and proven in the revised DEIR.

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Cont.

F. The DEIR Does Not Adequately Discuss Alternatives to the Proposed Project

The DEIR fails to adequately analyze alternatives. Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project's significant impacts. See Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(a); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal.App.3d 433, 443-45 (1988). As stated in Laurel Heights I, "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.3d 376, 404 (1988). The DEIR's discussion of alternatives fails to meet these standards for a number of reasons, including, but not limited to the following.

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First, none of the development alternatives are "transparently" based on a comprehensive constraints map that identifies areas of high resource values and areas that should be avoided based on City policy and regulations and other guiding policies and regulations. A revised analysis should include an alternative based on a site constraints map, which illustrates current information about high value resources, wildlife corridors, habitat areas, hazard areas (landslides), among other environmental features on the site. This alternative should also cluster development in a true cluster development pattern, rather than the "sprawling" cluster pattern. See Example constraints map attached, Exhibit 3.

Second, consideration should be given to an alternative which calls for delaying any action on the project until a HCP has been completed for Solano County.

In the absence of additional alternatives that address project-related impacts and local needs, the range of alternatives presented in the DEIR is inadequate.

CONCLUSION

As set forth above, the DEIR suffers from numerous deficiencies, many of which would independently render it inadequate under CEQA. Taken as a whole, the deficiencies of the DEIR are so pervasive as to necessitate further extensive revision of the document – and recirculation for public comment. The project should not be considered further until a legally adequate EIR is prepared.

17-47

Exhibits:

- 1 – Example Open Space Fee Programs**
- 2 – Jobs Housing Balance Analysis (submitted by federal express under separate cover)**
- 3 – Constraints Map for Alternatives Analysis (submitted by federal express under separate cover)**

cc.

**U.S. Fish and Wildlife Service
California Department of Fish and Game
U.S. Army Corps of Engineers
Secretary of Resources
Director of Cal EPA
Sierra Club
Planning and Conservation League
California Native Plant Society
Solano County**

MEMORANDUM

Example Open Space Fees and Implementing Mechanisms

SUMMARY

The types of mitigation/open space fees used in California range from:

1. Transfer tax which requires 2/3 voter approval unless imposed by the developer (i.e. the Old Greenwood and Gray's Crossing settlements in Truckee, Village at Northstar in Placer County)
2. General obligation bonds for a percentage increase on annual property tax which requires a 2/3 voter approval;
3. Mello-Roos Assessments;
4. Fee per acre for open space conversions to development;
5. Dedication of open space requirement for acres converted to open space;
6. Open Space fee per unit developed;
7. Up-front payment;
8. Use fees (e.g. small portion of ski lift ticket to open space; landfill tipping fees; etc.);
9. Casino "fees."

There may be other fees that consist of a combination of the above exactions or require voter approval.

The highest per unit mitigation/open space fees exacted in California include: a) South Livermore Valley at approximately \$40,000 per unit implemented through a specific plan policy and development agreement; and b) Santa Lucia Preserve at \$85,000 per unit implemented through a development agreement and conservancy.

MONTEREY COUNTY

Santa Lucia Preserve, Carmel Valley

The Santa Lucia Preserve provides an example of an assessed open space fee exacted for open space preservation from luxury home-sites. The Rancho San Carlos Partnership has initiated construction of a luxury residence community with 300 home sites, ranch club facilities and a golf club on 2,000 of its privately owned 20,000 acres in Monterey County. Currently, eight parcels have been built. Present parcel prices range from \$1 million to \$3.5 million.

As an integral condition in the development agreement with Monterey County, the Partnership agreed to create the Santa Lucia Conservancy (SLC) and provide endowment

funding. The development agreement describes the entities' relationship. It was incorporated as a 501(c)(3) agency in October of 1994 as a supporting organization of The Trust For Public Land (TPL). This arrangement continued until 2001 when the Sonoran Institute replaced TPL as the Conservancy's supported organization.¹

Specifically, the agreement's financial package guaranteed funding for SLC regardless of whether or when the development's home parcels were finally sold. The Partnership was bound to make regular cash payments to SLC to support its activities, several of which commenced immediately upon approval of the project. Particular attention was paid to securing financial support for SLC during any delay in development. As a result, the developer is obligated to subsidize the Conservancy's operations until a permanent endowment of approximately \$25 million is funded. An annual subsidy is required for the first five years after the recordation of the final map for the each of the project's phases. The subsidy increases as phases are added and Preserve Lands are conveyed to the Conservancy. ("Preserve Lands" are differentiated from the "Settled Lands" attached to residences and ancillary uses.) Furthermore, it must be secured by a letter of credit equal to 150% of the subsidy. For 2003, the annual obligation is \$821,000.

The annual subsidy payment is not considered an advance on the endowment, which is to be funded with a contribution upon the sale of each lot. The first annual payment of \$375,000 was made in 1998 and subsequent payments, adjusted for inflation, were programmed for subsequent years. They are to continue until the SLC endowment is fully funded. The endowment is being built with a per parcel contribution of \$85,000 for each lot sold. The per-lot contribution was set at \$85,000 in 1999 and is subject to inflation adjustments. As contributions to the endowment are made, the size of the annual subsidy is proportionally reduced. The minimum amount due to the endowment from the developer is \$25,000,000. The endowment, while growing rapidly, is not yet fully funded. This arrangement allowed SLC to hire staff and begin operations on a near full-scale level with its endowment about as guaranteed as possible.

The trust manages approximately 18,000 acres of privately owned land in the Santa Lucia Preserve. The Santa Lucia Conservancy owns approximately 12,000 acres and holds conservation easements on an additional 6,000 acres. SLC is responsible for the management and stewardship of its lands including long-term monitoring of environmental conditions and provision of educational, research, and recreational opportunities for residents of the Preserve and the public.

¹ The Sonoran Institute is writing a book on the Community Stewardship Program with examples from the western states.

LIVERMORE

South Livermore Valley

The Southern Livermore Valley Specific Plan policy and Development Agreement require that each acre developed permanently protect an acre of prime agricultural land (acre per acre) and that each unit per acre also protects an acre (acre per unit). The current mitigation fee per unit is running about \$30,000 plus an additional \$10,000 for park protection fees for a total *per unit fee of \$40,000* dollars. Home prices start at \$750,000 in the area. Fees are paid at issuance of building permits.

Both the use of a Specific Plan policy and Development agreement are effective tools for implementing open space and mitigation fees. This is the second highest fee we are aware of in the state.

ORANGE COUNTY

Natural Communities Conservation Plan/Habitat Conservation Plan

In Orange County, the adopted coastal and central NCCP/HCP's requires a fee of \$50,000 per acre occupied by Gnatcatchers that is converted to development. Fees must be spent on habitat protection.

Laguna Laurel Canyon, Laguna Beach

In 1990, the City of Laguna passed a general obligation bond for \$20 million to sunset in 20 years for acquisition of 4 of the 5 open space parcels comprising of an area called Laguna Laurel Canyon – totaling roughly 2,000 acres.² The bond was written into a larger park bond measure which required 2/3 voter approval and received 81% approval.

The general obligation bond for \$20 million results in \$40 million of payment over the 20 year period - a double of the principal. The city collects approximately \$1.5 million annually from a percentage increase on property taxes.³ Originally, the property owners paid a 6% increase on their property taxes. However, the percentage dropped roughly below 3% due to inflation and increased turnover.⁴ The amount collected is not based on the market value of a home but rather the property tax assigned by the County Assessor. For example, since Proposition 13, if a highly priced home has not been sold since 1979,

² The Irvine Company donated the fifth parcel.

³ The Laguna City Manager stated the city collected approximately \$2 million a year from the bond. And the County Auditor stated the city collected \$1.5 million this year for the bond.

⁴ The Orange County Auditor website (www.oc.ca.gov/ac) provided the Laguna Beach City 1990 Bond Fund tax rate for 2002 = .02905; 2001 = .03203; 2000 = .03724.

it may have a very low assessment for property taxes and in turn pay a low amount on the bond. Because the percentage paid each year depends on the property taxes, it is difficult to determine an “average” amount paid.

According to the County Auditor, the Laguna Beach City Bond Fund tax rate for 2003 is .02579; the city comprises of 13,506 parcels paying property taxes, and this year the city levied \$1.5 million from the bond. The mathematical mean payment results in \$116 per property per year.

FAIRFIELD

Mello-Roos Community Facilities District

The City of Fairfield requires all new development projects to assess new homes and commercial uses under a Mello-Roos assessment. *New homes pay about \$100 per year – forever with an escalation clause -- to the local land trust. The current cost per s.f. of non-residential space is 12 cents per s.f. per year.* The price per unit varies by unit type.

This fee resulted as part of a settlement agreement between *the City of Fairfield*, community groups and developers and is implemented as part of the development agreements with each developer. Because the developers own the land, the fee does not require a vote of the public. Permanently affordable units are exempt from these fees.

TIBURON

The town of Tiburon charged an upfront developer fee for \$64,627 per acre of native grassland converted to development. The development essentially disturbed less than an acre of native grasslands (serpentine bunch grass) for a two lot subdivision. The fee was a condition of approval for the subdivision. The fee was paid to the town’s open space fund for acquisition.⁵

YOLO COUNTY

Both Yolo County and the City of Davis require dedication of farmland for each acre converted to development. Yolo County requires one acre per acre development and Davis requires two acres per acre developed. This type of dedication is also supported by the Williamson Act.

EXAMPLES OF OTHER TYPES OF OPEN SPACE FEES

Teichert Aggregate Mine, Placer County:

Although Teichert (TAM) Aggregate Mine is not a residential or commercial development, it provides another example of how a County addresses open space

⁵ Tiburon is mailing a summary of the fee arrangement.

impacts. TAM consists of 3400 acres of which 950 are mined. Over a period of 42 years, TAM will pay a fee of 4 to 5 cents per ton of material produced on the property. These funds will be used to form the Coon Creek Conservancy. Also, a one time \$200,000 fee is paid to the County's Open Space Trust Fund for acquisition or operation and maintenance of open space.

Altamont Landfill, Alameda County:

Similarly, this and other landfills pay a "tipping" fee for regional open space. Fees are typically used to secure high value regional open space as defined by local open space entities (e.g. authorities, districts and land trusts).

Casinos on Tribal Land:

Unlike the other development agreements, the tribe negotiated with Placer County to maintain a good local relationship. They agreed to pay a one time payment for mitigation losses and pay \$200,000 annually for as long as the Casino operates, in to the County's Open Space Legacy Fund.

COMMUNITY DEVELOPMENT DEPT

TRANSMITTAL

APR 19 2004

CITY OF VACAVILLE

TO: Fred Buderl

FROM: Greenbelt Alliance

DATE: April 16, 2004

RE: Exhibits 2 and 3 to Greenbelt Alliance and Friends of Lagoon Valley Letter concerning the proposed Lagoon Valley Specific Plan DEIR

1.4 Compatibility With Existing Land Uses. The 10,000 Population Alternative would not result in the development of new urban uses in proximity to existing, potentially incompatible uses. Future urban development under this alternative would be separated by approximately 1.5 miles from the existing Bel Roma subdivision and the Rod and Gun Club, by approximately 1/2 mile from the FCC facility, and would be well outside of the Livermore Airport Protection Area.

Conclusions: No land use compatibility issues would result from this alternative. This alternative would reduce land use compatibility issues with existing rural residential and agricultural uses as compared to the proposed North Livermore Specific Plan.

Population, Employment and Housing

2.1 Exceed Population Projections for the Area. Development of this alternative would not contribute to exceeding regional or local population projections. Local and regional population projections (ABAG's regional projections, ECAP's County projections and the City of Livermore's local NLGPA population projections) have been developed based on assumptions that the Project Area would be developed with approximately 12,500 residential units, comprising approximately 30,000 people. Development of this alternative would result in development of approximately 3,773 residential units, comprising an estimated population of approximately 10,000 people. This holding capacity represents 8,727 fewer residential units, or approximately 20,000 fewer people than projected under the current General Plan (NLGPA).

Conclusions: Although this alternative would not exceed population projections for the area and thus would have *no impact*, this alternative would not be consistent with regional and local population projections for the area.

2.2 Potential to Exceed the City's Established Growth Rate. The City currently has an established average annual population growth rate ranging from 1.5% to 3.5% incorporated into the General Plan, regulated by the City's Housing Implementation Program (HIP). The current HIP growth rate cap is 3.5% per year. Since 1990, the City has averaged an annual population growth rate of 3.31% and an annual average housing growth rate of 2.33%.³ Development of this alternative could cause the City of Livermore's planned growth rate to be exceeded for a period of years unless a growth management program for this alternative was to be established regulating the pace of development that could occur within the Project Area. A similar growth management program as developed for the proposed North Livermore Specific Plan would be required, regulating new development within the Project Area to an annual average of a maximum of 600 units per year (or an approximate 6-7 year buildout).

Conclusions: A growth management mechanism that regulated development within the Project Area to a maximum of 600 units per year could ensure that this alternative's contribution to cumulative City-wide population and housing growth would occur at a rate that, when combined with other City cumulative development, remains consistent with the City's targeted growth rate

³ City of Livermore *Analysis of the Public Planning Initiative*, July 12, 1999.

of between 1.5 and 3.5 percent per year. Such a growth management mechanism would reduce this impact to a *less than significant level*.

2.3 Jobs / Housing Balance. Currently the City of Livermore maintains a fairly balanced job/housing ratio of 1.02 jobs per employed City resident.⁴ A jobs/housing ratio of 1.0 jobs per employed resident is considered to be in balance. The 10,000 Population Alternative would have the effect of reducing the housing supply anticipated under the current City General Plan therefore reducing the projected number of employed residents, but would not affect the buildout of anticipated employment opportunities. Under the 10,000 Population Alternative, the cumulative buildout of housing opportunities throughout the City would be approximately 34,725 housing units, and the resulting number of employed residents would be approximately 51,046 employed residents. The City's anticipated employment at year 2020 is expected to be approximately 82,250 jobs. The City's projected jobs/ employed resident ratio under the 10,000 Population Alternative would be approximately 1.67 jobs/ employed residents by year 2020, indicating that the City would become more imbalanced as an employment center than either current conditions or as anticipated under the current General Plan designations for the Project site (NLGPA), with many more employees commuting to the City from elsewhere in the region for work opportunities.

Regional Jobs/ Housing Balance. Currently, the Tri-Valley region also maintains a fairly balanced job/housing ratio of 1.07 jobs per employed resident. A projection of the future year 2020 job/housing balance under the 10,000 Population Alternative indicates that the Tri-Valley region would likely move toward an imbalance of approximately 1.40 jobs/employed resident as a result of reduced housing opportunities in Livermore associated with the 10,000 Population Alternative.

Conclusions: The reduction in housing opportunities provided under this alternative would contribute to a numerical imbalance in the job/housing ratio of both the City of Livermore and the Tri-Valley region. This is a *significant effect* of this alternative as compared to the proposed North Livermore Specific Plan. The North Livermore Specific Plan's additional housing opportunities (approximately 8,725 more housing units than this alternative) would help to offset the potential numerical imbalance in the jobs/housing ratio as shown below in Table 3.1.

⁴ Current DOF estimates for 1999 indicate that there are 37,580 existing jobs and 36,700 employed residents, resulting in a jobs/employed resident ratio of 1.02.

Table 3.1
Regional Jobs/Housing Balance, With and Without 10,000 Population Alternative

	Housing Units	Employed Residents	Jobs	Jobs / Employed Resident Ratio
Existing Jobs/Housing Ratios ¹				
Livermore	25,989	36,700	37,580	1.02
Total Tri-Valley, existing	88,880	134,160	143,180	1.07
Projected Year 2020 Jobs/Housing Ratios Under Current General Plans ²				
Livermore	43,452	61,343	82,250	1.34
Total Tri-Valley	129,790	200,060	262,390	1.31
Projected Year 2020 Jobs/Housing Ratios, with 10,000 Population Alternative				
Livermore ³	34,725	49,310	82,250	1.67
Total Tri-Valley ³	121,063	188,025	262,390	1.40

Notes: 1. "Existing" data derived from DOF 1999 estimates (Livermore), Pleasanton's 1998 General Plan (Pleasanton) and ABAG Projections '98 for year 2000 (Dublin, San Ramon and Danville).
2. Year 2020 data derived from City of Livermore Planning Department (Livermore), Pleasanton's 1998 General Plan (Pleasanton) and ABAG Projections '98 for year 2020 (other cities).
3. Assumes a reduction in housing opportunities provided under the City of Livermore General Plan of 8,725 units within North Livermore as a result of this alternative.

2.4 Affordable Housing Availability. Achievement of Livermore's regional housing needs (including the needs of moderate, low and very low income households) would be more difficult under the 10,000 Population Alternative than under the North Livermore Specific Plan. For example, under the 10,000 Population Alternative approximately 684 residential units would be anticipated to be developed within the High Density Residential land use category as compared to approximately 2,220 high density units as proposed under the North Livermore Specific Plan. Based on the City's 1995 rent survey, it can be reasonably assumed that a substantial number of high density and medium-high density residential units would be affordable at market rates to moderate income households. The 10,000 Population Alternative would reduce the number of units made available at market rates to moderate income households.

Assuming that the 10,000 Population Alternative would include an Affordable Housing Program similar to that of the North Livermore Specific Plan, this program would require property owners to provide a minimum of 10 percent of the units within the Project Area as a mix of low and very low income units. Under such a program, the 10,000 Population Alternative would produce a total of approximately 377 units affordable to low and very low income households, as compared to 1,250 units that would be provided under the North Livermore Specific Plan.

Conclusion: The 10,000 Population alternative would not preclude the City from meeting any of its goals and policies for affordable housing as set forth in the City's Housing Element, and

would therefore be a *less than significant effect*. However, this alternative may impede the City's ability to accommodate regional housing needs, including the housing needs of moderate, low and very low income households.

Traffic and Circulation

Trip Generation. The 10,000 Population Alternative would result in a substantial reduction of total vehicle trips generated from within the Project Area, as shown on Table 3.2. Based on the land use plan for the 10,000 Population Alternative, this alternative could enable construction of approximately 3,373 residential units and approximately 337,590 square feet of commercial/office space (assuming a FAR of 0.20 for all commercial/office land uses). The 10,000 Population Alternative would result in a total of approximately 51,364 total average daily trips, as compared to 132,847 total average daily trips generated by the North Livermore Specific Plan. In comparison, the 10,000 Population Alternative generates approximately 36% of the amount of vehicle trips that the North Livermore Specific Plan generates, generally resulting in approximately one-third of the impact on the surrounding roadway network.

Table 3.2
10,000 Population Alternative Daily and Peak Hour Trip Generation

Land Use	Units or SF	Trip Generation Rates			Two-way Trips Totals		
		ADT	AM	PM	ADT	AM	PM
Residential							
RVL-Very Low	84	9.57	0.75	1.01	804	63	85
RL-Low	583	9.57	1.00	1.00	5,579	583	583
RM-Medium	1,590	9.57	0.75	1.01	15,216	1,193	1,606
RMH-Medium High	832	5.86	0.44	0.54	4,876	366	449
RH-High	684	5.86	0.44	0.54	4,008	301	369
<i>Subtotal</i>	<i>3,773</i>				30,483	2,506	3,098
Commercial							
Village Commercial	163,350	50.00	1.00	5.00	8,168	163	817
Village Civic	47,120	11.01	1.56	1.49	519	74	70
CS-Service	174,200	70.00	1.00	7.00	12,194	174	1,219
<i>Subtotal</i>	<i>384,670</i>				20,880	411	2,106
Grand Total					51,364	2,917	5,204

Cumulative Impact Methodology. Based on information derived from the current City-wide TIF update program, year 2020 buildout of the City General Plan (not including the Project Area) is