



September 11<sup>th</sup>, 2012

*via email*

Rebecca Tolentino  
City of Morgan Hill

Re: Oak Meadow Plaza urban service area expansion, General Plan amendment, Pre-zoning and annexation project

Dear Ms. Tolentino,

The following are comments by the Santa Clara Valley Audubon Society (SCVAS) on the Mitigated Negative Declaration (MND) for the Oak Meadow Plaza urban service area expansion, General Plan amendment, Pre-zoning and annexation project (Project.) Our members enjoy open space, nature and wildlife, and are concerned with projects that have the potential to disrupt or diminish open space and habitat, especially for avian species and/or endangered species.

We believe that a project of the size and scope of the proposed Oak Meadow Plaza merits comprehensive analysis by an Environmental Impact Report (EIR) to fully evaluate the proposed (and additional) alternatives, and to identify and mitigate impacts on open space, agriculture, and biological resources. In review of the MND, we remain concerned with:

Deferred mitigation for impacts on California Tiger Salamander (CTS) (MMBIO-3)

The MND inappropriately defers mitigation for potentially significant impacts to California Tiger Salamander until after certification of the MND and approval of the project will identify a suitable mitigation strategy that could identify a location for restoration efforts, define the objectives of habitat mitigation, identify success criteria, define and identify maintenance and management activities... Page 4 of the MND.) This does not meet CEQA requirements for an MND or an EIR, since the effectiveness and feasibility of future mitigation measures cannot be determined prior to project approval.

Inadequate mitigation for impacts on Burrowing owls

1. The proposed survey methodology and the designated setbacks from construction activities for burrowing owls (MM Bio-5) are outdated and obsolete, thus inadequate. At a minimum, survey methodology and setbacks from construction activities should follow the recommended protocols as directed in the March 7, 2012 "Staff Report on Burrowing Owl Mitigation" publication by the

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California Department of Fish and Game (please find attached.) This document replaces the Department of Fish and Game 1995 Staff Report On Burrowing Owl Mitigation. Following the DFG directions for surveying potential burrowing owl habitat is important, as it minimizes the risk of unlawful "take" of individual owls, and that of habitat loss with no mitigation.

2. Please explain whether the wildlife preserve for burrowing owl (surrounding the Edmundson Water Tank facility) was designated a preserve to mitigate previous development projects, and if so, please provide the original mitigation.

3. Please evaluate the potential impacts of encroachment by domestic pets on burrowing owls (and other species of birds) in the preserve, and provide adequate analysis of the potential impacts of Access Road Alternative 2 on the preserve and its wildlife.

#### Loss of agricultural land

The project would result in direct and unmitigated loss of agricultural (grazing) land, some of which is under land conservation contracts (Williamson Act.) Development on the parcels under the Williamson Act contract is restricted until 2017 or cancellation of Williamson Act Contracts by the Santa Clara Board of Supervisors. The MND incorrectly and inadequately assumes that cancellation of Williamson Contracts is a simple administrative process. It is not. The Williamson Act aims to protect open space from development, and allows cancellation only by a County Board of Supervisors in cases where other public concerns substantially outweigh the objectives of the Williamson Act. There is no evidence that the proposed project offers substantial benefits to the public, and premature to assume that cancellation would be granted.

#### Impacts of Nitrogen Emissions on Serpentine habitat and associated species

The impacts of nitrogen emissions on Serpentine habitats and the endangered species associated with these habitats are well documented (See the Santa Clara Valley HCP/NCCP, <http://www.scv-habitatplan.org/www/default.aspx>.) Please evaluate and mitigate cumulative impacts of nitrogen emissions from construction activities and traffic (related to the construction and occupation of proposed development) on endangered species of serpentine lands. Please consider cumulative impacts from all other foreseeable development that may impact Serpentine habitats in South Santa Clara County.

#### Special status species

The proposed site is expansive, and the habitat suitable for a large number of special status plant and animal species, yet the MND does not provide a survey of the site for ANY special status plants or animals. Thus, the MND fails to provide sufficient information to the public or to decision makers. Please provide surveys as indicated by CA Department of Fish and Game for ALL special status species that could potentially occur on the site, and mitigate as needed.

#### The MND inappropriately defers hydrological analysis (MM BIO-13)

The Initial Study proposes that drainage and "evaporation basins" may, in high precipitation years, overflow into Little Llagas Creek. The description of the "evaporation basins" and the



finding of crustacean exoskeletons indicate that these features function as seasonal wetlands, yet the MND states, "At this time a formal wetland delineation of the project site has not been conducted". Despite this lack of information, the MND makes the unsubstantiated finding of "less than significant impacts" on Biological Resources and on Waters of The United States. We believe that an EIR is needed to adequately analyze the hydrology of the site, its temporary water features and wetlands, and the potential overflow into Waters of the United States. We believe that this information is necessary in order to consider development alternatives.

Inadequate mitigation for loss of Oak woodland and trees

Trees provide three-dimensional space for avian species that use them for shelter, foraging and nesting. The potential loss of established oak woodland, with a diverse age structure and mature trees should be mitigated in kind to sustain the habitat function of the woodland and its trees.

Movement of wildlife through the project site

The MND acknowledges that contiguous grasslands of the project site may facilitate the movement of wildlife through the region, from the hills to the west of the site and through the project site itself, yet dismisses this conclusion in the next sentence, in an unsubstantiated finding that the proposed project would result in a less than significant impact on the movements of native wildlife. Please provide adequate study and analysis of the value of the site for wildlife movement.

Conservation Easement

Please identify the agency that would accept, manage and maintain the proposed conservation easement. A Conservation Easement agreement should be in place prior to approval of the project to ensure proper protection of open space and habitat.

Thank you for the opportunity to comment on the proposed project. We believe we can fairly argue, based on substantial evidence, and in light of the whole record, that the Project may have remaining, unmitigable, significant environmental effects and that an EIR is needed to adequately assess the environmental impacts imposed by this project.

Sincerely,



Shani Kleinhaus, PhD.  
Environmental Advocate, Santa Clara Valley Audubon Society  
22221 McClellan Rd.  
Cupertino, CA 95014  
[shani@scvas.org](mailto:shani@scvas.org)