



November 11, 2004

Tim Heffington, Planner
Santa Clara County Planning Office
County Government Center
70 W. Hedding Street, 7th
Floor, East Wing
San Jose, CA 95110

Re: Comments on the Stanford University S1 Trail Alignment Draft Supplemental Environmental Impact Report

Dear Tim;

The Committee for Green Foothills (CGF) submits the following comments on the Stanford University S1 Trail Alignment Draft Supplemental Environmental Impact Report (DSEIR). We also attach and incorporate by reference our letter dated August 7, 2003 as comments on the scoping process for the DSEIR.

To summarize our comments, the DSEIR fails to analyze a reasonable range of alternatives, and should have analyzed both the S1-B and S1-E trail alignments. Despite labeling the document a "Supplemental" EIR, it fails to utilize the supplemental information about trail alignments to show which alignment best mitigates the impacts from Stanford's expansion. The County should additionally note that the S1-A and D are infeasible alternatives. While we cannot actively support the S1-C alternative due to the fact that it leads away from Arastradero Preserve and has no complete trail connection to the Preserve, we do not actively oppose the route, and we note that it is the best of the poor alternatives described in the DSEIR. CGF takes no position on whether the S1-C alignment is feasible. If the County chooses not to recirculate the DSEIR, at the very least the County should consult with its experts in the Parks Department (and with others) to determine which alignment best mitigates Stanford's recreational impacts. Finally, we remain extremely concerned about the County's illegal decision to share deliberative EIR documents and communications with Stanford while refusing to show the same records to the public. We wish to know whether the County plans to give Stanford a private and secret chance to review and lobby the County over a preliminary version of the Final SEIR for the S1 Trail.

I. Purpose of the S1 Trail

What has essentially been forgotten in the DSEIR is that insofar as it relates to Stanford's expansion, the document does not analyze a stand-alone project, but rather a mitigation to a project. The Stanford GUP allows 2 million square feet of academic building space and 3,000 new residences. While 3 people per thousand square feet may be a reasonable number for more spacious commercial working space, an academic standard could easily result in double that number of people. The mix of single-person and multiple-occupant residences will result in over 4,000 more full-time residents on campus. Together with the increased academic building area, the end result is that Stanford's GUP brings 16,000 more people to campus every day than were there previously, and all those extra people will use recreational resources in the area. The S1 and C1 Trails, if they are used, can mitigate the impact on existing recreational resources by providing new trails for people to use. The environmentally superior alternative would be

the trail alignment that does the best job of mitigating the significant impact on resources, unless the trail had significant impacts of its own.

II. The DSEIR failed to consider a reasonable range of alternatives, and should have considered the S1-B and S1-E alignments.

The California Environmental Quality Act requires consideration of a full range of reasonable alternatives for a proposed project. In this case, the location of the S1 Trail is the proposed “project”, although it actually is not a stand-alone project as it relates to Stanford, but rather a mitigation to the Stanford GUP. The description, “OS-3B: Dedication of Trails” clearly states that the alignments were only generally known from a map in the County Trails Master Plan. The mitigation description states the necessity “to identify the location” and determining “[t]he proposed location” of the trail. S1-B and S1-E are generally towards the southern end of the foothills and function as the S1 Trail proposed in the Countywide Trails Master Plan. Both routes are just as applicable to the S1 Trail as the S1-C route in terms of approximating the location on the map for the S1 Trail. Note that this is not a question of what routes Stanford will allow the County to consider in the County’s own documents, but whether the S1-C route can be considered as “shown on the County Trails Master Plan”. The County appears to believe that it does not need to revise the Stanford GUP EIR in order to accept the S1-C route as being a dedicated trail easement “shown on the County Trails Master Plan” (Mitigation OS-3B). Accordingly, S1-B and E should also fit the description of being one of the potential trail alignments, and should have been studied.

We further note that the County Supervisors did not conclude that S1-E was infeasible, and in fact directed that it be studied if the other routes were determined to be infeasible. The logical interpretation of this decision is that S1-E is a feasible route (why else should it be studied?), and that the Supervisors erred in suggesting it possibly be studied at a later point. Nothing in CEQA suggests that a feasible alternative may be excluded from the range of alternatives solely because other feasible alternatives exist.

Numerous previous communications with the County, including our August 7, 2003 letter and the October 28, 2004 letter from the MidPeninsula Regional Open Space District, also discuss why the S1-B and S1-E routes should be included in the DSEIR. We request that the County respond to these concerns.

III. As a “Supplemental” EIR, the DSEIR should have revised the information the Stanford GUP EIR and determine which trail best mitigates the significant environmental impact that Stanford’s expansion has on recreational resources.

As a matter of common sense, it is abundantly clear that the purpose of environmental documentation is to help the decision-making agency determine which course of action will have the least environmental impact. The agency can then either choose that environmentally superior alternative, or make overriding determinations that other circumstances require the choice of a different alternative. This DSEIR does not give the County the opportunity to choose the course of action that is best for the environment, because it does not analyze how well the trail mitigates Stanford’s expansion.

This is a systematic error in the County’s analysis, and it will re-occur anytime in the future that the County chooses to separately analyze a mitigation to a project without also considering how the new information about the mitigation affects the project. Assume that any hypothetical project has a significant impact, that a mitigation will reduce that impact to an insignificant level, but that mitigation requires further refinement at a later date. When the later date arrives, the County will examine different alternatives for the mitigation and define as environmentally

superior the one that has the least effect on the environment on its own. But because the effect of the mitigation may be necessary to reduce the impact of the overall project, examining the mitigation's effect alone does not tell the County which alternative is superior for the environment. What has happened is that in allegedly determining the environmentally superior alternative, the County examines the negative environmental impacts of the mitigation without considering the positive environmental impacts that the mitigation has on the overall project.

When the County refuses to consider how new information about a project's mitigation affects the project itself, it will always label as "superior" the mitigation that does the very least, which will likely be the mitigation that has the least beneficial impact on the overall project. If the County believes the previous sentence is incorrect, CGF requests an explanation for why that is so. The only other possibility is that the "No Project" alternative would be labeled as environmentally superior. The DSEIR concludes that S1-A variation alignment is environmentally superior because it is short and requires "fewer mitigation measures." DSEIR at 5-18. However, the No Project (No Trail) alternative is even shorter and requires no mitigation measures. We assume that the County rejected the No Project alternative as superior because they looked at its effects on the Stanford GUP EIR, compared those effects to the action alternatives, and rightly concluded that constructing a trail was better mitigation for the environmental impacts of the Stanford GUP than doing nothing. CGF requests that the County do a similar analysis of the action alternatives.

The County has chosen as environmentally superior the S1-A variation alignment that runs entirely along existing roads and sidewalks. This route does as little as possible to mitigate the recreational impacts from Stanford's expansion because in lieu of providing a new trail in a new area, it goes somewhere that people can already walk. To make matters worse, it will not be signed or publicized because it does not connect to a distinct destination point, and there are no plans to make a connection. As the DSEIR states, "[t]he County Parks Department does not sign or publicize discrete segments of trails as part of the official County trail system until the segment connects to distinct destination points at each end. This practice would be followed for the S1-A alignment" DSEIR at 3-19. In other words, the County can expect little to no use of a "mitigation" that is supposed to relieve the strain of 16,000 extra people on Stanford's campus, and calls that the environmentally superior alternative. This approach is illogical on its face.

The County appears to be confused on two additional matters regarding Supplemental EIRs. First, it is treating Supplemental EIRs as synonymous with a "tiered" EIR, which is an EIR that refers back to a program EIR, but Supplemental and tiered EIRs are not synonymous. There may sometimes be little difference between the two concepts, and confusion might result from the fact that a program EIR could require a supplemental EIR in some cases or could be followed by a tiered EIR in other cases. The essential difference between Supplemental EIRs and tiered EIRs is that Supplemental EIRs modify information in the original EIR, while tiered EIRs treat new projects that are subsidiary to the overall project, but are still separate projects. As a mitigation to the Stanford GUP EIR, the S1 trail alignments are part of that original project, and the new information about alignments therefore requires a Supplemental EIR to determine how the potential alignments affect the mitigation's effectiveness. We direct the County's attention to CEQA Guideline Section 15163(a)(2), stating that a Supplemental EIR may be used instead of a wholesale revision to the original EIR if "[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." The County did not do this with the present DSEIR. If it had, it would have examined the mitigation's effect on recreational impacts. We further note that new information about mitigation (in this case, about the trail alignments) can require Supplemental EIRs. "The new-information trigger thus extends not only to new information about the project's environmental impacts, but also to new information about mitigation measures and alternatives." Kostka and Zischke, *Practice Under the California Environmental Quality Act*, section 19.15 (1997). The point is very clear – in Supplemental EIRs, the County must

analyze how the project has been affected, instead of segmenting the mitigation and refusing to consider its effect on the overall project.¹

The other confusion appears to stem from the relationship of the DSEIR for the S1 Trail to the Santa Clara County Countywide Trails Master Plan Update SEIR. In this case, the S1 Trail alignment is appropriately considered a tiered project, because the S1 Trail is a subsidiary project, not a component part, of the Trails Master Plan. The County need not revise conclusions in the Trails Master Plan SEIR, but it does need to update the conclusion in the Stanford GUP EIR. The distinction between the two can be shown clearly: the County acknowledges that the Stanford GUP EIR would need to be revised if the County chose the No Project Alternative. Such revision is not necessary for the Trails SEIR, so the two documents have a different relationship, and the County should not confuse them.

As a final point on this subject, the County should acknowledge that it has the authority to use new information about trail alignments to consider which alignment best mitigates the effects of Stanford's expansion, even if the County did not choose to do so in this particular EIR process. The County can and should convene its experts and citizen advisors to help determine which alignment is truly the best.

IV. Page-specific comments.

Please respond to the following page-specific comments:

- Page 1-1: describes the DSEIR as limited to “project-specific” consequences and excluding cumulative and growth inducing effects. That is incorrect – the DSEIR needs to consider all effects from the new information regarding trail alignments.
- Page 2-1 (repeated on 3-1): the sentence “[e]ach of the threee alignments could potentially satisfy the requirement that Stanford University dedicate an S1 alignment as required by Mitigation Measure OS-3B . . .” is a conclusory statement with no supporting facts or analysis. Use of conclusory statements without supporting evidence is inadequate under CEQA. The proper purpose of this SEIR should have been to analyze the new information to determine which alignment best mitigates Stanford's impacts.
- Page 2-2: section 2.3, “Areas of Controversy or Expressed Concern”, fails to note the concern that the SEIR would not analyze how which trail would best mitigate Stanford's impacts, despite the fact that our letter submitted on August 7, 2003 noted this issue as one of our two main concerns.
- Page 3-19: The County would not sign or publicize the S1-A alignment, which would drastically decrease the use of this “trail.” By the (wrong) standards for measuring environmental superiority used in the DSEIR which ignore the effectiveness of mitigation on Stanford's expansion, relatively low use would mean less environmental impacts. Does the County agree that, on the basis of its analysis, the lack of use of the S1-A Trail constitute an additional reason why it should be considered the Environmentally Superior Alternative?

¹ An alternative way to view this problem is that the County has impermissibly segmented the project. New information here requires a Supplemental EIR to determine what has changed about the project. The new information about trail alignments affect not only the understanding of the S1 Trail as mitigation to the project, the new information also affects how well the mitigation works. By refusing to consider the effect on the overall project, the County has illegally segmented its analysis.

V. **Other comments.**

- Some comments submitted to the County may state that the purpose of the S1 Trail is solely to relieve recreational impacts to Stanford campus residents. This is incorrect. The Stanford GUP Draft and Final EIR acknowledge that the GUP causes cumulatively significant recreational impacts to the general area (not just on campus), and the trails dedication mitigates those impacts as well. See, e.g., Stanford GUP DEIR 4.2-26 to 4.2-27.
- CGF is concerned that the County may repeat the process it has done with administrative draft versions of DSEIR, where it gave copies of those documents to Stanford for Stanford to review, (apparently) gave Stanford a chance to lobby for changes in those documents, and refused to show the same documents or the results of Stanford's communications to community groups, the press, or the public. We request that the County tell us if it plans to give copies of administrative draft versions of the Final SEIR, particularly Responses to Comments, to Stanford, and give Stanford the opportunity to lobby for changes, while planning to deny the same opportunity to anyone else.

Thank you for the opportunity to submit these comments, and please contact us if you have any questions.

Sincerely,

<signed>

Brian A. Schmidt
Legislative Advocate, Santa Clara County

Attachment: Letter of August 7, 2003, to Tim Heffington, Santa Clara County Planning Office