



**COMMITTEE FOR  
GREEN FOOTHILLS**

Friday, October 9, 2015

Kristi Abrams, PE, Director  
Gilroy Community Development Department  
7351 Rosanna Street  
Gilroy, CA 95020-6197

**RE: Draft EIR North Gilroy Neighborhood Districts Urban Service Area Amendment (14-01)**

Dear Ms. Abrams,

Thank you for providing Committee for Green Foothills (CGF) the opportunity to comment on the draft Environmental Impact Report for the North Gilroy Neighborhood Districts Urban Service Area Amendment (DEIR). CGF has a 53 year history of working to protect open space, natural resources and farmland in San Mateo and Santa Clara Counties. We participated in the Notice of Preparation Scoping Meeting for this proposal and have provided written comment to the Planning Commission and City Council regarding the prerequisite conditions that may eventually apply to this project.

After reviewing the DEIR, we have identified the following areas of concern regarding adequate compliance with the requirements of CEQA. The DEIR is inconsistent with CEQA, among other deficiencies, in that it (1) fails to evaluate inconsistencies with established policies, (2) fails to use existing conditions to analyze the water demand, and (3) fails to propose and analyze an enforceable mitigation measure to reduce the project's significant environmental impacts.

**DEIR FAILS TO EVALUATE INCONSISTENCIES WITH ESTABLISHED POLICIES**

Per DEIR at 2-41, the proposed project is an amendment to the City's Urban Service Area (USA) boundary to include an approximately 721-acre project site within Gilroy's 20 year growth boundary but currently unincorporated and under the jurisdiction of the County of Santa Clara.

While no specific development plan is included in this proposal, a conceptual plan has been provided to allow for the analysis of secondary effects that can result following the granting of the amendment.

Since the USA amendment itself is the project, the DEIR must evaluate the project for consistency with urban service area and growth policies of the City of Gilroy (City), the County of Santa Clara (County), and the Local Agency Formation Commission of Santa Clara County (LAFCo). See CEQA Guidelines Appendix G X (b).

In particular, these policies encourage efficient urban growth by calling on cities to exhaust existing vacant or underutilized lands within their current USA boundary. It is unclear how this project would be consistent with these policies since (a) the most recent residential vacant land inventory demonstrates the city has an almost 15 year supply within its current USA boundary (or 12 years if downtown units are excluded), and (b) could prematurely convert agricultural lands. In fact, in several locations throughout the DEIR it is noted that the proposed project may be inconsistent with City policies related to growth (e.g. DEIR at 2-31 and 2-33) but does not further clarify, discuss or analyze beyond these statements.

### **MANY STATED OBJECTIVES OF THE PROJECT ARE INCONSISTENT WITH THE PROJECT**

It is unclear how the plethora of 'objectives' listed by the City and offered by the project applicant are applicable to this proposal, especially in light of CEQA Guidelines §15124 (b).

Since the city has a significant amount of existing vacant residential land, expansion of its USA boundary into an area comprised of over 68% important farmland is not consistent with 'small town character; a rural identity (a rural setting surrounded by open space); and a compact, integrated development pattern'. DEIR at 2-37.

Other objectives such as "attractive residential neighborhoods and quality housing; numerous trees and a network of parks, paths, and open spaces; a transportation network that makes it easy to get around; quality community facilities and excellent schools; and a diverse, active, and proud citizenry, including involved seniors and youth" are not exclusive to potential development outside the current USA boundary.

Among the objectives stated by the project applicant are:

- to provide efficient and sustainable land uses within already existing and planned transportation corridors
- to direct the majority of the City's future growth to the north to avoid overburdening existing infrastructure and City services necessary to support the necessary growth; and,
- to preserve and enhance natural features. DEIR at 2-39.

While these objectives are laudable, the DEIR questions their veracity in light of the proposed project. The DEIR at 2-32 states that the “primary questions in regard to services concern City priorities, suitability of timing, and efficiency of providing the services. In light of vacant lands within the City, and the City’s stated priorities for providing services in the least costly locations, the project as proposed may not be consistent with City policies on provision of services to new development.”

Since the conceptual plan estimates the development of some 4000 residences along with more than 338,000 square feet of commercial space and two public school facilities, the result is an almost complete loss of agricultural land. Again the DEIR at 2-33 states that the ‘project as proposed may not be consistent with City policies on deferring development on agricultural lands.’ Notwithstanding the retention of Whiskey Hill, it is difficult to reconcile this loss with the objective of preserving and enhancing natural features.

#### **FEASIBILITY OF AGRICULTURAL MITIGATION MEASURE NEEDS TO BE ANALYZED**

Per LAFCo’s Agricultural Mitigation Policies (Ag Policies), a proposal involving conversion of prime farmland should, in addition to mitigation at a ratio of 1:1, include ‘payment of funds as determined by the City / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and maintenance of agriculture on the mitigation lands’.

While Section 1.02 (B) of Gilroy’s Agricultural Mitigation Policy (Ag Program) requires all costs of program administration and monitoring of established easements to be inclusive in the mitigation options, the funds don’t appear to cover the costs of land management, enforcement and maintenance of agriculture on the mitigation lands.

According to a December 1, 2014, Community Development Department staff report to City Council, only recently had a first project triggered implementation of the City’s Ag Program (although it was adopted over 10 years ago) revealing the difficulty of applying some of its policies. The report also acknowledged City staff’s lack of resources and expertise to manage the Program. Per DEIR at 3-42, the City cannot presently offer the developer preferred in-lieu fee option, partially due to the inadequacy of the fee to fully fund the necessary ongoing maintenance and monitoring.

These issues call into question the feasibility of mitigation measure AG-1 and the City’s essentially untested Ag Program which was adopted prior to LAFCo’s Ag Policies.

Therefore, the DEIR needs to:

- a) discuss and analyze whether the City's Ag Program is consistent with LAFCo's Ag Policies
- b) evaluate the feasibility of AG-1, in particular the requirement to apply one of the Ag Program's options to not less than 150 contiguous acres at any one time
- c) clarify whether the City has finalized an agreement with an agricultural conservation entity, namely the Silicon Valley Land Conservancy, to engage its expertise in helping to adequately implement the program so that it may be financially sustainable in the long-term. See CEQA Guidelines §15126.4(a)(1) and Appendix G X (b).

### **WATER DEMAND CALCULATIONS MUST BE BASED ON EXISTING CONDITIONS**

The DEIR at 3-207 and Appendix J (p. 3 and Table 1) use incorrect baseline conditions to calculate existing project site water demand. In both cases, the error lies with the inclusion of 103.7 acres of High Residential Density as an existing land use. The DEIR at 2-2 and 2-13 as well as Figures 2 through 5 clearly demonstrate this to be inaccurate.

This is an impermissible baseline since it assumes that current conditions are other than what they are. CEQA requires that impacts be determined based on the existing physical conditions in the affected area 'as they exist at the time of the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced.' See CEQA Guidelines §15125 (a)(e) and §15126.2 (a). The DEIR's analysis of the Project's potential impact to groundwater supplies is faulty.

The DEIR must revise these calculations and recirculate the document for comment.

### **MITIGATION MEASURE F-2 NOT ENFORCEABLE**

To reduce the impacts to police and fire services, mitigation measure F-2 *requires* the formation of a Community Facilities District (CDF). DEIR at 3-237 and 3-240. (In addition, a CDF will be required to maintain public spaces such parks and the linear parkway. DEIR at 2-47 and 2-48.)

The formation of a CFD requires a two-thirds majority vote of residents living within the proposed district. It is highly speculative to assume what the outcome of the vote would be. As such, mitigation measure F-2 is not enforceable. See CEQA Guidelines §15126.4(a)(2). The DEIR must propose a new feasible and enforceable measure and recirculate the document for comment.

## CONCLUSION

The DEIR mentions two other USA amendment applications within the proposed project area that have been processed separately until this larger proposal was created. DEIR at 2-40 and 2-41. Of these two, the Wren Investors USA Amendment application came before the Planning Commission in December 2014. City staff proposed to the Planning Commission that it recommend the City Council deny Wren Investors' request due to its inconsistency with the following City General Plan policies:

- Policy 1.01 - Pattern of Development
- Policy 2.01 - Location of Growth
- Policy 2.07 - Urban Service Area
- Policy 4.03 - Urban Containment
- Policy 15.01 - Public Facilities and Development
- Policy 17.02 – New Residential Development

This begs the question of how a USA amendment *15 times greater* than the Wren Investors' application could possibly be consistent with these and other significant General Plan policies. Furthermore, the proposed project relies on outcomes that are speculative at best, such as the formation of a Community Facilities District and the availability of recycled water, to give the impression it will have a less burdensome impact than it actually will.

Gilroy's USA is a five year planning boundary that the City uses to identify property suitable for annexation and development within a five year horizon. Clearly, Gilroy has enough vacant land within its current boundaries to accommodate the growth it needs within this time horizon. Therefore, CGF supports the No Project - Infill Development Alternative in place of the proposed project as it is fully consistent with the City's growth policies. DEIR at 5-14.

Finally, while the DEIR claims the specific plan and development approval process may take five or more years, this is purely speculative. The project applicant has already significantly expedited this USA amendment process. So, it would appear the applicant is highly motivated to ensure other phases of the process move at an accelerated pace as well.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Julie Hutcheson". The signature is fluid and cursive, with the first name "Julie" written in a larger, more prominent script than the last name "Hutcheson".

Julie Hutcheson  
Legislative Advocate