



SAN JOAQUIN FARM BUREAU FEDERATION

MEETING TODAY'S PROBLEMS / PLANNING FOR TOMORROW

July 22, 1994

Kitty Walker
Senior Planner
San Joaquin County
Community Development Department
1810 E. Hazelton Ave.
Stockton, Ca 95205

Page 1 of 5

Subject: San Joaquin Farm Bureau Federation's response to "Draft EIR No. ER-93-01 of Trimark Communities for the Mountain House New Community Master Plan and Specific Plan"

The San Joaquin Farm Bureau Federation in its review of this stage of the proposed Mountain House New Community submits the following concerns and comments.

- (A) - The proposed development and loss of 4,784 acres of prime and farmland of local importance.¹

The San Joaquin Farm Bureau Federation believes that the impact of the loss of 4,784 acres of land from ever being able to produce agricultural products or the loss of wildlife habitat that farmland provides is a very important impact. The DEIR suggests that an agricultural mitigation fee be paid, once established, for the conversion of "prime farmland" to urban uses. This suggestion does not go far enough. An agriculture mitigation fee must be based on not only "prime farmland" but prime, unique, farmland of state importance, and farmland of local importance as well. The San Joaquin County Board of Supervisors set precedent to protect all these designations by their adoption of a resolution defining the "Farmland of Local Importance" in response to the Department of Conservation's Farm Land Mapping and Monitoring Program.

The San Joaquin Farm Bureau Federation requests that an "agricultural land mitigation fee" be developed by San Joaquin County prior to proceeding with the first phase of this proposed development. The mitigation fee should be in effect for all major subdivisions or larger developments that are proposed to be built

¹California State Department of Conservation Farmland Mapping and Monitoring Program. 1994 biennial update.

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on prime, unique, farmland of state importance or farmland of local importance. This mitigation fee must reflect the loss of the land from production availability forever, the loss of agricultural land habitat for wildlife, the loss of agricultural-provided open space, plus all other losses felt by conversion of agriculture land to urban uses. This mitigation fee should be paid to the County in full for the entire project upon the approval of the project and before any development permits are issued.

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(B) - Conflicts between urban/rural land uses.

The mitigation measure "policy" partially established in the DEIR for this project must be expanded in several areas. The proposed "buffer area" of 500 feet in minimum should be established not only along the entire west side of the proposed development but along the south side as well. Public safety as well as odor and other health control concerns along the Delta Mendota Canal must be accepted as valid reasons for a 500-foot buffer area to include all of the south side of this proposed project.

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The San Joaquin Farm Bureau Federation also urges that on-site residents of the proposed development not only be notified of the "County's Right to Farm Ordinance" but that a resident be required to sign a copy of the ordinance and a detailed list of possible conflicts that could be witnessed due to the fact that the development is proposed to be built in an agricultural area.

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(C) - The construction of wastewater treatment facilities and ponds.

The proposal to use Fabian Tract for the construction of wastewater treatment ponds is totally unacceptable to the San Joaquin Farm Bureau Federation. The unique nature of the primary zone of the Delta is not only protected by the Sacramento-San Joaquin Delta Protection Act, but is also protected by the Delta Commission's Plan² being compiled for adoption by October 1994. The unique nature of the Delta encompasses its peat soils; the fact that a large portion of the state's water supply uses the Delta channels; the wildlife habitat that is present; agriculture is the dominant land use of the area; and the environmental pressures of the Federal, State and Local government protections that are focused on the region. Pressure from flooding, water quality, protected plant and animal species, and other conditions all mandate that Fabian Tract is not a viable alternative for the location of wastewater treatment ponds, facilities or even wastewater land applications unless the materials are of at least tertiary treated

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²Delta Protection Commission Land Use Resource Management Plan for the Primary Zone of the Delta. July 1994

levels. It is imperative that the final EIR for this proposed project mandate that this proposed development treat its wastewater to tertiary levels and that the project itself utilize the treated material for landscape irrigation in parkways, open spaces, buffer zones, and golf courses.

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The San Joaquin Farm Bureau Federation also requests that this proposed development, because of its scope and the potential water use, institute a double piping system in its residential and industrial development so that usable wastewater could be utilized throughout the project, benefiting water consumption as well as water sources that will be drawn upon. The San Joaquin Farm Bureau Federation believes that the water situation in the county dictates that an ordinance for large size developments, such as Mountain House, should be subject to such water wise requirements.

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(D) - Water source and water use

The San Joaquin Farm Bureau Federation is very skeptical of the findings of the DEIR in regards to water and water use by this proposed development. More research and details must be provided to determine whether the water demand for the project is a reliable figure, or as suspected, only a figure that appears to be close enough to help obtain approval. It is very questionable that the projected demands would serve the new uses or whether Mountain House will continue to place new demands on more water with each new phase of the project. The Mountain House project has proposed to contract for Byron-Bethany Irrigation District (BBID) pre-1914 appropriative rights. BBID has historically diverted 9,413 acre feet of water for agricultural use within the District boundaries. Yet Mountain House now proposes to use up to 9,413 acre feet of water from BBID for its residential development, which is a new type, place, and possible time of use. State law prohibits new uses of water that will impact existing uses of water.³ It is not clear in this DEIR how this project proposes to mitigate for the reduction in groundwater recharge and other impacts that will result from this new use. Also with respect to BBID's pre-1914 rights, there is a concern that by changing a significant portion of BBID's water to urban uses there will be a significant impact on agricultural use of water within BBID's service area. This "DEIR" does not address the concern of priority of water deliveries within BBID. If the State Water Resources Control Board, or other agencies, impose restrictions on Delta water uses, who would bear the burden of curtailment? This is a particular concern for

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³California Water Code; Orange County Water District v. Riverside (1959) 173 Cal.App.2d137.)

agriculture within BBID and elsewhere due to the propensity and past history of reducing agricultural water supplies rather than residential needs. In light of this concern, Mountain House, as the new and subordinate user of BBID water, must be prepared to curtail its water supply before restricting agricultural users. Claims to "Old River" riparian water rights that are suspect have also been made by this proposed project. It is not clear that the purported riparian water rights remain with the land that the water will be used upon. There is a legitimate question regarding the use of riparian water rights to supply a residential and commercial development and whether this is a reasonable use of a riparian right. Mountain House must prove that, in fact, it has a legitimate riparian right before this project can be allowed to proceed.

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It is evident to the San Joaquin Farm Bureau Federation that this proposed project has many questions to answer in regards to having a viable water source for the development.

(E) - Air Quality

The San Joaquin Farm Bureau Federation has great concerns of the impacts this proposed project will have on the air quality status of the region. The impact and mitigation discussion in the "DEIR" about air quality is not very thorough in its analysis of the potential problems, and in ways that the situation should be dealt with. The proposed project would develop 273,000 daily vehicle trips, and through development would also cause severe dust and other air quality problems. These conditions are within an air corridor where already 27 percent of the entire San Joaquin Valley air basin's nonattainment problems have been flowing into the basin. The final EIR for this project must take into account the current air quality testing being done by the California Air Resources Board and must reflect that Board's opinion on how a project of this size and air quality impact will relate to the district and its already dismal air quality status. To mitigate this area with a simple mitigation fee is not enough. This project will affect more than just San Joaquin County and will affect other industries, as well as the economy, as air quality plans will force implementation measures that continue to hamper industry and job creation as well as health standards for the residents of the region.

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San Joaquin Farm Bureau Federation
Response to "Mountain House DEIR"
Page 5 of 5

The San Joaquin Farm Bureau Federation has raised some very serious concerns in response to this "DEIR" for the proposed Mountain House project. It is the belief of the Farm Bureau that a very thorough review of these points as well as much additional research needs to be done before a sound "Final EIR" can be circulated to the appropriate places. Furthermore, it is very apparent that the project proponents have many questions to answer in regards to the viability and reality of many of their projections as far as demand and effect of the natural resources of the area.

Sincerely submitted,


PATRICK CONNOLLY
President

PC:RM/kb



SAN JOAQUIN AUDUBON SOCIETY

July 19, 1994

Kitty Walker
Senior Planner
Community Development Department
San Joaquin County

RECEIVED
JUL 22 1994

COMMUNITY DEVELOPMENT DEPT.
PLANNING DIVISION

Dear Kitty,

We have examined the Biological Resources section in the Draft Environmental Impact Report, Mountain House Master Plan and Specific Plan I (SCH# 90020776) and the Appendices to Chapter Seven, Mountain House Multi-Purpose Habitat Management Plan.

We agree with DEIR Mitigation Measure and Monitoring Requirements M4.11-2. The Master Plan provisions related to San Joaquin Kit Fox should be revised, and documentation of concurrence from USFWS and CDFG is necessary.

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We agree with DEIR Mitigation Measure and Monitoring Requirements M4.11-3. As much as 4,590 acres of Swainson's hawk habitat will be lost and a 2081 permit from CDFG will be necessary.

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We agree with DEIR Mitigation Measure and Monitoring Requirements M4.11-4. Additional species not addressed in the DEIR and the HMP and apparently not detected by HMP biologists include:

The Federal Candidate (Category 2) Loggerhead shrike (*Lanius ludovicianus*), eleven of which we observed on the project site June 11, 1994, this includes several breeding pairs.

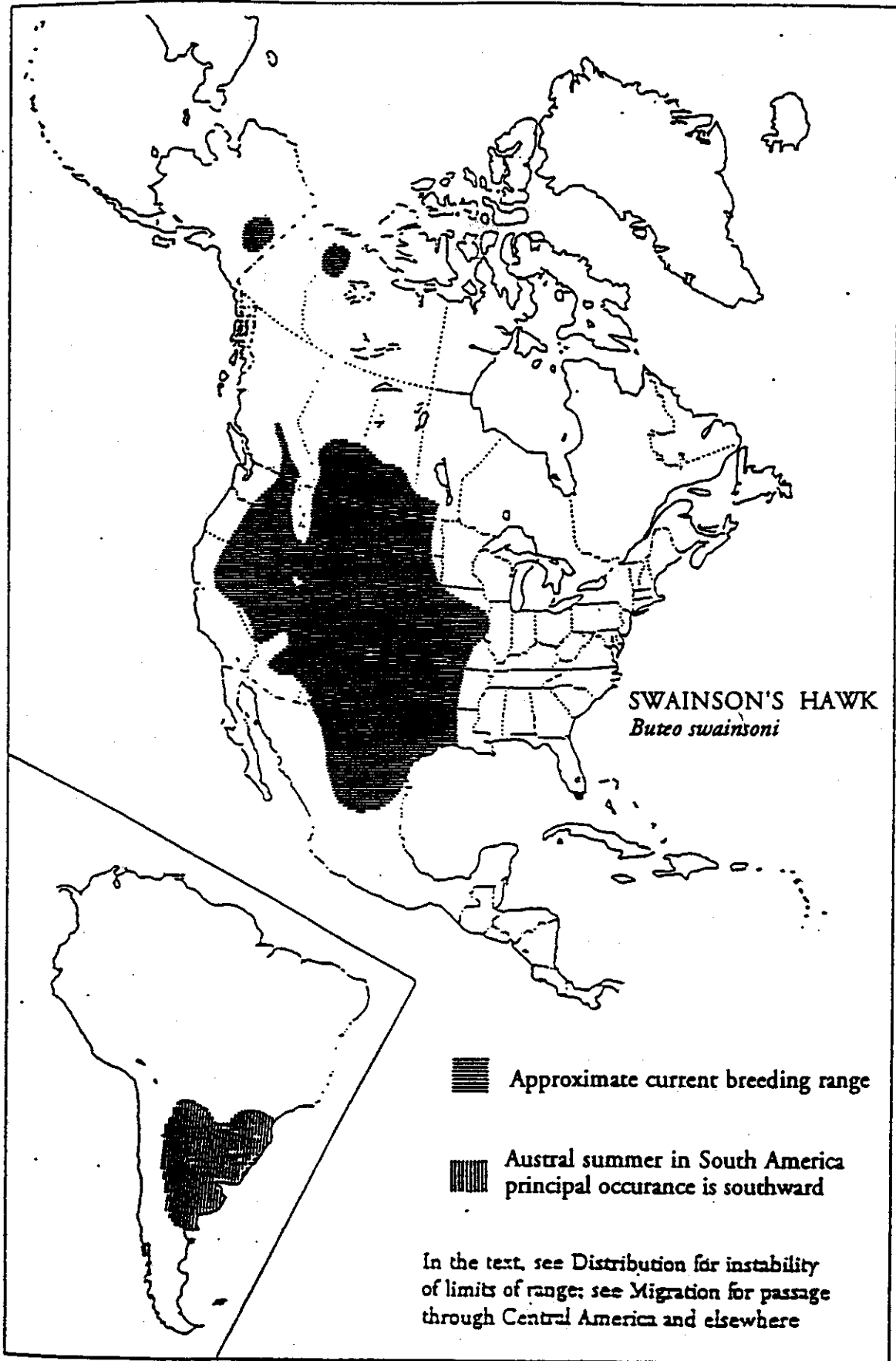
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The Federal Candidate (Category 2) Horned lark (*Eremophila alpestris actia*) also observed on site on June 11, 1994, their presence at that date indicates probable breeding activity.

We are disturbed and disappointed by the HMP prepared by Zentner and Zentner. Rather than being a responsible HMP it instead is merely another attempt by the project proponent to evade mitigation for impacts to Threatened and Endangered species.

Within the HMP is a chart, "Proposed Mountain House SH mitigation Program". This chart is unnecessarily confusing, we can only assume that there has been a clerical error. The chart indicates that the highest ratio of mitigation is reserved for impacts to

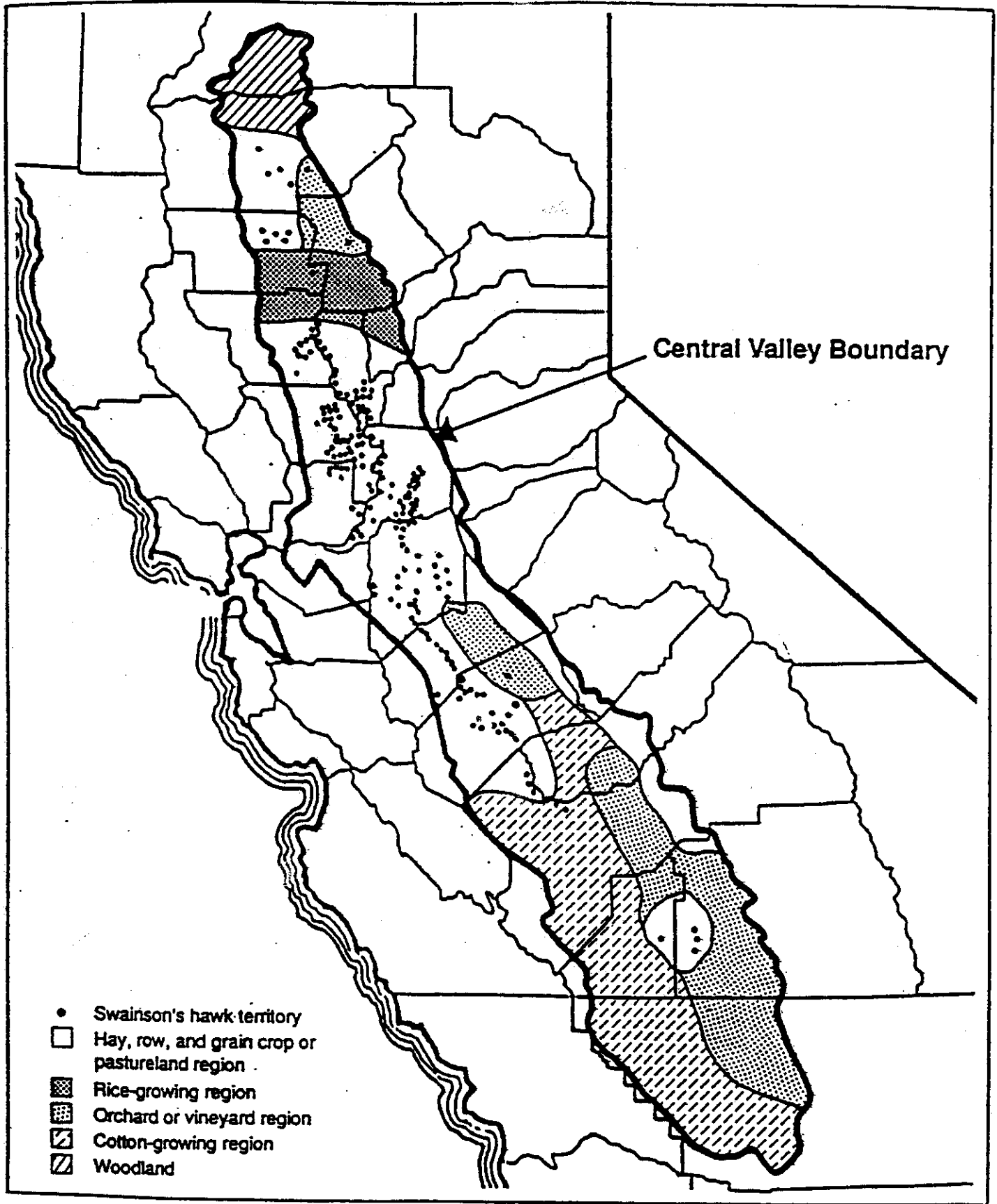
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Source: Handbook of North American Birds, Vol. 5 Edited by Ralph S. Palmer

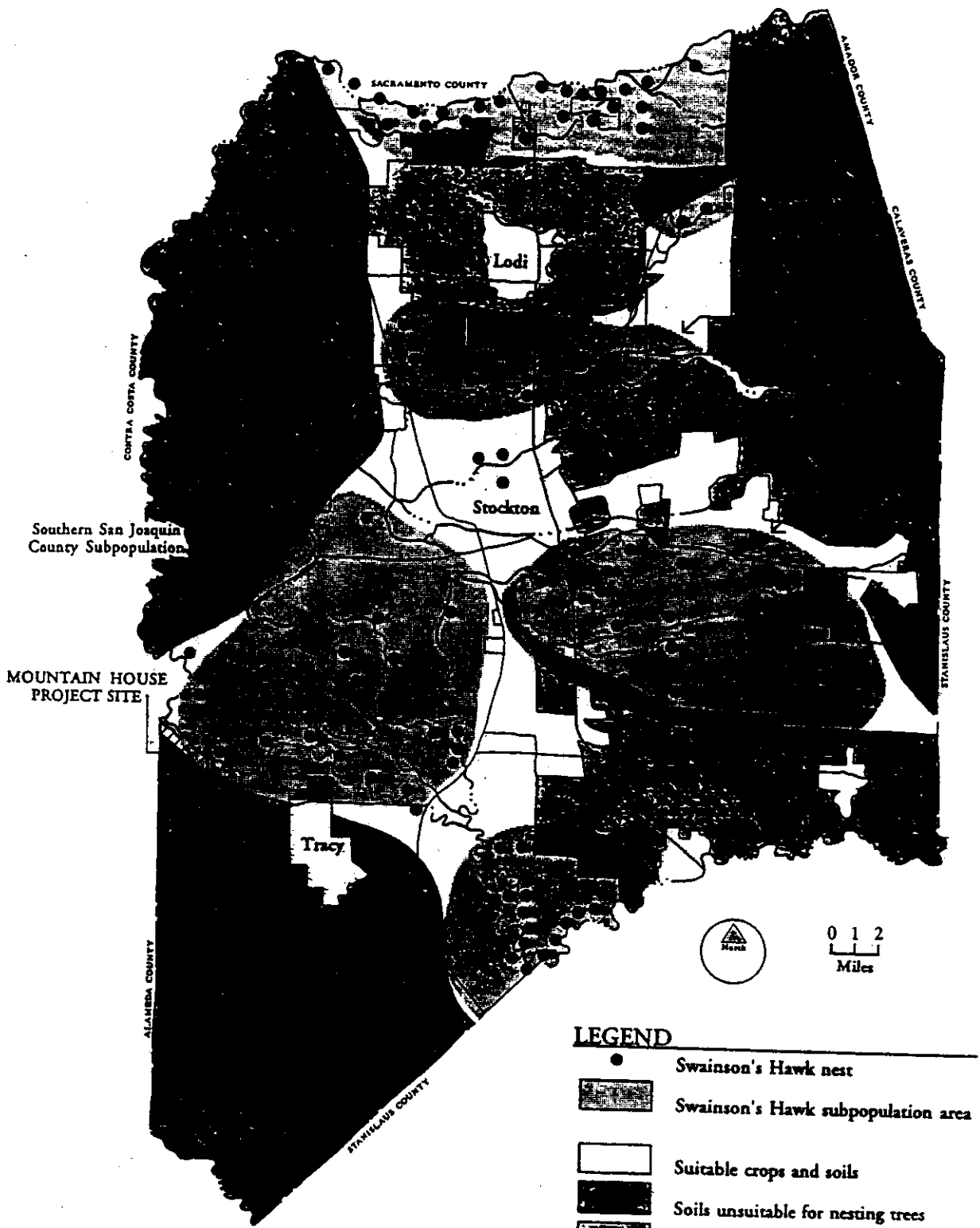
FIGURE 4

Swainson's Hawk Distribution



Source: Jones and Stokes, 1990.

FIGURE 5
Central Valley Swainson's Hawk Nesting Distribution
in Relation to Generalized Cropping Patterns



Southern San Joaquin
County Subpopulation

MOUNTAIN HOUSE
PROJECT SITE

LEGEND

- Swainson's Hawk nest
- ▨ Swainson's Hawk subpopulation area
- Suitable crops and soils
- Soils unsuitable for nesting trees
- ▩ Crops unsuitable for foraging habitat
- Urban

SOURCES

Nesting and Crops:
 Jones & Stokes Associates, 1990.
 Preliminary administrative draft habitat
 conservation plan for the Swainson's hawk
 in San Joaquin County. Figures 4.2 and 4.3.

Soils:
 R. Storie & W. Weir, 1951.
 Generalized soil map of California.

FIGURE 6
 Swainson's Hawk Nesting Distribution
 in San Joaquin County, 1990

foraging habitat greater than 10 miles from an active nest, while the lowest mitigation ratio is applied to impacts closest to an active nest. (?). It goes on to state that the fanciful mitigation ratios and requirements described are "derived from CDFG Swainson's hawk mitigation guidelines". Actually, nothing on this chart is compatible with current and/or previous CDFG Mitigation Guidelines. It is our expectation that the revised and amended HMP will rectify this confusing chart and it's absurd ratios of mitigation.

The thrust of the HMP biologist's argument for reducing the responsibility to mitigate for impacts to Swainson's hawk is their contention that Swainson's hawk population numbers in the Central Valley are not limited by a shortage of foraging habitat, but are limited primarily because of a lack of riparian trees for nesting. They further contend that most of the project area has an underlying soil type that is not suitable for foraging habitat and that the soil is also not suitable for riparian trees. Thus, they suggest that the impact to Swainson's hawks from the removal of 4,590 acres of habitat is of little consequence. This argument is specious. A fact that can be easily grasped by referring to the HMP's own graphics.

Figure 4 (enclosed), "Swainson's Hawk Distribution", is a range map of the species. The soils found throughout the Swainson's hawk's occupied range simply are not dominated by types that the HMP biologists deem to be "suitable" for the species, rather, the Swainson's hawk chooses to have beneath it soils that the HMP biologists contend are "unsuitable" for the species. Either the bird is in error as to it's own biology or the consulting biologists for the HMP are in error.

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Figure 5 (enclosed), "Central Valley Swainson's Hawk Nesting Distribution in Relation to Generalized Cropping Patterns", as illustrated, this map shows that there is an unquestionably strong relationship between foraging crops and Swainson's hawk populations. Inconsistent with HMP theory is the fact that suitable nest trees exist in several of those areas unoccupied by the species. The underlying soil type plainly has no relevancy as to whether an area is occupied or unoccupied.

Figure 6 (enclosed), "Swainson's Hawk Nesting Distribution in San Joaquin County, 1990", is a more specific county-wide correlation of nesting territories and suitable foraging crops. From this map HMP biologists concoct the assumption that a lack of suitable nest trees is the critical factor limiting local Swainson's hawk populations. This assumption is not well informed perhaps due to the HMP biologists lack of experience in San Joaquin County:

There are acres of large riparian trees suitable for nesting that exist in the Central Delta yet Swainson's hawks do not nest there in significant numbers. What is lacking is that the main crop in the Delta, corn, does not provide a sufficient and available prey base until it is harvested,

too late in the breeding season.

In the northeast and the southwest of the county there are literally thousands of large Valley oak trees suitable for nesting. Optimal foraging crops are not found there and therefore neither are Swainson's hawks.

In the vineyard and orchard areas of the county there are ample trees suitable for nesting. There is not a significant Swainson's hawk population because there are not suitable foraging crops.

Thus, from the HMP's own graphics it is clear that the critical factor limiting Swainson's hawk populations is not a lack of suitable nesting trees, as nest trees exist in areas unoccupied by the hawk. The critical factor is that Swainson's hawk populations are directly tied to a limited amount of foraging habitat, habitat precisely like the 4,590 acres that the Mountain House New Town is proposing to displace.

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Swainson's hawks of course nest in riparian systems but not exclusively, as the HMP biologists would have us believe. It is common to find them located miles away from riparian systems. On June 11, 1994 we were able to observe on the project site an occupied Swainson's Hawk Nesting Territory approximately 3.5 miles south of Old River and 2 miles south of Byron Road. The tree is a Eucalyptus, a tree that the HMP biologists describe as "unsuitable" for nesting, also this tree is on and surrounded by soils that the HMP biologists describe as "unsuitable" for Swainson's hawks. Those "unsuitable" soils were planted in compatible foraging crops. Additionally, we are aware that the HMP biologists have overlooked another occupied Nesting Territory on the project site. It is in a willow on Old River.

The EIR for this project accurately considers Impacts to Swainson's hawk to be Significant. We expect consultants for the HMP to prepare a HMP commensurate with that Level of Significance. Armchair theorizing may have its place but it is irresponsible to rely on tenuous assumptions while important field work is not being properly conducted. The presence of occupied Nesting Territories on the project site relegates this HMP and its unfounded assumptions to the wastepaper basket.

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In closing we expect that the forthcoming revised and amended HMP will be prepared by a consultant that is capable of concentrating on legitimate biology. The present consultant has missed the discovery of important field data and has filled the HMP with misinterpreted biology, and irresponsible mitigation scenarios.

Sincerely,



Waldo Holt, Conservation Chair,
San Joaquin Audubon Society
3900 River Drive, Stockton CA, 95204

RALPH B. GRUNAUER, JR.
P.O. BOX 2008
KINGS BEACH, CA. 96143

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JUL 20 1994

COMMUNITY DEVELOPMENT DEPT.
PLANNING DIVISION

July 15, 1994

Kitty Walker, Senior Planner
San Joaquin County Community Development Department
1810 E. Hazelton Ave.
Stockton, Ca. 95205-6232

RE: Senate Bill No. 1397
Mountain House Community Services Districts
Proposed Modification to SB 1397
Mountain House Housing Development, Tracy, Ca., proposed disposal
of sewer sludge and effluent on Fabian Tract

Dear Ms. Walker:

I am the owner of 312 acres of prime agricultural land that has been in my family since 1885. We have productively farmed the land since 1912. This land is considered to be the best, richest, and most fertile peat farm land in California for growing asparagus, tomatos, sugar beats, and other edible crops. We hold Riparian Water Rights under the 1912-1914 Acts.

We are growing asparagus on 100% of our fields. We ship approximately 60% of our production to Japan and Europe. This is good for the economy of California and the United States, and positively affects our balance of trade.

We are in the Green Belt Agricultural Protection Zone (ten years required to exit by law). I object intensely to the Mountain House project being able to condemn effectively our prime agricultural land for the dumping of their sewer sludge and waste sewer affluent.

This dumping of waste on our land will destroy forever this land for productive farming of edible products. The Heinz Company sent a letter to the county that was put into the current DEIR. This letter stated that their company could not accept crops grown with irrigation from sewer affluent or sewer sludge.

Our land is adjoining levees and is part of the flood plain with an extremely high water table. Any sewer sludge or affluent will immediately enter this water table and spread to the adjoining Forbay Pumps. If the levee breaks or overflows the land, the sewer affluent and sludge stored on the land will be disbursed. It will then enter the drinking water via the

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adjoining Forbay Pumps. This will result in the contamination of much of the state water system.

The Mountain House Development encompasses 4,782 acres, and they plan to develop it into apartments, homes, commercial and industrial buildings. They should be forced to provide their lands for the disposal project within their development and not destroy the surrounding prime farmlands or remove it from the area. The affluent should be cleaned to the point that it becomes drinkable. P125

The green area protection zone was formed to protect such lands from development. We need land for food production and farm related jobs. Farming is the basis of our California economy. California supplies the majority of the fruits and vegetables for the nation. OUR LIVELIHOOD AS FARMERS IS AT RISK.

Please help us by not allowing Mountain House Development to destroy our farms FOR THEIR PROFIT. Thank you,

Ralph B. Grunauer
Ralph B. Grunauer, Jr.

RAYMOND A. ANDRESEN
5555 MONTGOMERY RD. #L3
SANTA ROSA, CA. 95409-8837



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COMMUNITY DEVELOPMENT DEPT.
PLANNING DIVISION

Kitty Walker
San Joaquin County
Community Development Dept.
Stockton, Ca. 95205

July 16, 1994
TRIMARK EIR-493-01
Effluent Water

Dear Ms Walker:

In April 8, 1994 I wrote to Trimark objecting to effluent disposal on valuable farm land on the North-east side of Old River.

Farm lands in this area have been placed under the Williamson Act. The basic principal was to encourage and retain these lands for future agricultural use.

The flooding of these with effluent sewage water defeats the whole purpose of protecting our valuable agriculture in the State.

Other means are available to Trimark for disposal and I strongly object to their ^pposed dumping of afflu^ent on the north east side of Old River.

Sincerely yours

Raymond A. Andresen
Raymond A. Andresen

PI26

Kitty

July 18, 1994

Kitty Walker, Senior Planner
San Joaquin County Planning Division
1810 E. Hazelton Avenue
Stockton,
CA 95202-6232

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COMMUNITY DEVELOPMENT DEPT.
PLANNING DIVISION

SUBJECT: Review of Draft EIR for the Mountain House Community west of Tracy

We are owners of farm land north of Old River near the proposed project.

The most recent plan showed sewage wastewater being used to irrigate prime agriculture land north of Old River. This land is capable of growing high value crops.

The plan as presented would greatly reduce the value of this land by restricting the types and values of the crops grown. This is stated on Page 14.3 (April 13, 1994):
Implementation...crops which can be grown are for non-human consumption only...

Also stated in the draft is the fact that wastewater effluent is always higher in salts than the original water going into the community. This salt load can be quite high when good water conservation measures are used within the community. As a result, salt will restrict the types of crops grown (Page 14.1, 4/13/94).

The project as it is now presented will reduce the value of approximately 1,800 acres of additional prime agricultural land. What was **ORIGINALLY** a 4,784 acre project has now **CHANGED** to a 6,580 acre project. **THIS IS A MAJOR REVISION OF THE PROJECT.**

The draft stated that it is cheaper to use the wastewater to irrigate restricted crops than it is to treat and use the water within the Community (Page 14.3, 4/13/94). The reduced agricultural value of the land will mean less taxes collected and fewer agriculturally related jobs. By Mountain House "saving" money on wastewater treatment, the County, in general, will suffer a loss.

The tax structure may be even **WORSE**: If Mountain House becomes a city and the 1,800 acres are part of that city, then the 1,800 acres will be removed completely from the tax rolls.

Our recommendation: Mountain House treat the wastewater so that it can be used on golf courses, parks, and other uses within the Mountain House project area (see pages 4.4-11 & 4.4-12, 3/16/92) before application to agricultural land.

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The 1992 draft also implies that Mountain House had agricultural land available to the west (in Alameda County) for disposal of excess wastewater (Page 4.4-20, 3/16/92).

The San Joaquin County Planning Department and the Supervisors have been caught in a used car sales trick of bait and switch.

Sincerely,

Victor C. Andresen
Victor C. Andresen

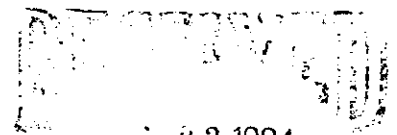
Jean C. Andresen
Jean C. Andresen

355 Brookside Drive
Chico,
CA 95928

(916) 894-7526

COPY:
R.A. Andresen
Fred Andresen
Bert Bacchetti
Lester Krohn

S. J. County Planning Division,



3 1994

COMMUNITY DEVELOPMENT
PLANNING DIVISION

Years ago I warned you people that this disregard for the truth, on our environmental health impact report would some day catch up with you. You're derelict in your duties to the S. J. County residents, and animals as well.

You obviously have no respect or concern for our well being by allowing this indiscriminate growth to go totally unchecked for the money generated by these developers, whom if you were to take their word for anything you'd find there's little truth in any of their petitions

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This bulldozing back hoes are disturbing the valley fever spores, and we've been in a dust bowl ever since Tracy went begging for anything they could, to build here.

You've been an accomplice by allowing Tracy to revise the General Plan over and over again. Where is this going to end, when people can't breathe clear air ever again, and they say cigaret smoke is harmful. There are many more droughts in our future, to consider very carefully.

George and Norma Poet
203 Hollywood Ave,
Tracy, Calif. 95376

Sharp Increase Detected In Cases of Valley Fever

Officials report tenfold rise in San Joaquin.

By Charles Pettit
Chronicle Science Writer

Drought and growing population caused valley fever, a sometimes fatal fungus infection, to shoot up tenfold in the past 10 years in the San Joaquin Valley, federal health officials said yesterday.

The federal Centers for Disease Control and Prevention in Atlanta said yesterday that the total for the entire country — with 70 percent of cases in the San Joaquin Valley — was 4,516 cases in 1992 and 4,134 in 1993. The average for all the country in the 1980s was 428 cases yearly.

Dr. B. A. Jinadu, the Kern County health officer in Bakersfield, said the disease caused several hundred deaths in his county in 1992 and '93.

However, he added, the number of cases appears to have started to fall again in the past year.

In the 1980s, the county typically saw fewer than 400 cases each year of the disease, formally called coccidioidomycosis. But in 1991, the number reached about 1,100, followed by about 3,300 in 1992 and

2,600 in 1993.

The cause of the disease is spores from a soil fungus common in the San Joaquin Valley and some other areas of Southern California and the desert Southwest. Prolonged drought or high winds often cause outbreaks as the air gets dustier. Last winter's Northridge earthquake, for instance, raised enough dust to cause a valley fever surge in Ventura County.

Jinadu said the wet winter of 1992-93 appears to have caused a slight drop in the incidence of the disease in his county. Last winter, however, was dry, leading to concern that another large number of cases may occur late this summer and early fall when the fungus spores tend to become most easily airborne. There have been 600 cases so far this year.

The disease usually clears up by itself if it involves only the lungs, but is fatal more than half the time if the fungus invades other organs. Jinadu said state and federal health officials are pushing for research into vaccines for the disease.

Pacific Gas and Electric Company

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PLANNING DIVISION
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COMMUNITY DEVELOPMENT
PLANNING DIVISION

July 15, 1994



Ms. Kitty Walker
Senior Planner, Community Development Department
San Joaquin County
1810 E. Hazelton Ave.
Stockton, CA 95205-6232

Dear Kitty:

PG&E has completed the review of the Draft Specific Plan 1 and Environmental Impact Report (DIER) for Mountain House Community. As you are aware, PG&E's has been actively working with the County and Trimark Developers to identify areas of concern. We believe our early involvement has identified many of them in these reports.

However, as of this date we have not received a formal request by the developer to start electric or natural gas engineering to relocate our existing facilities or to test our equipment. We have been in contact with the Developer and are ready to proceed at their request.

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Should you have any questions, please don't hesitate to give me a call at 942-1730.

Sincerely,

Phillip Pennino

Phillip Pennino
Clean Air Transportation Coordinator

Ron Gross
Project Manager
TriMark Communities
3120 Tracy Boulevard, Suite A
Tracy, CA 95376



BAY AREA RAPID TRANSIT DISTRICT
 800 Madison Street - Lake Merritt Station
 P.O. Box 12688
 Oakland, CA 94604-2688
 Telephone (510) 464-6000

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 JUN 17 1994
 PLANNING DIVISION

June 9, 1994

Ms. Kitty Walker
 Senior Planner, San Joaquin County Community Development Department
 1810 E. Hazelton Avenue
 Stockton, California 95205-6232

MARGARET K. PRYOR
 PRESIDENT

MICHAEL BERNICK
 VICE-PRESIDENT

RICHARD A. WHITE
 GENERAL MANAGER

Subject: Mountain House New Community Draft Master Plan

Dear Ms. Walker:

Thank you for the opportunity to respond to the Draft Master Plan for the Mountain House New Community. BART Extension Planning staff has reviewed the document and has the following comments:

DIRECTORS

DAN RICHARD
 1ST DISTRICT

NELLO BIANCO
 2ND DISTRICT

ROY NAKADEGAWA
 3RD DISTRICT

MARGARET K. PRYOR
 4TH DISTRICT

SHERMAN LEWIS
 5TH DISTRICT

JOHN GLENN
 6TH DISTRICT

WILFRED T. USSERY
 7TH DISTRICT

JAMES FANG
 8TH DISTRICT

MICHAEL BERNICK
 9TH DISTRICT

- Commuter Rail Service between Stockton and San Jose. BART and San Joaquin County Council of Governments (SJCCOG) are currently developing programs to implement commuter rail service between Stockton and San Jose. In conjunction with the SJCCOG, BART has identified the Altamont Pass Passenger Rail proposal as part of the BART *FASTRAK* proposal. This service would (1) offer an immediate commute alternative to traffic congestion along the Altamont Pass Corridor and (2) improve air quality in the region.

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Altamont Pass Passenger Rail service should be included in the discussions of rail transit. The service would use existing Union Pacific (UP) Railway and Southern Pacific (SP) Railway right-of-way to operate diesel locomotives between Stockton and San Jose. As proposed, this commuter rail service is expected to serve the City of Tracy along the UP alignment with a proposed station at either Coral Hollow Road or MacArthur Drive (approximately 7-9 miles from the project site).

BART Extension Planning anticipates that the comments presented in this letter will be addressed in the project development plan. If you have any questions or comments, please call me at (510) 287-4863.

Sincerely,

Karita Zimmerman
 Manager, Environmental Compliance

ROBERT BIANCHI FAMILY TRUST
350 Via Concha
Aptos, CA 95003
(408) 688-0483

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JUL 21 1994

July 19, 1994

Kitty Walker, Senior Planner
San Joaquin County Planning Division
Community Development Department
1810 E Hazelton Avenue
Stockton, CA 95205-6232

COMMUNITY DEVELOPMENT DEPT.
PLANNING DIVISION

REFERENCE: Draft Environmental Impact Report SCH #90020776 (DEIR)
Mountain House Master Plan and Specific Plan I

SUBJECT: Comments on the DEIR due July 22, 1994, per notice of June 10, 1994

Dear Ms. Walker:

DEIR Impact M4.1-3 states that construction of Wastewater Ponds on Fabian Tract MAY be inconsistent with the Sacramento-San Joaquin-Delta Protection Act (DPA).

FURTHER,

Fabian Tract (in the DPA Legal Primary Zone) is the preferred sewage lagoon site followed by the Alameda County site (located in the secondary zone OUTSIDE of the DPA zone). The third alternative is tertiary treatment of the sewage effluent products, on site.

The proposed use of Fabian Tract for effluent disposal or for that matter, any site within the DPA Primary Zone is clearly in conflict with the DPA's proposed intentions for activities within the Primary Zone.

THUS,

The DEIR statement that wastewater facilities may conflict is a gross misnomer. They do, in fact, CLEARLY CONFLICT with the proposed provisions embraced with The Delta Protection Commission's Land Use and Resource Plan for the Primary Zone of the Delta dated July 1994. (The Plan) In the text of the Delta Protection Act of 1992, Chapter 1, Findings and Declarations, Section 29703(c) states that Agricultural Land within the Primary Zone should be protected from nonagricultural uses.

P131

Construction of sewage lagoons, pipelines and effluent distribution systems (and their subsequent operations) conflicts with the foregoing section, notwithstanding the productive acreage that will be destroyed by the proposed facilities, some 1600 acres at total buildout.

The Plan states, in paragraph P-3, page 11, that whenever possible, sewage treatment facilities and holding ponds serving uses outside the Delta should be located outside of the Primary Zone.

The DEIR conflicts by proposing to site the sewage lagoons and facilities within the Primary Zone on Fabian Tract.

P131

DPA section 29765(j) provides for not increasing requirements or placing additional restrictions on agricultural practices in the Primary Zone.

Proposed utilization of sewage effluent to irrigate non-food crops such as alfalfa and sudan grass restricts the use of Primary Zone Land from the production of food products normally produced for human consumption. Alfalfa is a rotation crop used to increase soil productivity for crops such as tomatoes, beans, asparagus and sugar beets, among others. Restricting land use to alfalfa and sudan grass conflicts with the foregoing section of the DPA.

FURTHER,

For example, the J.J. Heinz contract, Exhibit A, Conditions to the Tomato Tonnage Contract, states in paragraph 13.0, "Grower hereby covenants and warrants that any and all tomatoes delivered hereunder have been planted and grown on land that has not had industrial and/or sludge applied thereto within the last five (5) years".

Logic would apply the foregoing warranty to ANY crop grown for human consumption.

Fabian Tract lies largely below sea level. Thirteen (13) pumping plants operate twenty-four (24) hours daily to maintain water level sufficiently below the farming horizons to insure crop production. Miles of drains, both subterranean tile pipe systems and open ditches, convey ground water to these plants for evacuation into the Delta Water courses.

Mountain House plans to pump an additional 5,700,000 gallons of effluent per day into an area (Fabian Tract) that already requires massive efforts to maintain groundwater levels at farmable levels.

P132

The sewage lagoons will leak. Whether lined or unlined, they will be a source of groundwater recharge. The best of installed HDPE (plastic) liners leak.

The vertical and horizontal geology of the islands is a complex matrix of sands, gravels, clays, peats, loams and mixtures thereof. Uncharted and unpredictable subsurface water and infiltration courses exist and meander throughout the Delta interconnecting the islands.

Vertical, then horizontal percolation of the pond effluents will no doubt enter these water courses and will disperse in same, eventually migrating to the agricultural drain water, and will be

overboarded back into the Delta Waterways via the agricultural drain systems.

Inter-island migration of the effluent has the potential of contaminating adjacent islands beyond the boundaries of Fabian Tract.

The sewage lagoons, because of their depth, will add hydrostatic head (pressure) to the effluent entering the subsurface water courses and will serve to ensure migration to other areas and, potentially, other islands growing other than alfalfa and sudan grass.

The additional 5,700,000 gallons per day will have to be pumped out of Fabian Tract. Sewage lagoon leakage will not be isolated to the sewage lagoons. Thus, the existing agricultural drains will experience an increased demand to maintain groundwater at farmable levels. The individual landowners will ultimately assume the additional cost of pumping the itinerant effluents along with the natural groundwater.

CRWQCB will shortly regulate agricultural drainage waters in terms of quality and quantity. Dealing with agricultural residuals, and control thereof, is going to be a complex undertaking in it's own right. Confounding the problem of agricultural residuals in the water stream with sewage effluent raises additional, unwarranted burdens on agriculture to mitigate the problem.

We previously have noticed CRWQCB of this conflict in a letter dated September 30, 1992, when we became aware of the intention of Mountain House to dispose of effluents in the Delta waterways.

P132

DPA section 29760(7) serves to present and protect the water quality of the Delta, both for instream purposes and for human use and consumption.

Fabian Tract has nineteen (19) irrigation plants furnishing water for crop irrigation on the island. Nine (9) of those locations are in Old River adjacent to the proposed development.

Mountain House Creek is designated to convey storm runoff directly into Old River in the vicinity of the irrigation plants serving Fabian Tract. Storm water will convey surface contaminants such as waste motor oils, pavement residuals, and other wastes typically generated in a community environment to Old River. Concentrated amounts of storm water will additionally pickup and convey solids in the form of sands, silts, clays and other particulate matter directly to Old River.

These contaminants will degrade the water quality in Old River with respect to crop irrigation use and the solids will eventually be deposited in the stream bed near the irrigation plants causing sedimentation problems at the intakes of these systems.

The dumping of storm waters into Old River from the Mountain House Development clearly conflicts with DPA 29760.

Fabian Tract is within the 100 year flood plain. During the winter months when the 200 acres of sewage lagoons are brimming with effluent (about 1.3 billion gallons) and a potential flood breaches the Fabian Tract Levees (and the lagoons as well), this 1.3 billion gallons will dispense over MILES

of the Primary Delta Zone, and because of Fabian Tract's close proximity to the California Department of Water Resource's intakes at Clifton Court to the west, the opportunity to contaminate State Project Water being used to recharge system reservoirs between Tracy and San Diego is a distinct reality.

The biological process utilized by the sewage lagoons is volatile and can fail due to the system ingesting unknown products killing the process of digestion and rendering the effluent to a pre-treatment raw sewage condition or worse. The potential release of millions of gallons of untreated raw effluent raises a constant threat to the surrounding Primary Zone Lands. The chemistry of the effluent is a problem. The concentrations of nitrates and other complex compounds pose a serious threat to the overall water quality of the entire Delta.

P132

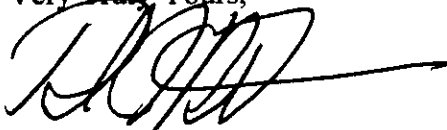
The most prudent option to treat the effluents generated by the Development is that of Tertiary treatment. This system is self-contained and produces water of near potable quality. With little more effort, the product could be cleaned up for reinjection into potable water supply sources. At this stage the water has a market value and as such could be sold to defray costs of operations or simply recycled in the development, satisfying its domestic needs.

The City of Altamont Springs, Florida, a city of 25,000 people, has constructed and is utilizing these advanced treatment technologies to successfully treat up to 12.5 million gallons per day of recyclable effluent product.

I am enclosing information regarding this project, designed by the HNTB Corporation, a recognized National Engineering firm specializing in civil and environmental community projects.

I strongly suggest the selection of the Tertiary treatment option for effluent management. That option would be in harmony with the Delta Protection Act and the preservation of the Primary Zone as prescribed therein.

Very Truly Yours,



Robert J. Burick
for Judith A. Bianchi-Burick, Trustee

RJB/bt

Enclosures: HNTB Data

cc: Files
Richard Harriman
Dan Nomellini
Bert Bacchetti
Bill Salmon
Lester Krohn
Ralph Grunauer

RECLAIMED RESOURCES



HNTB-designed Project APRICOT recirculates highly treated wastewater to homes and businesses for irrigation and other non-consumption uses, while reducing demand on Florida's over-taxed water resources.

**Project APRICOT provides
Altamonte Springs, Fla.,
residents and business
owners with an inexpensive
source of water for non-
consumption uses while
reducing the demand on the
water supply.**

In Florida, where water restrictions are the norm, it doesn't make sense for most of a city's drinking water to be used for lawn watering and car washing. Unfortunately, that's the case in most cities.

Things are changing in Altamonte Springs, a suburban community of 40,000 located just north of Orlando. Faced with growing demand on its dwindling water resources, the city has launched an ambitious water conservation program known as Project APRICOT. APRICOT, an acronym for A Prototype Realistic Innovative Community of Today, is an HNTB-designed reclaimed water system that recirculates highly treated wastewater effluent to homes, apartment complexes and business throughout the city for non-consumption uses.

"The city recognized the need to decrease the pressure on its water supply and to reduce the amount of effluent that it was releasing into the Little Wekiva River," says Jerry Phillips, P.E., head of environmental engineering in HNTB's Orlando office. "Project APRICOT addresses both of those concerns and delivers

the added benefit of providing residents and businesses with an inexpensive source of water for irrigation and other non-consumption uses."

Altamonte Springs' decision to establish a reclaimed water system was driven primarily by the need to increase the capacity of its 7.5 million gallon a day wastewater treatment plant to 12.5 million gallons per day. A side effect of more capacity would be an increase in the amount of wastewater effluent produced. Project APRICOT was viewed as the best alternative for dealing with the potential problems associated with plant expansion. It was also hailed as an innovative program that directly addressed groundwater conservation.

HNTB designed the transformation of the city's wastewater treatment plant into a sophisticated water reclamation facility. The treatment processes involve a two-stage anoxic-aerobic biological process, chemical addition, coagulation, dual media, deep-bed filtration and high-level disinfection.

To speed the development of the distribution system, Altamonte Springs' Land Development Code was amended to require the installation of two sets of pipes in new developments, one to deliver drinking water and the other to deliver reclaimed water. When complete, 24 miles of transmission main will comprise the backbone of the system. As transmission lines are laid, the city contacts neighborhoods to determine if they are interested in obtaining the service. Those who want to be part of the system receive the reclaimed water through a separate service in their yards.

The system has been a great success since beginning operations in late 1989. When fully operational, the system will make reclaimed water available to every property in the city and decrease the amount of discharge into the Little Wekiva by 80 percent.

(Continued on page 6)



(Continued from page 4)

The reclaimed water, which looks and smells like normal drinking water, is being used primarily for irrigation and car washing purposes. In some parts of the city it is being used for fire protection. In the future, the city hopes to promote reclaimed water use for ornamental fountains and waterfalls, toilet flushing in commercial office buildings, water-cooled air conditioners and lake level control.

Because connection to the system is voluntary for single-family homeowners, public education has been vital to the acceptance of the system. The city produced a video and brochure about Project APRICOT. City officials make presentations, answer questions and address concerns at community meetings. Once 51 percent of the residents in a neighborhood sign a petition indicating their intention to use the reclaimed water service, the local system is scheduled for design and construction. So far, interest in participating in the program has been so great that a waiting list has been formed.

Use of the system is relatively inexpensive for single-family residences. The \$8 per month charge for using the system is a flat rate that does not vary with usage. Residents who live in neighborhoods where the system is available but do not choose to use the system pay a \$3 availability fee. Businesses and apartment complexes are charged 50 cents per thousand gallons and an equivalent of \$3 per residential unit.

Because the need to conserve potable water is not limited to Altamonte Springs, the success of Project



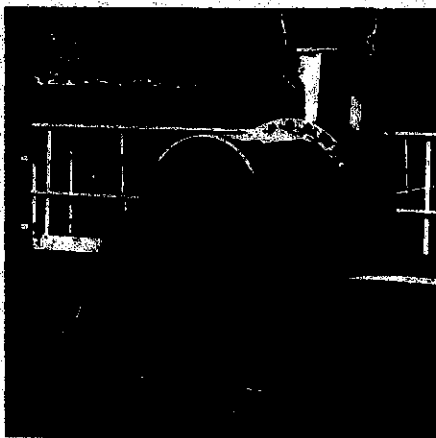
Altamonte Springs' decision to establish a reclaimed water system was driven primarily by the need to increase the capacity of its wastewater treatment plant from 7.5 million gallons per day to 12.5 million gallons per day. Project APRICOT was viewed as the best way to deal with potential problems associated with plant expansion.

APRICOT has caught the attention of cities all over the state. The city's Public Works Department has received numerous inquiries from cities that are looking for ways to ease the strain on their drinking water supplies.

"With Project APRICOT we have taken the lead in preserving the state's precious groundwater supply," says Donald F. Newnham, P.E., Altamonte Springs' public works director. "This is the most comprehensive dual distribution system in the country.

"HNTB took this innovative concept, and by the careful application of sound engineering techniques, converted the city's vision into a workable and cost-effective approach to the conservation program."

The treatment processes involve a two-stage anoxic-aerobic biological process, chemical addition, coagulation, dual media, deep-bed filtration and high-level disinfection.





July 12, 1994

Chevron U.S.A. Production Company
2360 Buchanan Road
Pittsburg, CA 94565
Fax 510 827 7334

**DRAFT MASTER PLAN AND SPECIFIC PLAN I
DRAFT EIR NO. ER-93-01, FOR MASTER PLAN AND
SPECIFIC PLAN I; SCH #9020776
MOUNTAIN HOUSE NEW COMMUNITY**

RECEIVED
JUL 15 1994
COMMUNITY DEVELOPMENT
PLANNING DIVISION

Ms. Kitty Walker
Planning Division
San Joaquin County
Community Development Department
1810 E. Hazelton Avenue
Stockton, CA 95205-6232

Dear Ms. Walker:

Chevron has received and reviewed the **DRAFT MASTER PLAN** and **SPECIFIC PLAN I** dated April 1994, submitted by letter dated April 26, 1994, and the **DRAFT EIR NO. ER-93-01 FOR THE MOUNTAIN HOUSE NEW COMMUNITY MASTER PLAN** and **SPECIFIC PLAN I** dated June 1994, submitted by letter dated June 10, 1994. Please recall that Chevron had previously responded by letters dated September 29, 1993 for the **NOTICE OF PREPARATION** to the DEIR, and November 23, 1992 to the Mountain House New Town General Plan Amendment Final Supplemental EIR (SCH # 90020776), with several concerns and observations regarding the safety and continued protection of both its buried 18-inch petroleum pipeline, and 6-inch petroleum products pipeline, copies attached for your reference.

Regarding the recently submitted **DRAFT MASTER PLAN** and **SPECIFIC PLAN I**, Chevron offers the following comments:

- (1) Please note that Figure 1.7 of the **Master Plan** does not indicate the location of Chevron's 6-inch petroleum products pipeline. This pipeline is located within a 10-foot wide easement on the north side of Byron Road, and south of the Southern Pacific Railroad property.
- (2) Chevron would like to comment that we are very pleased with Provision 6.9.1 on pages 6.10 and 6.11, Chapter 6, of the **Master Plan**. The Policies and Implementation procedures listed on these two pages are important in the protection of the underground pipelines and the general public.

Regarding the recently submitted **Draft EIR NO. ER-93-01**, we offer the following comments:

- (1) Figure 3.10, page 3-31, **Water and Wastewater Treatment Facilities**- We note that there are several proposed water pipeline routes within the Byron Road corridor between the site for the water treatment plant and the intake and pump station locations. We wish to advise you that should there be a future conflict between these proposed water pipelines and Chevron's existing 6-inch petroleum products pipeline and easement, and should the relocation of Chevron's facilities become necessary during

P133
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P133

development, that the cost and expense of such relocation would be the responsibility of the developer or water company.

(2) Figure 3.15, page 3-48, Mountain House Business Park, Conceptual Layout - We bring to your attention the existence of Chevron's 18-inch petroleum pipeline and associated easement which transits diagonally the southwest corner of the planned Business Park in a northwest to southeast direction. We note that the conceptual layout contains several features which appear to be buildings and forms of landscaping. Please be advised that State and Federal regulations together with the provisions of the easement itself do not allow the building of permanent structures, including buildings, within the boundaries of a pipeline easement. In addition, Chevron requires a minimum setback of 25 feet for any proposed structures from the edge of our easements. Chevron will allow, with our prior review and approval, certain types of paving and landscaping, with the exception of deep rooted trees or shrubs. All arrangements for review and approval of construction plans, as mentioned above need to be coordinated with our Chevron Pipe Line Office at 2360 Buchanan Road, Pittsburg, CA 94565, Attn: Mr. Gary Turner, Telephone: (510)680-3218.

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We thank you for the opportunity to review the Draft Master Plan, Specific Plan I and EIR, and look forward to continue working with your group throughout the development of this project. Please feel free to contact me at the letterhead address or call me at (510) 827-7873 should you have any questions.

Regards,


LARRY WHITEHEAD
LAND REPRESENTATIVE

WLW/wlw
Attachments

File: MunH117



September 29, 1993

Chevron U.S.A. Production Company
2360 Buchanan Road
Pittsburg, CA 94565
Fax 510 827 7334

**NOTICE OF PREPARATION
DRAFT ENVIRONMENTAL IMPACT REPORT
MOUNTAIN HOUSE NEW TOWN
MASTER PLAN MP-93-1; SPECIFIC PLAN #1 SP-93-1
GENERAL PLAN AMENDMENTS, TEXT AMENDMENTS and
ZONE RECLASSIFICATIONS
FILE NO. ER 93-2. SCH#: 90020776**

Ms. Kitty Walker
Planning Division
San Joaquin County
Community Development Department
1810 E. Hazelton Avenue
Stockton, CA 95205-6232

Dear Ms. Walker:

Chevron has received and reviewed the NOTICE OF PREPARATION dated September 1993 relating to the captioned Draft EIR for the Mountain House New Town proposed development. Please recall that Chevron had previously responded by letter dated November 23, 1992 to the Mountain House New Town General Plan Amendment Final Supplemental EIR (SCH # 90020776), dated January, 1993, with several concerns and observations regarding the safety and continued protection of both its buried 18-inch petroleum pipeline, and 6-inch petroleum products pipeline. Chevron's comments and concerns were subsequently addressed in the January 1993 Final Supplemental EIR. A copy of the November 1992 letter is attached hereto for reference as Exhibit "A".

We note that Figure 3, page 8, of the September 1993 NOTICE OF PREPARATION for Specific Plan #1 Areas indicates the Chevron/P.G.& E. easements for buried pipelines traverse a portion of the proposed Mountain House Business Park, located in the southeast corner of the development, which is to be zoned Limited Industrial. Figure 3 also indicates the pipeline easements pass in close proximity to the proposed Central Parkway at the point where the Parkway turns from a north/south to a west/east direction. Please be advised that Chevron continues to express the same concerns, and offers the same comments, including the review and approval of any construction and development plans, in relation to the development of the proposed Business Park and Central Parkway as was previously outlined in our November 23, 1992 letter.

September 29, 1993

Chevron's November 23, 1992 letter also addresses the fact that Chevron owns and operates a 6-inch buried petroleum products pipeline and associated 10-foot wide easement located along the northeast side of Byron Highway between Byron Highway and the Southern Pacific Railroad corridor. This pipeline traverses the entire Mountain House project site in a northwest to southeasterly direction. We note that Figure 3, page 8, of the September 1993 Notice of Preparation indicates the proposed location of a Water Treatment Plant site just northeast of the Southern Pacific Railroad with the intersection of Kelso Road, and a proposed Industrial and Public development area which appears to include a Waste Water Treatment Plant site located northeast of the Southern Pacific Railroad near the intersection of Henderson and Bethany Roads. Chevron wishes to advise both San Joaquin County, and any future developers on either side of and adjacent to the Byron Highway/S.P.R.R. corridor, including the proposed developments mentioned above, that any plans for utility crossings and/or future road crossings of Chevron's pipeline will need to be reviewed and approved by Chevron. Any pipeline relocation work necessitated by the development or future expansion of this project would be at the cost and expense of the developer or property owner. All arrangements for review and approval of construction plans, as mentioned above, need to be coordinated with our Chevron Pipe Line office at 2360 Buchanan Road, Pittsburg, CA 94565, Attn: Mr. Gary Turner, Telephone: (510) 680-3218.

Please be aware that in the northeast section of the Mountain House project site in the vicinity of the San Joaquin County and Alameda County line crossing of the Byron Highway/S.P.R.R. corridor, Chevron's pipeline and easement make a slight deviation from its parallel route along the corridor and traverses a small portion of land in the vicinity of Assessor's parcel No. 209-030-14. The above mentioned review and approval restrictions would also apply to this small section of pipeline. The attached Exhibit "B" indicates the approximate location of this section of pipeline.

We thank you for the opportunity to review the Notice of Preparation and look forward to continue working with your group throughout the development of this project. Please feel free to contact me at the letterhead address or call me at (510) 827-7873 should you have any questions.

Regards,

LARRY WHITEHEAD
LAND REPRESENTATIVE

WLW/wlw
Attachments

EXHIBIT "A"



Chevron U.S.A. Inc.
Western Land Division
2360 Buchanan Road, Pittsburg, CA 94565
Fax (415) 827-7334

November 23, 1992

**DRAFT SUPPLEMENTAL EIR
NO. ER-92-06
MOUNTAIN HOUSE NEW TOWN
GENERAL PLAN AMENDMENT**

Ms. Kitty Walker
Planning Division
San Joaquin County
Community Development Department
1810 E. Hazelton Avenue
Stockton, CA 95205-6232

NOV 23 1992
COMMUNITY DEVELOPMENT
PLANNING DIVISION

Dear Ms. Walker:

Thank you for giving Chevron the opportunity to review the Draft Supplemental EIR for the Mountain House New Town project. Chevron currently owns and operates an 18-inch buried crude oil pipeline which shares the same 30-foot wide easement as the PG&E 26-inch pipeline as identified and discussed in a previous letter dated January 30, 1992, from PG&E's Forrest R. Sullivan, copy attached. The January 30, 1992 letter which addresses the DEIR, mentions Chevron's involvement in the easement in comment numbers D104 and D105 of the letter.

We note that the first paragraph of page 4.4-31 of the Draft Supplemental EIR states that "An open space corridor has been proposed for portions of the 26-inch Stan Pac gas pipeline in the southern portion of the project site. However, a school site as well as industrial and freeway-service commercial areas are also proposed over this natural gas pipeline." Chevron, as the owner of a buried pipeline within the same PG&E easement, shares the same concerns as PG&E regarding future development that may impact our easement and pipelines.

D3 Chevron's pipelines are operated and maintained under Federal Regulations (D.O.T. 195) and State Regulations (California Pipeline Safety Act). It is important to note that the above regulations and provisions in the easements restrict any development within or in close proximity to the easement that would prohibit Chevron from proper access to the pipeline and easement in order to conduct routine maintenance and future construction projects. This restriction includes, but is not limited to, any permanent structures or deep rooted trees. Any proposed encroachment including additional or diminished ground cover over the pipeline would need to be reviewed for possible approval by Chevron. Any proposed construction and development plans that would impact our pipeline and easement must be reviewed and approved by Chevron. Any pipeline relocation work necessitated by the development or future expansion of this project would be at the cost and expense of the property owner.

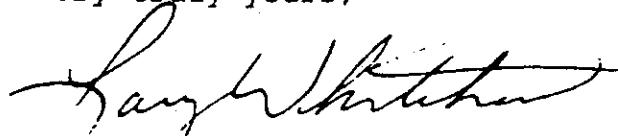
D3 All arrangements for review and approval of construction plans, as mentioned above, need to be coordinated with our Chevron Pipe Line office at 2360 Buchanan Rd., Pittsburg, CA 94565, Attn: Gary Turner, telephone (510) 680-3218.

Chevron strongly supports a position that providing for open space corridors for pipelines and public utilities is an excellent method for protecting the integrity of the pipelines, and at the same time, provides a safety factor for the efficient operation of the pipelines.

Chevron also owns and operates a 6-inch buried petroleum products pipeline and associated 10-foot wide easement located along the northeast side of Byron Road between Byron Road and the Southern Pacific Railroad. The location of this pipeline within this transportation corridor should not be affected by future development of the Mountain House project unless Byron Road is widened in the future.

We thank you for the opportunity to review the Draft Supplemental EIR, and look forward to working with your group throughout the development process of this project. Please feel free to contact me at our Pittsburg office address or call me at (510) 827-7873 if you have any questions. Please use me as your Chevron contact for future correspondence or supplemental EIR's.

Very truly yours,



Larry Whitehead
Land Representative

WLW/tdh

cc: Mr. William Van Heusen
PGT-P.G.&E.

EXHIBIT "B"

120+00

location where we cross
from south side to north side

SAN JOAQUIN CO.
ALAMEDA CO.

M.P. 2
105+60

P. 116+34

118+30 4'16" Conc. Culvert

9200

SOUTHERN PACIFIC R.R.

BYRON HWY

Rd. 116+01

10' R/W

**Comments of
Plumbers and Steamfitters
U.A. Locals 492, 342 and 159**

on the

**Draft Environmental Impact Report
for the
Mountain House Master Plan
and Specific Plan I
(SCH # 90020776)**

Prepared by:

**Daniel L. Cardozo
Adams & Broadwell
651 Gateway Boulevard
Suite 900
South San Francisco, CA 94080
415/589-1660**

**Karen Weissman, Ph.D.
Thomas Reid Associates
505 Hamilton Avenue
Suite 201
Palo Alto, CA 94301
415/327-0429**

July 21, 1994

THOMAS R. ADAMS
ANN BROADWELL
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SOUTH SAN FRANCISCO, CA 94080



OF COUNSEL
CARL L. MCCONNELL
BYRON MELLBERG
PACKARD, MELLBERG
& MCCONNELL

FACSIMILE
(415) 589-5062

July 21, 1994

RECEIVED
JUL 22 1994

COMMUNITY DEVELOPMENT DEPT.
PLANNING DIVISION

VIA FEDERAL EXPRESS

Ms. Kitty Walker
Senior Planner
San Joaquin County Planning Division
San Joaquin County Community Development Department
1810 E. Hazleton Avenue
Stockton, California 95205-6232

Re: Comments on the Draft Environmental Impact Report for
the Mountain House Master Plan and Specific Plan I,
SCH # 90020776

Dear Ms. Walker:

I am writing on behalf of Plumbers and Steamfitters Local 492, which represents members who live and work in San Joaquin County, and Locals 342 and 159, whose members live in Contra Costa County. The purpose of this letter is to comment on the Draft Environmental Impact Report prepared for the Mountain House Master Plan and Specific Plan I.

We have actively participated in the environmental review proceedings conducted by the County with regard to the Mountain House project. We submitted 50 pages of comments on the Draft EIR prepared on the General Plan Amendment for the project, submitted written testimony to the Planning Commission regarding the Final EIR and General Plan Amendment, and submitted comments on the Draft Supplemental EIR.

At the request of Locals 492, 342, and 159, we have undertaken a review of the Mountain House Master Plan and Specific Plan I Draft Environmental Impact Report ("Draft EIR") recently completed for San Joaquin County ("County"). The Draft EIR needs further work before it can be certified as consistent

Ms. Kitty Walker
July 21, 1994
Page 2

with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq. CEQA requires that a significantly revised environmental document be recirculated.

This letter examines the analysis presented in the Draft EIR in relation to the legal standards and requirements of CEQA. The attached letter prepared by Dr. Karen Weissman of Thomas Reid Associates, an environmental planning and consulting firm specializing in environmental impact analysis, evaluates the Draft EIR's analysis of the technical and substantive issues raised by the proposed project. Thomas Reid Associates has prepared over 250 environmental documents on a variety of projects including major industrial, residential and commercial projects.

As local residents, our clients' members will be affected by the air quality, traffic, public service and other environmental and health and safety impacts of the Mountain House project. Locals 492, 342, and 159 and their members have a direct interest in ensuring that such impacts are thoroughly considered and addressed.

We live in an era in which growth and development are limited by natural systems, inadequate public services and infrastructure, regulatory restrictions and political pressures. Although Locals 492, 342, and 159 generally support responsible development, the organized construction trades are increasingly concerned that poor planning and environmental degradation are jeopardizing future construction jobs by undermining opportunities for sustainable growth. For this reason, Locals 492, 342, and 159 also believe it important that proposed development projects, particularly projects of this magnitude, be carefully planned and environmentally responsible.

The Draft EIR prepared for San Joaquin County on the Mountain House Master Plan and Specific Plan I project falls far short of the legal requirements for an adequate environmental review under CEQA. As discussed in detail in the comments that follow, the Draft EIR fails to include a clear and complete description of the project, fails to adequately address the potential direct, indirect and cumulative impacts of the project and fails to properly identify and evaluate mitigation measures and alternatives necessary to avoid or lessen the significance of potential impacts.

These deficiencies in the analysis result in a document that fails to comply with the informational objectives of CEQA. The significant additional information and analysis that must be

P135

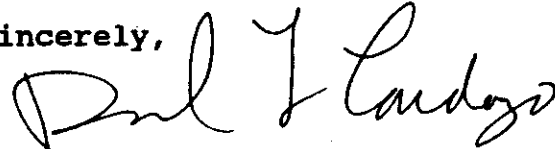
Ms. Kitty Walker
July 21, 1994
Page 3

added to the document to conform to CEQA requirements and to respond to these comments will require recirculation of a new Draft EIR.

P135

Locals 492, 342, and 159 wish to thank San Joaquin County for this opportunity to comment on the Draft EIR.

Sincerely,



Daniel L. Cardozo

DLC:bh
Enclosures

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APPENDIX: REPORT FROM THOMAS REID ASSOCIATES ON THE DRAFT EIR FOR THE MOUNTAIN HOUSE MASTER PLAN AND SPECIFIC PLAN I

I. INTRODUCTION

The Draft Environmental Impact Report ("Draft EIR" or "DEIR") prepared by San Joaquin County on the Mountain House Master Plan and Specific Plan I falls far short of the legal requirements for an adequate environmental review under the California Environmental Quality Act ("CEQA"). As discussed in detail in the comments that follow, the Draft EIR fails to include an accurate and complete description of the project, fails to adequately address the potential direct, indirect and cumulative impacts of the project and fails to properly identify and evaluate mitigation measures and alternatives necessary to avoid or lessen the significance of potential impacts.

These deficiencies in the analysis result in a document which as a whole fails to comply with the informational objectives of CEQA. The significant additional information and analysis that must be added to the document to conform to CEQA requirements and to respond to these comments will require recirculation of a new Draft EIR.

In examining the adequacy of the Draft EIR, it is important to note that the document may have been prepared as a Master EIR which could be the final public environmental review document for all actions and entitlements described as within the Master EIR. The selection of the Master EIR approach is critical in determining the scope required of the environmental evaluation, as well as the level of specificity, detail and resolution of issues required in the analysis.

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CEQA authorizes an agency to employ a "tiering" approach to environmental analysis of a series of related actions. (14 C.C.R. § 15152.) Tiering "allows agencies to deal with broad environmental issues in EIRs at planning stages and then to provide more detailed examination of specific effects in EIRs on later development projects that are consistent with or implement the plans." (See Discussion following 14 C.C.R. § 15385.)

A "project" EIR is the most common type of EIR and examines the environmental impacts of a specific development project. (14 C.C.R. § 15161.) A project EIR must "examine all phases of the project including planning, construction, and operation." (*Ibid.*) It is intended to serve as the final environmental analysis of the project, and must provide sufficient information to permit the lead agency to adopt specific mitigation measures or alternatives necessary to lessen or avoid the impacts associated with implementation and operation of the project.

A "Master" EIR can analyze the effects of subsequent development activities or projects that follow the approval of a general plan or a specific plan. By using a Master EIR for such projects, an agency can reduce or eliminate subsequent

environmental review for those future development approvals that the Master EIR anticipates, such as use permits and tentative map approvals. (Pub. Resources Code, § 21157.1.)

The Draft EIR states that it "may" be a Master EIR. (DEIR, p. 1-5). If so, it would eliminate subsequent environmental review for the elements described as within the DEIR, unless substantial changes in the project or new information require the preparation of a subsequent or supplemental EIR under CEQA Guidelines section 15162 (14 C.C.R. § 15162). The Draft EIR's own uncertainty as to what type of EIR it is and what project it is intended to address creates a dilemma for reviewers of this document, who cannot know, based on the information provided, what, if any, environmental review will follow, and what, if any, additional permits and entitlements are being addressed now.

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II. THE PROJECT DESCRIPTION IS AMBIGUOUS AND INCOMPLETE

The definition of the project under review in an EIR is critically important since it informs the public and government decision-makers of the nature of the proposed activity and determines the scope and content of the analysis that follows. In this case, the activities intended to be covered by the project definition are not clearly identified, and the project components discussed are not adequately or completely described. This defective project description undermines the environmental evaluation.

The courts have declared that "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App. 3d 185, 193, [139 Cal.Rptr. 396, 401]; see also *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438 [263 Cal.Rptr. 340], *Rural Land Owners Association v. Lodi City Council* (1983) 143 Cal.App.3d 1013, 1024-1025 [192 Cal.Rptr. 325, 332-333] and *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829-830 [173 Cal.Rptr. 602, 608].)

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The CEQA Guidelines also require that a project definition include: "the whole of the action, which has a potential for resulting in a physical change in the environment, directly or ultimately. . . ." (14 C.C.R. § 15037, subd. (a); See *City of Santee v. County of San Diego*, *supra*, 214 Cal.App.3d at pp. 1450-1455 and *Rural Landowners Association v. Lodi City Council*, *supra*, 143 Cal.App.3d at p. 1025.)

The policy behind the requirement for a clear, accurate and complete project definition was cogently stated in *County of Inyo v. City of Los Angeles*, *supra*, 71 Cal.App.3d at p. 193: "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 (i.e., the 'no project' alternative) and weigh other alternatives in the balance." (See also *City of Santee v. County of San Diego*, supra, 214 Cal.App.3d at pp. 1450-1455.)

The project at issue in *County of Inyo* was a proposed increase in groundwater pumping from the Owens Valley aquifer for export to Los Angeles. (*County of Inyo v. City of Los Angeles*, supra, 71 Cal.App.3d at pp. 194-195.) The City's EIR, however, initially described the project to include only the pumping of additional groundwater for use on City-owned lands in Inyo and Mono Counties, although later sections of the report considered the groundwater pumping as part of the city's larger water supply system. (*Id.*, at pp. 190-191.).

The court concluded that the ambiguous project definition frustrated the public informational goals of CEQA and undermined the ability of the public and government agencies to present meaningful comments on the Draft EIR. The court found that "[t]he incessant shifts among different project descriptions . . . vitiates the City's EIR process as a vehicle for intelligent public participation." (*County of Inyo v. City of Los Angeles*, supra, 71 Cal.App.3d at p. 197.) The court added that "[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*Id.*, at 198.)

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In *Santiago County Water District v. County of Orange*, supra, 118 Cal.App. 3d 818, the court considered a challenge to an EIR on a proposed sand and gravel mining operation. Although the sand and gravel mining project would require service by new off-site water supply facilities, the EIR had not included the construction of additional water facilities in the project description.

The *Santiago* court concluded that the inaccurate project definition rendered the EIR invalid since not all significant environmental effects had been considered. The court noted that "[t]he construction of additional water delivery facilities is undoubtedly one of the significant environmental effects of the project." (*Santiago County Water District v. County of Orange*, supra, 118 Cal.App. 3d at p. 829).

The court also concluded that the exclusion of the water facilities from the project description misled the public and government decision-makers regarding the full scope of the proposal: "Because of this omission, some important ramifications of the proposed project remained hidden from view at the time the project was being discussed and approved. This

frustrates one of the core goals of CEQA." (*Santiago County Water District v. County of Orange, supra*, 118 Cal.App. 3d at p. 830.)

In *Rural Land Owners Association v. Lodi City Council, supra*, 143 Cal.App. 3d 1013, the city considered a general plan amendment necessary to allow development on certain agricultural lands within the City's sphere of influence. However, the EIR described the project to include only the general plan amendment, and excluded the proposed annexation and development of the property as unrelated projects. (*Id.* at p. 1021.)

The court held that the City's restricted project definition defeated CEQA's mandate for public disclosure and full consideration of project impacts. (*Rural Land Owners Association v. Lodi City Council, supra*, 143 Cal.App.3d at pp. 1024-1025.) The court declared that "[r]esponsibility for a project cannot be avoided by limiting the title or description of the project." (*Id.* at pp. 1022-1023.)

The CEQA Guidelines provide that the EIR must include, *inter alia*, a statement briefly describing the intended uses of the EIR, a list of the agencies that are expected to use the EIR in their decisionmaking, and a list of approvals for which the EIR will be used. 14 C.C.R. § 15124(c) and (d). The DEIR fails on all of these counts, and therefore does not meet the project description requirements of CEQA.

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The initial problem with the Mountainhouse project definition is the ambiguous description of the actions covered by the EIR. The Draft EIR states that it, together with certain enumerated prior EIRs, "may meet the requirements for a "Master Environmental Impact Report" in accordance with the terms of CEQA. (DEIR, p. 1-1, emphasis added.) This is vague, and doesn't sufficiently inform the reader of the intended uses of the DEIR. The DEIR states that, "Preparation of this DEIR in accordance with CEQA provisions for a "Master EIR" and other CEQA provisions for successive environmental review, may affect the type of environmental review that will be required at future stages of the approval process." (DEIR, p. 1-2, emphasis added).

If the DEIR is intended to be a Master EIR, it must satisfy CEQA requirements for a full disclosure of environmental impacts of all development approvals described as within the Master EIR. Accordingly, the Master EIR must clearly delineate exactly what development approvals are addressed, describe such development approvals in detail, and adequately review their impacts. The DEIR fails to do so. To the extent that there is an attempt to use this DEIR as a Master EIR, the DEIR does not describe the anticipated subsequent projects adequately.

A Master EIR is required to include a detailed description of anticipated subsequent projects that "would be within the scope of the master environmental impact report." (Pub. Resources Code, § 21157, subd.(b)(2).) The description must include "sufficient information regarding the size, intensity, and location of the subsequent projects, including, but not limited to, all of the following: the specific type of anticipated subsequent projects; the maximum and minimum intensity of such projects; the anticipated location and alternative locations for any development projects; and a capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects. (Pub. Resources Code § 21157, subd.(b)(2).) The Master EIR must also include "a description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the [Master EIR]." (Pub. Resources Code, § 21157, subd.(b)(3).) Thus, a Master EIR must describe each anticipated subsequent project with considerable specificity and detail.

The DEIR, page 1-3, states that the DEIR evaluates the Master Plan, the Specific Plan, "General Plan Amendments and related Development Title Text Amendments and Rezoning Reclassification applications." The DEIR states elsewhere that it also covers the Development Agreement (pp. 1-4, 3-9), although the provisions of the Development Agreement are not set forth nor adequately described anywhere in the DEIR. To the extent that the DEIR is a Master EIR intended to cover these elements of the project, it has not adequately described these elements or addressed their impacts.

Tentative subdivision maps and use permits (p. 1-5) are apparently intended to be left for future environmental review, although this is called into question by text on page 3-11 of the DEIR, which provides as follows: "The Development Agreement would incorporate the specific infrastructure improvements and other mitigation programs that the applicant would be required to construct or establish as the conditions of approval of the project." If the DEIR is intended to address the environmental impacts of the Development Agreement, and the Development Agreement includes infrastructure improvements, then these improvements must be addressed in detail in this DEIR. The DEIR also lists 29 additional permits required for the project from 23 different governmental agencies without stating which, if any, of these permits are intended to be addressed by this DEIR (DEIR, Table 3.10, pp. 3-37 to 39). If this DEIR is intended to serve as the environmental review for any of these permits, then they must be described in detail in this DEIR.

To the extent that infrastructure improvements are covered by the Development Agreement, which this DEIR claims to address, a tentative subdivision map application would typically include,

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inter alia, topographical information showing elevations and contours, location and size of all pipelines, existing irrigation and drainage facilities, irrigation and drainage patterns, location and character of existing or proposed utilities, width, location and purpose of existing or proposed easements, location of all trees proposed to remain, and soil and geologic reports. The DEIR does not describe this information relative to proposed infrastructure improvements covered by the Development Agreement.

A Development Agreement may specify the density or intensity of uses permitted for the project, the provisions for reservation or dedication of land for public purposes, the timing and phasing of development, provisions for affordable housing and so forth. (Gov. Code § 65865.2) Development Agreements address infrastructure improvements and phasing in detail. The nature and substance of these provisions would be significant in assessing potential impacts, mitigation measures and project alternatives. The DEIR does not describe these provisions or assess their impacts, even though the DEIR's project description claims to address the Development Agreement.

The other approvals and entitlements necessary for the development that are intended to be addressed by this DEIR must also be clearly set forth. The nature, timing and standards relevant to each of these approvals must be described.

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The DEIR states that tentative maps and use permits would be subject to environmental review, but that CEQA and the Government Code provide exemptions from CEQA review if a residential development project were consistent with a specific plan for which an EIR had been certified after 1980. (DEIR, p. 1-5). In making this statement, the DEIR apparently relies on 14 C.C.R. § 15182 and Government Code § 65457. There are several problems with the DEIR's apparent reliance on these sections.

First, both sections apply only to a "residential project" undertaken pursuant to and in conformity with a specific plan which has been the subject of an EIR. These sections clearly would not apply to a new town, the first phase of which is development under the Mountain House Specific Plan I, which includes 94.5 acres of commercial and 211 acres of industrial development, as well as schools, a town center and other civic buildings, park construction and construction of major public service infrastructure both on and off-site.

Second, section 15182 does not exempt from environmental review potential impacts of projects that were not addressed in the Specific Plan EIR. As discussed in detail in these comments, the Draft EIR fails to adequately identify and address a wide array of potential impacts associated with the development of the project.

Finally, it is clear that under section 15182 subsequent environmental review will be required at the development plan stage in this case. Since the DEIR has failed to describe the development project or adequately consider development-level impacts, the development plan will by definition constitute new information regarding potentially significant impacts that was not available at the specific plan stage. (See 14 C.C.R. §§ 15182 and 15162.)

DEIR pages 3-9 and 3-11 appear to include the Development Agreement within the DEIR. ("Trimark Communities has requested that a Development Agreement be reviewed and adopted by the County as a part of the overall approval of the Draft Master Plan and Specific Plan I", p. 3-11). It is unclear whether the Draft EIR is intended to serve as the environmental documentation for the other approvals that are necessary for the project. If so, is the Draft EIR intended to address the other approvals for the Mountain House project as a whole, or only for Specific Plan I?

Even more troubling is the lack of information provided on Specific Plan I. At a minimum, a Specific Plan must specify in detail the distribution, location and extent of proposed land uses, the distribution, location, extent and intensity of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other facilities necessary to support the proposed land uses, the standards and criteria by which development will proceed, standards for the conservation, development and utilization of natural resources, a program of implementation measures, including regulations, programs, public works projects and financing measures necessary to carry out the project, and a statement of the relationship of the Specific Plan to the General Plan. (Gov. Code § 65451.)

The DEIR describes the Specific Plan in general terms. (DEIR, pp. 3-35, 3-43, 3-49). The report fails to provide a detailed description of the proposed Specific Plan elements, the policies, standards and criteria proposed to govern development, or the regulations, programs and financing plan proposed to implement and carry out the project.

It is not permissible to describe the project by reference to other documents, even if such documents are available for public review. Although an EIR may incorporate information by reference, this device is appropriate only for background material and does not apply to materials that "contribute directly to the analysis at hand." (14 C.C.R. § 15150, subd. (f).) An accurate and complete description of the project is an essential component of an adequate EIR and must be included in the document itself. Without more information on the Specific Plan included in the EIR, it is impossible for reviewers of the document to conduct a meaningful evaluation of the potential

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impacts of plan implementation, or to assess the feasibility and effectiveness of recommended mitigation measures.

We have identified the elements that should be included in a description of the project in some detail in order to illustrate the serious deficiency in the project description included in the Draft EIR.

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The potential impacts of the construction and implementation of the project cannot be adequately assessed without more information regarding the project. Additional information regarding the Specific Plan and the specific subsequent approvals that are intended to be addressed by this DEIR, and information contained in the Development Agreement, is essential in order to identify development impacts and evaluate mitigation measures and alternatives.

III. THE DEIR DOES NOT PROVIDE COMPLETE INFORMATION

A. Delaying Discussion of Mitigation Measures and Possible Project Modifications to a Future Study or Subsequent Approval Stage Directly Conflicts With the Requirements of CEQA

The basic purpose of an EIR is to educate the public and the decision makers, in this case the County of San Joaquin, about all of the significant environmental impacts of the project. As one court recently stated, "[a]n adequate EIR must be "prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences." (14 C.C.R. § 15151.) (*Kings County Farm Bureau v. City of Hanford* (Fifth District, 1990) 221 Cal. App. 3d 692.

In order to fulfill its role as an educational tool, an EIR must be complete in order to be certified. The dangers of going forward without a complete EIR are clear. For example, in *Sundstrom v. County of Mendocino*, (First District, 1988) 202 Cal.App. 3d 296, the County of Mendocino adopted a negative declaration for a proposed sewage treatment plant. The applicant had not conducted a hydrological study to study soil stability, erosion, sediment transport, and flooding of downslope properties. Instead of requiring the applicant to prepare the study, so that the County could take its results into account in the environmental review and the permit process for the sewage treatment plant, the County added a condition to the use permit which required (i) that the applicant conduct a hydrological study at a later date, subject to review and approval by the County Planning Commission, and (ii) that "mitigation measures recommended by the study shall be incorporated as requirements of [the] use permit." *Sundstrom, supra*, 202 Cal. App. 3d at 302.

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When the County was sued, the court invalidated all of the approvals for the project on several grounds. The ground that is most relevant here is that the hydrological study, and mitigation measures connected with the study, were postponed until after the environmental document was adopted. The court held that delaying a discussion of actual mitigation measures and possible project modifications to a future study or subsequent approval stage directly conflicts with the requirements of CEQA. The court found that the County had approved the project prematurely, before all the necessary studies had been completed, and could not have known all of the environmental impacts. The project's negative declaration was therefore found to be incomplete and invalid.

The Mountain House DEIR is fatally flawed because throughout it defers to future study and review critical environmental considerations concerning the scope, feasibility and impact of the project. These matters need to be fully analyzed at the outset if the EIR is to function as an information document upon which to base project decisions. To rely on subsequently developed materials, studies, and plans to determine the project's effects and the mitigation measures necessary undermines the very purpose of CEQA and leads to "the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Id.* at 307.)

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In many instances, the Draft EIR recommends that performance of mitigation measures providing for further studies and plans be deferred until the time of application for future permits. For example, the DEIR states, at page 3-21, that, "Parks and open spaces would be developed at the site in accordance with a Parks and Open Space Plan to be approved prior to submittal of the first Development Permit." (emphasis added). This entry appears with a footnote, which is also repeated at numerous points throughout the Draft EIR, that states, "A development permit may be either discretionary or ministerial. Discretionary permits include tentative subdivision maps, use permits, and variances. Ministerial permits include final subdivision maps, encroachment permits, grading permits, and building permits. The first Development permit to be submitted for development of any area within the community would not be approved until the various required plans and programs had been submitted." (DEIR, p. 3-21). However, CEQA mandates that plans and programs with Master Plan and Specific Plan - level impacts cannot be deferred to the next development permit. To the extent that these plans and programs are either a part of or a consequence of the Development Agreement, the Specific Plan, the Master Plan, or the Rezoning, the DEIR has not addressed them with the required specificity.

In this instance, the County is being asked to permit the transformation of prime agricultural land into a mix of urban uses without knowing, for example, the specific impact on and

availability of replacement lands for existing wetlands, the feasibility of the proposed wastewater treatment facility, the adequacy of the water supply for residential consumption, the mitigation for loss of habitats of several protected species, and the potential costs of soil remediation on obtaining financing for the project. Decisions regarding such issues will crucially affect whether the project can go forward and at what scale.

The failure to analyze adequately such concerns as part of the Draft EIR is especially troublesome because the Draft EIR unequivocally concludes with respect to other critical issues that the proposed project will have unavoidable impacts of major consequence, which cannot be mitigated to a level of insignificance. These unavoidable adverse impacts include the loss of 3,600 acres of prime agricultural land, an outcome which also conflicts with the County's General Plan policy of discouraging the premature and unnecessary conversion of prime agricultural land, and unmitigable consequences for traffic and air quality as a result of a projected 249,000 additional daily vehicle trips generated by the project at build-out. Throughout all phases of the project, automobile usage will contribute significantly to existing and projected Level of Service (LOS) traffic deficiencies on roads and highways and to increased emissions of criteria pollutants that will further exacerbate air quality in the San Joaquin Central Valley and the Bay Area basins. Other unavoidable significant impacts acknowledged in the DEIR include potential hazards from seismic activities.

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The studies, plans and assessments called for but not undertaken as part of this Draft EIR may well reveal that there are additional unavoidable significant impacts. At the very least, they will indicate the extent and cost of the mitigation necessary to reduce adverse environmental consequences. Such additional information is critical to determining whether, on balance, the potential benefits of the proposed project outweigh the negative effects on the environment.

B. The Draft EIR Fails to Address the Issues that the Prior EIR for the General Plan Amendment Indicated Would be Resolved Prior to Adoption of a Specific Plan

In responding to Local 492's extensive comments on the 1992 Draft EIR for the Mountain House New Town General Plan Amendment, the Final EIR indicated that the following issues would be examined and resolved prior to adoption of a Specific Plan:

- * Wastewater management, including collection, treatment, and disposal and the availability of on-site and off-site lands for use of reclaimed wastewater;
- * Sewage sludge management and disposal;

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* Determination of the presence of the San Joaquin kit fox and other protected species through additional site surveys and development of mitigation measures for the protection of such species;

* Identification of potentially contaminated areas of the site and development of a remediation plan;

* Geotechnical studies, including development of an erosion and sediment control plan and the identification of appropriate foundations and pavement subgrade treatment;

* Public service plan for the project;

* Stormwater management, including disposal, treatment and system design;

* Water supply, including demonstration of a reliable year-round supply and adequate water treatment capability, and an agreement protecting the Byron-Bethany Irrigation District and its customers from economic loss and water interruption; and

* Refined jobs/housing analysis, including housing costs and salary characteristics of on-site workers, and the proportion and number of housing units in each phase that should be affordable.

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We highlighted these items in our letter to the Planning Commission dated April 8, 1994 regarding the Mountain House New Town Final General Plan Amendment Final EIR, and called the attention of the Planning Commission to the fact that the Final EIR indicated that these issues would be resolved prior to adoption of the Specific Plan.

The danger in a "tiered" environmental review is that the first EIR will defer a detailed analysis to later stages only to find the later environmental documents referring back to the earlier documents or to future studies, with no meaningful analysis ever being prepared.

In its examination of virtually all of the issues listed above, the DEIR has again put off review pending completion of plans, studies, and assessments, or examined the issue only briefly and not with the specificity required by CEQA, despite the assurances in the Final EIR that these issues would be resolved prior to adoption of the Specific Plan stage. The DEIR has also deferred study of a number of additional issues with Master Plan and Specific Plan - level impacts, which need to be addressed in this DEIR.

In addition to the above described items which have been impermissibly delayed, we have identified the following

additional studies, plans, and mitigations that the Draft EIR has required to be prepared in the future. *Sundstrom v. County of Mendocino* requires these studies, plans, and mitigations to be completed as part of the environmental review undertaken by this DEIR, so that they can be considered by the County and the public prior to certification of the EIR and adoption of the Master Plan and the Specific Plan.

1. Emergency preparedness plan. (DEIR, p. 3-18). (Delay violates Final Supplemental EIR mitigation measure 4.12-9).
2. Wildlife management plan. (DEIR, p. 3-18).
3. Hazardous materials management plan for materials used at the water and wastewater treatment plants. (DEIR, p. 3-18). (Delay violates Final Supplemental EIR mitigation measures 4.4.1-7(a) and 4.4.2-4(a).)
4. Site assessment for fuel and natural gas subsurface lines. (DEIR, p. 3-18). (Delay violates Final Supplemental EIR mitigation measure 4.12-1(d).)
5. Site assessment regarding chemical residue from pesticides and herbicides used in farming. (DEIR, p. 3-20).
6. Identification of drainage canals. (DEIR, p. 3-20).
7. Assessment of surface water and groundwater impacts of runoff of dairy waste. (DEIR, p. 3-20).
8. Soil investigation regarding geologic, seismic, and other hazards. (DEIR, p. 3-20).
9. Evaluation of electric and magnetic field studies, and establishment of setbacks for residential uses if studies indicate that it is necessary. (DEIR, p. 3-21).
10. Parks and Open Space plan. (DEIR, p. 3-21).
11. Habitat and maintenance plan for the existing levee and riparian area along Old River. (DEIR, p. 3-22).
12. Special status species survey, and enhancement of on-site habitat value. (DEIR, p. 3-24).
13. Tree surveys. (DEIR, p. 3-24).
14. Wetlands management plan. (DEIR, p. 3-24).
15. Transportation Demand Management plan. (DEIR, p. 3-30).

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16. Noise studies. (DEIR, p. 3-30). (Delay violates Final Supplemental EIR mitigation measures 4.16-1(c) and (e).)
17. Water treatment plant sludge management program. (DEIR, p. 3-32). (Delay violates Final EIR response D168.)
18. No landfill contract has been executed, relative to sludge disposal. (DEIR, p. 3-32). (Delay violates Final EIR response D168).
19. Lands for wastewater reclamation have not been shown to be under the control of the applicant. (DEIR, p. 3-33).
20. Stream bed alterations and riparian vegetation proposals. (DEIR, pp. 3-33 and 4.7-11).
21. Design and performance criteria for stormwater detention ponds. (DEIR, p. 3-33).
22. Best Management Plans to protect storm water conveyance facilities from erosion. (DEIR, p. 3-35).
23. School facilities plan covering funding, planning, design, approvals, construction, and interim facilities. (DEIR, p. 4.3-8)
24. Study to determine soil liquefaction potential. (DEIR, p. 4.3-15).
25. Fire and Emergency Protection Plan. (DEIR, p. 4.3-19).
26. Institutional and funding arrangements for police services. (DEIR, p. 4.3-22).
27. Hazardous materials management plan. (DEIR, p. 4.3-24).
28. Contingency water supply plan, in the event of restrictions on diversion of fresh water from the Delta. (DEIR, p. 4.4-6).
29. Site assessment for hazardous materials, study of effects to future residents, and assessment of current and past land uses that could have been a source of release; mapping of underground fuel pipelines; mapping of abandoned gas wells; and assessment of public safety impacts of open canals. (DEIR, pp. 3-40 and 4.10-3).
30. Study of impacts of proposed marina on biotic resources, and appropriate mitigation. (DEIR, p. 2-46, mitigation measure M4.11-7(d)).
31. Water storage assumptions and plans. (DEIR, p. 4.4-6).

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32. Plan for constructing or modifying facilities to maintain irrigation water and drainage services to land within the project site that has not been or is not planned for immediate development and a schedule for constructing these facilities. (DEIR, p. 4.4-8).

33. Water conservation plan. (DEIR, p. 4.4-11).

34. Assessment of water sludge treatment and drying needs. (DEIR, p. 4.4-14).

35. Selection of chemicals for wastewater treatment plants to minimize hazards. (DEIR, p. 4.4-14).

36. Calculations, including assumptions and process loading parameters, to support the determination of land necessary for raw water storage, different water treatment processes, treated water storage, sludge disposal, and support facilities. (DEIR, p. 4.4-15).

37. Habitat protection plan for *Mason's lilaeopsis*. (DEIR, p. 4.11-40).

38. Wastewater reclamation plan to ensure no physical adverse effects on crop production, public health, groundwater, or surface waterways as result of agricultural irrigation with reclaimed wastewater. (DEIR, p. 2-15).

All of these plans and studies need to be completed now, and the results included in a revised DEIR that is recirculated for public review and comment. Otherwise, there will not be sufficient information regarding the environmental impacts of the project to allow certification of the EIR.

The following provides more detailed analysis of some of the issues that have been deferred for future study, in violation of CEQA requirements.

1. Public Services

With respect to the availability of public services, a Park and Open Space Plan has not been prepared for the Master Plan, and a conceptual park plan has not been prepared for the Specific plan. (DEIR, pp. 4.3-3 to 6). Regional Park facilities proposed for the new community would not be adequate to serve residents of the project or to meet County General Plan standards. *Id.* Specific Plan I does not provide regional park land in accordance with the requirements of the County General Plan. *Id.*

The DEIR fails to specify and analyze funding for school busing and high school construction, even though it recognizes that existing and proposed schools may be insufficient (DEIR, p.

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4.3-8 and 4.3-15); fails to specify arrangements for providing fire protection (DEIR, p. 4.3-18 to 20), police services and crime protection (DEIR, p. 4.3-22) and programs for the reduction of solid waste (DEIR, p. 4.3-24 to 25). These are all project-wide impacts that need to be addressed in this DEIR, and not deferred to future stages of the project.

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2. Public Utilities

A similar, equally uninformative approach is taken with respect to the availability of necessary public utilities. A particularly vexing issue concerns the uncertainty surrounding the steps to be taken to establish a reliable water supply (DEIR, pp. 4.4-3 to 4.4-11). Matters such as the proposed annexation of parts of the project site to the Byron-Bethany Irrigation District and the design of a water treatment plant are left unresolved to be undertaken as mitigation measures by the applicant at a future time. Development outside of BBID boundaries would require an alternative source of water. This includes all of the land north of Byron Road, the parcels in the southwestern corner of the site, and the land within the Plain View Irrigation District.

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Objections by neighboring landowners could prevent annexation to BBID. Even if annexation to BBID could be accomplished, the available water supply from BBID is less than the project demand (DEIR, p. 4.4-8), and BBID's water rights may be diminished by future federal and state regulatory actions curtailing diversion of fresh water from the Delta. (DEIR, p. 4.4-6). There is no contingency plan to supply water to the project, and inadequate raw water storage facilities have been proposed. (DEIR, p. 4.4-5 to 6).

Provisions for wastewater treatment (DEIR, pp. 4.4-18 to 27) are handled in essentially the same fashion. Without some certainty as to the sufficiency of the water supply and the provision of wastewater treatment, Mountain House cannot be developed as a new community. Note that the proposed construction of wastewater storage ponds on Fabian Tract, which is located within the "primary zone" of the Delta, may be inconsistent with the Sacramento-San Joaquin Delta Protection Act, because construction would result in the loss of agricultural lands and wildlife habitat, and degradation of Pacific flyway habitat. (DEIR, p. 4.1-16). In addition, several landowners on Fabian Tract have protested the plan to irrigate non-food crops with treated effluent. (*Id.*). If the Delta Protection Act prevents use of the Fabian Tract lands for storage ponds, the Draft EIR recommends, as a mitigation measure, the use of an alternate location in Alameda County. (DEIR, p. 4.1-17). The DEIR fails to identify the location or examine the feasibility of using the alternate location if necessary, which

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appears likely. Therefore, there is no way to know whether the proposed wastewater system is a viable one.

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3. Geotechnical Studies

The geological and geotechnical section of the Draft EIR explicitly defers to subsequent studies a detailed investigation of on-site soils, the feasibility and costs of levee reconstruction, and an examination of areas susceptible to liquefaction (DEIR, pp. 3-20 and 4.6-6 to 8). Each of these studies could well result in substantial changes in the land uses for the project site as proposed. They are not matters which can be deferred to a later stage but are directly pertinent to the Master Plan and Specific Plan I.

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4. Public Health Hazards

Equally disturbing is the Draft EIR's failure to identify and analyze environmental public health hazards on the project site. For example, the DEIR indicates that an assessment of the presence of hazardous chemical residues from pesticide and herbicide use, effects to future residents, and other past and current land uses that could have been a source of release should be completed prior to submittal of the next development permit. (DEIR, p. 4.10-3). Given the longstanding agricultural use of the property and the prior EIR's conclusion that the "costs of remediation of contaminated soils could have significant impacts on financing plans, which should be addressed in the Specific Plan" (December 1991 DEIR for Mountain House New Town General Plan Amendment, p. 4.12-10), the decision to delay the appropriate environmental analysis leaves an important void in information.

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5. Biological Resources

With respect to the analysis of biological resources, the DEIR fails to adequately address mitigation measures to protect the habitat of the San Joaquin kit fox, a state-listed threatened and federal-listed endangered species (described in detail below), as well as the habitat of Swainson's hawk, a state-listed threatened species (DEIR, p. 4.11). The DEIR has only a cursory discussion of wetland issues, which indicates that the Master Plan provides inadequate setbacks from wetlands, and inadequate coordination with governmental agencies. (DEIR, p. 4.11-45). The mitigation requirements of the governmental agencies are unknown. (DEIR, p. 4.11-45). The protection of endangered species and the preservation of wetlands are matters of substantial environmental concern.

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6. Land Use and Agricultural Issues

The DEIR notes that development of the proposed project would result in the loss of 3,600 acres of prime farmland. (DEIR, p. 4.1-10). Mitigation Measure 4.1-1(b) set forth in the Final Supplemental EIR for the Mountain House New Town General Plan Amendment, provides as follows: "The applicant should be assessed an impact fee for each acre converted to an urban designation (whether residential, industrial, or commercial use) to be applied toward the purchase of development rights on agricultural lands or to support land trusts that purchase conservation easements on agricultural land. Such a fee system should be identified in the County's development title in compliance with the policy supporting such a fee as included in the County's General Plan 2010..."

The Master Plan has ignored this requirement, and the Development Title has not been amended to include the mitigation fee program. (DEIR, p. 4.1-10).

The DEIR recommends, in mitigation measure M4.1-1, that the agricultural mitigation fee shall be paid by the developer to the County at the time of the approval of each subdivision map or other discretionary permit, if a Countywide agricultural mitigation fee has been established by the County. This measure does not go nearly far enough to establish mitigation for lost farmland.

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Why does the DEIR not recommend that the County adopt the appropriate ordinance now, along with the other Development Title amendments?

Second, why is payment of the fee being deferred to the approval of each subdivision map or other discretionary permit? The fee should be assessed now, prior to approval of the Specific Plan and the Master Plan, in order to mitigate the impacts of the adoption of these plans.

Due to (i) the precedent-setting nature of this project, (ii) the magnitude of the project, and (iii) the extensive loss of prime farmland that will result from the project, the approval of the Specific Plan and certification of the EIR should not proceed in the absence of the County's adoption of the agricultural mitigation fee ordinance suggested in the DEIR. Otherwise, the extensive loss of prime farmland will be a significant impact that will not be mitigated.

Dedication and assessment requirements can flow from goals and policies contained in the general plan. *J.W. Jones Companies v. City of San Diego*, 157 Cal. App. 3d 745 (1984). San Joaquin County General Plan 2010 policies and implementation measures support assessment of mitigation fees for agricultural lands

converted to urban uses. (See General Plan 2010 Agricultural Lands policies 5, 7, and 8 and implementation measure 3.)

C. CEQA Requires Full Environmental Review At The Outset Of The Project

On a number of critical issues the Draft EIR has cut short the analysis needed to understand the impact of the proposed project. The approach taken has been to characterize as mitigation measures the need to carry out further surveys, investigations, discussions or assessments. These matters are not mitigation measures but important aspects of the initial environmental review.

To defer such review to a later stage conflicts with well-established CEQA principles that environmental problems should be assessed as early as possible in governmental planning and should be considered at a point in the planning process where genuine flexibility remains. (*Sundstrom, supra*, 202 Cal.App. at 307 [248 Cal.Rptr. at 358]; *Bozung, supra*, 13 Cal.3d at 282 [118 Cal.Rptr. at 262]; *Mt. Sutro Defense Committee v. Regents of Univ. of Calif.* (1978) 77 Cal.App.3d 20, 34 [143 Cal.Rptr. 365].) That point for this project is prior to the County's consideration of the Specific Plan I, not afterwards.

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The delay in analysis resorted to by the Draft EIR drafters is impermissible piecemeal review. CEQA precludes piecemeal review by broadly defining the "project" which must be evaluated. "'Project' means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately. . . ." (14 C.C.R. § 15378(a).)

In *Laurel Heights Improvement Association v. Regents of the Univ. of Calif.* (1989) 47 Cal.3d 376 [253 Cal.Rptr. 426]), the Court specifically considered the tradeoff between analyzing the environmental effects of a project early enough in the development of the overall project to avoid piecemeal review, and yet late enough to have reliable evidence of the environmental impacts of a project. The court concluded that even though precision may not be possible if the analysis is performed when the future action has not been fully determined, the agency must nevertheless perform the analysis and "use its best efforts to find out and disclose all that it reasonably can." (*Id.*, 47 Cal.3d at 399 [253 Cal.Rptr. at 435], quoting 14 C.C.R. § 15144.) Such forecasting cannot be put off to a later stage in the development of a project. The Draft EIR is critically inadequate in this regard.

IV. THE COUNTY CANNOT RELY ON SUBSEQUENT PERMITTING AGENCIES TO EVALUATE ENVIRONMENTAL ISSUES

The U.S. Army Corps of Engineers may have to issue a permit under section 404 of the Clean Water Act because of the creek and wetland impacts associated with the project. The California Department of Fish and Game ("CDFG") may have to issue a streambed alteration permit for the creek work. The United States Fish & Wildlife Service ("USFWS") may have to authorize a "take" of endangered species under the Endangered Species Act. At least thirty-two additional governmental permits or approvals are required for the Mountainhouse project, as shown in Table 3.10 of the DEIR on p. 3-37 to 3-39.

As Lead Agency, the County is required to address the wetlands, protected species, Clean Water Act Section 404, National Pollutant Discharge Elimination System, pesticide remediation, wastewater treatment, streambed alteration, dredging, and other issues in this EIR; it cannot rely on subsequent permitting agencies to evaluate these issues. An EIR cannot refuse to consider potential impacts on the ground that responsible agencies with subsequent permitting responsibility are empowered to address impacts. (*Citizens for Quality Growth v. City of Mount Shasta*, (1988) 198 Cal.App.3d 433, 443, fn. 8 [243 Cal.rptr. 727].) Deferring assessment of these impacts also violates CEQA's requirement that environmental review occur at the earliest feasible time (14 C.C.R. § 15004, subd. (b)), and is inconsistent with the County's obligation to conduct a comprehensive environmental evaluation of the project. (See *Sundstrom v. County of Mendocino*, (1988) 202 Cal.App.3d 296, 308-309 [248 Cal.Rptr. 352] and *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-885 [274 Cal.Rptr. 720].)

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V. INADEQUATE DISCUSSION OF IMPACTS ON ENDANGERED SPECIES

The Draft EIR fails to adequately address potential impacts on the endangered San Joaquin kit fox. The federal Endangered Species Act, 16 U.S.C. section 1531 et seq., strictly prohibits the "taking" of any endangered species. (16 U.S.C. § 1538(a)(1)(B); *Tennessee Valley Authority v. Hill* (1978) 437 U.S. 153 [98 S.Ct. 2279].) "Taking" means to "harass, harm, pursue, hunt, wound . . . or attempt to engage in any such conduct." (16 U.S.C. § 1532(14).) "[H]arm includes not only direct physical injury, but also injury caused by impairment of essential behavior patterns via habitat modification that can have significant and permanent effects on a listed species." (*Palila*

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v. Hawaii Dept. of Land & Natural Resources (9th Cir. 1988) 852 F.2d 1106, 1108.)¹

The proposed project would destroy thousands of acres of suitable kit fox habitat and potential dens in an area that is within the mapped range of the species. The United States Fish and Wildlife Service concludes that the site is occupied kit fox habitat, requiring mitigation in the amount of 7,611 acres. (DEIR, p. 4.11-27.) Nevertheless, the applicant maintains that the site does not provide suitable denning and foraging habitat for kit fox, that the project would not result in a "take" under the Endangered Species Act, and that no habitat compensation should be required. (DEIR, p. 4.11-26). As a result, there is an alarming discrepancy between the extensive mitigation required by USFWS and that provided in the Master Plan.

It is important to note that, aside from the protection of kit fox habitat that is required by the Federal Endangered Species Act, San Joaquin County General Plan policies independently mandate such protections. The following policies in the Vegetation, Fish and Wildlife section of the General Plan are applicable:

Policy 1: Resources of significant biological and ecological importance in San Joaquin County shall be protected. These include wetlands, riparian areas, rare, threatened and endangered species and their habitats as well as potentially rare or commercially important species; vernal pools; significant oak groves and heritage trees.

Policy 2: No public action shall significantly diminish the wildlife and vegetative resources of the County; cumulatively significant impacts shall be avoided.

Implementation 3 provides that the County shall address protection and preservation of special status taxa in review of development applications.

The pre-construction and construction protocols set forth in the Master Plan do not address the need for 7,611 acres of replacement habitat and do not even meet the USFWS' "Standardized Recommendations for the Protection of the San Joaquin Kit Fox" (DEIR, p. 4.11-29). The EIR cannot be certified and the Master Plan and Specific Plan I cannot be approved until the applicant

¹ As noted in the Draft EIR, the District of Columbia Circuit Court of Appeals decision in *Sweet Homes v. Babbitt* (17 F. 3d 1463) did not concur with *Palila*. In any event, the project is located in the Ninth Circuit, not the District of Columbia Circuit, and *Palila* is the controlling law in the Ninth Circuit.

is able to resolve its differences with the governmental agencies regarding habitat mitigation. Otherwise, the proposed mitigation will not be timely disclosed to the public and the decision makers, and the public and the decision makers will therefore not have any way of evaluating whether or not the mitigation is adequate and whether or not the impact will be significant.

In this case, the identification of mitigation habitat to replace any habitat lost to the project may be impossible. (DEIR, p. 6-17.) Lands within the kit fox range that are already serving as habitat would not compensate for areas lost to the project. The DEIR recommends, in proposed mitigation measure M4.11-2, that adjacent agricultural lands in Alameda County should be considered as suitable off-site mitigation area for San Joaquin kit fox, but does not disclose whether these lands are already being used as kit fox habitat, whether these lands are available to the applicant, what the cost to the applicant would be, and whether the applicant can afford the cost.

The DEIR also discloses that, "Representatives of the USFWS and California Department of Fish and Game have expressed concern that suitable habitat for mitigation of project-specific impacts on Swainson's hawk and kit fox may not be available, given the extent of cumulative development throughout the County. Projected growth outlined in the General Plans for the cities and the County impinges onto areas tentatively identified as conservation areas for Swainson's hawk in the south Delta area and for the San Joaquin kit fox in the Altamont Hills west of Tracy." (DEIR, p. 6-17, emphasis added).

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In light of the concern expressed by these governmental agencies, mitigation for kit fox impacts is a critical, unresolved issue that must be addressed in this DEIR. If USFWS and CDFG are proven to be correct that mitigation lands are not available, then this fact must be disclosed in the DEIR. Clearly, without the approval of USFWS and CDFG, the project can not go forward.

The DEIR provides that, "This mitigation requirement could have major ramifications on the long-term feasibility of developing the site, which have not been taken into account by the applicant or the County. The financial ramification of this recommended mitigation measure should be addressed prior to the approval of the Draft Master Plan, even if mitigation were deferred to the time of individual Tentative Map or Development Permit applications." (DEIR, p. 4.11-27). We agree with this assessment. If the mitigation required by federal law is found to be available, but is not financially feasible, then this fact must be disclosed in the DEIR.

DEIR proposed mitigation measure M4.11-2 proposes to address the current impasse between the applicant and USFWS as follows:

"The Draft Master Plan provisions related to San Joaquin kit fox should be revised and amended, based on the results of further negotiation with representatives of the USFWS and the CDFG..." As noted above, it is not only the Master Plan that must be revised, but also the DEIR. The kit fox habitat mitigation is an essential element of this DEIR. Certification of the EIR without this critical information would violate CEQA. *Sundstrom v. County of Mendocino, supra*, 202 Cal.App.3d. 296.

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With respect to Swainson's hawk habitat, the DEIR states that the master plan includes a habitat management program, but that the program "does not appear to satisfy requirements of the California Department of Fish and Game". (DEIR, p. 4.2-8). Therefore, the DEIR has not adequately addressed mitigation for Swainson's hawk impacts, for the reasons set forth above. The DEIR will need to be recirculated for comment when an acceptable and feasible habitat management program for Swainson's hawk has been identified.

VI. THE MASTER PLAN IS INCONSISTENT WITH THE COUNTY GENERAL PLAN 2010

The DEIR discloses that the Master Plan would conflict with many policies of the General Plan 2010, as well as with the use and design standards set forth in the County Development Title. (DEIR, p. 4.2-3). The substantial number of inconsistencies with the General Plan demonstrates that the proposed project is substantially inconsistent with County development policy. This is a significant impact that must be addressed prior to approval of the Master Plan and Specific Plan.

The general plan is the basic land use charter that embodies fundamental land use decisions and governs the direction of future land use in the local jurisdiction. *City of Santa Ana v. City of Garden Grove*, 100 Cal.App.3d 521, 532 (1979). The general plan is the "constitution for all future developments within the city or county" to which any local decision affecting land use and development must conform. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553 (1990). All subordinate land use decisions must be consistent with the general plan. *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531 (1990).

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Consistency exists between the County's land use action and the general plan when the county has officially adopted such a plan, and the various land uses approved are compatible with the objectives, policies, general land uses, and programs specified in such a plan. "An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." *General Plan Guidelines*, page 212, Sacramento, CA: Governor's Office of Planning and Research, 1990.

The DEIR states that the proposed project would require the County to further amend the General Plan, which was already amended in February 1993 to accommodate the Mountain House project. The new amendments would severely undermine sound planning policies in the existing general plan.

For example, the general plan transportation standards mandate Level of Service C on county roads. The proposed project cannot meet this standard. Rather than recommend that the applicant reduce the size of the project or relocate it to a location that would allow the transportation standards to be met, the DEIR recommends that the general plan should be amended to allow the Master Plan to deviate from the adopted Level of Service standards. (Proposed mitigation measure M4.2-1(f), see also DEIR, p. 4.2-7). As traffic is already at unacceptable levels at certain intersections, such as I-205 at Patterson Pass Road (See DEIR, p. 4.12-9), it would make little sense to allow each new project applicant to change the adopted general plan Level of Service standards to allow lower Levels of Service, merely to accommodate the new project. Otherwise, the adoption of the original standards in the general plan would seem to have no meaning, and the planning process is turned on its head.

Other inconsistencies of the proposed Master Plan with the adopted general plan include combining of R/L and R/M designations on the land use map, which would increase dwelling unit minimum and maximum densities in current residential/low density zones; expanding retail sales and services in C/FS zones; deviation from general plan roadway classifications and right-of-way standards, specifically with regard to maximum average daily traffic; narrowing of certain road right-of-way widths; failure to include 10 acres of regional park for every 1,000 population; and failure to include policies to mitigate for loss of San Joaquin kit fox habitat, Swainson's hawk habitat, and for impacts to other species of concern. (DEIR, pp. 4.2-7, 4.2-8).

The DEIR states that, "According to County staff, some amendments to the General Plan necessary to accommodate Master Plan provisions might be applicable Countywide." (DEIR, p. 4.2-7). If so, then this DEIR must include an investigation and analysis of the Countywide impacts of each such amendment, a determination of significance of the impacts, and appropriate mitigation measures.

The DEIR identifies numerous inconsistencies between the design standards and land uses specified in the Master Plan, and those specified in the County Development Title. These include minimum lot sizes and lot widths; maximum building heights and building coverage; front, side and rear setbacks; allowable uses; standards for home occupations, and landscaping; requirements for subdivision applications and development permits, grading and excavation, signs, storm drainage, roadway standards, parking and

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parking lots; contamination reports for subdivisions; setbacks from wetlands, electromagnetic fields, specified roads and land uses, standards for bikeways, bike parking, pedestrian paths, and public alleys; findings regarding jobs/housing for approval of zoning reclassifications; use of public land equity program for public land dedication; cost reimbursement program for expenditures in excess of fair share; and affordable housing fee. These inconsistencies must be addressed and resolved prior to approval of the project.

In order to reduce conflicts between urban and rural uses, the General Plan land use map includes a 500-foot buffer along the western site boundary. The Master Plan and Specific Plan do not provide this buffer zone. (DEIR, p. 2-2.) If the General Plan were to be amended to eliminate this buffer, as the applicant desires, then a critical mitigation measure intended to address the loss of agricultural land would be eliminated.

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As noted above, the extensive number and the broad scope of the inconsistencies demonstrate that the Mountainhouse development, including permit application requirements, is being planned by the applicant in a way that conflicts with County policy, with the County planning law, and with the Development Title. These inconsistencies represent significant impacts.

The DEIR states that, "According to County staff, some amendments to the Development Title necessary to accommodate the Master Plan might be applicable Countywide and to all new communities." (DEIR, p. 4.2-10). If so, then this DEIR must include an investigation and analysis of the Countywide impacts of each such amendment, a determination of significance of the impacts, and appropriate mitigation measures.

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The completion of many of the 38 plans and studies identified in Section III of these comments concurrently with the Specific Plan was a condition relied upon in the "Statements of Fact" supporting the findings adopted by the Board of Supervisors with regard to the Mountain House New Town General Plan Amendment pursuant to 14 C.C.R. § 15091. The findings state that, "All of the mitigation measures listed in conjunction with each finding will be implemented by the Project applicant ("Applicant") or the County, resulting in the Project having no significant adverse environmental impacts, except for those items listed on the following pages for which Statements of Overriding Considerations have been adopted." (Findings, p. 1). The failure of the applicant to complete the plans and studies relied upon in the findings, and to perform all mitigation measures necessary to mitigate the impacts of the General Plan Amendments, as required in the findings, indicates that the current Master Plan and Specific Plan proposals are inconsistent with the General Plan policies adopted by the Board in 1992. Such inconsistency will remain until the mitigation measures required in 1992 are

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performed, and must be resolved before the approval of the Master Plan and Specific Plan and certification of the EIR. P152

VII. THE DEIR FAILS TO ADDRESS SOCIAL AND ECONOMIC EFFECTS OF CONSTRUCTION THAT WILL RESULT IN ENVIRONMENTAL IMPACTS

The Draft EIR fails to provide any analysis whatsoever of construction workforce impacts. This important information needs to be included in a revised Draft EIR.

In recent years, contractors building large residential and industrial projects have in a number of cases obtained their construction workforce by recruiting workers from low-wage states outside of California. This practice has two consequences: 1) it results in an influx of temporary, transient workers and their families into an area and increases demands on schools, health and welfare and other public services; and 2) it reduces the employment and economic benefits to local communities.

Development of the Town of Mountain House will require a substantial construction work force for a prolonged period of time. The phasing of the project contemplates major construction activities from 1994 through 2025. Yet the DEIR provides no information regarding the size of the construction work force and its potential impact on the region and relevant localities.

Just as with other aspects of the project's review, alternatives and mitigation measures regarding the impact of the project's work force have to be analyzed. In particular, the extent to which qualified workers are available within the County and whether they are paid prevailing wage rates substantially affects the financial and fiscal benefits and burdens of the project. Heavy reliance on low-paid, out-of-area construction workers potentially imposes an enormous cost on local schools, hospitals and police services. Conversely, such workers spend less money in the local economy thereby constricting the economic benefits of the project for the County and its residents. P153

The DEIR does not address the quite substantial and prolonged public service and fiscal effects related to the type of construction work force used to transform the physical environment from agricultural land to a new urban community. For example, no consideration has been given to the additional demand for public services, schools, police services, housing, medical and health care, and social welfare services if the construction workers employed are from out-of-the-area and need to establish temporary residence nearby.

Given the magnitude of the project, such potential effects cannot be ignored. The courts have held that "the lead agency shall consider the secondary or indirect environmental

consequences of economic and social changes" and that the agency has "discretion to determine whether the consequences of economic and social changes are significant, which is not the same as discretion to not consider these consequences at all." (*Citizens for Quality Growth v. Mount Shasta* (1988) 198 Cal.App.3d 433, 446 [243 Cal.Rptr. 727, 734] (italics in the original); *Citizens Association for Sensible Development v. County of Inyo* (1985) 172 Cal.App. 151, 170 [217 Cal.Rptr. 893, 905].)

A revised DEIR needs to provide information regarding the size and nature of the construction force to be employed at different times, to analyze critical issues such as the likely wage packages and residences of the available work force, and to suggest mitigation measures to prevent unexpected demands on public services and fiscal resources and a less than expected return for the regional and local economy. For a project as encompassing as Mountain House, the economic and social effects of construction employment cannot be disregarded. In carrying out the required CEQA analysis, potential issues, such as school overcrowding caused by the need to absorb the children of temporary resident construction workers, have to be taken into account. (See 14 C.C.R., § 15064(f).) The DEIR's failure to consider economic and social considerations related to construction, and to develop appropriate local-hire requirements or other appropriate mitigation, is a major oversight.

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VIII. INADEQUATE IDENTIFICATION AND EVALUATION OF MITIGATION MEASURES

The courts have recognized that the consideration of mitigation measures is at the heart of the EIR process. It is at this juncture that the lead agency makes the critical determinations regarding the measures available to avoid or lessen the significance of project impacts. In order to ensure that project impacts are genuinely addressed, CEQA requires that specific feasible, effective and enforceable mitigation measures be identified for each significant impact, and that all uncertainties regarding the mitigation of impacts be resolved in the EIR.

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In the present case, there has been a failure to comply with CEQA requirements regarding the consideration of mitigation measures. As a result, the EIR provides no assurance that the significant effects of the project will be avoided or reduced in significance. This deficiency in the CEQA analysis is profoundly important in the context of this EIR, given the number of potentially significant effects of the project. In view of the EIR's inadequate treatment of this issue, the legal requirements for the consideration of mitigation measures are set forth below in some detail.

Before approving a project for which one or more significant effects has been identified, the lead agency must find for each significant effect: 1) that measures have been required which mitigate or avoid the impact; 2) that the agency lacks jurisdiction to require the mitigation but that another agency has such authority; or 3) that specific economic, social or other considerations make infeasible the mitigation measures identified in the EIR. (Pub. Resources Code § 21081; 14 C.C.R. § 15091; *Citizens for Quality Growth v. City of Mount Shasta, supra*, 198 Cal.App. 3d 433.) These findings regarding project mitigation must be supported by substantial evidence in the administrative record. (Pub. Resources Code § 21081.5; 14 C.C.R. § 15091, subd. (b).)

In order for the lead agency to comply with this obligation, the EIR must identify specific and concrete mitigation measures for each significant effect. (14 C.C.R. § 15126, subd. (c); see also *Stevens v. City of Glendale* (1981) 125 Cal.App.2d 986, 995-996 [178 Cal.Rptr. 367].) Where a number of alternative mitigation measures may be available, the EIR must evaluate each such measure and must explain the rationale for recommending one mitigation approach over the others. (*Ibid.*) The discussion must also distinguish between measures proposed by the applicant to be included in the project, and those measures recommended as conditions of approval. (*Ibid.*)

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A lead agency is also precluded from making the required findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved. An agency may not rely on mitigation measures of uncertain efficacy or feasibility (*Kings County v. City of Hanford, supra*, 221 Cal.App.3d at pp. 727-728), nor may it defer consideration of mitigation measures to later studies (*Sundstrom v. County of Mendocino, supra*, 202 Cal.App.3d 296) or to other agencies (*Citizens for Quality Growth v. City of Mount Shasta, supra*, 198 Cal.App.3d at p. 442).

In *Kings County*, the primary measure proposed to mitigate the water use impacts of the project and ensure recharge of an overdrawn aquifer was a "mitigation agreement" by which the applicant agreed to provide funds to a local water district to purchase water from unspecified sources. The court found this mitigation measure inadequate because the record did not show that sufficient water to recharge the aquifer would be available for purchase. (*Kings County v. City of Hanford, supra*, 221 Cal.App.3d at pp. 727-728.)

In *Sundstrom*, as described in Section III of these comments, the lead agency conditioned its approval of the project on the preparation of a hydrological study evaluating the project's potential impacts on downslope properties. The study would then permit agency staff to develop specific mitigation measures. The court concluded that since the success of the mitigation was

uncertain, the lead agency could not have made a reasonable finding that all potential impacts had been mitigated below a level of significance. (*Sundstrom v. County of Mendocino, supra*, 202 Cal.App.3d at pp. 306-308.)

In *Citizens for Quality Growth*, the City defended the adequacy of its consideration of wetlands impacts by arguing that it was under no obligation to consider impacts of wetlands because any filling of wetlands would be regulated by the Army Corps of Engineers. The court rejected this argument, holding that the City as lead agency was required to address all potential impacts and evaluate mitigation measures and project alternatives. (*Citizens for Quality Growth v. City of Mount Shasta, supra*, 198 Cal.App.3d at p. 732, fn. 8.)

A call for future action is not mitigation. Statements listed as mitigation measures in the DEIR are not themselves mitigation measures. For example, they call for subsequent actions to be taken, such as the recommendation that "Fire service and protection standards during construction and occupation of the project, including the addition of staff and equipment to existing off-site facilities and the construction, staffing, and outfitting of on-site facilities shall be included in the Fire and Emergency Protection Plan. The standards shall be submitted to the County and local fire protection service agency for review and approval prior to approval of the first Development Permit. (DEIR, p. 2-8, proposed mitigation measure M4.3.3-1(j).) This recommendation is hardly a feasible mitigation program for addressing serious problems of fire protection and service and funding. Clearly, Specific Plan - level issues are being improperly deferred to a future date. Essential services such as fire protection must be addressed at the Specific Plan stage. In addition, the Mountain House DEIR throughout fails to discuss the feasibility of the mitigation measures proposed. The standards of *Sundstrom* have not been met by this DEIR.

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The EIR is also required to analyze the potential effects of recommended mitigation measures if such measures would themselves produce potentially significant impacts. (14 C.C.R. § 15126, subd. (c); see also *Stevens v. City of Glendale, supra*, 125 Cal.App. 3d at pp. 995-996.)

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Dr. Weissman's comments discuss in detail many of the proposed mitigation measures that are inadequately addressed. Probably the most dramatic example of inadequacy occurs with respect to the measures proposed to address potential kit fox habitat impacts. The DEIR, in mitigation measure M4.11-2, simply defers to USFWS. As Lead Agency, the County may not simply defer the matter to USFWS review. It must identify the specific measures required to address potential impacts on the kit fox.

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Dr. Weissman also demonstrates that the purported mitigation for transportation, water supply, wastewater treatment and disposal and other public service impacts, and air quality impacts, are inadequately considered and left unresolved.

DEIR Tables 2.1-2.2 provide a list of impacts and mitigation measures, including a column designated "level of significance after mitigation." This begs the question of the feasibility of the mitigation and the means of insuring that it will be performed so that the impact will truly be mitigated. We have already seen that numerous mitigation measures specified in the Final Supplemental EIR for the Mountain House New Town General Plan Amendment were not complied with by the applicant.

DEIR Appendix D discloses that the applicant has failed to comply with 82 mitigation measures relative to the Master Plan specified in the Final Supplemental EIR. DEIR Appendix D identifies an additional 63 mitigation requirements specified in the Final Supplemental EIR for which it found that the applicant had only achieved "partial" compliance. ²

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This is not the sort of record that inspires confidence that the applicant is giving necessary attention to the environmental protection requirements for this project. If this pattern continues, the applicant would likewise not perform many of the mitigation measures identified in the DEIR, and the project could be built without the protections that this detailed environmental review process, mandated by law, has required. In order to avoid this scenario, all County project approvals and permits for this project should state that non-compliance with any mitigation measure required by any EIR for this project shall be grounds for revocation or suspension of such approval or permit until such time as the applicant comes into compliance.

IX. INADEQUATE CONSIDERATION OF GROWTH-INDUCING IMPACTS

A draft EIR must discuss the potential of the proposed project to promote, either directly or indirectly, economic or population growth, or the construction of additional housing, in the surrounding environment. (14 C.C.R. § 15126, subd. (g); Pub. Resources Code § 21100, subd. (g).) The analysis must evaluate those characteristics of the project that may encourage or facilitate activities that, either individually or cumulatively, may be growth inducing. (*Ibid.*) For example, population increases may further tax existing community facilities and so consideration must be given to this impact. (*Ibid.*) Similarly,

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² The DEIR does not include a similar table that assesses Specific Plan compliance with mitigation requirements required by the Final Supplemental EIR.

the expansion of a waste water treatment plant could accommodate new development and thereby trigger growth-related impacts. (Ibid.)

The Draft EIR's "analysis" of the potential growth inducing impacts of the project consists of a cursory discussion of less than one page. (Draft EIR, p. 6-23.) The Draft EIR includes this abbreviated treatment of the issue despite the fact that: 1) If approved, this would be the largest single development project ever authorized by San Joaquin County; 2) The project site is in the heart of one of the largest remaining open space regions in the County; 3) The project would convert a significant proportion of the County's remaining agricultural lands; 4) The project is near other proposed "new town" projects; 5) The area already suffers from inadequate water supplies and transportation systems are near capacity; and 6) The project would require extensive infrastructure improvements and increases in service capacity.

The Draft EIR simply states the obvious conclusion that the conversion of the project site from open space to urban uses and the extension of urban services into the area will create growth pressures. The report does not discuss, however, the specific nature of the growth inducing impacts, whether such impacts should be considered significant, or the availability of mitigation measures to address such impacts.

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A conclusory statement devoid of analysis and explanation does not foster informed decision-making and does not permit meaningful public participation. The EIR must be revised to include a meaningful discussion of the potential growth-inducing impacts of the project.

Because the project site is not contiguous to an existing community but is in a potential corridor of development from Pleasanton to Manteca along Interstate Highways 580 and 205, it represents a classic case of leapfrog development. The growth-inducing effects of the project are likely to be unavoidable. Leapfrog development is contrary to the County's own General Plan policy. (See December 1991 DEIR for Mountain House New Town General Plan Amendment, at p. 4.2-12.)

The DEIR's summary discussion of possible mitigation measures is not realistic. Adjacent property owners already have expressed interest in developing their properties for non-agricultural uses if Mountain House is approved. It is highly probable that if the County were to seek to create an agricultural buffer area which includes such properties, the County would confront litigation challenging such decisions as "spot zoning" (see *Hamer v. Town of Ross* (1963) 59 Cal.2d 776 [31 Cal.Rptr. 335]) or as violative of the takings clause of the United States Constitution (see *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 [107 S.Ct. 3141]).

A cryptic analysis of growth-inducing effects is not adequate when a project will serve as "a catalyst for further development in the immediate area." (*City of Antioch v. City Council, City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1337 [232 Cal.Rptr. 507, 514].) The DEIR has not provided a reasonable assessment of the effects of future development which may be provoked by the Mountain House project.

X. INADEQUATE CONSIDERATION OF CUMULATIVE IMPACTS

The Draft EIR's treatment of cumulative effects falls far short of the legal standards for an adequate analysis. The deficiency is particularly serious in this case given the scope of the proposed project, which alone will have a significant regional impact. The report's failure to adequately assess project impacts together with cumulative effects may dramatically understate the true magnitude of potential impacts.

CEQA explicitly requires that an EIR find that a project may have a significant effect on the environment if "[t]he possible effects of a project are individually limited but cumulatively considerable." (Pub. Resources Code § 20183, subd. (b).) The CEQA Guidelines define "cumulatively considerable" to mean "that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (14 C.C.R. § 15065, subd. (c).)

The CEQA Guidelines further specify that an adequate discussion of cumulative impacts include a listing of "past, present, and reasonably anticipated future projects," a "summary of the expected environmental effects" of the relevant projects and a "reasonable analysis of the[ir] cumulative impacts." (14 C.C.R. § 15130, subd. (b).)

The courts have vigorously enforced the obligation to discuss cumulative impacts. In *San Franciscans For Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61 [198 Cal.Rptr. 634], the court called the cumulative impact analysis "vital" and concluded that an inadequate cumulative impact analysis subverts an agency's ability to adopt appropriate and effective mitigation measures and skews its perspective concerning the benefits of particular projects. (*Id.* at pp. 73 and 80; see also *Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d 692; *Mountain Lion Coalition v. California Fish & Game Comm'n.* (1989) 214 Cal.App.3d 1043 [263 Cal.Rptr. 104]; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421 [222 Cal.Rptr. 247].)

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The list of projects in Table 6.1 used in the cumulative impact analysis is incomplete. Dr. Weissman cites the other projects proposed for the westside of San Joaquin and Stanislaus counties which must be considered in the analysis. The analysis should also include the buildout of General Plans for westside cities, including Tracy, Manteca, Lathrop, Patterson, and Newman since these cities would also contribute to cumulative traffic, air quality, water service demand, wastewater generation and other impacts.

The second fundamental defect in the analysis is the complete absence of any specific or quantitative discussion of particular cumulative effects. The brief discussion presented solely in qualitative terms precludes a meaningful assessment of the magnitude of the potential impacts. This general discussion also precludes an identification and development of appropriate mitigation measures.

In light of the importance of an adequate cumulative impact analysis, the DEIR drafters' failure to incorporate a systematic analysis of the other major new communities proposed for San Joaquin County is surprising. (DEIR, p. 6-1.) These other communities which are referred to as Riverbrook and New Jerusalem are included in the new General Plan 2010 for San Joaquin County. Particularly with respect to land use, transportation, air quality and fiscal issues within the County, the cumulative impacts of these projects along with Mountain House are of major significance. To not take into account specific information regarding the development of other planned new communities completely skews the perspective of decision-makers as to the viability and desirability of Mountain House as a major undertaking. A passing reference now-and-then to these other new communities and their collective impacts upon existing communities does not remedy this critical deficiency.

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In our comments on the General Plan Amendment EIR, we said that the decision of the EIR drafters to limit the cumulative impact analysis to projects within 20 miles of the project site was arbitrary and unexplained. Apparently in response to this comment, the DEIR has revised the limit of the cumulative impact analysis to projects within 30 miles of the project site. (DEIR, p. 6-1). While this is an improvement, the DEIR still misses the point. Whether the limit chosen is 20 miles or 30 miles, it is still arbitrary, and the DEIR makes no attempt to explain the basis for the choice. A more reasoned approach would be to include all projects that will contribute to regional transportation, water supply, or air quality impacts, or other cumulatively significant regional impacts.

The presentations under separate topical headings of the cumulative environmental impacts of the various projects listed are unevenly and, for the most part, sparingly analyzed. The

appendix to these comments lists a number of additional projects, which also should have been taken into account. The DEIR's listing and discussion of cumulatively relevant projects is not sufficiently comprehensive and inclusive.

In only a few instances does the DEIR provide a useful perspective on how the development of Mountain House would interrelate with other relevant proposed projects. The overall analysis comports with neither the letter nor the spirit of CEQA.

XI. INADEQUATE CONSIDERATION OF ALTERNATIVES

In considering alternatives to the proposed project, the CEQA Guidelines state: "The key issue is whether the selection and discussion of alternatives fosters informed decision-making and informed public participation." (14 C.C.R. § 15126, subd. (d)(5).) The courts have interpreted this requirement to mean that an EIR must explain in reasonable detail a range of alternatives to the proposed project and, if the applicant finds them to be infeasible, the reasons and facts in support of such conclusions. (See *Laurel Heights Improvement Ass'n v. University of California*, supra, 47 Cal.3d at p. 406.)

While the DEIR described a new mitigated alternative, it does not provide a factual and reasoned explanation of the applicant's views regarding the feasibility of the mitigated alternative. As a result, the decision-makers and the public have no way of determining what room exists for project modifications and compromise.

XII. THE DEFICIENT ANALYSIS PRECLUDES INFORMED DECISION MAKING AND INFORMED PUBLIC PARTICIPATION

"An EIR is an 'environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.'" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 393, 392 [253 Cal.Rptr. 426, 430].) An environmental evaluation conducted in accordance with CEQA also serves to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (14 CCR § 15003, subd. (d); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86 [118 Cal.Rptr. 34].)

"[T]he requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.'" (*Sutter Sensible Planning, Inc. V. Board of Supervisors* (1981) 122 Cal.App.3d 813, 820 [176 Cal.Rptr. 342].) It also ensures

"the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision.'" (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354 [182 Cal.Rptr 317].)

In order to serve these functions, the EIR must "provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Pub. Resources Code § 21061.) The analysis must be specific and detailed, and must also be supported by empirical or experimental data, scientific authorities or explanatory information, including comparative and quantitative evaluation. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 [270 Cal.Rptr. 650]; *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397 [151 Cal.Rptr. 866]; *People v. County of Kern* (1974) 39 Cal.App. 3d 830 [115 Cal.Rptr 67].)

"The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in an EIR." (14 C.C.R. § 15146.) Accordingly, "[a]n EIR for a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy." (14 C.C.R. § 15146, subd. (b).)

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The Draft EIR fails to facilitate informed decision-making and meaningful public participation. As discussed above, the project definition is ambiguous and incomplete, as is the description of the intended uses of the DEIR. This uncertain and curtailed project description undermines the informational objectives of CEQA.

As a Master EIR for Specific Plan I, this document must address not only the general issues associated with the land use plan, but must identify, discuss and resolve all potential environmental impacts related to development of the project over its buildout period. As discussed in detail in these comments, the Draft EIR fails to address numerous effects associated with the project. For these reasons, the document as a whole fails to comply with the informational objectives of CEQA.

XIII. THE DEIR'S ANALYSIS OF CEQA AND PROJECT-RELATED ISSUES IS SUBSTANTIALLY DEFICIENT AND WILL REQUIRE MAJOR REVISIONS AND RE-CIRCULATION

CEQA requires recirculation of an EIR whenever "significant new information" is added to a report or where there are "substantial changes" to the initial draft. (See Pub. Resources Code § 21092.1 and *Sutter Sensible Planning v. Sutter County Board*, *supra*, 122 Cal.App.3d 813.) Because the failure to recirculate eliminates essential elements of the CEQA process, the *Sutter* court stated that the failure to recirculate an EIR turned the process of environmental evaluation into a "useless ritual" which could jeopardize "responsible decision-making." (*Id.* at p. 822.) Both the opportunity to comment and the preparation of written responses to those comments are crucial parts of the EIR process.

The *Sutter* court held that the failure to include all significant information in the original document denied the public the "opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." (*Sutter Sensible Planning v. Sutter County Board*, *supra*, 122 Cal.App.3d at p. 822.)

The *Sutter* decision makes clear that recirculation is required not only when new significant impacts are found, but also when significant new information is added to the document. The public must have the opportunity to test, assess and evaluate the agency's analysis. It is not enough to merely have the opportunity to review the conclusions. (*Mountain Lion Coalition v. California Fish & Game Comm'n*, *supra*, 214 Cal.App.3d 1043.)

In *M.M. Homeowners v. San Buenaventura County* (1985) 165 Cal.App.3d 357 [212 Cal.Rptr. 127], the court noted that "[i]n reviewing an EIR a paramount consideration is the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision." (*Id.* at p. 365; citation omitted.)

Recirculation of the EIR is also required in order to assure that responses to all comments will be prepared by the lead agency. "The policy of citizen input which underlies the act supports the requirement that the responsible public officials set forth in detail the reasons why the economic and social value of the project, in their opinion, overcomes the significant environmental objections raised by the public." *People v. County of Kern*, *supra*, 39 Cal.App.3d 830.) The responses to comments play a vital role in insuring the integrity of the process by

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precluding stubborn problems or serious criticism from being swept under the rug. (*Ibid.*)

Responses to comments play such an important role in the environmental evaluation that the CEQA Guidelines spell out the agency's duty to avoid pro forma responses:

"In particular, the major environmental issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." (14 C.C.R. § 15088, subd. (b).)

CEQA is much more than simply a presentation to the public of the lead agency's environmental analysis. Public comments and responses to comments are equally essential ingredients of a valid EIR. As one court observed:

"CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process." (*County of Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178, 1185.)

Failure to recirculate an EIR when there is significant new information or a substantial change is fatal to the process. The final EIR will not be valid because essential components have not been included. California courts have not hesitated either to protect the right to comment or to enforce the duty to prepare responses. Recirculation of an EIR is consistent with CEQA's fundamental purpose: to provide information about environmental impacts. Failure to recirculate deprives the decision-maker of comments from responsible agencies and members of the public, and of written, reasoned responses to those comments.

There can be no question that significant new information and analysis will be required in order for the Draft EIR to comply with CEQA requirements and to respond to these comments. Beginning with redefinition of the project and clarification of the subject of the environmental review, the EIR will require major revisions and additional analysis. Under these circumstances, the public must be afforded an opportunity to review and comment on the revised document.

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XIV. THOMAS REID ASSOCIATES REPORT

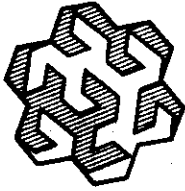
The appendix to these comments addresses a host of specific issues not adequately covered in the DEIR. This factual report is an integral part of these comments. Its analysis will not be repeated here.

The chief purpose of the appended report is to provide additional factual support and analysis with respect to key CEQA issues discussed previously and to highlight a number of environmental considerations given unduly short shrift in the DEIR. It discusses the significant unavoidable impacts of the proposed project and its inconsistencies with policies contained in General Plan policies for San Joaquin County.

The appendix was prepared by Karen Weissman, Ph.D., of Thomas Reid Associates, an environmental consulting firm which has prepared over 250 environmental documents on a variety of projects, including major industrial, residential and commercial projects. The DEIR's deficiencies are so extensive and substantial that it will have to be revised and recirculated. (Public Resources Code sec. 21092.1; *Sutter Sensible Planning v. Sutter County Board* (1981) 122 Cal.App.3d 813 [176 Cal.Rptr. 342].)

XV. CONCLUSION

The Draft EIR fails to comply with CEQA standards in a number of significant respects. The deficiencies in the document are particularly disturbing in the context of this project, one of the largest development projects in the County's history. Locals 492, 342, and 159 urge the County to consider these comments and carefully explore all potential effects associated with the project prior to taking action.



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MEMORANDUM

SUBJECT: Review of Mountain House Master Plan and Specific Plan Draft EIR

TRA FILE: LMHT
DATE: July 15, 1994
FROM: Karen G. Weissman, Ph.D.

TO: Daniel L. Cardozo
Adams & Broadwell
651 Gateway Boulevard, Suite 900
South San Francisco, CA 94080

I have reviewed the Draft Environmental Impact Report for the Mountain House Master Plan and Specific Plan. The document is well-organized in that the discussion of each separate potentially significant environmental issue is tied to the identification of the mitigation measures specific to that factor and issue. I also note that the present document has responded to some of the criticisms I raised in the review of the Draft EIR for the General Plan Amendment in January 1992. One important example is the more detailed discussion of a so-called "Mitigated Alternative" which is also identified as the environmentally superior alternative.

While the analysis of impacts is generally adequate, I find that some important mitigation is not adequate, largely because of a lack of commitment or an improper focus in the Master Plan Goals, Objectives, Policies, and Implementation. These deficiencies must be rectified before the EIR can be certified by the Lead Agency, and before the Master Plan and Specific Plan can be adopted. I focus my discussion on the following major issues:

1. Endangered species mitigation
2. Water Supply
3. Wastewater Treatment and Disposal
4. Sludge Disposal
5. Wastewater Disinfection
6. Traffic Impact and Mitigation
7. Infrastructure Mitigation Costs and Affordable Housing
8. Jobs/Housing Analysis
9. Air Quality
10. Cumulative Impact

- 1. **Endangered species mitigation -- the EIR must demonstrate mitigation for identified endangered species impacts up to a standard acceptable to the resource agencies, and not defer critical decisions to future studies.**

The project, as proposed, does not provide sufficient mitigation for identified endangered species, and it is not clear that such mitigation is possible. The mitigation proposals for the Master Plan and the Specific Plan are both deficient. The applicant's proposed mitigation for impacts to San Joaquin kit fox and Swainson's hawk, as reflected in both the Draft Master Plan and the Habitat Management Plan previously prepared for the project does not meet current resource agency guidelines, and requires numerous changes to the Habitat Management Plan (HMP).

For example, the applicant has taken the position that the project would not result in a take of kit fox, and is proposing no mitigation. On the other hand, the USFWS determined that there are a minimum of 2,537 acres of suitable and occupied kit fox habitat, which would require 7,611 acres of replacement habitat to be acquired to compensate for the loss of 2,537 acres at a 3:1 ratio. (p. 4-11.27). The Draft EIR also states (p. 4.11-33) that "The Draft Master Plan and proposed HMP contain outdated information on existing (Swainson's hawk) nesting habitat...", and that "all proposed mitigation ratios contained in Table 4.11-3 (the applicant's proposed mitigation) would provide substantially less replacement habitat than the minimum ratio specifications of the CDFG guidelines." The Draft EIR further states (p. 4.11-34)

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"Due to major inconsistencies between the basic assumptions and provisions in the Draft Master Plan and the mitigation guidelines of the CDFG, particularly the limited area identified as foraging habitat and lack of any specific measures to protect the on-site nest locations such as development setbacks and construction restrictions, the HMP as currently proposed would not adequately mitigate potential impacts on Swainson's hawk use of the site."

To address these deficiencies the Draft EIR has identified as mitigation revisions to the Draft Master Plan and proposed HMP to meet acreage requirements and other objectives (e.g. setbacks, monitoring requirements, and development restrictions) in consultation with the CDFG and USFWS.

The ultimate mitigation and set-asides for the species of concern could substantially change the configuration of the project, reduce project size, or identify additional offsite mitigation lands which were required to be incorporated into the project. For example, the applicant currently plans to develop on the 1,500 acres north of Byron Road (p. 4.11-34), but the Draft EIR mitigation (p. 4.11-38) states that "Ideally, the entire area north of Byron Road, containing approximately 1,500 acres, should be set aside as an agricultural preserve to be enhanced and managed for Swainson's hawk and other protected wildlife species, with the required replacement habitat provided at a ratio negotiated and approved by the CDFG, and any additional compensation provided in the immediate vicinity offsite."

If the configuration or size of the project were changed, then this could affect the feasibility of the project as a whole, and would definitely mean that the project as defined in the existing Master Plan and analyzed in this EIR, could not be built as proposed.

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The Draft EIR also states that there are a number of species of concern whose occurrence and impact from the project has not been assessed. The EIR leaves the survey and determination of potential impact and mitigation on these species to a future study. This is contrary to the dictates of *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296 (1988), which we also raised in our comments on the prior EIR. The guidance provided by this case dictates that any relevant studies or consultations that may result in project modification or additional mitigations cannot be deferred to a time after EIR certification. In particular,

"The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA."

"Environmental problems should be considered at a point in the planning process 'where genuine flexibility remains'....A study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA."

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The Draft EIR states, for example (p. 4.11-46) that if the proposed project marina were found to have an impact on populations of a rare plant *Lilaeopsis maysonii*, along Old River, that the marina might have to be eliminated from the project. In addition, the Mitigated Alternative described in the Alternatives chapter, specifically recommends eliminating the marina from the project. At present, the project could be approved with a marina which a future study could find to be impermissible.

The Draft EIR (p. 4.11-41) calls for a future survey to confirm the presence or absence of Delta smelt and Sacramento splittail along the segment of Old River bordering the site. The Draft EIR states that "if the species is detected, a habitat protection plan should be prepared by a qualified fisheries biologist in consultation with and which meets the approval of the representatives of USFWS and CDFG." It is possible that no such mitigation scheme is feasible if the mitigation which would be acceptable to the resource agencies regarding water diversion, storm drainage runoff, and levee modifications would substantially interfere with the development of the Specific Plan area affected by the mitigation. Alternatively, the mitigation acceptable to the resource agencies could be deemed infeasible by the applicant by reason of its direct cost or fiscal impact on the project. The deferral of mitigation specifics to a later time casts substantial doubt that the impacts are possible to mitigate to insignificance.

2. **Water Supply -- The EIR must demonstrate that such a supply exists, including realistic, implementable contingencies, before a project of this magnitude can be approved.**

The water supply analysis in the Draft EIR appears contradictory. On the one hand, the Draft EIR states (p. 4.4-7) that the Byron-Bethany Irrigation District (BBID) has signed a contract to provide water to the project, and "will provide up to 9,413 acre-feet of water per year to the project," which is equal to the average of what BBID diverted for agricultural use within the project site between 1976 and 1991 (p. 4.4-1).

On the other hand, the Draft EIR finds (p. 4.4-7) that the pre-1914 water rights for BBID are based on past use, and that since BBID had not previously withdrawn water from the California Aqueduct in the winter, that BBID would not be able to provide water to the project in the winter. The current agreement between BBID and DWR "allows BBID to withdraw a maximum of 4,000 acre-feet per year between November 1 and March 31, provided that BBID does not divert an equal amount of water between April 1 and October 31" (p. 4.4-5). This seems to limit BBID's withdrawal to only 4,000 acf/year, not 9.413 acf/year, and does not explain how BBID would provide water in the summer.

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In addition, the Draft EIR finds (p. 4.4-6) that hearings now being conducted by the responsible federal agencies will result in a water quality plan for the Sacramento River Delta which is designed to set water quality standards to protect certain fish species. The Draft EIR states that "diversion of fresh water from the Delta will almost certainly be curtailed for the large Federal and State diversion projects...(and that the) "water rights of other users of Delta water would be reconsidered by the State Water Resources Control Board in order to spread the burden of protecting the Delta".

The foregoing implies that the level of commitment of water supply that BBID has made for the project is seriously in doubt. This is reflected in the EIR Mitigation Measure M4.4.4-1 which includes "A contingency plan to supply water for the project in case of potential restrictions on water diversion, imposed on BBID, and/or DWR under the exchange agreement." It is not clear that such a contingency plan exists or could be developed. The EIR needs to identify what the contingency plan would be.

Even if the BBID were to supply all 9,413 acf/year of water to the project, this appears to be insufficient compared to the demand of the project at buildout, according to Table 4.4-1 (p. 4.4-8) which shows a demand ranging from 9,812 acre-feet/year up to 12.874 acre-feet/year. The applicant intends to get up to 2,600 acf/year from riparian rights (p. 4.4-9), but this is the applicant's calculation and has not been verified by the state. In addition, the Draft EIR states (p. 4.4-11) that "BBID's water rights may be diminished by future federal and/or state regulatory actions." It is also not clear that BBID will be able to serve those portions of the project (e.g. north of Byron Road) not currently served by this District.

The project has not demonstrated that an adequate supply of water exists to serve buildout of the project as proposed. The EIR must demonstrate that

such a supply exists, including realistic, implementable contingencies, before a project of this magnitude can be approved.

The Draft EIR states (p. 4.4-1) that "discrepancies between (water) supply and demand are not in themselves technically significant environmental impacts", except as they would have a direct impact on the environment. However, the project will have physical impacts to water supply which are "individually limited, but cumulatively considerable", as defined by CEQA Guidelines §15065, which sets forth Mandatory Findings of Significance. The State Water Project already has entitlements (4.16 million acf/y) well in excess of the firm yield of its available facilities (2.4 million acf/year), according to the California Resources Agency's annual report Management of the California State Water Project (1990 and 1992).

The experience of six years of drought and a depletion of the state's water reserves shows that there is not adequate planning for either water shortages or the future. An excess of demand over supply leads to many physical impacts including groundwater overdraft, land subsidence, increasing salinity and saltwater intrusion in the Delta, reduced water quality for fish and wildlife in surface water, buildup of salts in agricultural soils, and accumulations of toxins and salts in agricultural drain water. These are all significant impacts under CEQA to which the project, by virtue of its size, would make a significant contribution.

3. **Wastewater Treatment and Disposal -- Tertiary treatment and full reclamation/reuse of the wastewater *on the project site* should be required mitigation**

There are numerous deficiencies in the applicant's proposal to treat and dispose of wastewater. The Draft EIR does not adequately describe these deficiencies, and therefore, the mitigation for wastewater disposal impacts as stated in the Draft EIR is inadequate.

The applicant's proposal in the Draft Master Plan is to use primary treatment, facultative lagoons, chlorination for disinfection in Specific Plan I, and an ultimate wastewater treatment plant that would provide primary treatment, with secondary treatment using an activated sludge process. All of the wastewater is to be disposed of offsite, either at Fabian Tract, where 1,590 acres of irrigation disposal area would be needed as well as 200 - 300 acres of storage ponds, or 1,360 acres of irrigated land and 480 acres of storage ponds at a site in Alameda County (p. 4.4-19). The Draft EIR states (p. 3-33) that "a study area for these activities has been delineated, consisting of 4,550 acres; the exact locations of the irrigation and storage ponds within the study area are not defined."

The Draft EIR also indicates on p. 3-33 that the lands proposed for reclamation are not currently owned by or under the control of the Applicant. Therefore, there is no assurance that at the time such lands were needed that they could then be acquired by the applicant, or that the lands would be available for wastewater disposal in the long-term.

The storage ponds on the Fabian tract would be built "up to 20 feet above existing ground surfaces". The EIR has not evaluated the impacts of a

200 to 300 acre elevated structure from the point of view of dam safety, public safety or seismic safety in the event of an earthquake.

There are other issues which argue against the use of the Fabian Tract for wastewater disposal. The Draft EIR states (p. 4.1-16) that the most appropriate use of the Fabian Tract is for farming of edible food crops which would be precluded if the site were used for disposal of secondary effluent. The Applicant also potentially wants to use the same lands as part of the mitigation area for Swainson's hawk. But the Draft EIR states (p. 4.11-48) that salt and metal buildup in the soils of such lands could affect both the viability of the land to support crop types suitable for use as Swainson's hawk foraging habitat and could be detrimental to the wildlife.

Considering the volume of water necessary to serve the project, both for the Specific Plan I and full buildout, tertiary treatment and full reuse on the site should be required mitigation for the entire project. The Draft EIR estimated the project would use (with conservation) 2,500 acf/year (2.23 million gallons/day) in Specific Plan I (p. 3-43) and 9,849 acf/year (8.8 mgd) at full buildout (p. 3-30). As discussed above, the availability of a long-term water supply is not guaranteed, offsite disposal for secondary effluent is not guaranteed and has impacts that cannot be mitigated on agriculture and wildlife use of the site. Tertiary wastewater treatment is part of the Mitigated Alternative described in the Alternatives chapter, but is not necessarily recommended for the proposed project.

The mitigation in the Draft EIR (Measure 4.4.2-1) should be revised to specify tertiary treatment of the wastewater. Tertiary treatment is essentially a water purification system similar to that used on a large scale for drinking water, and at many locations in California for wastewater. Tertiary treatment *per se* is additional filtration to remove a greater proportion of the organic matter (BOD) and suspended solids (SS) from the wastewater. Full treatment to meet California Title 22 criteria for full reclamation/reuse involves both the additional filtration, as well as coagulation, oxidation, clarification and disinfection to produce an effluent that is safe for public contact. Such systems are in place at many locations throughout the state; the technology is feasible and cost-effective.

The Draft EIR states (p. 4.4-21) that the effluent would have to meet a coliform limit of 2.2 MPN/ml. This is the Title 22 standard, and a BOD and SS of 10 mg/l are also tertiary standards. Thus it appears that the person consulted at the State Water Resources Control Board regarding the project (p. 4.4-21) indicated that the project would be required to meet a tertiary standard.

Considering the growing disparity between the state's supply of fresh water, and the demand of the rapidly growing population, along with the problem of prolonged droughts, full reclamation of wastewater will probably be a state requirement for municipalities and new water consumers on the scale of municipalities (e.g. new towns) within the near future. Reclaimed wastewater is a particularly valuable resource to the extent that it can replace the use of drinking water for many applications. There is no reason why a project of this scale should be allowed to use an essentially out-of-date wastewater treatment and disposal method that is wasteful of such a resource.

4. The requirements for sludge disposal under Mitigation Measure 4.4.2-3 are too speculative.

The Draft EIR states (p. 4.4-27) that at full buildout the project will produce between 11,300 and 16,800 lbs per day of sewage sludge. The Draft EIR correctly recognizes that the project should not rely on landfill disposal for sewage sludge and that there should be source control and pretreatment so that the sludge would not be classified as hazardous, and could be used as an agricultural soil amendment. However, the proposed mitigation does not go far enough. The mitigation does not identify a definite disposal site for the Specific Plan I sludge, and puts off the issue of sludge disposal to a future plan to be submitted to the County one year after the startup of the activated sludge process.

The deferral of a sludge disposal program to a later time only serves to emphasize the uncertainty that a viable program for sludge disposal can be developed. The lack of commitment from an existing landfill to take the sludge from the project demonstrates the fact that most landfills are reluctant to take municipal sewage sludge both because of limited space in the landfill and the difficulty of landfill permitting, and the uncertainties of sludge composition with respect to hazardous waste components in the context of increasingly stringent regulation by the USEPA.

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The vague, speculative nature of the options described and the deferral of a long-term sludge disposal program to the future does not constitute adequate mitigation. The EIR should be revised to specify a definite program for sludge disposal that should be tied to a rigorous program of source control and pre-treatment.

Source control applies to both the residential and non-residential components of the project. Source control should describe the actual means that will be used to assure that hazardous chemicals and metals do not enter the sewage system. The types of businesses that would be subject to pre-treatment should be listed, and the types of organic chemicals and metals that would be subject to removal by pre-treatment should be also be listed. The EIR should spell out the means of monitoring to show that the source control and pre-treatment objectives are being met. The purpose of the source control and pre-treatment programs would be to guarantee that the sludge would be safe for use as a soil amendment within the site itself, so that the project would not have to depend on a speculative plan for offsite disposal.

Newer methods of secondary wastewater treatment, notably the sequential batch reactor ("SBR") provide more effective BOD removal and reduce the volume of sludge considerably compared with the conventional activated sludge treatment. By removing more solids, the SBR also reduces the need for filtration, and the cost of the tertiary system. The EIR should also consider the use of an SBR system for secondary treatment as a mitigation measure.

5. Alternative forms of Disinfection Should be Suggested as Mitigation

The Draft EIR states (p. 4.4-30) that the Draft Master Plan proposes to use chlorine, either in the form of hypochlorite or chlorine gas for wastewater disinfection, and that this may pose public health and safety

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hazards. The mitigation for this is simply to refer to Mitigation Measure 4.4.1-6, which states that "chemicals associated with water and wastewater treatment should be carefully selected to minimize the hazard." This is essentially vague and meaningless. The EIR needs to provide a risk analysis of the use of chlorine, particularly if chlorine gas, usually stored in 1-ton cylinders, is to be used. The risk analysis should show what population would be exposed to what magnitude of risk within a certain radius of the plant, in the event of chlorine gas releases.

The EIR should specifically consider the alternative of using ultraviolet light as an alternative to liquid chlorine. This alternative has been shown to be more effective in killing viruses, has no public health hazards, and is cost-effective. The technology is widely available for use in wastewater treatment systems of all sizes.

6. **Traffic impact and mitigation -- Project Impacts are Significant and Cannot be Mitigated; proposed mitigation may be financially infeasible**

The Draft EIR (p. 3-25) states that the proposed project would pay its fair share of a large number of road and freeway improvements that would bring these freeways, roads and interchanges up to a level of service C standard during the morning and evening peak periods. These numerous road improvements, including the widening of the I-580 and 205 corridors, are extremely costly, and the EIR contains no analysis of what the project's fair share participation in these improvements would cost. For example, Caltrans had reported that the cost to construct one mile of a new lane within an existing median would exceed \$1 million. The likely cost of the slate of improvements, as listed in Table 3.7 on p. 3-27, is in excess of \$1 billion. Unless the EIR contains an analysis, in monetary terms, of what the project's fair share of these improvements would be, it is impossible to determine whether the mitigation, as proposed, is really feasible, or would affect the overall feasibility of the project.

If the project were allowed to proceed, but the road infrastructure mitigation funds were not forthcoming, then either the impact would not be mitigated, or other public agencies such as the County, or the public at large, would be forced to pay for the improvements. For this reason, the County should not enter into a development agreement with the developer or commit any public funds until the full feasibility of the project has been demonstrated.

The statement of mitigation to LOS C on p. 3-25 is contradicted by the analysis in the transportation impact chapter of the EIR which shows that at numerous segments of I-580 and along arterial roads the level of service in the year 2010 would be at F = "jammed" with or without the project. The prior EIR on the Mountain House General Plan Amendment had shown that even with the maximum feasible widening of sections of I-580 that LOS F could not be avoided with the levels of cumulative traffic anticipated. The Draft EIR states (p. 4.12-26) the "unacceptable peak period levels of service, generally LOS F, are projected along most of I-580 west of the I-205 connection, and some peak period traffic would divert to Altamont Pass Road, causing similar LOS F conditions. *These conditions are projected with or without the project*" (emphasis added).

Since the project would clearly exacerbate an already unacceptable level of service according to County and Caltrans standards, the EIR should provide a greater explanation of the project's impact. In other words, how does an increase in the volume to capacity (V/C) ratio from 1.03 to 1.15 actually affect traffic flow? The answer would be for the EIR to explain how this aggravation of jammed conditions would either extend the length of the queue or the length of time during which LOS F was experienced, or both.

The Draft EIR correctly states (p. 4.12-27) that

" the proposed Land Use Plan seeks to maximize the proportion of work trips and shopping trips that stay within the site. A monitoring program that measures the amount of employment actually created within the site at each phase of development is essential to ensure that the projections for a high rate of internal travel remain valid. If the development and occupancy of industrial and commercial land uses were to lag sufficiently behind residential development, or if housing were not affordable to a sufficient number of onsite employees, more project residents would travel away from the project site than projected by the travel model resulting in potentially greater impacts in the year 2010 than indicated above."

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Since no fiscal or demographic analysis of either the residential or employment sectors of the project is presented, it is not at all clear that the housing on the project site would be affordable to the local workers. The discussion above regarding the high cost of the infrastructure improvements, especially roads, suggests that it would be difficult for the project to provide housing except for "high end" housing not affordable to the major class of workers. The EIR must present this analysis to show that the impact will in fact not be worse than the traffic model has predicted.

The financial analysis that was prepared in support of the earlier General Plan EIR concluded that the applicant's projections for absorption of the employment sector of the project were overly optimistic, and it was concluded that the residential portion of the project was likely to build out much faster than the employment component. This casts further doubt on the financial feasibility of the project as a new town, in contrast to a giant subdivision. The EIR needs to address the issue of the greater impact on local government to provide ongoing public services and infrastructure to the project if the non-residential component has a poor absorption rate because the revenue/cost ratio for non-residential development is much more favorable than for residential.

7. Infrastructure mitigation cost, including roads, will interfere with the implementation of affordable housing goals in the project.

The Draft EIR contains considerable analysis of affordable housing. The project is proposed to include 1,132 very low income units, renting for \$390 or less, (sale price up to \$43,000) and 1,949 low income units, renting for \$390 to \$610 (sale price up to \$70,000) as well as 4,139 moderate income units

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renting for less than \$960, or selling for \$70 - \$137,000. The Draft EIR discusses under Mitigation (Measure M4.9-2) measures to show that the affordable housing is occupied by qualified individuals or that the proportion of affordable units built, and prices charged, are meeting goals as specified. These are worthwhile measures, but they do not address the fundamental issue of whether the project will be able to include any units in these price ranges, once the full costs of infrastructure have been factored in.

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8. The jobs/housing analysis, as presented, is overly simplistic, and does not show that jobs within the project will be occupied by local residents.

The Draft EIR discusses the jobs/housing balance issue on p. 4.9-5 and relates 21,925 jobs to 16,105 dwelling units at buildout, with 1.44 employees per household, and concludes that ideally the project would have close to a 1.0 ratio between jobs and housing. However, this analysis does not show how there would be an income match between the types of jobs offered, their pay scales, the resultant household incomes of the employees, and how much of the housing in the project the range of employees could afford to buy or rent. For a project of this magnitude, it is essential that a more sophisticated analysis be done to demonstrate that the jobs/housing goal of the project is actually feasible.

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9. The proposed air quality impact mitigation is inadequate. To be more effective air quality impact mitigation needs to be tied to a jobs/housing balance incentive program.

The proposed project would generate air emissions many times in excess of significance thresholds established by both the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the San Francisco Air Quality Management District. For reactive organic gases (ROG) and oxides of nitrogen (NO_x), the significance threshold is 150 lb./day, and for small particulate matter (PM-10), the significance threshold is 80 lb. day. The proposed project will thus contribute at buildout 41 times the significance threshold for ROG emissions, 59 times the threshold for NO_x emissions and 12 times the threshold for PM-10 emissions. The Specific Plan I levels would be respectively 8, 12, and 2 times the significance thresholds for each emission factor.

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The levels of emissions, as reported in the Draft EIR, have increased from the levels reported in the General Plan EIR, yet no additional effective mitigation is proposed. In addition, the current Draft EIR still addresses only automobile and residential emissions, but does not include a factor for the stationary source emissions that could result from industrial or commercial uses within the project.

The mitigation described in the Draft EIR (Mitigation Measure M4.13-1, p. 4.13-4) sets a goal of 25% reduction in air emissions as the threshold below which the County should impose an air impact fee. As can be seen from the threshold of significance ratios above, a 25% decrease in air emissions would not bring either the Specific Plan I or the buildout emissions even close to the significance thresholds of the air management districts.

The Draft Master Plan incorporates a transportation demand management (TDM) plan, coordination with major outside employers such as Hacienda Business Park and Bishop Ranch, vanpools, internal transit and "clean fuels" as mitigation for air quality impacts. Yet the Draft EIR fails to analyze the percentage reduction in air emissions that would result from full implementation of these measures. The Draft EIR needs to show what these effects would be in meeting even the 25% reduction goal.

A long-term study by the SJVUAPCD as part of the regional 1991 Air Quality Attainment Plan found that the maximum possible implementation of measures such as those described in the Draft EIR would result in only less than a 5% total reduction in air emissions for each county in the basin, and in some cases almost no net reduction. The effects of TDM and other programs were being overridden by the effects of growth, and overall growth in vehicular use.

Since such measures are largely ineffective, the EIR should place a far greater emphasis on the benefit to traffic generation and air emissions of having the vast majority of the residents of the project also work within the project. This would greatly increase the prospects for non-motor vehicular "commuting", alternative-energy fueled shuttle buses, etc. and would also almost eliminate the long-distance commuting component. The air quality, transportation, and jobs/housing balance measures are closely related. The mitigation program regarding jobs and housing should be substantially expanded in both the EIR and the Master Plan to provide clear incentives for Mountain House to function as a self-sufficient "new town". Such incentives could include, but would not be limited to:

- o the recruiting efforts to attract major employers to the area should be expressly tied to the relocation of employees to the project, or to housing assistance incentives for new employees to move into the project.
- o the housing cost and employment pay scale profile should be closely matched to assure that the housing will be affordable to local workers
- o the rate of development of the residential component should be required to be in step with the employment component, rather than just reviewing whether the jobs have been absorbed after 4,000, 8,000, 12,000 and 16,000 units have been completed, each of which would be far too late to rectify a major local employment/resident imbalance.

The enforcement program should not be retroactive, as described in the Draft Master Plan (p. C-14), but should be pro-active to assure that the goals are met in advance.

The relative ineffectiveness of the jobs/housing program as proposed is shown by the fact that in the Draft EIR the transportation and air impacts of the full employment scenario for Specific Plan I are greater than for the expected employment scenario. This results because full employment is a priori assumed to generate more internal and external automobile trips than a lesser degree of onsite employment. If a full-scale effort were made to ensure that the majority of Mountain House residents were also Mountain House

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employees, the effect should be reversed. The greater employment scenario should generate a potentially lesser amount of trips and air emissions.

10. **Cumulative Impacts** -- The list of cumulative projects on which the Draft EIR analysis was based appears to be incomplete.

The Draft EIR states (p. 6-1) that it addresses other out-of-County and specific San Joaquin County projects within an approximately 30-mile radius of the Mountain House site that are approved or are under construction. The following additional projects in both Stanislaus and San Joaquin County were apparently not included in the cumulative impact analysis since these projects are not listed in Table 6.1 on pp. 6-2 through 6-7 of the Draft EIR. While some of these projects may be more than 30 miles from the Mountain House site they would still contribute to the cumulative impacts of development on major transportation routes, air quality, water supply, loss of agricultural land and loss of wildlife habitat. The EIR should explain why each of the following projects was not relevant to the cumulative impact analysis, or revise the analysis to reflect the inclusion of the additional projects.

ADDITIONAL MAJOR DEVELOPMENTS NOT LISTED IN DRAFT EIR CUMULATIVE IMPACT ASSESSMENT			
PROJECT NAME	TYPE	ACRES	OTHER INFORMATION
<u>Stanislaus County</u>			
Mayes Ranch	Residential & commercial	1400	
Lakeborough	"New Town" (incl resid., commerc., indust., open space, etc.)	4300	10,000 du, 5.8 million sf office/ commercial industrial
Grayson Park #3	Residential & commercial	155	633 resid. lots
North Salida	Residential & commercial	1600	
Mapes Ranch	"New Town" (incl resid., commerc., indust., open space, etc.)	9600	
Boatwright Property	Residential, golf course, commercial		
Del Rio Community Plan Update	Residential, golf course, commercial	1242	

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ADDITIONAL MAJOR DEVELOPMENTS NOT LISTED IN DRAFT EIR CUMULATIVE IMPACT ASSESSMENT			
Kaufman & Broad		1100	
Salida		750	
Village One Specific Plan	Mixed use (residential, commercial, industrial)	994	7,500 units
Stanislaus Motorsport Resort	Speedway, clubhouse	960	
Williams Ranch	27-hole golf course	2,400	not specified
Riverbank Village	Residential	633	
Newman General Plan	Mixed land uses		3,200
San Joaquin County			
Liberty	New Town	483	
Forest Oaks		1385	
Spanos Park		1300	
Escalon Golf Course Subdivision		750	
Collier Ranch	Mixed use	725	1,700 - 2,200, 27-hole golf course
Rancho San Joaquin			1000 lots
Tracy Highlands/ Le Boeuf	Residential	1,450	3,000 - 6,000 units
Dell'Aringa Golfland/	Golf course	600	

SOURCES: Stanislaus County Department of Planning and Community Development.
San Joaquin County General Plan Update EIR (1992)

Thank you for the opportunity to provide these comments.



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July 22, 1994

Kitty Walker
San Joaquin County Planning Division
1810 E. Hazelton Avenue
Stockton, California 95205

Re: Mountain House Draft EIR

Dear Kitty:

As you know, this office represents Trimark Communities, and in that capacity has reviewed the Draft EIR which is currently being circulated in connection with the Mountain House Project. You have already received comments, by separate cover, from other consultants and attorneys for the project.

These comments pertain to Section 4.11 of the DEIR, entitled Biological Resources. We will make both general comments on the biological resources section of the DEIR as a whole, as well as specific text comments.

First, in any analysis of a project's impact upon biological resources, it is important to note that CEQA requires an analysis of a project's impacts upon the actual, as opposed to potential habitat of a given species of plant or animal. Thus, while it is theoretically possible to construct an argument in which an endangered species might potentially use the project site CEQA requires an analysis of actual impacts resulting from a given project. Furthermore, the impact on actual habitat must be substantial (see Public Resources Code Section 21151).

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Second, in following the analytic path from quantification of project impacts to the formulation of feasible mitigation measures for the reduction of that impact, the EIR author cannot ignore the concepts of feasibility and proportionality of mitigation. This is particularly true in the area of biological resources, where state and federal agencies have collectively demanded acreage for mitigation which collectively exceeds more than twice the size of the project itself.

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COMMUNITY DEVELOPMENT DEPT.
PLANNING DIVISION

Kitty Walker
July 22, 1994
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Finally, it is critical for the EIR to acknowledge that the role of the California Department of Fish and Game ("CDFG") and of the U.S. Fish and Wildlife Service ("USFWS") in the CEQA process is consultative, not determinative. In other words, while the EIR authors have properly consulted with DFG and USFWS regarding potential project impacts, the authors need not incorporate the mitigation proposals demanded by those agencies. The legal relationship of DFG and USFWS to the Mountain House project, for purposes of CEQA, is that of "trustee" agencies.¹ The agencies are not responsible agencies with approval authority over the project.

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The following comments are provided by this office and the applicant's biological consultant, Zentner & Zentner, on Section 4.11 of the DEIR.

1. On page 4.11-5, the DEIR makes reference to "willow-dominated riparian scrub . . .". This statement could be interpreted to mean that native willows occur along Old River. In fact, most of these willows are non-native weeping willows. These have lower value to native wildlife than native willows and illustrate the level of vegetative alteration on site. The DEIR goes on to state "these trees provide important perching, roosting, and nesting substrate for a wide variety of avian species". The importance of these trees should be better defined as no data is presented to support this conclusion. If a "wide variety" of avian species use this site, the specific species should be referenced and the source for the conclusion cited.

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2. Also on page 4.11-5, the DEIR states "these and other wetlands and waters of the U.S. still provide important resources to wildlife." The basis for concluding that these resources are important must be explained as no specific data are provided. The DEIR also makes reference to "animal taxa of concern which have been reported or are suspected to occur . . .". The use of this phrase implies that there is reason to believe these species may occur on site. In fact, the following species

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¹ For example, in a recent Legislative Counsel opinion letter regarding enforcement of DFG's "non-regulatory" 1993 Draft Swainson's Hawk Mitigation Guidelines, the Legislative Counsel has opined that DFG is a trustee agency for purposes of CEQA.

were not observed during Spring 1991 surveys, the site does not offer prime habitat for them, and their use of the site is a matter of chance, dependent upon rainfall and winter crop selection for a particular year: Aleutian Canada Goose; Mountain Plover; Prairie Falcon; Peregrine Falcon; and White-Faced Ibis. These species are unlikely to occur on the site and reference to these in the EIR should be deleted.

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3. On page 4.11-7, the DEIR states "the site is not believed to provide critical habitat . . .". The term "critical habitat" has a specific meaning under the Federal Endangered Species Act (FESA) - it is habitat designated in accordance with the provisions of FESA and implementing regulations which is determined to be essential to the species' conservation. The Mountain House site does not contain "critical habitat" for any special status species. Use of this phrase when not applied to "critical habitat" as designated under the ESA is misleading.

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4. On page 4.11-8, we would simply reiterate our comments as stated above regarding the use of the phrase "suspected to occur" and identification of species not found, nor likely to occur, on the site.

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5. On page 4.11-11, the DEIR states "provisions to compensate for the loss of Swainson's Hawk foraging habitat contained in the Draft Master Plan are based on the assumption by the applicant that no mitigation should be required for conversion of agricultural land south of Byron Road." In view of a recent sighting of Swainson's Hawk South of Byron Road, the HMP may be revised, although the applicant's position regarding "take" of Swainson's Hawk as a result of project implementation remains unchanged.

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6. On page 4.11-12, the DEIR makes reference to "the Kit Fox range extending over the southern 1/4 to 1/3 of the site." We would note that the northern most portion of the range in San Joaquin County extends over only in the southern 1/5 to 1/4 of the site.

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7. Also on page 4.11-12, the DEIR states "two independent consultants concluded that the track was more like Kit Fox than Grey Fox; however, this conclusion was not definitive." After careful review of this track, Bio-

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Systems concluded that it was more like Grey Fox than Kit Fox due to the distinct outline of the hind pad; Kit Foxes typically have an indistinct hind pad because they have so much fur on their feet (Bio-Systems 1992).

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8. The DEIR also states that the site "functions as both a movement corridor and feeding habitat for Kit Fox." Dr. McGinnis, however, concluded that had the site been used for breeding, pupping, feeding, and/or weaning purposes, the evidence should have been substantiated during his survey. (Baseline 1992) The DEIR conclusion that the site functions as a feeding site was based solely on the presence of potential prey. (Id.) The survey findings do not support this conclusion. Furthermore, later statements in the DEIR to the effect that failure to observe Kit Fox does not constitute proof that a particular area does not provide habitat for the species may have some validity, but it does not constitute substantial evidence (or any evidence, for that matter) that implementation of the project will have significant affects upon the Kit Fox or its habitat. There is also no evidence that the site is a movement corridor for the fox.

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9. On page 4.11-13, the DEIR discusses Bio-Systems' conclusions regarding "possible" and "potential" Kit Fox dens based on Bio-Systems classifications. It should be noted that Red Fox density in this area was significant and it is reasonable to conclude that dens identified as "possible" or "potential" were those of Red Fox (particularly because Red Foxes exclude and eat Kit Foxes).

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10. Also on page 4.11-13, the DEIR states "the site is well within the foraging range of the Kit Fox observed one mile to the west . . .". No other information other than the sighting is known about the Kit Fox reported one mile to the west of the site. It cannot be assumed that this fox was foraging successfully as it may have been simply dispersing from foraging or other habitat.

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11. On page 4.11-15, the DEIR correctly states "no consensus regarding Kit Fox occurrence or appropriate mitigation has been reached among the biologists involved in assessing the project." The applicant's biological consultant, Zentner & Zentner, and H.T. Harvey & Associates, retained by the applicant to provide peer review of the work accomplished to date, and to

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independently interpret the available data, agree that mitigation is not appropriate based upon the survey findings. Ultimately, the DEIR should recognize that with respect to the Kit Fox and the Swainson's Hawk, the ultimate determination for CEQA purposes of whether implementation of the project will result in significant effects upon these species will be made by the lead agency's decision making body, the Board of Supervisors. Similarly, it is the unique province of the Board of Supervisors to determine which mitigation measures should be imposed upon the project. The available evidence would be more than sufficient for the Board of Supervisors to conclude that there would be no significant impact on the fox and that no mitigation is necessary to satisfy CEQA.

The discharging of the Board's obligations under CEQA may well be separate and distinct from the applicant's responsibility to comply with CESA and the Federal ESA. In other words, the Board of Supervisors may determine that while the project would have some significant effects upon wildlife resources under CEQA, it may determine, for purposes of its review of the project, that the project's potential impacts upon wildlife or habitat does not necessarily constitute "take" under CESA or the Federal ESA. This conclusion would be justified given the conflicting views of biologists who have surveyed the site. Therefore, the mere fact that CDFG and USFWS, as trustee agencies under CEQA, have reviewed the conflicting survey data and concluded (rightly or wrongly) that implementation of the project would result in "take" of endangered species, the Board of Supervisors is not bound by this conclusion. By the same token, the Board is not required to implement each and every mitigation measure demanded by these agencies. It is the applicants position that the lack of direct evidence of Kit Fox use of the site must lead to the conclusion that the site does not provide critical, essential, or even marginal denning or foraging habitat for the Kit Fox. Since the project will thus not have substantial adverse impacts upon the habitat of the Kit Fox, implementation of the project will not violate the County's General Plan policies and will not constitute a significant impact on the Kit Fox under CEQA.

Finally, the Board of Supervisors could determine that even if the loss of potential marginal Kit Fox habitat is a significant impact under CEQA, the

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mitigation measures proposed by CDFG and USFWS are not "feasible" for either legal or economic reasons. If the Board believes that no mitigation measures are feasible, the Board could adopt a Statement of Overriding Considerations for the project, thus discharging its CEQA obligation.

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12. On pages 4.11-13 and 4.11-15 of the DEIR, the authors correctly note that considerable effort has been made since certification of the General Plan amendment EIR and SEIR to clarify whether Kit Fox use the site, and if so, to determine the significance of potential impacts of the draft Master Plan. Each of the studies, comments, and meetings discussed by the authors constitute significant new site specific information which was not evaluated in any previous project EIR. As such, the Board must entirely re-evaluate the project's potential impacts upon the San Joaquin Kit Fox, and must make a de novo determination as to project impacts and feasible mitigation measures. This analysis and adoption of feasible mitigation measures must entirely supersede that contained in previous project EIRs.

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13. On page 4.11-15, the DEIR references the draft Habitat Conservation Plan (HCP) prepared by EIP in 1992 and 1993. The discussion of the HCP is irrelevant to this EIR since the project site is not within the boundaries of the draft HCP study area, the draft HCP was never completed, and, most importantly, was not subject to any peer review.

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14. On page 4.11-18, the DEIR states "given the average 10 mile foraging radius for Swainson's Hawk . . ." This statement is incorrect. A majority of hawk foraging activity occurs within 1 to 2 miles of a nest, and 80 - 90% of foraging occurs within 5 miles. The DEIR also states "it is reasonable to assume that nesting pairs and fledglings depend upon the site for a portion of their prey requirements." Although it is reasonable to assume that hawks use the site for a portion of their prey requirements, it has not been established that the hawk depends on the site. Sufficient off-site foraging habitat exists within 2 to 5 miles of active nests in the region for many more pairs than are currently identified for the region.

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15. On page 4.11-21, the DEIR states "the proposed HMP . . . does not include any specific provisions to protect the nest location or critical habitat for the nesting territory." (Emphasis added.) As stated above, the use of the term "critical habitat" is misleading and implies greater importance of the project site to conservation of the hawk than has been established by the data or is assigned by law. We would also note the Legal Requirements section of the Background Report, Mountain House. New Town and the San Joaquin Kit Fox (Zentner & Zentner 1993) was prepared by the law firm of Keck, Mahin & Cate, and represents the legal conclusions of the applicants attorneys.

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16. On page 4.11-19, footnote 8 states that the County has required recent development projects to mitigate for the loss of Swainson's Hawk habitat in accordance with the draft Mitigation Guidelines proposed by CDFG. This statement is misleading at best. First, the River Oaks subdivision proposed by Louis Arismendi did agree to mitigation at 1/2:1 for affected areas, or, in the alternative, to participate in a City of Stockton-sponsored fee program. Second, the Lee Lakes subdivision was denied by the Planning Commission, and the applicants did not agree to abide by the draft Mitigation Guidelines. In fact, the most recent position of the County with respect to the Swainson's Hawk mitigation is that projects should be required to comply with the California Endangered Species Act, not necessarily with each and every requirement of CDFG. In fact, many more projects have been approved and implemented in the County using this mitigation measure than have been approved and implemented using the draft Mitigation Guidelines proposed by CDFG. We would suggest the DEIR authors discuss this matter with the County's Community Development Department and County Counsel so that more accurate information can be presented in the DEIR.

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17. On page 4.11-27, the DEIR states "an informal consultation was conducted with the USFWS during preparation of this DEIR." While discussions have been held between the applicant and the USFWS (and the EIR consultants and the USFWS), "informal consultation" as defined in ESA regulations (50 C.F.R. 402.13) was not initiated by the applicant. The applicant continues to maintain that mitigation is not required because there has

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been no significant impact (or any impact) to the Kit Fox shown to be caused by this project.

18. Also on page 4.11-27, the DEIR suggests a procedure to establish off-site habitat compensation requirements for the Kit Fox while calculating acreage values for each of the different crop types on the site. The basis for this proposal is not stated and is not supportable by the current data. Kit Fox are not known to utilize crop lands for foraging and any mitigation ratio based on crop type would be speculative.

P193

19. On page 4.11-28, the DEIR states "as noted previously, the site is located at the periphery of the currently accepted Kit Fox range mapped by the USFWS." As stated earlier, only the southern 1/5 to 1/4 of the site is located within the mapped range. This statement implies the entire site is located within the range.

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20. Also on page 4.11-28, the DEIR asserts "the lack of any definitive evidence of Kit Fox occurrence and use of the site indicate that the overall habitat value is lower than the nearby grasslands of the Altamont hills, where numerous sightings and dens have been documented." The grasslands of the Altamont hills are traditional Kit Fox habitat. The occurrence of Kit Fox in the Altamont hills, and its non-occurrence on Mountain House, is not an unexpected finding based upon the very different habitat characteristics of these two areas and is in itself a verification of these different habitat values.

P195

21. On page 4.11-25, the DEIR states "project implementation would result in elimination of suitable on-site foraging and dispersal habitat for San Joaquin Kit Fox." The survey findings do not support this conclusion.

P196

22. On page 4.11-26, the DEIR states "compensation for loss of suitable Kit Fox habitat would be a 3 to 1 ratio . . . consistent with mitigation requirements for other developments affecting substantial areas of Kit Fox habitat in the area, including the proposed Los Vaqueros Reservoir and Byron Airport projects . . .". The implication that Mountain House is a substantial area of Kit Fox habitat or is in any way comparable to the other two sites is inaccurate. To the contrary, there is no evidence the Kit Fox uses this site. Further, the Los Vaqueros and Byron Airport projects are easily

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distinguished from Mountain House and do not provide precedent for 3 to 1 mitigation for this project. An occupied natal den was found at the Los Vaqueros Reservoir project site, and Kit Foxes were sighted in the project area. The Byron Airport project site consisted of classic suitable Kit Fox habitat, i.e., large expansions of annual and alkali grasslands, many potential dens, and a notable ground squirrel population without frequent interruption by farm activities and no intervening barriers such as the Aqueduct.

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23. Also on page 4.11-26, the DEIR states "the applicants position is that . . . the project would not result in a 'take' . . . and that no habitat compensation should be required. Somewhat inconsistently, the draft Master Plan does include pre-construction and construction protocol 'to insure that project construction does not result in harm or injury to the Kit Fox'." These positions are not inconsistent. The survey findings, and other relevant data concerning Kit Fox observed in the northern portion of the known range, do not support any requirement for mitigation for loss of habitat. However, to ensure a "take" does not occur during construction activities should a Kit Fox wander through the site, pre-construction and construction protocols have been included in the Master Plan.

P198

24. On pages 4.11-28 - 4.11-31, mitigation measure M4.11-2 should be revised or deleted in its entirety. The applicant should not be required to conduct negotiations with representatives of the USFWS and the CDFG since no impacts to Kit Fox have been identified in connection with project implementation. Simply stated, the mitigation measures recommended by the DEIR do not flow logically from the survey results, which were inconclusive at best. The applicant further objects to that portion of the mitigation measure recommending revision of the Zentner & Zentner Background Report. The Background Report provides an analysis of survey findings and the conclusions reached by Bio-Systems. It would be inappropriate to revise this document to incorporate the "likely requirements" of the USFWS and CDFG.

P199

In addition, the pre-construction and construction protocols contained in the Master Plan are no less reasonable than those recommended by the USFWS. It is the opinion of the applicant's biological consultant

that the measures proposed will adequately protect the fox from harm should any happen to wander through the site prior to and during project construction. To avoid "take" and comply with the Federal and State Endangered Species Acts, pre-construction protocols are reasonably limited to known dens as defined by the USFWS. Because the fox has not been observed on the site, it is unnecessary to extend these protocols to "potential" dens as defined by the USFWS. The five dens identified by Bio-Systems as "potential" were located north of the species' known range. USFWS Guidelines define a "potential" den as "any natural den or burrow within the species range" (emphasis added). Only those dens that have been conclusively found to be inhabited by Kit Fox should be subject to the measures identified in the Master Plan.

P199

The DEIR questions the Kit Fox mitigation recommended by Bio-Systems, yet concludes that "any deviations from the Bio-Systems' recommendations should be negotiated with representatives of the USFWS and CDFG, with adequate explanation provided to justify them from a biological standpoint." This mitigation is unsupported by the analysis contained in the DEIR. Further, the applicant already has provided adequate biological justification to refute the conclusions drawn by Bio-Systems based upon its survey findings and other relevant data.

25. On page 4.11-31, the DEIR states "this conversion of foraging habitat . . . would be a significant adverse impact under CEQA, resulting in a substantial reduction of critical habitat for this special status species." As noted above, this site has not been shown to be "critical habitat" for the Swainson's Hawk (even assuming the common definition of "critical"). Although it can be assumed that the hawk forages on at least some portions of the Mountain House site, foraging lands surround the site as well. Additionally, because of the specific meaning of "critical habitat" under the ESA, use of this term in the context of the Mountain House site is misleading (the implication that the site is essential to the species conservation, which has not been demonstrated, pertains, notwithstanding that the hawk is a state, not federally, listed species).

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26. On page 4.11-32, the DEIR states "due to the extent and density of development proposed on the site,

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the suitability of foraging habitat on adjacent undeveloped properties to the east and west would most likely be reduced as well." This statement is totally unsubstantiated. Hawks have been shown to be opportunistic feeders and conversion of Mountain House from agricultural to urban uses will not necessarily reduce the suitability of foraging habitat to the east and west of the site. Hawks currently exist in a variety of urban and suburban sites; no deleterious effects of these nesting locations have been demonstrated. This is particularly true as much of the site north of Byron Road will be occupied by open space, including the golf course, regional park, and Mountain House Creek Park.

P201

27. On page 4.11-33 and 4.11-34, the DEIR states "the on-site nesting activity and proximity of other known nesting locations increase the likelihood that the site provides critical foraging habitat . . . ". Again, the site does not provide "critical habitat" for any special status species. The significance of the foraging habitat on Mountain House has not been conclusively established. Given the supply of foraging land in the vicinity, it is very unlikely the site provides critical habitat. There is no disagreement, however, that the site provides some foraging habitat for the hawk.

P202

28. On page 4.11-34, the DEIR states "these totals (for provision of mitigation lands under the HMP) could be reduced even further if future applicants choose other methods to meet proposed mitigation requirements . . . ". Other proposed mitigation measures, as provided in the HMP, provide adequate compensation for impacts to the hawk. Such measures do not necessarily have to take the form of provision of mitigation lands to constitute appropriate mitigation.

P203

29. Also on page 4.11-34, the DEIR states "due to major inconsistencies between the basic assumptions and provisions in the draft Master Plan and Mitigation Guidelines of the CDFG . . . the HMP as currently proposed would not adequately mitigate potential impacts on Swainson's Hawk use of the site." There are differences, not inconsistencies, between CDFG Guidelines (whether the 1992 version, 1993 version, or the new "non-Regulatory" Guidelines) and the HMP. The Guidelines do not represent mandatory requirements, and the HMP should be independently assessed for adequacy in mitigating

P204

identified impacts. This conclusion is buttressed by a recent Legislative Counsel opinion prepared at the request of Assemblyman Curt Pringle (a copy of which is attached). The Legislative Counsel's opinion is that the CDFG Guidelines improperly expand the scope of authority of the CDFG under CESA, and that habitat modification, in and of itself, does not constitute "take" under CESA. The Legislative Counsel opinion further states that none of the CDFG Guidelines (whether 1992, 1993 or the most recent "non-regulatory" CDFG Guidelines) are anything more than advisory in nature, since the Guidelines have never been formally adopted under the Administrative Procedures Act. (See Government Code Sections 11342(b), 11346, 11347.5(a).) It is the applicant's position that by uncritically adopting and attempting to impose the CDFG "Non-Regulatory Guidelines" on the Mountain House project, the EIR authors have proposed excessive and unnecessary mitigation not warranted by the available data.

P204

30. On pages 4.11-34 and 4.11-35, the DEIR states that several important details are missing from the HMP. However, the HMP addresses all of the following elements:

1. Appropriate crop types to be used on mitigation lands (HMP Appendix B);
2. Minimum size of mitigation lands (proposed mitigation program [text] and Appendix B); and,
3. Mechanism to insure a minimum acreage of suitable foraging habitat is provided (HMP states that a minimum of 35% of the mitigation area should be in alfalfa at all times).

P205

31. On page 4.11-36, the DEIR states "hawks would generally have to fly over urban development to access foraging habitat in the [Alameda County off-site] mitigation area. This would most likely contribute to a reduction in suitability and use by Swainson's Hawk." The Swainson's Hawk is an opportunistic feeder and currently flies over urban development to access foraging habitat (e.g. in West Sacramento and Stockton as evidenced by nests within the urban limits). This does not therefore render the foraging habitat less suitable or likely to be used by the hawk.

P206

32. On page 4.11-36 - 4.11-38, we would offer the following comment on mitigation measure M4.11-3.

1. The mitigation measure states that a "take" permit or habitat management agreement for loss of Swainson's Hawk habitat should be obtained by the applicant pursuant to Section 2081 of the State Fish and Game Code. This mitigation measure should be changed to reflect the fact that if project activities are determined by the Board of Supervisors to constitute "take", the applicant should negotiate directly with the Department of Fish and Game for the processing and obtaining of a Habitat Management Agreement. From a legal perspective, the applicant does not believe that the modification of potential or actual foraging habitat on the site constitutes a "take" under CESA. If the Board of Supervisors believes, as part of its review of the project under CEQA, that the project's activities do not constitute "take" this mitigation measure should be deleted. Also, as stated in the Mountain House Multi-Purpose Habitat Management Plan - Analysis of Legal Considerations, which is attached to the Master Plan, the applicant believes, and the Board of Supervisors could decide, that the mitigation commitments outlined in the HMP adequately and feasibly mitigate Swainson's Hawk impacts of the project.

2. As stated above, the HMP contains many of the details which the DEIR indicates are missing (e.g., unacceptable crop types, etc.). The HMP explains the basis of the minimum 35% alfalfa requirement; the basis for questioning this percentage should be clarified. With respect to the use of rodenticides, the DEIR's proposed standard that only allows its use when small mammal levels pose a serious threat to agricultural crops is not quantifiable; the HMP, on the other hand, contains an objective standard.

33. On page 4.11-40, the DEIR refers to "possible occurrences" of Delta Smelt, Sacramento Splittail and California Hibiscus. With respect to this statement, we would refer to our earlier comments regarding the use of the phrase "suspected to occur". These species have not been found in surveys conducted to date and thus must be presumed to not be found on site. In view of the absence of these species from the site, any reference to consultation with USFWS and CDFG with respect to these

P207

P208

species is clearly not required under FESA or CESA, and should be deleted.

P208

34. On page 4.11-41, the DEIR refers to the site, and to Mountain House Creek in particular, as wildlife movement corridors. The data does not support the assertion that Mountain House Creek is a movement corridor for any significant terrestrial species. Furthermore, Mountain House Creek flows south to north then east to west and does not appear to function as a movement corridor for other than small mammals, sparrows and other similar species.

P209

35. With respect to mitigation measure M4.11-5, the applicant's consultant believes that to encourage community appreciation for Mountain House Creek, trails can meander (at selected points) as close as 10 feet to the creek channel as compared to 50 feet as stated in this measure. Restricting the trail to 50 feet would in fact be an encouragement for traffic to leave the trail to walk along the creek.

P210

36. On page 4.11-45, the DEIR states "any unavoidable modifications to wetlands and other waters of the U.S. should still require review by the CORPS and CDFG to determine jurisdiction and any mitigation requirements." Any reference to required review by the CDFG should be limited to its jurisdiction which is defined in Section 1600 et seq. of the California Fish and Game Code.

P211

37. On page 4.11-48, mitigation measure M4.11-8 appears to require formal consultation with USFWS and CDFG with regard to the evaluation of off-site mitigation locations. Consultation with USFWS and CDFG should only be required if the project's impacts on sensitive resources would result in "take" under CESA or FESA. Only then would USFWS and CDFG acquire jurisdiction over sensitive resources on proposed off-site mitigation locations. The same comment is made with respect to impact S4.11-1 with regard to Kit Fox mitigation requirements, and mitigation measure S4.11-2, with respect to foraging habitat for Swainson's Hawk.

P212

38. On page 4.11-33 of the DEIR, the DEIR states "while establishment and preservation of nesting habitat is a desirable goal of the HMP, the proposed credit ratios

P213

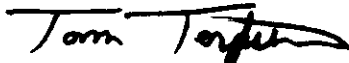
Kitty Walker
July 22, 1994
Page 15

appear excessive given that most riparian habitat along Old River and other locations in the project vicinity would most likely be preserved in an enhanced habitat as a condition of development approval." We would point out that mitigation of project impacts is measured on the basis of "before project" versus "after project" conditions. The mere fact that certain riparian habitat along Old River would likely be preserved as a normal condition of development approval does not mean that credit cannot be given for the Old River riparian area. This area is currently private agricultural land, which, if farmed, could be converted to unsuitable Swainson's Hawk habitat without the requirement of mitigation. Therefore, full mitigation credit should be given for all riparian habitat along Old River and other locations in the project vicinity, regardless of whether such lands could ultimately be developed for urban uses.

P213

Thank you for the opportunity to comment on the Draft EIR.

Very truly yours,



THOMAS H. TERPSTRA
Attorney-at-Law

THT:lam

MINUTES

The San Joaquin County Community Development Department held an Administrative Public Hearing on the DEIR for Mountain House, in the conference room at 1810 E. Hazelton Avenue, at 1:30 p.m. on June 30, 1994.

Present: Barry Hand, David Storer, Judi Burick, Bob Burick, Lester Krohn, Mike Hakeem, Eric Parfrey, Tamma Adamell, and Scott Howard.

Staff: Kitty Walker and Jacquie Fonzi.

Senior Planner Kitty Walker gave her opening remarks, including a brief history of the project, presented the projected calendar for Mountain House, and the format to be followed for the afternoon. Prior to opening the hearing, Ms. Walker added some additional information not reflected in the DEIR, in regard to an active Swainson Hawk nest in the center of the Mountain House site. She also commented on areas to be considered for effluent disposal in addition to Fabian Tract. The following spoke in the order presented.

Lester H. Krohn, 15120 W. Finck Rd., Tracy CA 95376

Mr. Krohn stated his reason for attending was to gain information in regard to Fabian Tract and sewer disposal. Ms. Walker said that it was her understanding that Fabian Tract was no longer Trimark's preferred alternative. The preferred alternative for waste water treatment is the tertiary treatment plant.

PH1

Judi Burick, 350 Via Concha, Aptos, CA 95003

Mrs. Burick expressed her concerns in regard to Old River and storm water drainage. Ms. Walker explained the various steps required by governing agencies and the NPDES for drainage and the marina area. There was further discussion in regard to governing agencies and whether or not the marina is a viable concern at this time.

PH2

Bob Burick, 350 Via Concha, Aptos, CA 95003

Mr. Burick expressed his basic position as rejection of any proposal to dump sewage disposal onto Fabian Tract or on prime agricultural land in San Joaquin County and that this proposal is also generally inconsistent with the Delta Protection Act. He believes that once the Plan of the Delta Protection Act is adopted it will be straightforward in its rejection of sewage effluent disposal. He then stated that he views the location of storage ponds and irrigation of sewage effluent as leading to a general degradation in the value of this agriculture land.

PH3

Mr. Burick expressed his concern that we are dealing with an island that is already below sea level and has a high water table that currently requires pumping 24 hours a day to ensure crop stability - it doesn't make sense to add millions of gallons of water to this situation.

Mr. Burick also believes that regulating their own chemical discharges in light of increasing regulation will be difficult, and will be even more difficult with the introduction of this treated water source.

PH3

He believes odors will be generated to some degree as well and feels that tertiary treatment is the most prudent course to follow.

Mr. Burick then stated that a detailed letter would follow prior to the 22nd.

Barry Hand, City of Tracy

Mr. Hand stated that the City of Tracy's concerns in regard to impacts on the City be accounted for in the Environmental Impact Report mitigations and Finance Plan. The City's position is that if the project were incorporated into the City, it would have the financial methods to mitigate the impacts and to build the infrastructure necessary to serve it from the City's standpoint. Because it's not incorporated as part of the City, there are impacts that the City is seeking to have those portions of the infrastructure costs come to the City of Tracy. The first example given by Mr. Hand was the road system. He cited the I-205 and Grant Line interchange as not being examined as part of the traffic analysis, so there is no impact or mitigation presented. He said they have correspondence from both County Public Works Department and Cal-Trans that the City needs to account for the Mountain House impacts on that interchange. Therefore, the EIR is the vehicle to show what the traffic volume is and what that fair share should be, that would go to fund that City piece of infrastructure. He made a similar comment in regard to Grant Line Road, in that it's analyzed in the County area but its impacts inside the City limits are not included.

PH4

He then stated that in the area of parks, there is a reference that the City of Tracy provides the closest parks to Mountain House and on page 4.3-1 it summarizes the parks that are planned but are not built yet. Mr. Hand said he would provide the acreage. If it is anticipated that the Mountain House residents would utilize the City recreation facilities, the City of Tracy would ask that cost support be provided for that.

PH5

Mr. Hand then referred to units per year on a chart found on page 4.9-3, and discussed the estimated growth in the south west part of the County.

PH6

He went on to discuss the growth inducing impacts, Section 6, stating it indicated that utilities wouldn't be extended off site of Mountain House and I-205 would act as a barrier to service extensions. There was discussion in regard to amending the wording in the DEIR regarding project boundaries.

PH7

In the area of alternative projects and locations, Mr. Hand addressed the Tracy alternative site which is on page 5-2 and reiterated that this is still the City's preferred location.

PH8

Mr. Hand closed his remarks stating that he had other comments on the DEIR but would follow up with a letter.

David Storer, City of Tracy

Mr. Storer commented that the City of Tracy had requested in writing that there be an itemization of the impacts of the Master Plan and the Specific Plan on the City of Tracy recognizing the fiscal impact analysis and also the timetable for completion and that this is not addressed in the DEIR.

PH9

Secondly, he stated that subsequent to the FSEIR, the City of Tracy has adopted a General Plan and they think the Mountain House project should be looked at for consistency with their General Plan.

PH10

Mr. Storer referred to page 4.12-21 and addressed the increase in traffic volumes along the freeways within 10 miles of the site. He expressed concern in regard to spin-off traffic in and around the project and within the city limits of Tracy. He also spoke extensively about the noise element from the increased traffic and expressed interest in how the DEIR addressed the 240 mitigations that were identified in the SFEIR.

PH11

Student generation rate and the figures in the DEIR were also discussed. Ms. Walker clarified the origin of the various school population figures. Mr. Storer questioned the accuracy of page 4.3-6 in relation to Tracy High School.

PH12

Prior to the closing of the session, there was some general discussion not related to the adequacy of the EIR.

KW/jjf
PH6-30.MH

P.2/2
Kitty



United States Department of the Interior

BUREAU OF RECLAMATION

Mid-Pacific Region
Tracy Office (CVP)
Route 1 Box 35
Byron, California 94514-9614

IN REPLY
REFER TO:

DAO-435
ENV 1.00

AUG 9 - 1994

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AUG 10 1994

DEPARTMENT OF THE INTERIOR
PLANNING DIVISION

Ms. Kitty Walker, Senior Planner
San Joaquin County
Department of Planning and Building Inspection
1810 East Hazelton Avenue
Stockton, California 95205

Subject: Draft Environmental Impact Report for the Mountain House New Town --
San Joaquin County -- Delta-Mendota Canal (DMC) -- Central Valley
Project (CVP) CA (Draft Environmental Impact Report)

We have reviewed the subject report and our comments are as follows:

1. We would like to reiterate our concerns of storm water runoff into Old River. Since the Old River is the source of the Delta Mendota Canal (DMC) and because municipal entities draw their water from the DMC, there must be assurances that pollutants and/or water borne disease will not enter the DMC. Furthermore, we must strongly emphasize that under no circumstances will any runoff be allowed to enter the DMC directly. It should be noted that, presently along the Byron Highway, tile drains and some farm runoff do drain directly into the DMC. No other flows will be allowed into these drainage systems.

F1

2. Although the fencing of the DMC was listed in mitigation measure 4.1-4, it is also noted in Appendix D of the Draft Environmental Impact Report that "No specific fencing or signage standards are addressed". We believe future maps should indicate proper DMC fencing as specified in the earlier Standard Fencing Plans sent to your office.

F2

3. We support the recommendation to include a 500 foot "buffer area" along the DMC.

F3

If there are any questions, please contact Brian Shinmoto of my staff at (209) 836-6261.

Sincerely,

Herbert S. Y. Ng
Acting Area Manager

cc: DAO-435