



Santa Clara Valley Audubon Society  
Founded 1926

August 15<sup>th</sup> 2010

Mr. John Davidson, Senior Planner,  
Department of Planning, Building and Code Enforcement  
City of San Jose

Re: SCVAS comments: Draft PEIR for the Envision San José 2040 General Plan

Dear Mr. Davidson,

Santa Clara Valley Audubon (SCVAS) is pleased to have the opportunity to comment on the Draft Program Environmental Impact Report (PEIR) for the Envision San José 2040 General Plan (Plan). SCVAS' mission is to foster public awareness of native birds and their ecosystems and habitats in Santa Clara County, California. Since the General Plan is the policy framework for decision making on both private development projects and City capital expenditures, it has the potential to greatly impact the future of biological resources in the City and beyond, and is of concern to our membership. Specifically, we are concerned with the welfare of nesting birds in the city, and with the threats to continued existence of burrowing owls in the South Bay. We are also concerned with growth-inducing impact of the plan on biological communities inside the city's boundary and beyond, and with impacts to wildlife movement and habitat connectivity.

#### 1. Project Description omits important Biological Resources

Appendix E. (Biological Resources) lists dozens of species for which impacts are predicted. Many of these species are not mentioned in the body of the PEIR. We ask that the PEIR provide reference to ALL of the species that could potentially be impacted by the Plan, and discuss impacts to the most vulnerable species (such as the burrowing owl). This would be the correct way to provide future planners and decision makers, and the public, with complete Project Description as required by CEQA.

#### 2. Inadequate Mitigation for significant impacts to burrowing owls

In appendix E. (page 197), the PEIR acknowledges, "Impacts to individual burrowing owls and their habitats resulting from allowable development under the General Plan could result in a significant impact to regional burrowing owl populations because this species has experienced substantial regional losses in habitat and populations." Furthermore, the analysis proposes that for the Alviso Specific Plan Area, the Preferred Scenario would result in a greater impact to potential owl habitat than the other scenarios" (Appendix E. page 197). This means that the city intends to knowingly adopt an alternative that is environmentally inferior despite the fact that

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alternatives with smaller environmentally adverse impacts, alternatives that would not result in the likely extirpation of burrowing owls from our County, are available to meet project objectives.

To mitigate potentially significant impacts to burrowing owls, Appendix E. of the PEIR (page 264) proposes to rely on the Valley Habitat Valley Plan (VHP or HCP/NCCP) that is currently in development. The PEIR proposes, “if the [Valley Habitat Plan] process fails to result in an approved HCP/NCCP, comparable mitigation measures will be needed for burrowing owls.” This statement defers mitigation for impacts on burrowing owls. **We ask for all such “comparable mitigation measures” to be spelled out in the final EIR for the Envision San José 2040 General Plan so that the public can review the full set of mitigations proposed for this species.** Furthermore, there were many public comments on the burrowing owl conservation strategy as presented in the Draft Valley Habitat Plan, and the plan is currently going revisions. It is inappropriate for the PEIR to assume that the burrowing owl conservation strategy will retain the potential to mitigate for the General Plan’s impacts to this species.

The PEIR proposes, “additional measures will provide mitigation” to complement the unspecified “comparable mitigation measures”. The proposed complementary mitigation measures follow the “Burrowing Owl Consortium Guidelines”. Time has clearly shown that the burrowing owl consortium guideline are inadequate and fail to reduce impacts of development, infill and habitat loss on burrowing owls - on local and regional scales. The CA Department of Fish and Game maintains that these measures cannot reduce impacts on burrowing owls to a less-than-significant level.

Several times over the last eighteen months, SCVAS has provided the city with comments, and supportive evidence (emails from a Department of Fish and Game scientist, expert opinion by San Jose burrowing owl experts) that shows unequivocally that the mitigations set forth by the burrowing owl consortium guidelines are inadequate for our region (for example, please refer to SCVAS comments and supportive documents for the recent Dry Fermentation Anaerobic Digestion Facility, City File No. SP09-057),

**We conclude that the PEIR, as presented, includes no mitigation for identified significant impacts to burrowing owls and their habitat. Finding of no significant impacts with mitigations cannot be made.**

### 3. Inadequate Mitigation for impacts on Serpentine soil and its associated biological resources

Indirect impacts to serpentine soil habitats (due to nitrogen emissions) are discussed and mitigation is defined (ER-2.9, 2.10). However, the discussion in BIO-2 explicitly stipulates that the City cannot commit to implementing the proposed mitigation. This is a major flaw in the EIR. If the City cannot mitigate for the impacts, decision makers must adopt findings of overriding considerations, but even with such findings – CEQA mandates mitigation to the maximum extent practical.

#### 4. Inadequate mitigation for impacts on wildlife connectivity

We ask for adequate mitigation of East-West wildlife movement corridors and habitat connectivity in Coyote Valley. Mitigation should include partial removal of barriers on Monterey road, design policies that accommodate connectivity, and parkland acquisition.

#### 5. Need for protection of tree nesting birds

We ask that the Plan include policy and mitigations for tree removal and tree work to provide adequate protection to nesting birds. We ask that the PEIR include discussion of the issue and address timing of work for different categories of trees, nest surveys, and resources for implementation, and monitoring. This would help the City to comply with Federal and State law – the Migratory Bird Treaty Act and regulations by the California Department of Fish and Game – that make it unlawful to kill, possess or needlessly destroy the nest or eggs of any bird (with the exception of some invading species).

#### 6. Integration with the Valley Habitat Plan (HCP/NCCP)

SCVAS concurs with the PEIR that some of the issues we raised can be partially resolved by tight integration of mitigation for Plan impacts with the Santa Clara Valley Habitat Plan. However, at this time, this Plan cannot rely (for some species exclusively) on another plan that is still undergoing revisions - and has yet to be approved by several cities and government agencies - to mitigate significant impacts to biological resources.

Thank you for the opportunity to provide comments on the Environmental Impact Report for the Envision San José 2040 General Plan. Please keep SCVAS informed of the progress of this Plan.

Sincerely,



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