

July 20, 2020

66541-030

Rosalynn Hughey, Director (by email to [Rosalynn.Hughey@sanjoseca.gov](mailto:Rosalynn.Hughey@sanjoseca.gov))  
Jared Hart, Division Manager (by email to [Jared.Hart@sanjoseca.gov](mailto:Jared.Hart@sanjoseca.gov))  
Envision San José 2040 General Plan Task Force  
City of San José  
Department of Planning, Building & Code Enforcement  
200 E. Santa Clara Street  
Tower, 3rd Floor  
San José, CA 95113

**Re: General Plan 4-Year Review Task Force  
North Coyote Valley Properties**

Dear Ms. Hughey, Mr. Hart, and General Plan Task Force:

We represent the owners of four parcels totaling 126.5 acres located southeast of Monterey Road and Bailey Avenue in North Coyote Valley. The properties are identified as Assessor's Parcel Numbers 712-01-010, 712-01-011, 712-01-012, and 712-01-004 ("the NCV Properties") and are owned by entities of the Lester, Benson, and Foster families. The NCV Properties are designated "Industrial Park" in *Envision San José 2040* ("GP2040") and are a key component of the City's long-planned employment lands. We urge the Task Force to (1) continue allocating planned job capacity to the NCV Properties and (2) maintain the current land use designation for the NCV Properties. Revising the designation or eliminating the planned job capacity would be a disservice to years of careful planning, disrupting the City's quest to obtain its desired jobs/housing balance. Doing so without a full Environmental Impact Report would be a violation of the California Environmental Quality Act. And leaving the NCV Properties without any economically beneficial use would be an unconstitutional taking of property.

Background

Coyote Valley contains over 7,000 acres and is divided into three distinct planning areas: (1) North Coyote Valley (approximately 1,722 acres); (2) Mid-Coyote Valley Urban Reserve (approximately 2,000 acres); and (3) South Coyote Greenbelt (approximately 3,600 acres). Since the Mayor's 1983 Task Force on Economic Development, job-creating industrial uses have been planned for North Coyote Valley – the only planning area in Coyote Valley slated for development. The prior General Plan (San José 2020 General Plan) preserved the Mid-Coyote Urban Reserve, and GP2040 supports no growth in this planning area through 2040. The South Coyote Greenbelt is intended to remain as a permanent non-urban buffer between the City of San José and the City of Morgan Hill.

Job-creating uses are not mere minor interests of the City, subject to easy erasure – they are at the very core of GP2040. Job creation is the basis for one of the twelve interrelated "Major Strategies" of GP2040, which "are considered *fundamental to achievement of the City's Vision*." (GP2040, Chapter 1, p. 14, emphasis added.) Major Strategy #4 recognizes that San José is "the only large city within the US that acts as a net exporter of workers within the region." (GP2040, Chapter 1, p. 17.) To correct this imbalance, Major Strategy #4 establishes achievement of a Jobs/Employed Residents ratio of 1.1 by 2040 and the development of up to 382,000 new jobs to reach that ratio, with a near-term goal of a 1.0 ratio by 2025. *Id.* Residential growth cannot proceed to the next Horizon without demonstrated progress toward meeting the desired Jobs/Employed Residents ratio. (GP2040, Chapter 7, p. 6.)

The City's commitment to meeting the desired Jobs/Employed Residents Ratio has never wavered. Indeed, the voters recently reiterated improvement of the Jobs/Employed Residents Ratio as a "critical policy goal" of GP2040. (Measure C, approved on June 5, 2018, Section 1901(f).) Under Measure C, the NCV Properties all constitute "Threatened Employment Lands" that the voters recognized a need to protect. (Section 1902(a).) The voters acknowledged the lengthy planning process that led to the current balance between housing and job creation in GP2040:

The policies in the City's current General Plan were adopted unanimously by the City Council in 2011 after significant review and input (which included 51 public meetings for a 37-member task force leading [to] the drafting of the General Plan and approximately 5,000 community stakeholder comments over a four-year period) in order to achieve a balance between the need for housing and the creation of jobs in San José for San José residents and to achieve fiscal sustainability. Efforts to alter that balance should be subject to extensive community outreach and environmental review. (Measure C, Section 1901(i).)

The City's enormous need for jobs demands that substantial land be available to allow for and absorb new jobs. Without it, the ratios would be meaningless paper goals, denigrating the General Plan's status as the City's "constitution" for future development. *DeVita v. County of Napa*, 9 Cal. 4th 763, 772-773 (1995). GP2040 recognizes the need for employment lands, and assigns planned job capacity of 35,000 jobs to 1,722 acres of land known as the North Coyote Valley Employment Lands Growth Area. (GP 2040, Appendix 5, p. 3.) The North Coyote Valley Employment Lands Growth Area includes the NCV Properties.

The 4-year Major Review of GP2040 is required to "[d]emonstrate improvement of the City's jobs to employed residents ratio [J/ER] consistent with achievement of 1.0 jobs per employed resident by 2025, and 1.1 jobs per employed resident by the year 2040." (GP2040, Chapter 7, p. 8, IP-2.5(1).) In this regard, the City has failed to show improvement in reaching the Jobs/Employed Residents ratio goal of Major Strategy #4. The current Jobs/Employed Residents

ratio of .82 shows that the City continues to be a bedroom community, with residents leaving the City to work elsewhere. While GP2040 envisions *increasing* the Jobs/Employed Residents ratio, in fact the most recent data shows the ratio has *decreased*, and the City has not seen a ratio lower than .82 since 2012. After all the effort the Task Force expended in helping to create GP2040, Major Strategy #4 is being ignored. The Task Force should not let this continue; certainly, it should not let the ratio move in the opposite direction of that which is required.

Moreover, the available acreage of employment lands has been substantially diminished by the purchase of approximately 937 acres of the 1,722-acre North Coyote Valley Employment Lands Growth Area by the City and Peninsula Open Space Trust in November 2019, with the intent to conserve this portion of North Coyote Valley. In addition, a significant portion of the remaining North Coyote Valley Employment Lands Growth Area is already developed (*e.g.*, the IBM Silicon Valley Lab on Bailey Avenue west of Santa Teresa Boulevard, the Metcalf Energy Center northwest of Blanchard Road and Monterey Road, and the South Bay Regional Public Safety Training Consortium on Bailey Avenue). Excluding the developed land and the properties purchased by the City and POST, only a little over 300 acres of undeveloped North Coyote Valley Employment Lands Growth Area land remain. The NCV Properties are nearly half of this acreage.

The NCV Properties are inside the City's Urban Growth Boundary line, which was approved by the voters in 2000, and also inside the City's Urban Service Area. Infrastructure investments of \$116 million have been made in the area of the NCV Properties, including the 101/Bailey Avenue interchange and the Bailey Avenue bridge over Monterey Road and the Union Pacific Railroad. The Bailey Avenue interchange and bridge provide direct access to the NCV Properties and support the reverse-commute traffic flow to and from the North Coyote Valley Employment Lands Growth Area.

This brief summary of the history and status of North Coyote Valley forms the background to the Task Force's consideration of planning issues related to Coyote Valley at its August 20, 2020 session.

### Job Capacity Should be Reserved for the NCV Properties

The November 2019 purchases of 937 acres of North Coyote Valley Employment Lands Growth Area land obviously calls into question the Area's ability to support 35,000 planned jobs. The City Council's Scope of Work for the Task Force – created prior to but in contemplation of the November 2019 purchases – includes consideration of "potential redistribution of jobs capacity from North Coyote Valley to other General Plan growth areas." (May 29, 2019 Staff Report, p. 3.) The City's Four-Year Review Progress Report states that the Task Force is to consider the relocation "of most or all of the 35,000 campus/industrial jobs planned within North Coyote." (November 13, 2019 Progress Report, p. 29.) While *some* reallocation may be justified in light

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of the November 2019 purchases, the purchases do not justify the reallocation of *all* of the 35,000 jobs planned for the North Coyote Valley Employment Lands Growth Area. We urge the Task Force to leave intact a sufficient allocation of jobs to support employment uses of the NCV Properties.

To achieve the Jobs/Employed Residents ratio of 1.1 in Major Strategy #4, GP2040 established a ratio of 20.32 jobs per acre in the North Coyote Valley Employment Lands Growth Area – 35,000 jobs on 1,722 acres. It will be difficult enough to realistically redistribute jobs to other areas of the City in light of the 2019 land purchases. Because only about 300 acres of undeveloped land remain within the North Coyote Valley Employment Lands Growth Area, this is the land that remains available to help reach Major Strategy #4. At 20.32 jobs per acre, this equates to about 6,100 new jobs that should be reserved, at a minimum, for this land.

Both quantity and quality of jobs must be considered. GP2040's policies envision creating and sustaining a mix of jobs, including blue-collar industrial jobs – not just the high-tech employment opportunities that may fill high-rises. *See, e.g.*, GP 2040, Chapter 2, p. 4, IE-1.2, calling for "the retention and expansion of a strategic mix of employment activities" throughout the City. To achieve social diversity, the preservation and expansion of industrial jobs is particularly favored. *See* GP2040, Chapter 2, p. 4, IE-1.1 ("To retain land capacity for employment uses in San José, protect and improve the quantity and quality of all lands designated exclusively for industrial uses. . . ."). The City's Land Use Policies "promote the fiscal sustainability of the City by protecting employment lands, *particularly industrial lands. . . .*" (GP2040, Chapter 6, p. 4, emphasis added.) The NCV Properties are vital to preserving job diversity in the City, especially much-needed industrial jobs.

Reserving at least 6,100 new industrial jobs for the undeveloped 300 acres within the North Coyote Valley Employment Lands Growth Area is a reasonable compromise that would help harmonize Major Strategy #4 while still preserving the more sensitive lands in North Coyote Valley, which were the subject of the 2019 purchases. The 2019 purchases included use of 2018 Measure T funds for "preventing flooding and water quality contamination, including the acquisition of open space in Coyote Valley for these purposes." But preservation of the NCV Properties would not accomplish such purposes. These properties do not flood and do not contribute to water quality contamination. *See Attachment 1* (February 5, 2020 letter from Peter R. Benson and accompanying FEMA Flood Insurance Rate Map); *Attachment 2* (February 13, 2020 Memorandum from Kier + Wright). Wildlife corridors do not cross the NCV Properties, and proposed Permeability Improvements would not be located on any part of the NCV Properties. *See* March 1, 2016 Coyote Valley Linkage Assessment Study Final Report; *Attachment 3* (Letter from Tom Foster re Wildlife Connectivity and Permeability Improvements for North Coyote Valley); *Attachment 4* (February 12, 2020 letter from the Foster Family, the Benson Family, the Linda L. Lester Family, and the Fred Lester Family). Thus, reserving new

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jobs for the NCV Properties does not threaten legitimate goals recited in Measure T related to flooding, water quality contamination, or wildlife corridors.

If no new jobs are reserved for the remaining undeveloped lands in the North Coyote Valley Employment Lands Growth Area, the Industrial Park land use designation of the NCV Properties would be relegated to a fiction. The NCV Properties would be left with no economically beneficial or productive use and would be inversely condemned under *Lucas v. So. Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992), as well as under the multi-factor approach of *Penn Central Transp. Co. of New York*, 438 U.S. 104, 124 (1978). The NCV Properties are currently in contract with a buyer, based on the jobs allocation for the North Coyote Valley Employment Lands Growth Area under GP2040. As the City has acknowledged, "industrial space vacancy rates are currently low in San José (approximately 2%) and demand is high." (November 13, 2019 Progress Report, p. 37.) *See also, Attachment 5* (Letter from Michael Karp re Land Dynamics in San José.) Assuredly, the owners of the NCV Properties will be compelled to seek compensation for their losses if no new jobs are reserved for the North Coyote Valley Employment Lands Growth Area lands.

Attainment of the Jobs/Employed Residents ratio of 1.1 – a core strategy of GP2040 – cannot be achieved without the reservation of a reasonable number of new jobs that may be satisfied on the NCV Properties. Under current conditions of economic crisis due to COVID-19, job creation is more than a land use issue – it is a vital human issue that demands government to help put unemployed residents back to productive work. And, as noted above, residential development cannot proceed to the next Horizon under GP2040 without demonstrated progress toward meeting the Jobs/Employed Residents ratio. The current economic crisis is not the time for the City to be sacrificing revenues attainable by allowing reasonable development of the NCV Properties. *See Attachment 6* (April 22, 2020 letter from Chuck Reed to General Plan Task Force); GP2040, Chapter 1, p. 65 ("[R]ealizing a higher proportion of jobs (and retail) per resident should significantly improve the City's fiscal health, now recognized as an imperative.")

The City has already preserved the more sensitive parts of North Coyote Valley by the 2019 purchases. We urge the Task Force to reserve a reasonable number of new jobs for undeveloped land in the North Coyote Valley Employment Lands Growth Area, including the NCV Properties.

### The Land Use Designation for the NCV Properties Should Not Be Changed

As noted, the NCV Properties are designated "Industrial Park" in GP2040, which allows for a wide variety of uses. (GP2040, Chapter 5, p. 10.) We urge the Task Force to maintain this designation.

GP2040's 4-Year Major Review process is not designed to evaluate or implement wholesale policy changes or major revisions to land use designations. The purpose of the Major Review process is to monitor progress toward meeting the *existing* General Plan Vision, goals and policies. The City is to "[e]valuate the success of the Envision General Plan's implementation and consider refinement of the Land Use/Transportation Diagram and the Envision General Plan policies *to ensure their achievement*. (GP2040, Chapter 7, p. 7, Goal IP-2, emphasis added.) Opening an additional Horizon for residential growth is part of this evaluation process, but instituting major land use policy shifts is not. Likewise, none of the policies applicable to the 4-Year Major Review allow for such broad revisions. (GP2040, Chapter 7, pp. 7-10, Policies IP-2.1 through IP-2.12.) The reconvened Task Force during the Major Review process is "to provide community and stakeholder engagement in reviewing and evaluating success in the implementation of this General Plan and recommending any mid-course actions *needed to achieve its goals*." (GP2040, Chapter 7, p. 10, Policy IP-2.12, emphasis added.) Changing the land use designation of the NCV Properties as part of the Major Review process would be inconsistent with GP2040.

Even if such revisions could properly be pursued, the NCV Properties are each "Qualifying Parcels" and "Threatened Employment Lands" under Section 1902 of Measure C. Any conversion of the designation of the NCV Properties (other than to Agriculture) must comply with Measure C. Agriculture is not an economically beneficial or productive use of the NCV Properties. Agriculture requires nearby adjunctive services in order to be productive (*e.g.*, preparation and packaging) and sustainable, but none of these services are available in reasonable proximity to the NCV Properties. Agricultural uses do not produce sufficient income to meet the holding costs of these properties. Converting the designation of the NCV Properties from Industrial Park to Agriculture would constitute a regulatory taking of the properties. If the public wants to "preserve" the NCV Properties, it needs to pay fair market value for them.

Furthermore, converting the land use designation to Agriculture or another unproductive use would effectively move the City's Urban Growth Boundary line northward, placing the NCV Properties outside the line. In light of the planning history and existing infrastructure, this would be unsound public policy for all the reasons discussed above. More than that, the Urban Growth Boundary line was confirmed by the voters when they adopted Measure K on November 7, 2000, and it cannot be relocated by the City without voter approval. *See* Elections Code §9217.

As the constitution and guiding document of the City's land use framework – based on years of community input and hard work by the Task Force – GP2040 should not be shunted aside based on the current political winds. Its goals and policies deserve to be respected and followed. The existing Industrial Park designation of the NCV Properties should be left intact.

## Removing Job Capacity From or Re-Designating the NCV Properties Would Require a Full Environmental Report

If the Task Force were to recommend either redistributing all job capacity from the NCV Properties or changing their Industrial Park land use designation, state law and City policy would require preparation of a full Environmental Impact Report. But the Task Force has "a limited scope" and can recommend "[n]o revisions that require an Environmental Impact Report." *See* November 20, 2019 General Plan 4-Year Review Task Force Meeting #1, "Task Force Responsibilities," at p. 6. "The 4-year Major Review is not intended to undertake any major revisions to the General Plan that would require environmental clearance . . . ." *See* April 10, 2015 Memorandum from Mayor Liccardo and Councilmembers Jones and Carrasco, p. 1.

Redistributing all job capacity from the NCV Properties or changing their land use designation would clearly constitute a major revision to GP2040. The City would be abandoning GP2040's commitment to job growth in North Coyote Valley. The beneficial impacts to transportation/traffic and greenhouse gas emissions from the reverse-commute enjoyed by jobs in North Coyote Valley would be eliminated. The ability to meet Major Strategy #4 – "*fundamental* to achievement of the City's vision" – would be eviscerated. Attainment of the City's Jobs/Employed Residents ratio would be destroyed, even if replaced by unrealistic reallocation of paper jobs to other areas. Major impacts to Urban Services, Energy, Utilities, Noise & Vibration, Land Use, Air Quality, and Facilities and Services – to name just a few – would need to be analyzed before the wholesale reordering of the City's employment lands strategy could be pursued.

Job capacity redistribution from or revisions to the land use designations of the NCV Properties would constitute substantial changes in the project that is GP2040. A complete subsequent EIR would be required under Pub. Resources Code §21166 and CEQA Guidelines §15162(a). Further, under Section 1904(c) of Measure C, any proposed amendment to GP2040 that would allow non-employment uses on Threatened Employment Lands like the NCV Properties "shall require compliance with CEQA to the fullest extent permitted by law." And Policy IP-12.2 requires the preparation of an Environmental Impact Report when "potentially significant environmental effects of a project are identified." (GP2040, Chapter 7, p. 26, IP-12.2.)

In sum, a full Environmental Impact Report would be required before the City may either remove all reserved jobs from the North Coyote Valley Employment Lands Growth Area lands or change the land use designation of the NCV Properties. The Task Force is not empowered to make such recommendations and should not do so here.

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## Conclusion

Long-term planning for the public good requires substantial fortitude to maintain established City goals and policies. The Task Force and the City spent years shaping the Major Strategies, goals, and policies of GP2040. The voters have affirmed them. The Task Force should not participate in dismantling them.

The City cannot meet its Major Strategy, goals, and policies reflected in a Jobs/Employed Residents ratio of 1.1 by 2040 or 1.0 by 2025 without continuing to allow job-creating development of the NCV Properties. We urge the Task Force to maintain a reasonable number of jobs assigned to the NCV Properties and to maintain the current designation for these properties. Contrary action or recommendations would be unwise, beyond the Task Force's permissible scope, and require the City to compensate the owners of the NCV Properties for the taking of their land.

Sincerely,



Edward G. Burg

## Attachments

1. February 5, 2020 letter from Peter R. Benson and accompanying FEMA Flood Insurance Rate Map
2. February 13, 2020 Memorandum from Kier + Wright
3. Letter from Tom Foster re Wildlife Connectivity and Permeability Improvements for North Coyote Valley
4. February 12, 2020 letter from the Foster Family, the Benson Family, the Linda L. Lester Family, and the Fred Lester Family
5. Letter from Michael Karp re Land Dynamics in San Jose
6. April 22, 2020 letter from Chuck Reed to General Plan Task Force

cc, with attachments:

Michael Brilliot, Deputy Planning Director (by email to [Michael.Brilliot@sanjoseca.gov](mailto:Michael.Brilliot@sanjoseca.gov))

Chris Burton, Office of Economic Development Deputy Director (by email to [Chris.Burton@sanjoseca.gov](mailto:Chris.Burton@sanjoseca.gov))

Kevin Ice, Office of Economic Development Senior Manager (by email to [Kevin.Ice@sanjoseca.gov](mailto:Kevin.Ice@sanjoseca.gov))

Dave Sykes, City Manager (by email to [Dave.Sykes@sanjoseca.gov](mailto:Dave.Sykes@sanjoseca.gov))

Richard Doyle, City Attorney (by email to [Richard.Doyle@sanjoseca.gov](mailto:Richard.Doyle@sanjoseca.gov))

# Attachment 1

To Whom it May Concern

February 5, 2020

Re: Two Oaks Ranch - Flooding  
8820 Santa Teresa Blvd  
APN 712-01-010

My name is Peter Benson, I was raised on the subject property. Specifically, I resided full time in the main brick farmhouse from 1960 through 1976 and continued to have a presence there through 2019 prior to moving out of state.

During my time on this property I became very familiar with the surrounding properties, irrigation patterns, and seasonal agricultural operations. I also witnessed the construction of Santa Teresa Boulevard from Baily Avenue South.

While a great deal of Northern Coyote Valley is subject to flooding, the 126 acres in the Southeast corner of the intersection of Baily and Santa Teresa does not flood. Attached is a copy of the FEMA map showing their flood designations for this area and you will see that our properties are not in the flood plain.

Specifically, I have never observed flooding of the subject properties with the exception of minor storm drain backups near the main driveway on Santa Teresa Boulevard. This condition was and is related to lack of maintenance by City/County crews of drainage ditches along the Eastern edge of Santa Teresa Boulevard, and physical blockages of same drainage ditches to the North of main driveway.

Respectfully,

A handwritten signature in black ink, appearing to be 'Peter R. Benson', with a long horizontal line extending to the right.

Peter R. Benson



# Attachment 2

February 13, 2020

TO: The 2040 General Plan Review Task Force  
The Lester Family  
The Foster Family  
The Benson Family  
**Address**

FROM: Garrett Readler, P.E.  
Vice President

**SUBJECT: Memorandum – Coyote Valley Development**

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The development of the Coyote Valley would not have significant impacts to storm water quality or downstream erosion. As required by the city of San Jose and the State of California, all new development site must treat and control the flow of water off the site. The property owned by the Lester, Foster, and Benson families is under the jurisdiction of the city of San Jose and Region 2 of the State of California Water Quality Control Board.

Storm water treatment will occur through natural bio-treatment planter. Storm water runoff is directed toward these treatment planters and is filtered through the treatment medium before it enters the public storm system. This medium has a 100% capture rate of TSS. In addition to the treatment of the storm water runoff, the volume of water exiting the site will also be restricted to not exceed the volume of water currently flowing off of the site. This reduction in flow is achieved by on-site retention in storm water treatment basins and on-site detention of water in loading docks. Storm runoff will slowly be metered out of the site as to not increase the pre-existing flow volume.

As it relates to flooding, the FEMA Flood Insurance Rate Map Panel 0428H lists this property in Zone "D". Zone "D" is classified as "*Areas in which flood hazards are undetermined, but possible*". It is our understanding that flooding of this property has never occurred. In any event, should a rain event happen in which flooding was experienced, ponding areas on the site and on-site retention planters would be sized to detain the 100-year storm event volume. By designing the site to be able to detain the 100-year flood event, downstream properties would not be adversely affected.

# Attachment 3

## Wildlife Connectivity and Permeability Improvements for North Coyote Valley

The 126 acres bounded by Bailey Avenue and Santa Teresa Boulevard is currently zoned Industrial Park, under the 2040 General Plan. This letter describes the context in which future development under that zoning would not impact wildlife corridors or permeability features as defined by the Coyote Valley Linkage Assessment Final Report.

Several important studies have been prepared regarding Wildlife connectivity that identify locations and routes that wildlife use, and improvements needed to enhance wildlife crossings (“Permeability Improvements”). Most prominently, the **“Coyote Valley Linkage Assessment Study Final Report”** prepared jointly by the California Department of Fish and Game, the Santa Clara Valley Open Space Authority and the Guadalupe-Coyote Resource Conservation District dated March 1, 2016, outlines migration routes and Permeability Improvements, among other things, in a highly detailed fashion.

Within that document are an assortment of aerials that describe, in a clear visual context, where the routes exist, all based on detailed field assessment using automated cameras and other collection data. As noted on the aerials, (which are attach as exhibits A and B), and upon which we have added the location of the subject 126 acres, wildlife corridors as defined by the report **DO NOT CROSS ANY OF THE 126 ACRES** and the suggested Permeability Improvements are designated well to the west, north and east of the property. As has been suggested elsewhere in submissions to the Task Force, modern development and architectural designs can help to promote safe passage of wildlife and indeed, mitigate and help prevent hazardous interactions between wildlife and human based impediments.

The facts presented further suggest that these 126 acres should be available for development in the context of both supporting viable wildlife corridors and the development and enhancement of “Permeability Features” to enhance movement of transiting wildlife. Based on these facts, we believe that it is in all parties’ interest that the 126 acres remain zoned Industrial Park in the 2040 General Plan.



Tom Foster

# Exhibit A

## Cross Valley Floor Bobcat Pathway: Midsection-North Section.



Figure 5: Cross Valley Floor Bobcat Pathway: Midsection-North Section.

Each month throughout the study period, several bobcats were recorded traveling at various camera stations in Fisher Creek. For example, in the month of September, there were several detections of different bobcat individuals at each camera station along Fisher Creek from the midsection of Coyote Valley to the North Section (Figures 6,7,8, & 9).

# Exhibit B

## Wildlife Connectivity Design with Permeability Improvements



0 0.25 0.5 1 1.5 2 Miles



### Legend

- High Priority
- Secondary Priority
- Low Priority

### Permeability Improvements

- Bridges with Exclusionary Fencing in need of Wildlife Friendly Fencing
- Highway 101 Culverts in need of Debris Removal
- Directional Fencing at Crossing Structure
- Restoration along Fisher Creek & Branches

Map & Data Collected by:  
Pathways for Wildlife



Figure 22: Improvements for Wildlife Movement at Known Barriers.

# Attachment 4

February 12, 2020

The Foster Family  
The Benson Family  
Linda L. Lester Family  
The Fred Lester Family  
1486 Gerhardt Ave., San Jose, CA 95125

February 12, 2020

Envision San Jose 2040 General Plan Task Force  
GeneralPlanStaff@sanjoseca.gov

Dear Task Force Member:

In this letter we provide information on our four parcels of land – information that we believe is relevant and important to you in your role as a Task Force Member. These parcels total 126 acres, are located within the San Jose City limits, are not in the 100-year flood plain, biological studies show no wildlife corridors, and the current General Plan designation is Industrial Park.

We request that the General Plan designation and allocation of jobs for our portion of Coyote Valley remain unchanged.

Our 126 acres are situated in the southeast corner of the intersection of Bailey Avenue and Santa Teresa Boulevard. These streets separate and act as barriers between our property and the recently acquired properties intended for open space, wildlife corridors and flood control. The Union Pacific Railroad bounds our property on the east side. See Attachment “A” a map outlining our parcels.

These four contiguous parcels of land have been separately owned by multiple generations within each family group and have been held with the intention of future development.

Our properties are not in the FEMA flood plain and families living on the property have not experienced flooding. Studies by the Open Space Authority and the California Department of Fish and Wildlife do not document any wildlife corridors on this property. All utilities are located at, or on, our property line, including a storm water discharge line to the Laguna Seca flood control basin. The property has close access via Bailey Avenue to the Bailey Avenue/US-101 interchange.

San Jose currently needs industrial land as stated in City documents and will need more in the future. Our property is well located, and no parcels of this size exist within the City limits. The present owners do not receive enough farming income to cover taxes. Two farming tenants have given up their leases. Farming infrastructure no longer exists to support large scale farming, including viable sources of affordable labor.

Several groups and individuals have stated that they want to preserve the habitat of Coyote Valley. We are also in favor of protecting the valley’s habitat. The recent purchase of the Sobrato and Brandenburg properties accomplishes a significant part of that goal as well as improving flood control. We believe there is a need for responsible development that can coexist with the goals of preserving and enhancing needed wildlife corridors and improving flood control.

Below are important facts regarding critical topics and concerns that have been discussed in the media and in City Council meetings.

- 1) *Coyote Valley is a significant habitat for plants and animals that are rare, endangered, or of regional significance.*
  - a. This statement is not completely true. Open Space Authority Studies have shown no animal crossings on our properties or across Monterey Highway east of our property. This activity occurs outside of the property boundaries. The property is farmed and occupied by homes and other structures.
  - b. While other parts of the valley may be important habitat for endangered plants, because our properties have been farmed for over 100 years, there are no observed endangered plant or animal communities within our property boundary. Further, any development would be required to complete a thorough investigation for endangered plants or animals as part of their CEQA analysis process.
- 2) *Coyote Valley is a rare and significant freshwater complex.*
  - a. True as it relates to Fisher Creek and the Laguna Seca. However, our property is not located in the Fisher Creek flood plain. Any development would be required by state law to capture storm water on-site and treat it to strict clean water standards thereby adding to the valley's freshwater.
- 3) *Development will increase downstream flooding.*
  - a. Not true. Development will actually decrease downstream flooding by retaining storm water on-site and only releasing it during non-peak flow times. This is a requirement of any new development under State and Federal Law. Currently there is downstream run-off from the agricultural operations, this would cease.
- 4) *Coyote Valley has been ignored by development.*
  - a. Not true. Real estate experts reported that there was little interest in Coyote Valley when it was General Planned Campus Industrial. At that time, with an abundance of developable land to the north, campus-oriented users were not interested in going that far south. However, since the General Plan was changed to Industrial Park and since so little land is now available, we have had a great deal of interest.
  - b. We are currently in contract with a national developer who recognizes the need for a balanced, ecologically sensitive approach in Coyote Valley.
- 5) *Coyote Valley is a flood plain and historically a wetland.*
  - a. This is only true for certain portions of Coyote Valley, most of which were included in the recent acquisition completed by the City, POST, and the Open Space Authority. Our property is not located in the wetlands and is not subject to flooding from Fisher Creek.
  - b. We are located outside the FEMA 100-year flood plain and have not seen on-site flooding from Fisher Creek during our ownership, which spans more than 50 years.

- 6) *Coyote Valley is a prime area for smaller agricultural operations since it is prime agriculture land.*
- a. The support structure for farming has moved from the area to the Salinas and Central valleys. Labor minimum wage laws for property within City limits have been raised, and other developments like traffic have made profitable farming in this area more difficult.
  - b. The rent income from our farm properties is low because the cost of farming is now high. Our rent income is so low that it does not even pay for the property taxes. Farming, for various reasons including lack of farm-related infrastructure and lack of appropriate, affordable labor, may no longer be a viable financial option. We have had several farming tenants leave stating those reasons.

We hope this information is helpful as you discuss and consider your recommendations.

Sincerely,

*Signed in Counterparts*

Fred Lester (for the Fred Lester Family Members)

*Signed in Counterparts*

Tom Foster (for the Foster Family Members)

*Signed in Counterparts*

Pete Benson (for the Benson Family Members)

*Signed in Counterparts*

Linda L. Lester (For the Linda L. Lester Family Members)



Brandenberg  
(open space)

IBM

Sobrato  
(open space)

POST

Sobrato  
(open space)

Brandenberg  
(City)

Fisher Creek

SANTA TERESA BLVD

Subject Property  
126 Acres

BAILEY AVE

Residential Development

MONTEREY HWY

US  
101

Union Pacific Rail

6) *Coyote Valley is a prime area for smaller agricultural operations since it is prime agriculture land.*

- a. The support structure for farming has moved from the area to the Salinas and Central valleys. Labor minimum wage laws for property within City limits have been raised, and other developments like traffic have made profitable farming in this area more difficult.
- b. The rent income from our farm properties is low because the cost of farming is now high. Our rent income is so low that it does not even pay for the property taxes. Farming, for various reasons including lack of farm-related infrastructure and lack of appropriate, affordable labor, may no longer be a viable financial option. We have had several farming tenants leave stating those reasons.

We hope this information is helpful as you discuss and consider your recommendations.

Sincerely,

Fred Lester (for the Lester Family Members)

Tom Foster (for the Foster Family Members)

A handwritten signature in black ink, appearing to read 'Pete Benson', with a long horizontal flourish extending to the right.

Pete Benson (for the Benson Family Members)

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Tom Foster (for the Foster Family Members)

Pete Benson (for the Benson Family Members)

A handwritten signature in blue ink, appearing to read 'Linda L. Lester', with a stylized flourish at the end.

Linda L. Lester (For the Linda L. Lester Family Members)

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Fred Lester (for the Lester Family Members)

Tom Foster (for the Foster Family Members)

Pete Benson (for the Benson Family Members)

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# Attachment 5

## Land Dynamics in San Jose

As is the case in most of the greater Bay Area, San Jose is now at the point where virtually every available and/or developable land parcel, of any meaningful scale, is fully developed. This includes residential, commercial, (including offices, retail, and corporate campus office development) and industrial, including advanced manufacturing and R&D facilities.

The Coyote Valley 126-acre subject property is one of the only large parcels available to accommodate new growth, growth essential to ensure the prosperity of San Jose as a technology powerhouse. In fact, there are NO remaining parcels in any of the inner Bay Area cities ringing the bay, including San Jose, of this size- anywhere.

While some small-scale redevelopment projects are beginning to occur on previously developed properties, these are difficult projects in several ways, not the least of which are enormous economic hurdles.

These challenges are not occurring just in San Jose, but throughout the Bay Area. The recent development cycle has seen nearly all large parcels come into play, and most are now fully developed or are either under construction or in the entitlement phase.

In the meantime, traffic mitigation and quality of life issues confront many communities and the people that live in these communities, whether it is commuting from great distances to get to places of employment in the Bay Area, like Silicon Valley, or, as is the case in San Jose, employees are forced to drive out of the city limits to get to work, which exacerbates environmental and other quality of life issues. Some outlying communities have embraced new development, and corporate employers have swarmed into these areas, creating the same high paying jobs as Silicon Valley, without the daily 4-hour round-trip commute. Tracy and the Prologis International Park of Commerce is an example of this phenomena.

Economic viability of the larger San Jose metro area depends on being able to accommodate not just the larger household name brands, but as this area is famous for and well accustomed to, new, innovative companies and technologies not yet even invented. On the flip side, the recent phenomenon of corporations leaving California and to relocated to States like Texas and Arizona is occurring. In many cases, it is less about State and local regulation and cost of labor as it is the ability to expand and offer new, scalable facilities.

As a development opportunity to the City of San Jose, this 126-acre site offers the benefits of a reverse commute for most San Jose residents, robust infrastructure in place (fully integrated interchange and surface access to highway 101), and the ability to plan for, and design features that enhance, in the most modern way possible, flood control and water retention, on-site landscaping and architectural features designed to promote and ensure safety of migrating wildlife, planting of native vegetation (where none exists currently), management and stewardship of heritage Oak trees, as well as world-class features that enable employees to enjoy and recreate in Coyote Valley.

For these and many other reasons, this essential system of parcels needs to be preserved under the 2040 General Plan as Campus Industrial.

Michael Karp

Cushman & Wakefield

# Attachment 6

April 22, 2020

Chuck Reed  
chuckreed@hopkinscarley.com  
T. 408.299.1409  
F. 408.998.4790

**Via Email: [GeneralPlanStaff@sanjoseca.gov](mailto:GeneralPlanStaff@sanjoseca.gov)**

General Plan Task Force  
City of San Jose  
Planning Department  
200 E. Santa Clara Street  
Tower, 3<sup>rd</sup> Floor  
San Jose, CA 95113

**Re: GP 4-Year Review Task Force**

Dear General Plan Task Force:

Hopkins & Carley represents the Lester families, who have owned property and farmed in North Coyote Valley for generations. Their property, and that of the Denning, Benson and Foster families who also have owned property and farmed in Coyote Valley for generations, has been designated by the General Plan for decades to be developed for employment uses. Industrial development to create jobs on their property could be underway now, but for the uncertainty created by the issues before the Task Force.

The national crisis we face today makes employment uses more important than ever, and jobs in Coyote Valley should not be eliminated, but encouraged.

#### San Jose Residents Need Jobs to Provide for Their Families

The San Jose area faces a loss of over 200,000 jobs as a result of the Covid 19 crisis. (University of the Pacific Center for Business and Policy Research, April 2020, Initial Estimates of Employment Impacts of Covid-19 Pandemic) Most of those people live in San Jose and San Jose will need to find ways to help them provide for their families. The best way to do that is by creating jobs. Coyote Valley is an opportunity to provide jobs for blue collar to white collar workers, and we only need to use a fraction of its acreage to do so.

#### San Jose's Budget Needs New Revenues to Provide Services

San Jose is also facing large budget gaps this year and next, gaps that will only grow as the Covid 19 recession further slows the economy. The collective revenue shortfall is estimated at \$45 million in 2019-2020 and \$65 million in 2020-2021. (Memorandum from David Sykes April 3, 2020, Estimated Budget Impacts of Covid 19)

We learned in the depths of the Great Recession that the best way to help our residents and taxpayers was thorough job growth. Creating jobs in Coyote Valley is a vitally important to generate tax revenues.

Job development in Coyote Valley will generate tax revenues that would flow annually into the city budget. Jobs for 35,000 employees could generate over \$20 million per year for the City. (\$575 net revenue per

employee from Industrial Park lands, Update on Fiscal Analysis of Land Use - City of San Jose, by Applied Development Economics, Council Agenda April 14, 2015, Item 11.3)

We Can Protect Coyote Valley Without Destroying Its Jobs and Revenues Capacity.

It is completely unnecessary to wipe out job growth and tax revenues from Coyote Valley to protect the environment. There are many areas in the 7000 acres of Coyote Valley, including my clients' property, that are not in a flood zone or wildlife corridor. The attached map by the Open Space Authority makes that clear.

The Task Force Needs to Engage In Thoughtful Decision Making During This Crisis

As David Sykes said in his memo April 3<sup>rd</sup>, "The City will need to engage in thoughtful decision making to resolve these significant shortfalls during these unprecedented times." The Task Force needs to heed his words and engage in thoughtful decision making about Coyote Valley, and whether or not the City needs jobs and revenues from Coyote Valley.

The Task Force should ask staff for answers to the following questions before making a recommendation regarding Coyote Valley:

What parts of Coyote Valley need to be dedicated to flood protection?

What parts of Coyote Valley need to be dedicated for a wildlife corridor?

How many acres remain for other uses?

How many jobs could be accommodated on the remaining acres?

What kinds of jobs do the residents of San Jose need?

How much revenue could flow into the City from jobs in Coyote Valley?

Only when the Task Force has the answers to those questions will you be prepared to make thoughtful decisions about how many jobs the General Plan should assume for Coyote Valley.

When you get answers to those questions, you will realize that we can protect Coyote Valley without destroying its jobs capacity. You will also see that eliminating jobs in Coyote Valley would be a horrible fiscal decision in a time of fiscal crisis, and a retreat from our Major Strategy 8 Fiscally Strong City and our goals of fiscal sustainability and improving services, reflected in GP2040 Chapter 2, pages 15-21.

The future of Coyote Valley and the importance of development of jobs have been robustly debated for decades, in political campaigns, policy discussion, and formal planning processes (Mayor's Task Force on Economic Development 1983, Horizon 2000 General Plan 1984, General Plan 2020 1994), and most recently in the development of GP2040, in which more than 5000 people participated in 55 public meetings. The Envision San Jose GP2040 Task Force and members of the community strongly advocated for land use planning that promotes economic development, is fiscally responsible, is environmentally sustainable, and makes prudent use of existing and planned transit facilities and other infrastructure.

**Economic development and fiscal stability objectives, fueled by the City's current fiscal condition and a desire to advance San José's national stature, led to the selection of a**

**Preferred Land Use Scenario that gives clear priority to job growth and to improving the City's current Jobs to Employed Resident (J/ER) ratio. (GP2040, Appendix 3, page 23)**

The sum of all those debates about Coyote Valley has been reflected in the approval of multiple general plans, including GP 2040, as well as in the specific strategies and goals of the adopted plans.

Development of jobs in Coyote Valley plays a critical role in achieving the long held objective of a fiscally sustainable city. GP2040, as modified in the 4-Year Major Review approved in December 2016, assumes that there will be 35,000 jobs on 1722 acres in North Coyote Valley, which is nearly 10% of the total job growth for the entire city. Taking Coyote Valley and its 35,000 reverse-commute jobs out of consideration would undermine GP2040 by making it internally inconsistent and unachievable. Eliminating jobs in Coyote Valley would undermine the entire General Plan and open it up to litigation.

GP2040 also has goals to preserve the environment and provide for wildlife movement across Coyote Valley (Goal ER-7 Wildlife Movement) and protect against flooding hazards (Goal EC-5 – Flooding Hazards). Those goals are not incompatible with our economic development goals and or our fiscal sustainability goals. In fact, development in Coyote Valley can help facilitate these goals through compliance with modern flood control standards and revenue generation that can contribute to the protection and expansion of wildlife movement.

**Goal FS-4.2 Maintain, enhance, and develop the employment lands within identified key employment areas (North Coyote Valley, . . . Protect existing employment uses within these areas from potentially incompatible non-employment uses.**(GP2040 Chapter 2, page 19)

**Goal FS-4.1 Preserve and enhance employment land acreage and building floor area capacity for various employment activities because they provide revenue, near-term jobs, contribute to our City's long-term achievement of economic development and job growth goals . . .** (GP2040 Chapter 2, page 18- 9)

And our economic development and fiscal sustainability are not necessarily incompatible with the desire for Hydrological Enhancements and the Wildlife Crossings, described in the Open Space Authority Coyote Valley Landscape Linkage 2017, Figure 6, page 28. <https://www.openspaceauthority.org/public-information/document-library.html>

San Jose has long demonstrated the ability to have both economic development and environmental protection. We have already protected and preserved many thousands of acres with our environmental policies, the South Coyote Greenbelt, our Urban Growth Boundary and our Habitat Conservation Plan. Coyote Valley is but a small fraction of our City but it has a huge role to play in our fiscal future and the economic wellbeing of our residents.

Perhaps more corporate headquarters are not what we need in Coyote Valley. Perhaps we need more business services? Perhaps we need additional blue collar jobs? What kind of jobs do the people of San Jose need and where can they be feasibly located? Those are questions the Task Force should deal with before it makes recommendations to the City Council about the best use of the land in Coyote Valley.

General Plan Task Force  
April 22, 2020  
Page 4

Sincerely,

HOPKINS & CARLEY  
A Law Corporation

A handwritten signature in cursive script that reads "Chuck Reed".

Chuck Reed

CRR/lc:

cc: City Manager David Sykes  
City Attorney Richard Doyle  
Planning Director Rosalynn Hughey  
Director of Economic Development Kim Walesh