# Fw: Coyote Valley - November 16, 2021 City Council Item 10.3

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Wed 11/10/2021 5:03 PM
**To:** Agendadesk <Agendadesk@sanjoseca.gov>

Thank You,

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**From:** Burg, Ed [redacted]
**Sent:** Wednesday, November 10, 2021 11:58 AM
**To:** The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>
**Cc:** City Clerk <city.clerk@sanjoseca.gov>; Rivera, Robert <robert.rivera@sanjoseca.gov>; Brilliot, Michael <Michael.Brilliot@sanjoseca.gov>; Burton, Chris <Christopher.Burton@sanjoseca.gov>; Frimann, Nora <nora.frimann@sanjoseca.gov>
**Subject:** Coyote Valley - November 16, 2021 City Council Item 10.3

[redacted]

[External Email]

Hon. Mayor Liccardo, Vice-Mayor Jones and City Councilmembers:

Please see correspondence attached.

Sincerely,

**Edward Burg**

**Manatt, Phelps & Phillips,** LLP
[redacted]

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November 10, 2021 66541-030

**BY E-MAIL**

Hon. Mayor Liccardo, Vice-Mayor Jones and City Councilmembers
City of San José
200 E. Santa Clara Street
Tower, 3rd Floor
San José, CA 95113

**Re: November 16, 2021 – General Plan 4-Year Review Public Hearing**
**City File Nos. GP21-012, GPT21-002, C21-031, PDC21-033, PP21-012**
**North Coyote Valley Properties**

Dear Mayor Liccardo, Vice-Mayor Jones and City Councilmembers:

They say it's always easy to spend other people's money By the same token, it is likewise easy to preserve other people's property. My clients *are* the other people.

We represent the owners of four parcels totaling 126.5 acres located southwest 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. The NCV Properties are more than 40% of the acreage that the City itself has identified as the "Remaining Developable Parcels" in North Coyote Valley.

The City Council plans to hold a public hearing regarding Coyote Valley on November 16, 2021, for the file numbers listed above. The Council will consider staff's recommendations to amend GP2040 regarding Coyote Valley, including a proposed change of land use designation for the NCV Properties from "Industrial Park" to "Agriculture" ("the Proposed GPA" or "the GPA"). On October 27, 2021, the Planning Commission recommended that the Proposed GPA be denied. **We urge the City Council to follow the recommendation of the Planning Commission by rejecting the Proposed GPA and maintaining the current "Industrial Park" land use designation for the NCV Properties**.

Adopting the Proposed GPA should be rejected because it would:

- Eliminate the ability to balance environmental protection with economic development, thereby destroying a key funding source to achieve the protections needed on land already acquired for preservation;
- Kill the creation of thousands of needed blue-collar jobs and cost the City millions of dollars of revenue that could be realized by an already-submitted proposal for industrial development of the NCV Properties;
- Relegate the NCV Properties to agricultural uses which are not economically viable;
- Effect an unconstitutional taking without just compensation of the NCV Properties;
- Be inconsistent with the City's current general plan; and
- Improperly seek to amend the City's Urban Growth Boundary and its Urban Service Area.

In November 2019, the City and Peninsula Open Space Trust purchased approximately 937 acres of land in North Coyote Valley from Brandenburg and Sobrato to be preserved as open space. Open space preservation now needs to be balanced with reasonable economic development. The NCV Properties present unique opportunities for the City to create blue-collar jobs for its residents, improve its critical Jobs/Employed Residents ratio in a reverse-commute location, and satisfy substantial local demand for industrial uses. Currently, the NCV Properties are under contract with CHI Holdings, which has submitted a proposal for industrial development on the NCV Properties for an identified end user. This proposed development could provide funds to make needed improvements on the former Brandenburg and Sobrato properties in order to create a thriving environmental reserve as opposed to fallow hay fields. Changing the land use designation of the NCV Properties to "Agriculture" would be unfair to the owners and unwise for the City and its residents.

***Background***

The NCV Properties are depicted on several key aerials attached (and bookmarked) to this letter:

> Attachment 1 shows the location and current "Industrial Park" land use designation of the NCV Properties.

> <u>Attachment 2</u> shows the proposed "Agriculture" land use designation for the NCV Properties.
>
> <u>Attachment 3</u> shows the City's boundaries in Coyote Valley. As appears, the NCV Properties are located (1) *within* the City; (2) *inside* the City's Urban Service Area; and (3) *inside* the City's Urban Growth Boundary.
>
> <u>Attachment 4</u> shows that the NCV Properties have been identified by the City as among the few "Remaining Developable Parcels" in North Coyote Valley.
>
> <u>Attachment 5</u> is an oblique aerial showing the NCV Properties and surrounding properties, including the Brandenburg and Sobrato properties that were purchased for open space preservation.

Attachments 1 through 4 were prepared by the City, with the location of the NCV Properties added.

Coyote Valley contains over 7,000 acres which 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 at the very core of GP2040. Job creation is the basis for one of the twelve interrelated "Major Strategies" of GP2040, which "are considered ***<u>fundamental</u> to achievement of the City's Vision***." (GP2040, Chapter 1, p. 14, emphasis added.)[1] 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.*

The voters 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 constitute "Threatened Employment Lands" that the voters recognized a

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1 All emphasis in quoted materials is added, unless otherwise stated.

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 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, General Plan Phasing Policy IP-2.5(1).) But 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 .81 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 .81 since 2011. *See* General Plan Annual Performance Review, October 2020, p. 17.

Moreover, the available acreage of employment lands has already been substantially diminished by the November 2019 purchase of the Brandenburg and Sobrato properties, being approximately 937 acres of the 1,722-acre North Coyote Valley Employment Lands Growth Area. The City proposes to redesignate these properties as "Private Recreation and Open Space. *See* Attachments 2 and 5. The Brandenburg/Sobrato purchases mean that only about 314 acres of undeveloped North Coyote Valley Employment Lands Growth Area land remain. The "Remaining Developable Parcels" are depicted by the City on Attachment 2. The NCV Properties are more than 40% of this acreage.

As noted, 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.

***The 2019 Purchase of the Brandenburg and Sobrato Properties Accomplished Significant Environmental Goals of the City***

On November 6, 2019, the City Council approved the expenditure of $46.3 million of the available $50 million of Measure T funds toward purchase of the Brandenburg and Sobrato properties. The $50 million had been allocated from Measure T for "water supply, flood control, open space and environmental protection of lands such as Coyote Valley." *See* September 11, 2018 Staff Report, Item 3.7, Att. A. The purchase and preservation of these 937 acres in North Coyote Valley accomplished significant environmental goals of the City. As explained in the staff report on this item:

> The City Council's approval of the recommended actions offers the opportunity to create an unparalleled natural urban preserve. This can provide public access to open space and trails, green infrastructure supporting flood attenuation and aquifer recharge, protection of habitat to support rare and endangered species, preservation of a critical wildlife linkage between the Diablo and Santa Cruz Mountain Ranges necessary to maintain regional biodiversity, agricultural preservation, and opportunities for wetland and riparian restoration amongst other environmental benefits consistent with City Policies including the City's Climate Smart Plan. (Staff Report, November 6, 2019 Item 4.1, pp. 2-3.)

Now open space advocates are clamoring for "protection" of the rest of North Coyote Valley, including the few "Remaining Developable Parcels" that include the NCV Properties. Having spent nearly all of the available Measure T funds on the Brandenburg/Sobrato purchases, the City is apparently unable to purchase the NCV Properties. Instead, it seeks preservation by changing the land use designation from "Industrial Park" to "Agriculture." This is as unfair as it is unconstitutional.

Preservation of the NCV Properties would not even meet the purposes in the Measure T allocation because:

- These properties do not flood and do not contribute to water quality contamination. *See* Attachment 6 (February 5, 2020 letter from Peter R. Benson and accompanying FEMA Flood Insurance Rate Map); Attachment 7 (February 13, 2020 Memorandum from Kier + Wright); and

- 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 8 (Letter from Tom Foster re Wildlife Connectivity and Permeability Improvements for North Coyote Valley); Attachment 9 (February 12, 2020 letter from the Foster Family, the Benson Family, the Linda L. Lester Family, and the Fred Lester Family).

***The City's Economic Development Needs Must be Balanced With the Preservation of North Coyote Valley That the City Has Already Accomplished***

The NCV Properties present a unique opportunity to accomplish the type of economic development that is included as important goals and policies of the City in its General Plan. Industrial development of the properties is proceeding, with the contract buyer having already submitted preliminary plans to the City. The City Council should balance the opportunity to create blue-collar jobs for its residents with the environmental goals already accomplished in North Coyote Valley.

Critically, GP2040's policies envision creating and sustaining a mix of jobs, including blue-collar industrial job—not just the high-tech employment opportunities that may fill high-rises. *See, e.g.,* GP2040, Chapter 2, p. 4, Land Use and Employment Policy 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, Land Use and Employment Policy 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.

The City has already acknowledged that the demand for industrial uses in the City is high: "[I]ndustrial space vacancy rates are currently low in San José (approximately 2%) and demand is high." (November 13, 2019 Progress Report, p. 37.) Demand for industrial uses will not magically disappear by restricting the quantity of land available for such uses. The rising demand instead will be transferred to other land more distant from the City, with negative environmental consequences from the increased distance between such sites and the workers who will commute to them, and increased distance between such sites and where the goods associated with them are ultimately transported and consumed.

The City has already preserved the more sensitive parts of North Coyote Valley by the 2019 purchases. While acquisition of the Brandenburg and Sobrato properties was indeed significant, the realization of environmental restoration of those properties will require substantial further funding, as environmental improvements like wildlife crossings are expensive to implement. No funding sources have been identified to achieve these objectives, whereas reasonable economic development of the NCV Properties presents a funding source to do so.

We urge the Council to balance preservation with reasonable economic development and reject staff's recommendation to change the land use designation of the NCV Properties to "Agriculture."

***Agriculture is Not an Economically Viable Use of the NCV Properties***

The owners of the NCV Properties previously submitted to the City a copy of a report titled "The Economic Viability and Financial Feasibility of the Continued Agricultural Use of the North Coyote Valley Properties in the City of San Jose" by Dr. Daniel A. Sumner. Dr. Sumner is the Frank H. Buck, Jr. Distinguished Professor in the Department of Agricultural and Resource Economics at the University of California, Davis. Another copy of Dr. Sumner's Report is attached to this letter as Attachment 11.

Although Dr. Sumner's Report discusses broad concepts of agricultural viability, the Report is specifically focused on the NCV Properties. Dr. Sumner took the time to interview Gary Tognetti, the operator of the current tenant of the NCV Properties, B&T Farms. He also interviewed John Spina, who had previously farmed the NCV Properties before abandoning the effort. Dr. Sumner also took into account that another prior farming tenant, Uesugi Farms, went out of business in 2018. As stated on p. 22 of the report, Dr. Sumner's conclusion is that "***agricultural production is not economically viable or financially feasible on the NCV Properties***."[2]

Dr. Sumner's Report traces the history of agricultural uses on the NCV Properties and examines the reasons why existing economic pressures and trends render such uses infeasible and unsustainable. Tenants that have undertaken agricultural production on the NCV Properties have not succeeded. Farming costs have risen substantially, including labor, utilities, fuel and irrigation. Agriculture requires nearby adjunctive services in order to be productive and sustainable (*e.g.,* processing, packaging and distribution), but none of these services are available in reasonable proximity to the NCV Properties. Simply placing a new use label on the NCV Properties will not magically create economic viability for agricultural usage of the properties.

At the October 27, 2021 Planning Commission hearing, the City's staff said nothing about agricultural viability. Instead, they handed off the issue entirely to Michael Meehan, a senior planner with the County. If the City truly believed that agriculture was an economically viable use of the NCV Properties, one would reasonably expect that the City's own staff could present support for that proposition rather than punting the issue to County staff. It is *the City* that will

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[2] Dr. Sumner's conclusion is no surprise to the City. On October 20, 2021, during a call with our client Linda Lester and her attorney Sam Farb, Mayor Liccardo stated that he did not need a report to know that agricultural use of the NCV Properties is not economically viable.

be liable for a regulatory taking of the NCV Properties, not the County; accordingly, the City ought to think long and hard before blindly relying on the County to support the City's actions.

Mr. Meehan's presentation said nothing about agricultural viability of the NCV Properties, or any properties in North Coyote Valley. Instead, he lumped together *all* properties in North, Mid, and South Coyote Valley. By doing so, he overlooked key regulatory factors that distinguish the NCV Properties from the other properties:

- The NCV Properties are located *inside* the City's boundaries and are therefore subject to higher agricultural labor costs than properties located *outside* the City;
- The NCV Properties are located *inside* the City's Urban Service Area, unlike the properties located in Mid Coyote Valley and South Coyote Valley, which are *outside* the Urban Service Area; and
- The NCV Properties are located *inside* the City's Urban Growth Boundary.

Mr. Meehan relied on two publications during his presentation. The first was the January 9, 2018 Santa Clara Valley Agricultural Plan ("SCVAP"), prepared by the County and Santa Clara Valley Open Space Authority. While the SCVAP displays glossy graphics and color photos, it says nothing about agricultural viability of the NCV Properties. Nor could it, for a simple reason: ***SCVAP does not even apply to the NCV Properties***. Areas that are *inside* the Urban Service Area of San José "are not within the County's land use authority *and are outside of the County land use policies that are considered by this Valley Agricultural Plan*." SCVAP, at p. 11. Thus, SCVAP does not apply to properties in North Coyote Valley, like the NCV Properties, which are *inside* the City's Urban Service Area. SCVAP instead applies to an area identified as the "Santa Clara Valley Agricultural Resource Area," or "ARA." SCVAP, at p. 11. But North Coyote Valley lands like the NCV Properties are *not* within the ARA. This is clearly shown by Map 5-2 of SCVAP, which shows that North Coyote Valley lands inside the City's Urban Service Area are "not included in ARA." SCVAP, at p. 45. SCVAP does apply to properties in Mid Coyote Valley and South Coyote Valley that are *outside* the City's Urban Service Area. SCVAP, at p. 45. Mr. Meehan failed to make this distinction in both his October 29, 2020 presentation to the Task Force and his October 27, 2021 presentation to the Planning Commission.

Moreover, SCVAP presents ***no economic data*** to support the economic viability of farming. Instead, it provides merely for a "*vision* of a thriving agricultural economy." SCVAP, at p. 35. Its strategy for reaching the hoped-for "vision" is the establishment and implementation of policies and objectives to properties inside the ARA—which, again, does not include the NCV Properties. It is fine for the County to *encourage* agricultural land use in other parts of the County, but the SCVAP does not constitute substantial evidence that agriculture *is* an economically viable use of the NCV Properties. As conceded by Mr. Meehan at the Planning Commission hearing, economic analysis was not a part of the County's study.

The second report referenced by Mr. Meehan in his presentation to the Planning Commission was a January 2020 report by Santa Clara County Food System Alliance titled "Small Farms, Big Potential: Growing a Resilient Local Food System" (the "County Small Farms Report"). This report was prepared "to further the conversation and momentum of the [SCVAP]." County Small Farms Report, at p. iii. But once again, the County Small Farms Report contains ***no economic data for any farm operation on any property anywhere***. It says nothing at all about agricultural viability.

Instead, the County Small Farms Report presents the reader a series of vignettes about small farmers. None of the farmers spotlighted have farmed in North Coyote Valley, and more than half of them do not even farm in Santa Clara County.[3] None of these reports provide any evidence regarding agricultural viability of the NCV Properties—as was addressed in Dr. Sumner's Report.

If Mr. Meehan (or someone else from the County, rather than City staff) is going to make another presentation to the City Council about agriculture, he should be asked these questions:

- Did he interview Gary Tognetti, the current tenant of the NCV Properties. If so, what did he say? If not, why not?
- Did he interview John Spina, a prior tenant who gave up farming the NCV Properties? If so, what did he say? If not, why not?
- Did he interview anyone from Uesugi Farms, a prior tenant who farmed NCV Properties before going out of business? If so, what did he say? If not, why not?
- Did he interview any of the owners of the NVC Properties? If so, what did they say? If not, why not?
- Does he have any income and expense data demonstrating the economic viability of agriculture on any land in North Coyote Valley?

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[3] The County Small Farms Report provides the reader reports on Spade & Plow (in San Martin); Frantoio Grove (San Martin); Shun-Fat Nursery (Morgan Hill); Ryan Casey (San Gregorio, San Mateo County); Ge Moua (Sacramento County); Mark & Jeannette Fellows (Warwick, Massachusetts); Ryan Clark (North Carolina); JSM Organics (Aromas, Monterey County); Root Down Farm (Pescadero, San Mateo County); Veggielution (a 501(c)(3) non-profit public benefit corporation operating in East San José); Santa Clara Unified School District Farm (Sunnyvale); Oya Organics (Hollister, San Benito County); Pink Barn Farm (Sebastopol, Sonoma County); and Bluma Farms (Berkeley, Alameda County).

- Are the NCV Properties included in the Santa Clara Valley Agricultural Resource Area discussed in the SCVAP and the County Small Farms Report? If not, why didn't he say so at his presentations to the Task Force and to the Planning Commission?

The only solid evidence of ponderable significance in the record about the economic viability of agriculture on the NCV Properties is contained in Dr. Sumner's Report. His conclusion that agriculture is not an economically viable use of the NCV Properties stands unrebutted.

***Adoption of the GPA Would Be An Unconstitutional Taking of the NCV Properties***

The Proposed GPA would constitute a taking, in violation of both the United States and California constitutions.

There are two types of regulatory takings. The first is a *per se* taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992). The Court wrote:

> "[W]e have found categorical treatment appropriate [ ] ***where the regulation denies all economically beneficial or productive use of land***." (*Lucas*, 505 U.S. at 1015, emphasis added.)

The Court further described this standard as deprivation of all "economically viable use," all "economically feasible use," and all "economically valuable use" of land. *Lucas*, 505 U.S. at 1016 n. 6, n. 7; 505 U.S. at 1027.

At the October 27, 2021 hearing before the Planning Commission, Senior Deputy City Attorney Vera Todorov misstated the standard as denial of "all use" of land. This is an attempt to rewrite the Supreme Court's opinion, pretending that the Court had written this:

> "[W]e have found categorical treatment appropriate [ ] ***where the regulation denies all ~~economically beneficial or productive~~ use of land***." (*Lucas*, 505 U.S. at 1015, emphasis added.)

Had the Supreme Court intended to say "all use," it would have done so. But it specifically modified the word "use" by the terms "economically beneficial or productive," or "economically viable," or "economically feasible," or "economically valuable."[4] Inferior courts cannot rewrite

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4 In the nearly 30 years since *Lucas* was decided, the Supreme Court has never wavered from applying a modifier to the word "use" so that the legal requirement is something less than "all use." *See, e.g., City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 720 (1999) ("all economically viable use"); *Palazzolo v.*

the Supreme Court's repeated statement of the standard, and neither can the City. Redesignating the NCV Properties from "Industrial Park" to "Agriculture" would be an unconstitutional *per se* taking because it eliminates all *economically viable* use of the land.

But even where a regulation leaves the owner with *some* economically beneficial use of its property, a regulatory taking may still be found. *Kavanau v. Santa Monica Rent Control Board*, 16 Cal. 4th 761, 774 (1997). This second type of regulatory taking is decided based on an array of factors, derived from *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978). A *Penn Central* taking is decided by "essentially ad hoc, factual inquiries." *Lucas*, 505 U.S. at 1015.

In short, the City will not escape takings liability by insisting that "some use" or "a use" remains for the NCV Properties. That is not the standard under *Lucas;* it is a misstatement of the standard. And even if it were to be somehow assumed that agricultural use was "economically viable," the City would still face liability for a taking under the *Penn Central* standard.

Converting the designation of the NCV Properties from "Industrial Park" to "Agriculture" would constitute a regulatory taking of the properties. The NCV Properties would be left with no economically beneficial or productive use and would be inversely condemned under *Lucas*, as well as under the multi-factor approach of *Penn Central*. If the public wants to "preserve" the NCV Properties, it needs to pay fair market value for them.

***The Proposed General Plan Amendment Is Inconsistent With The General Plan***

GP2040 must comprise an integrated, internally consistent and compatible statement of policies. *See* Gov't Code §§65300.5, 65700(b). A general plan that "displays substantial contradictions and inconsistencies cannot serve as an effective plan." *Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County*, 166 Cal. App. 3d 90, 97 (1985). A land use designation that is inconsistent with the stated policies of the general plan's text is invalid. *Families Unafraid To Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County*, 62 Cal. App. 4th 1332, 1341 (1998).

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*Rhode Island*, 533 U.S. 606, 616 (2001) ("all economically beneficial use"); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 316 (2002) ("all economically viable use"); *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 540 (2005) ("economically viable use"); *Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection*, 560 U.S. 702, 713 (2010) ("all economically beneficial use"); *Arkansas Game and Fish Comm'n v. United States*, 568 U.S. 511, 518 (2012) ("all economically beneficial uses"); *Horne v. Department of Agriculture*, 576 U.S. 350, 363 (2015) ("all economically valuable use"); *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943 (2017) ("all economically beneficial use"); *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2070 (2021) ("all economically beneficial use").

The October 27, 2021 Staff Report to the Planning Commission (at p. 22-23 of 32) ***concedes*** that the Proposed GPA is inconsistent with the following provisions of GP2040:

- Major Strategy #4 – Innovation/Regional Employment Center;
- Innovative Economy Policy IE-1.2;
- Broad Economic Prosperity Policy IE-6.2;
- Fiscal Sustainability Goal FS-4;
- Fiscal Sustainability Policy FS-4.1; and
- Fiscal Sustainability Goal [sic - Policy] FS-4.2.

The Staff Report attempted to excuse or justify adoption of the GPA notwithstanding these inconsistencies. There is no legal basis for this attempt. Other than Fiscal Sustainability Policy FS-4.2, the Major Strategy, Goals, and Policies cited above are *not* being amended—they are being left intact. The GPA is improper because it is inconsistent with the visions listed above (as the City concedes), as well as numerous other provisions in GP2040.

<u>Major Strategy #4</u>: Major Strategies "are considered ***<u>fundamental</u> to achievement of the City's Vision***." (GP2040, Chapter 1, p. 14.)[5] Major Strategy #4 emphasizes economic development within the City to support job growth. GP2040 "recognizes that ***all existing employment lands*** **add value to the City and therefore *preserves those employment lands*** and promotes the addition of new employment lands when opportunities arise." (GP2040, Chapter 1, pp. 17-18.) The Proposed GPA does not "preserve" the North Coyote Valley employment lands—it obliterates them. This is inconsistent with Major Strategy #4.

<u>Innovative Economy Policy IE-1.2</u>. This policy calls for "***expansion of a strategic mix of employment activities . . . to support a balanced economic base, including industrial suppliers and services***." (GP2040, Chapter 2, p. 4.) GP2040 also states: "San José's goal is to ***provide adequate growth capacity for each type of employment land*** in order to meet the forecast job demand identified within the Employment Land Demand and Housing Demand report." (GP2040, Chapter 1, p. 61.) The GPA is antithetical to maintaining the diversity of jobs promoted by this policy and this goal. Not everyone can work for Google. The jobs that would be created on the NCV Properties are mostly blue-collar industrial jobs, consistent with the

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[5] Citations to GP2040 are to the version recently placed on the City's website, with amendments through September 30, 2021 (https://www.sanjoseca.gov/home/showpublisheddocument/22359/637686090967970000).

Industrial Park land use designation. The GPA wipes out these industrial jobs. Worse still, while the Task Force recommended that 5,000 industrial jobs be shifted to the Alviso Master Plan Employment Lands Area to help ameliorate this loss, staff deleted this recommendation. *See* October 27, 2021 Planning Commission Staff Report, at p. 12 of 32. The result is that the GPA accomplishes the loss of planned industrial jobs for the North Coyote Valley Employment Lands Area and retains none of those jobs elsewhere, directly contradicting Innovative Economy Policy IE-1.2.

Other provisions of GP2040 equally promote job diversity and the expansion of an industrial job sector so that the interests of *all* of the City's residents will be served. Innovative Economy Policy IE-1.1 provides:

> "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***, especially those that are vulnerable to conversion to non-employment uses." (GP2040, Chapter 2, p. 4.)

Similarly, GP2040's Land Use Policies "promote the fiscal sustainability of the City by protecting employment land, ***particularly industrial lands***." (GP2040, Chapter 6, p. 4.) The GPA is inconsistent with these policies, as it does not protect and improve industrial lands—it destroys them.

The Staff Report tries to downplay the blatant inconsistency (a tactic that, as noted above, is legally irrelevant in any case) by arguing that the loss of 314 acres of industrial land is only 6% of citywide Industrial Park lands. (October 27, 2021 Planning Commission Staff Report, at p. 22 of 32.) This is misleading, because the numerator is *undeveloped* industrial lands in Coyote Valley (but not all of it) while the denominator includes both *undeveloped and developed* industrial sites citywide. The calculation misses the point of the existing (unchanged) General Plan policies, which is to *expand* the City's industrial job sector. What matters is how much *undeveloped* industrial land remains in the City, because that is where the industrial job growth opportunities are. Lumping together undeveloped industrial land with developed industrial land is an obfuscation, as it says nothing about the industrial job *growth* that GP2040 seeks to advance.[6]

---

[6] The City should be able to easily calculate what percentage of *undeveloped* and available industrial acreage citywide would be lost by redesignating all of the Industrial Park lands in North Coyote Valley. Under Industrial Preservation Policy LU-6.6, the City is to "[m]onitor the absorption and availability of industrial land, particularly land identified for light and heavy industrial uses, to ensure a balanced supply of available land for all sectors, including industrial suppliers and services." (GP2040, Chapter 6, p. 12.) Further, under Industrial Preservation Policy LU-6.10, the City is to "[m]aintain an inventory of industrial lands and periodically assess the condition, type, and amount of industrial land available to meet projected demands." (GP2040, Chapter 6, pp. 12-13.) This data would provide the means to make the relevant calculation—*i.e.,* what percentage of available *undeveloped* industrial land would the City lose by adopting the GPA?

Broad Economic Prosperity Policy IE-6.2. This policy calls for the City to "**[a]ttract and retain a diverse mix of businesses and industries that can provide jobs for the residents *of all skill and education levels*** to support a thriving community." (GP2040, Chapter 2, p. 9.) It supports Broad Economic Prosperity Goal IE-6, to ***"[p]rovide widespread access to diverse employment*** and training opportunities in San José." (GP2040, Chapter 2, p. 9.) The GPA is contrary to the goal and policy of diverse job creation, as explained above.

Fiscal Sustainability Goals and Policies. Fiscal Sustainability Goal FS-4 calls for the City to *"**[m]aintain, enhance, and develop our City's employment lands*** as part of our strategy for Fiscal Sustainability." (GP2040, Chapter 2, p. 18.) The GPA is inconsistent with this goal. By eliminating altogether the North Coyote Valley Employment Lands Area, the GPA accomplishes the exact opposite of this goal.

The GPA is likewise inconsistent with numerous policies in GP2040 established to effect Fiscal Sustainability Goal FS-4. Fiscal Sustainability Policy FS-4.1 calls for the City to "***[p]reserve and enhance employment land acreage***." (GP2040, Chapter 2, p. 18.) The GPA does not do so—it *deletes* 1,722 acres of employment land in North Coyote Valley.

The GPA's harmful financial impacts to the City are also a critical consideration. GP2040 recognizes that land use decisions significantly affect the City's finances by creating revenue sources for the City. Fiscal Sustainability Goal FS-2 requires the City to "***[m]aintain and expand*** the ***revenue sources*** available to finance the provision of City services." (GP2040, Chapter 2, p. 16.) In support of this goal, Cultivate Fiscal Resources Policy FS-2.1 states that the City should focus on economic development as a tool of revenue generation. (GP2040, Chapter 2, p. 16.) Fiscal Sustainability Goal FS-3 calls on the City to "[m]ake land use decisions that ***improve the City's fiscal condition***." (GP2040, Chapter 2, p. 17.) In support of this Goal, Fiscally Sustainable Land Use Framework Policy FS-3.4 states that the City should ***"[m]aintain or enhance the City's projected total net revenue*** through amendments made to this General Plan in each Review process," and "***[d]iscourage*** proposed rezonings or other discretionary ***land use actions that could significantly diminish revenue to the City*.**" (GP2040, Chapter 2, p. 17.) Business Growth and Retention Policy IE-2.7 broadly ***"[e]ncourage[s]*** business and ***property development that will provide jobs and generate revenue*** to support city services and infrastructure**.**" (GP2040, Chapter 2, p. 6.)

The GPA is inconsistent with these goals and policies. As noted, the NCV Properties are under contract for sale to a buyer that has already submitted an application for an industrial project on the properties. The buyer has an identified end user for the project that will create ***thousands of jobs and millions of dollars of revenue for the City***. The GPA would kill the project, causing the City to suffer a substantial revenue loss over the minimal City revenue that could be generated from agricultural uses. The Proposed GPA does not *improve* the City's financial condition, it *damages* it.

Industrial Preservation Goals and Policies. Industrial land is so important to the City that its General Plan contains a host of goals and policies to assure *preservation* of such land. Industrial Lands Goal LU-6 directs: "***Preserve and protect industrial uses*** to sustain and develop the city's economy and fiscal sustainability." (GP2040, Chapter 6, p. 11.) Industrial Preservation Policy LU-6.1 supports this goal, requiring the City to "***[p]rohibit conversion of lands designated for light and heavy industrial uses to non-industrial uses.***" (GP2040, Chapter 6, p. 11.) The Proposed GPA is obviously inconsistent with this goal and this policy. It does not "preserve" industrial use on the NCV Properties, it eliminates it. In doing so, it clearly violates the **prohibition** of Industrial Preservation Policy LU-6.1 by converting the NCV Properties from industrial to non-industrial (*i.e.,* agricultural) uses. The City cannot have a general plan policy prohibiting such conversions while simultaneously advancing a project which undertakes such a conversion. In a rush to satisfy calls from those who want to "preserve" Coyote Valley, the City is simply disregarding its own general plan by proposing to act in a manner blatantly inconsistent with it.

Industrial Preservation Policy LU-6.4 establishes that the City should *"**[e]ncourage the development of new industrial areas***. . . particularly ***in locations which facilitate efficient commute patterns***." (GP2040, Chapter 6, p. 12.) Cultivate Fiscal Resources Policy FS-2.3 is to the same effect (GP2040, Chapter 2, p. 16.) Industrial development of the NCV Properties advances these policies because the properties are primarily reached by a reverse commute pattern, travelling southbound on Highway 101 in the morning and northbound in the evening. As GP2040 notes, it has been long recognized that: ***"[s]elective industrial development within Coyote Valley would*** generate revenues to support City services and ***support a reverse commute pattern*** that would make better use of existing transportation infrastructure by placing job growth in the job-poor southeast portion of the City." (GP2040, Chapter 1, p. 36.) Eliminating industrial development in North Coyote Valley is inconsistent with this policy.

The Staff Report focuses on Vehicle Miles Travelled as the City's CEQA metric and recites that Coyote Valley purportedly has the highest VMT in the City because it is located at the southern end of the City. (October 27, 2021 Planning Commission Staff Report, at p. 6 of 32.) This is a simplistic analysis that does nothing but recognize Coyote Valley's location within the City. The City's CEQA metric cannot override its existing general plan policies. If employees of industrial uses on the NCV properties were to commute southbound on Highway 101 to reach the site, their reverse commute would support Cultivate Fiscal Resources Policy FS-2.3. If employees were to commute northbound on Highway 101, their VMT would be reduced as compared to commuting to downtown jobs. Moreover, the City's simplistic analysis fails to consider that farmworker labor at the NCV Properties would largely commute from the Central Valley and other distant locations; hence the VMT of agricultural workers would be greater than the VMT of industrial workers. It is of little assistance for the City to merely note that the NCV Properties are located in the southernmost part of the City as a supposed justification for the GPA without further focused VMT analysis.

Rural Agriculture Policy LU-20.1. The Proposed GPA seeks to mandate agricultural uses on 314 acres of "Remaining Developable Parcels" in North Coyote Valley, including the NCV Properties. This is fundamentally inconsistent with Rural Agriculture Policy LU-20.1, which calls for the City to "[p]rotect and preserve the remaining farmlands ***within San José's sphere of influence that are not planned for urbanization in the timeframe of the Envision General Plan, such as mid- and south Coyote Valley***. . . ."(GP2040, Chapter 6, p. 33.) The NCV Properties are inside the City's boundaries, not within its sphere of influence. The NCV Properties are located in North Coyote Valley, not Mid- or South Coyote Valley. Seeking to "preserve" farmland on the NCV Properties requires a rewriting of the City's policy. The City's (unchanged) policy sets forth the parameters of where agricultural preservation is to occur, and imposing agricultural preservation on the NCV Properties is wholly inconsistent with this City policy.

GP2040 is the City's "constitution" for future development. *DeVita v. County of Napa*, 9 Cal. 4th 763, 772-773 (1995). Instead of complying with its general plan, the GPA runs roughshod over it, ignoring its goals and policies.

***The Proposed GPA Improperly Shifts the City's Urban Growth Boundary and Urban Service Area***

GP2040 establishes two boundaries to limit urban growth in the City—the Urban Growth Boundary and the Urban Service Area. The NCV Properties are located *inside* the City's Urban Growth Boundary and *inside* the City's Urban Service Area. *See* Attachment 3.

A "key concept" of GP2040's Land Use/Transportation Diagram is establishment of a "***Fixed*** Urban Growth Boundary." (GP2040, Chapter 5, p. 3.) "***The Urban Growth Boundary provides clarity as to the lands appropriate for development*** within San José." (GP2040, Chapter 5, p. 5.) New urban development is to be placed *inside* the Urban Growth Boundary, and areas *outside* the Urban Growth Boundary are to be preserved "for primarily open space, habitat, parkland or agricultural activities." (GP2040, Chapter 5, pp. 5, 21.)

The Proposed GPA is inconsistent with the "fixed" Urban Growth Boundary, and stands the City's Urban Growth Boundary on its head. The NCV Properties are *inside* the City's Urban Growth Boundary, but are being treated as if they were *outside* the Boundary. The redesignation from "Industrial Park" to "Agriculture" would prohibit urban development on the NCV Properties; the NCV Properties are instead being preserved for "agricultural activities." Put simply, the Proposed GPA would move the "fixed" Urban Growth Boundary so that the NCV Properties are suddenly *outside* the Boundary rather than *inside* it.

This the City Council cannot do. On November 7, 2000, the voters passed Measure K, which adopted the Urban Growth Boundary and provided that it could only be amended by the voters.

The Proposed GPA would accomplish an amendment to the Urban Growth Boundary without voter approval, in violation of Elections Code §9217.

The Urban Service Area boundary is the area within which services and facilities provided by the City and other public agencies are available "and where urban development requiring such services should be located." (GP2040, Chapter 5, p. 21.) The NCV Properties are *inside* the Urban Service Area, but the Proposed GPA to "Agriculture" would *prohibit* any uses requiring urban services. (GP2040, Chapter 5, pp. 17-18.) The owners of the NCV Properties are being simultaneously told that they *may* use urban services and they *may not* use urban services on their land. Manifestly, this is entirely inconsistent and improper.

***Improper Notice***

The City Council hearing on the Proposed GPA has not been properly noticed. Planning Director Burton's Staff Report (at p. 10) states that staff followed Council Policy 6-30 by sending public hearing notices for this meeting to property owners within a 500-foot radius. The public hearing notices sent state that this hearing will be held at 6:00 p.m. on November 16, 2021 (see Attachment 12), yet the published agenda states that the hearing will be held at 1:30 p.m. on November 16, 2021. Recipients who rely on the public hearing notice and appear at 6:00 p.m. would have missed the meeting that commenced at 1:30 p.m.

The Staff Report also states that a notice of the public hearing was published in the San Jose Post Record, but no date or proof of publication has been provided.

***Conclusion***

As to the NCV Properties, the constitutional protections afforded landowners and the principles of good planning coalesce. The City's environmental goals and its economic development goals should be considered together and appropriately balanced. Industrial uses are in high demand and industrial jobs are needed by City residents for job diversity. Industrial development of the NCV Properties would provide a funding mechanism to realize the environmental reserve envisioned for the Brandenburg and Sobrato properties already acquired. Designating the NCV Properties as "Agriculture" would be a regulatory taking of the properties.

**We urge the City Council to follow the recommendation of the Planning Commission and reject staff's recommended amendment to GP2040. The "Industrial Park" land use designation of the NCV Properties should be maintained.**

We request that this letter and its attachments be made part of the record of proceedings for this matter.

Sincerely,

[redacted]

Edward G. Burg

Attachments

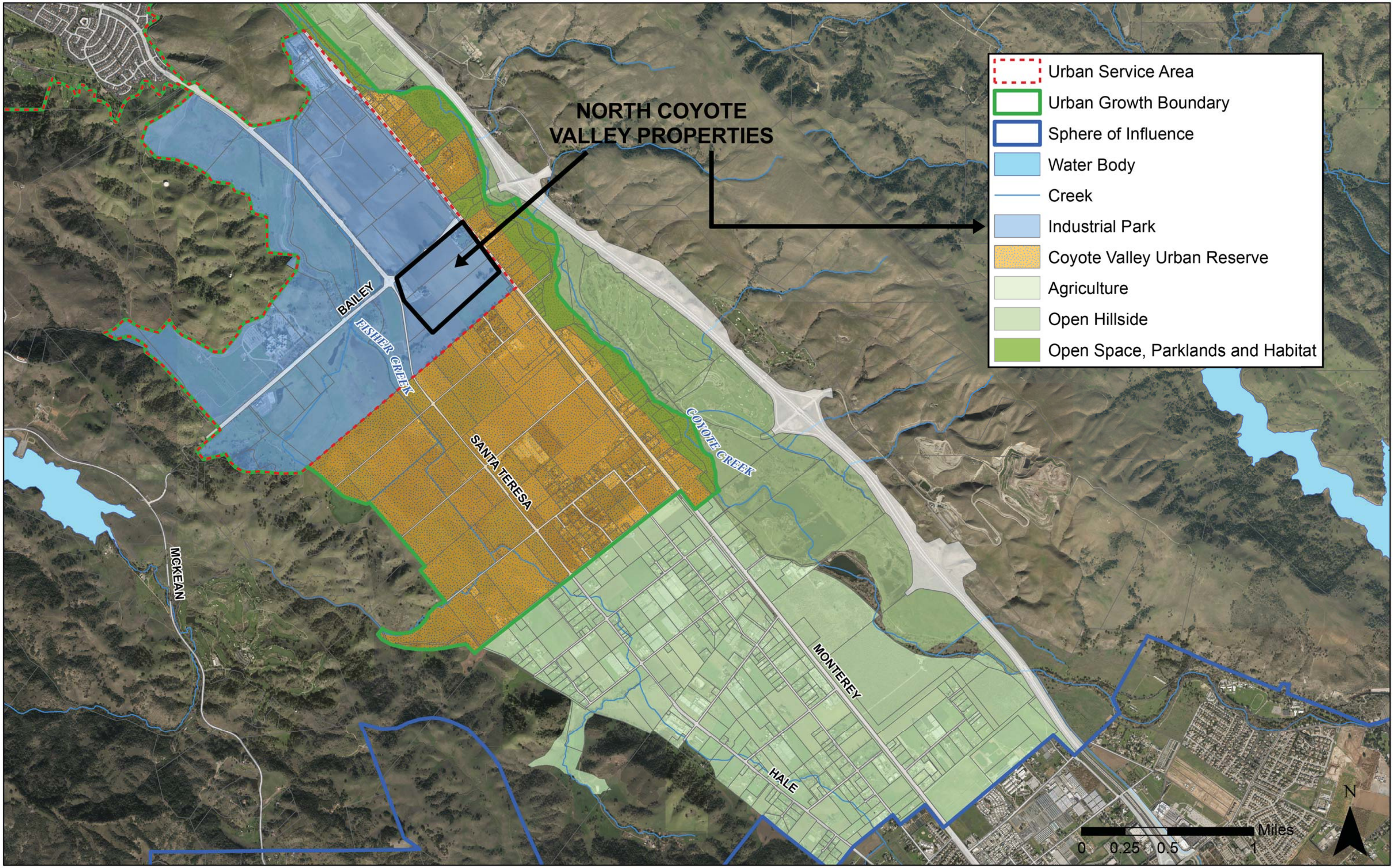
1. Aerial Photo – current Industrial Park land use designation
2. Aerial Photo – proposed Agricultural land use designation
3. Aerial Photo – City boundaries, Urban Service Area, and Urban Growth Boundary
4. Aerial Photo – Remaining Developable Parcels
5. Photo of NCV Properties and Surrounding Properties
6. February 5, 2020 letter from Peter R. Benson and accompanying FEMA Flood Insurance Rate Map
7. February 13, 2020 Memorandum from Kier + Wright
8. Letter from Tom Foster re Wildlife Connectivity and Permeability Improvements for North Coyote Valley
9. February 12, 2020 letter from the Foster Family, the Benson Family, the Linda L. Lester Family, and the Fred Lester Family
10. Letter from Michael Karp re Land Dynamics in San José
11. Agricultural Report by Dr. Daniel A. Sumner, Frank H. Buck, Jr. Distinguished Professor in the Department of Agricultural and Resource Economics at the University of California, Davis
12. Planning Division Hearing Notice, postmarked October 12, 2021

cc, with attachments:
Chris Burton, Director of Planning, Building and Code Enforcement (by email to Chris.Burton@sanjoseca.gov)
Michael Brilliot, Deputy Director of Planning (by email to Michael.Brilliot@sanjoseca.gov)
Robert Rivera, Planning Project Manager (by email to Robert.Rivera@sanjoseca.gov)
Nora Frimann, City Attorney (by email to Nora.Frimann@sanjoseca.gov)

EGB

# ATTACHMENT 1

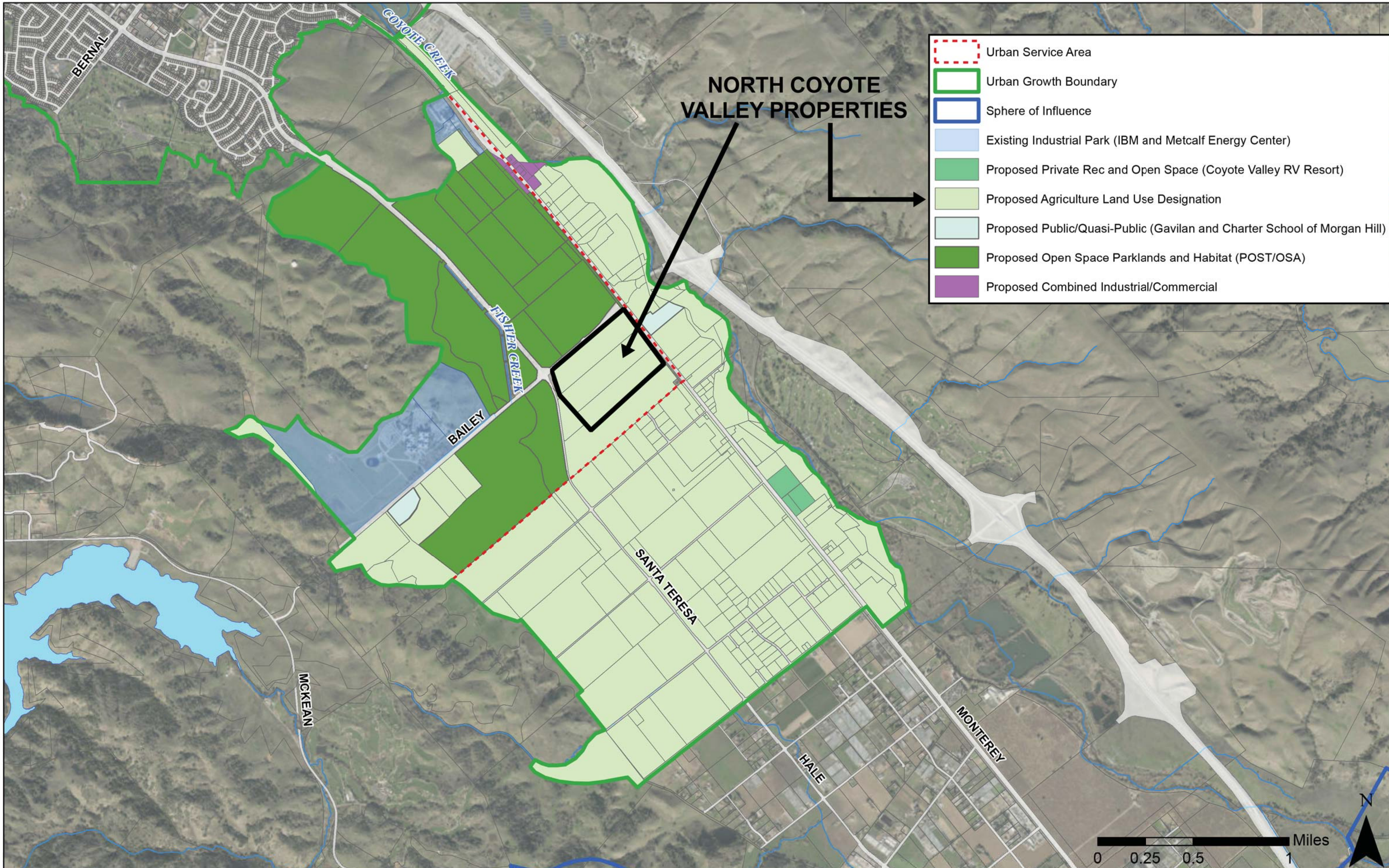
Attachment G: Existing Coyote Valley General Plan Land Use Designations




Map Prepared by: City of San Jose Planning Division, August 2018

# ATTACHMENT 2

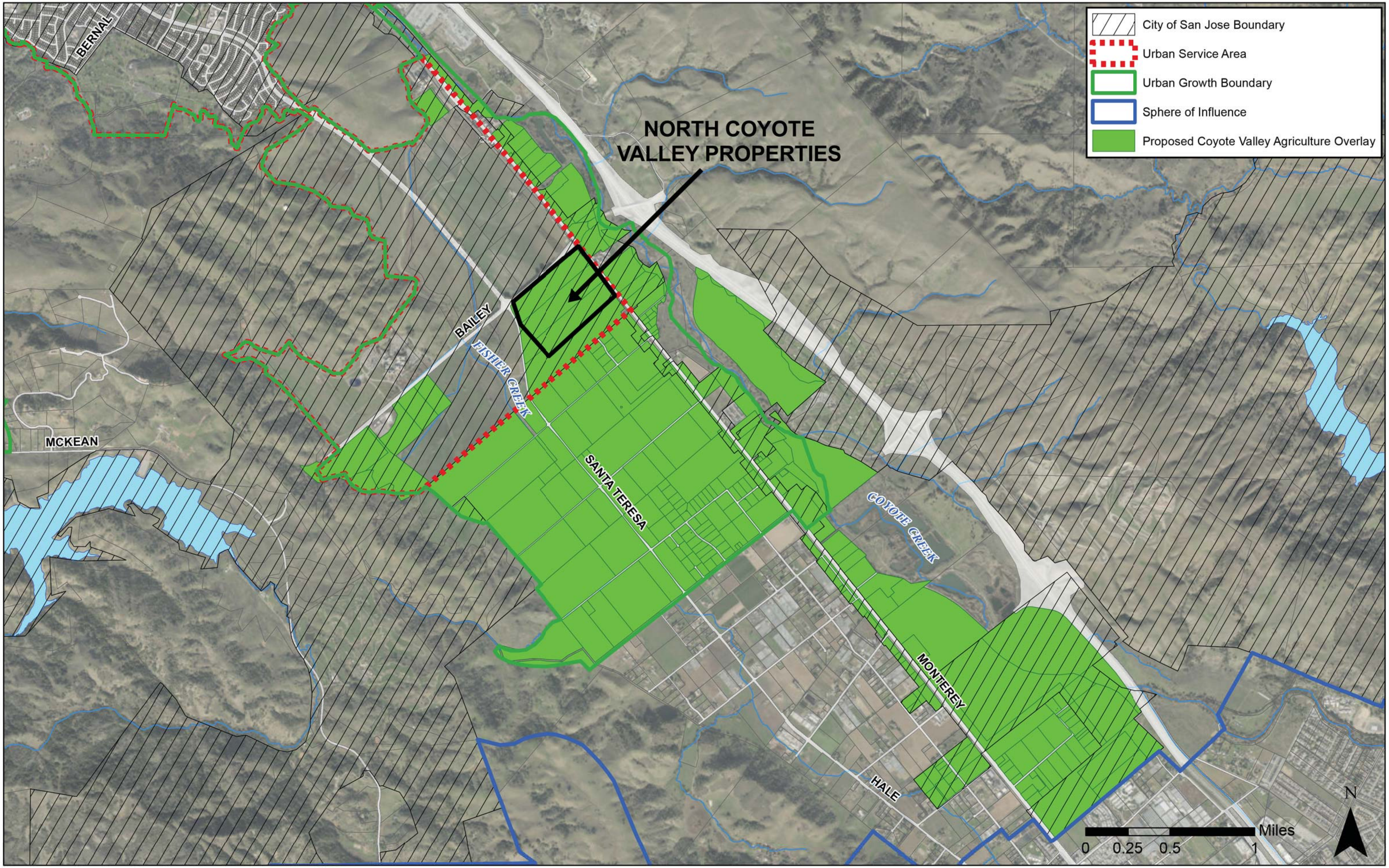
Attachment G: Proposed General Plan Land Use Designations




Map Prepared by: City of San Jose Planning Division, May 2020

# ATTACHMENT 3

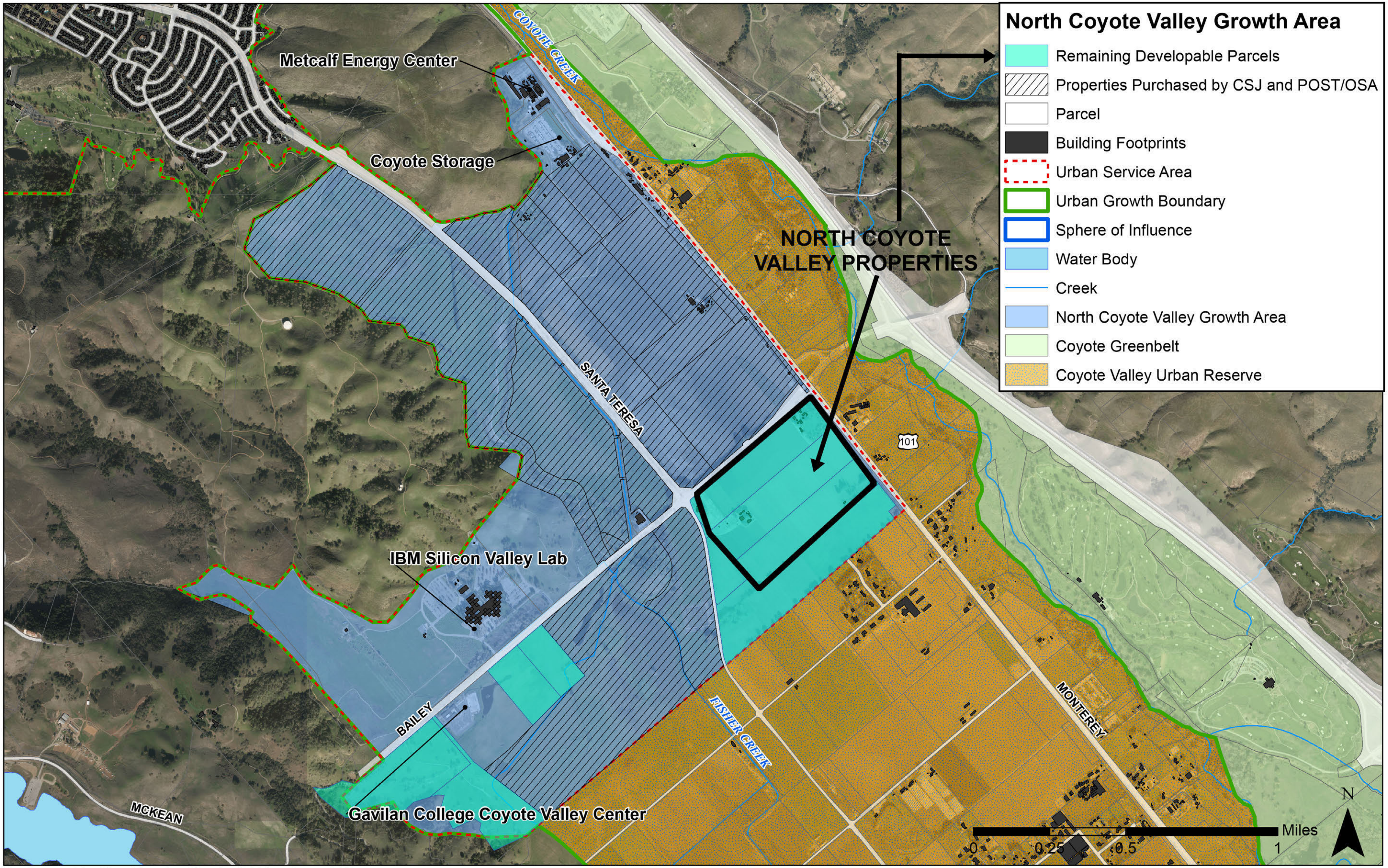
Attachment G: Proposed Coyote Valley Agriculture Overlay




Map Prepared by: City of San Jose Planning Division, May 2020

# ATTACHMENT 4

Attachment C

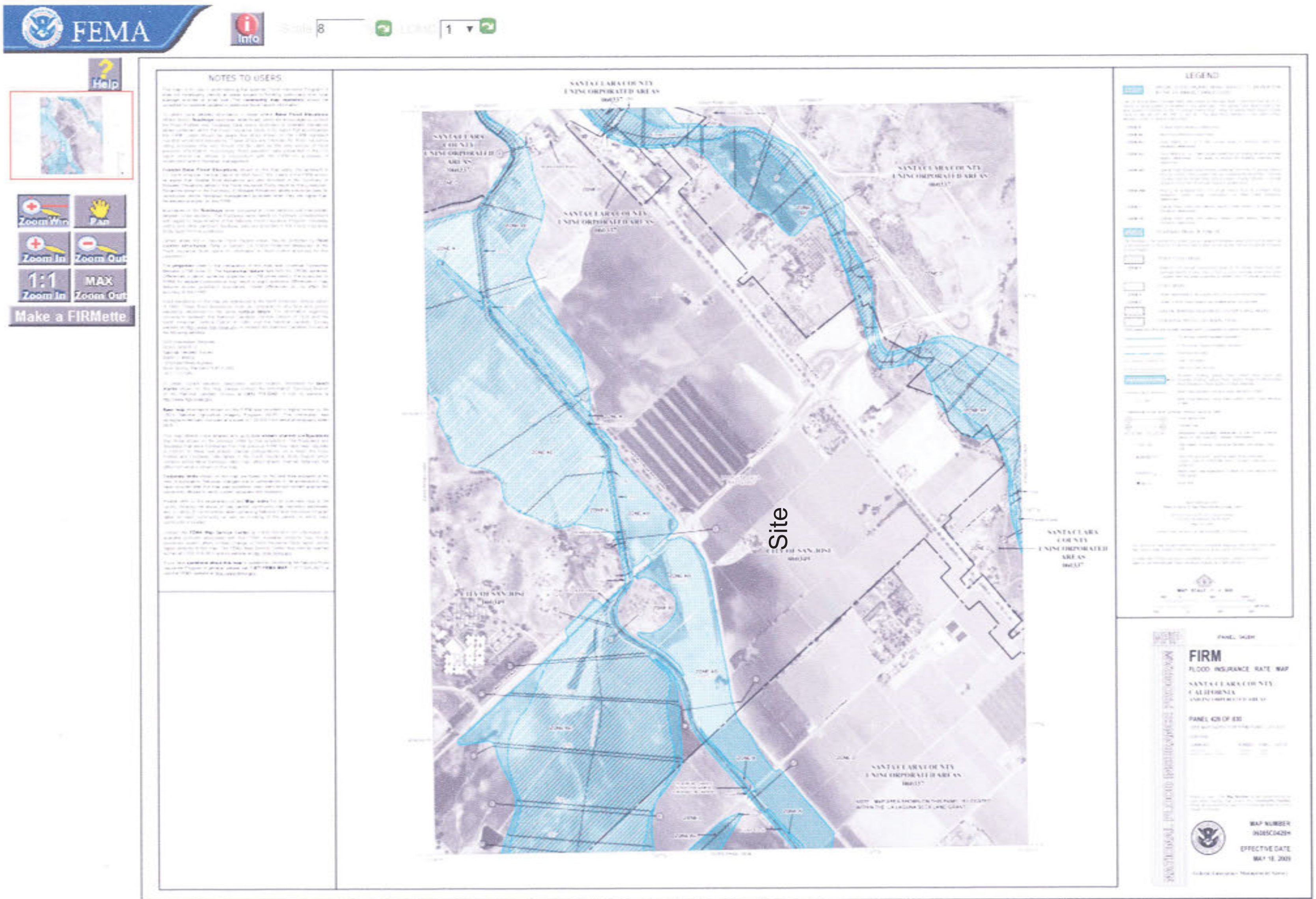



Map Prepared by: City of San Jose Planning Division, August 2018

# ATTACHMENT 5


Brandenberg
(open space)
IBM
POST
Sobrato
(open space)
Brandenberg
(City)
Sobrato
(open space)
Fisher Creek
SANTA TERESA BLVD
Subject Property
126 Acres
BAILEY AVE
MONTEREY HWY
US
101
Residential Development
Union Pacific Rail

# ATTACHMENT 6


FEMA
Info
Scale 8
LOMC 1
Help
Zoom Win
Pan
Zoom In
Zoom Out
1:1 Zoom In
MAX Zoom Out
Make a FIRMette
NOTES TO USERS
LEGEND
SANTA CLARA COUNTY UNINCORPORATED AREAS
CITY OF SAN JOSE
Site
FIRM
FLOOD INSURANCE RATE MAP
SANTA CLARA COUNTY CALIFORNIA
PANEL 428 OF 830
MAP NUMBER 06085C0428H
EFFECTIVE DATE MAY 18, 2009

# ATTACHMENT 7

KIER+WRIGHT

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 pubic 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 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 8

**<u>Wildlife Connectivity and Permeability Improvements for North Coyote Valley</u>**

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 **<u>"Coyote Valley Linkage Assessment Study Final Report"</u> 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.

[redacted]

Tom Foster

# Exhibit A

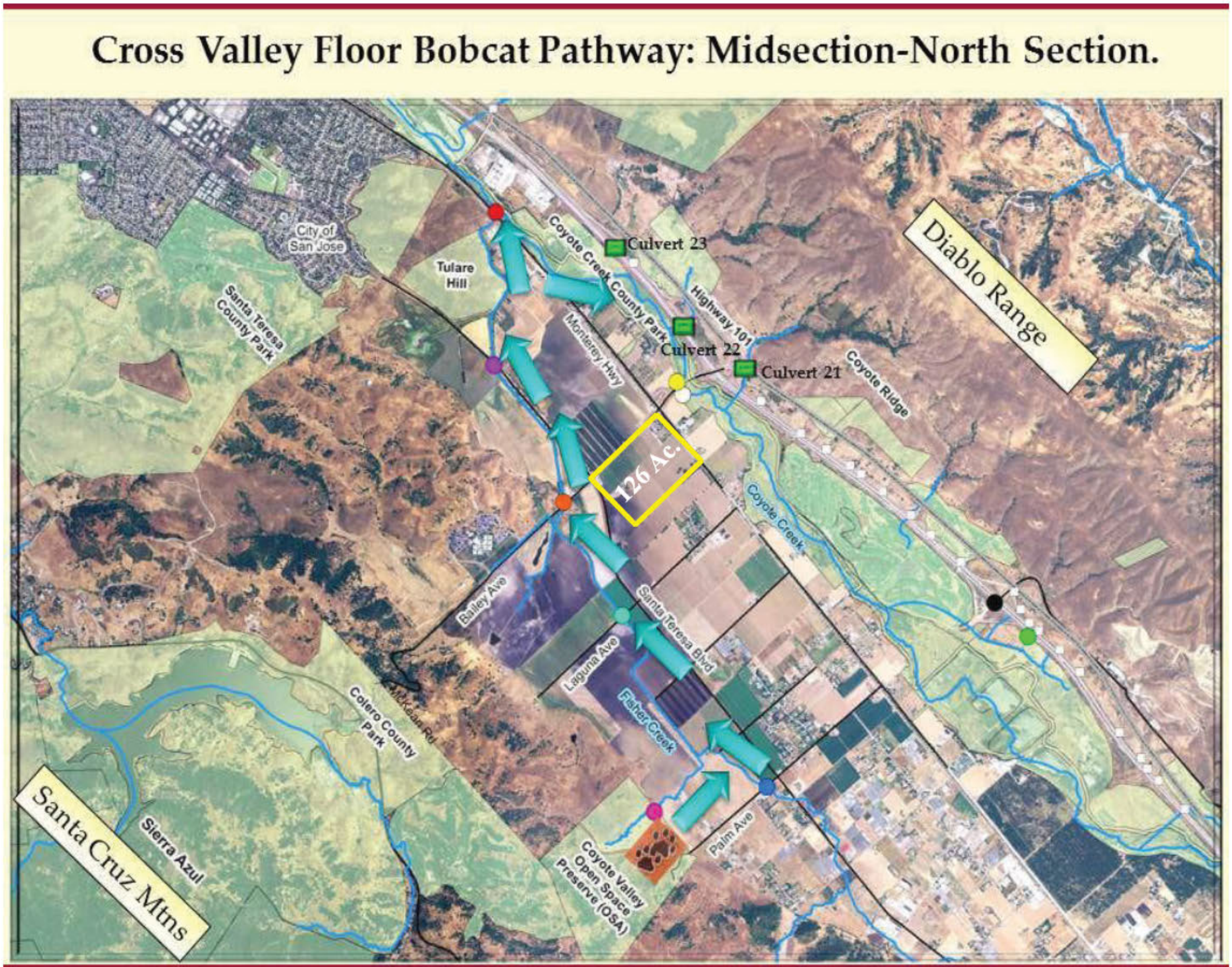


Figure 5: Cross Valley Floor Bobcat Pathway: Midsection-North Section.

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

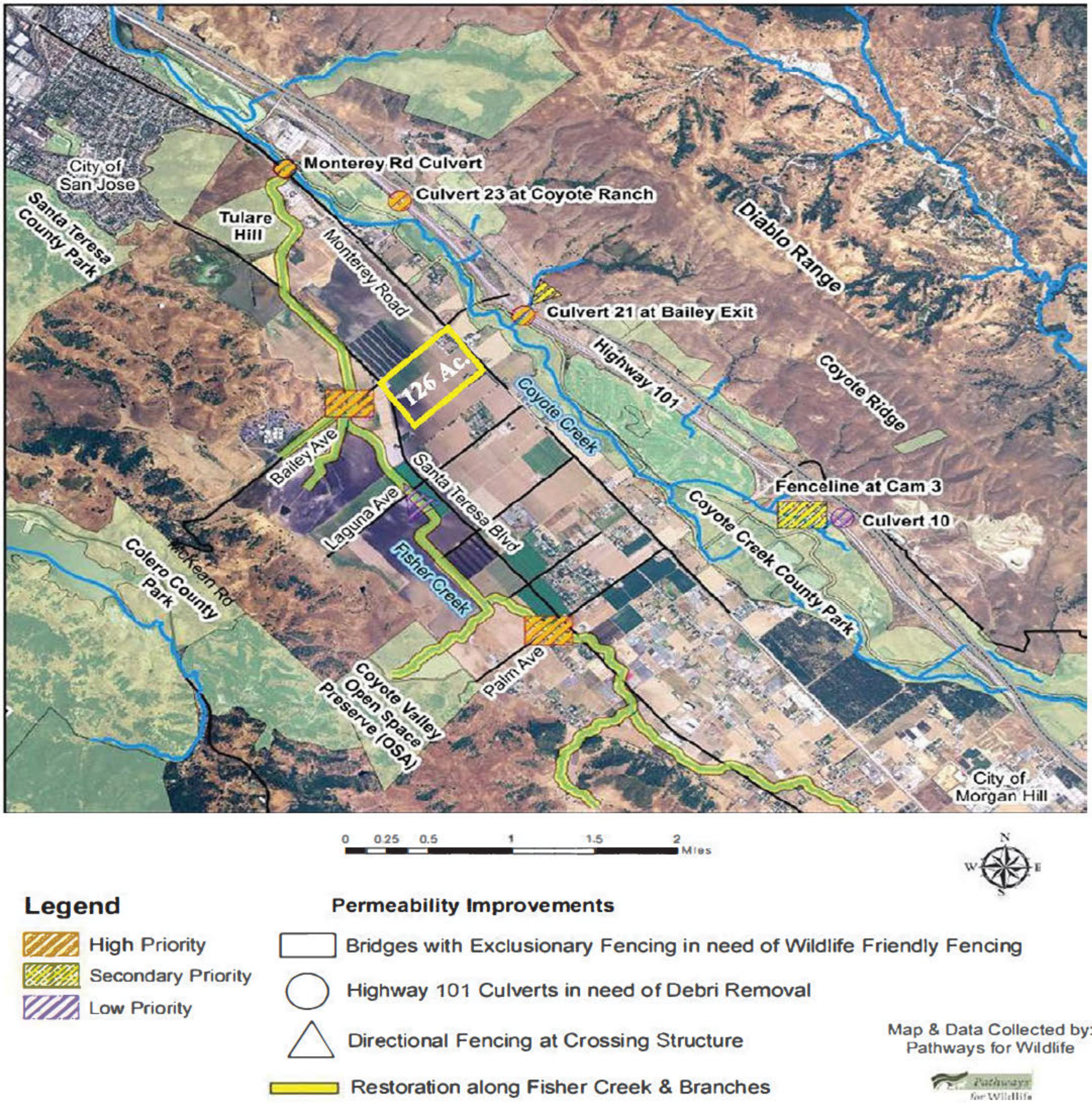


Figure 22: Improvements for Wildlife Movement at Known Barriers.

# ATTACHMENT 9

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)

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Fred Lester (for the Lester Family Members)

Tom Foster (for the Foster Family Members)

[redacted]

Pete Benson (for the Benson Family Members)


Brandenberg
(open space)
IBM
POST
Sobrato
(open space)
Brandenberg
(City)
Sobrato
(open space)
Fisher Creek
SANTA TERESA BLVD
Subject Property
126 Acres
BAILEY AVE
MONTEREY HWY
US
101
Residential Development
Union Pacific Rail

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Fred Lester (for the Lester Family Members)

[redacted]

Tom Foster (for the Foster Family Members)

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)

[redacted]

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

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,

[redacted]

Fred Lester (for the Lester Family Members)

Tom Foster (for the Foster Family Members)

Pete Benson (for the Benson Family Members)

# ATTACHMENT 10

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 11

# The Economic Viability and Financial Feasibility of the Continued Agricultural Use of the North Coyote Valley Properties in the City of San Jose

**September 2021**

**Daniel A. Sumner***

*Distinguished Professor of Agricultural and Resource Economics, University of California, Davis. I list my university position here for information only. The preparation of this report was not conducted as a part of my university responsibilities and the views expressed in this report are those of the author and not those of any organization with which I am affiliated.

## Table of Contents

# The Economic Viability and Financial Feasibility of the Continued Agricultural Use of the North Coyote Valley Properties in the City of San Jose

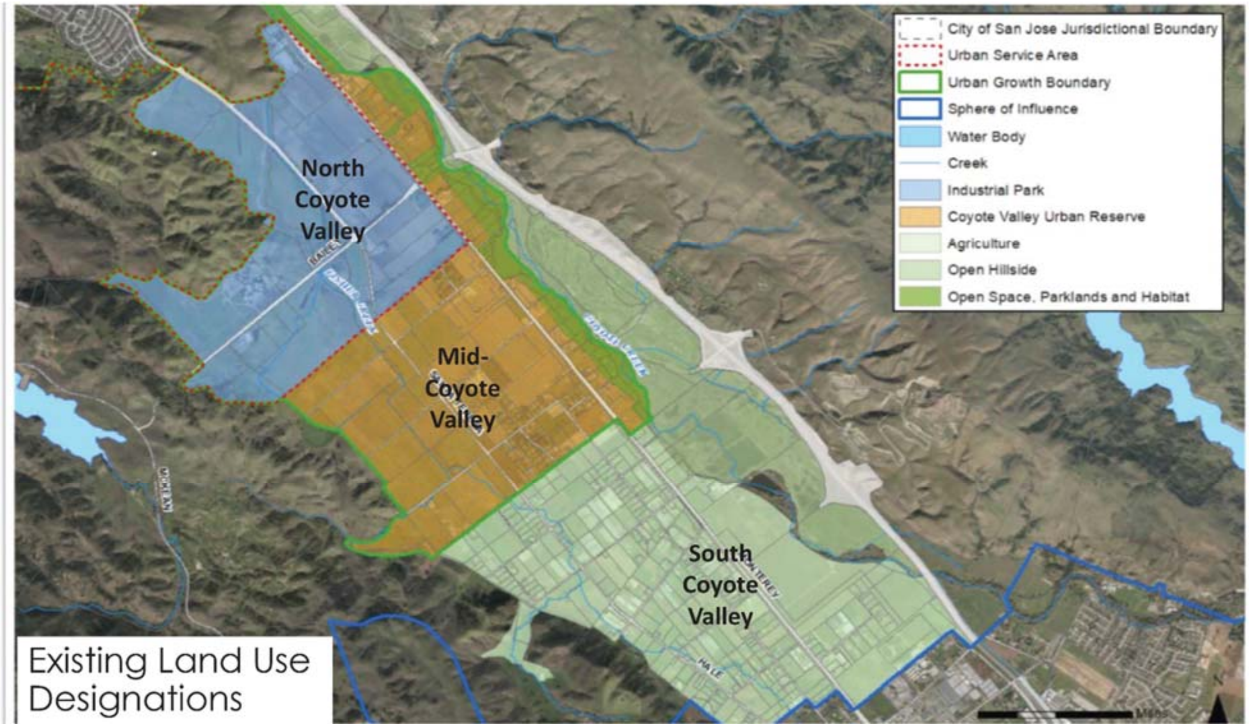
## I. Introduction, Objectives and Main Finding

Farming has always been a difficult undertaking in even the best of circumstances. California crop farms in particular deal with many difficult issues, including increasing costs of production, regulatory burdens, scarce availability of hired labor and increasing labor costs, national and global competition, climate change, and repeated droughts, to name some of the most prominent challenges.

However, when the local farming situation has increasing or more severe challenges, use of local land for commercial crop production may no longer be economically viable or financially feasible. Where the physical and economic conditions are becoming more complex and less encouraging, economically beneficial and productive agricultural land use becomes less likely.

Santa Clara County had a successful tradition of crop farming for several decades in the middle of the 20th Century. Through the 1960s land in San Jose and nearby cities and towns was used to produce and process a variety of crops before offices, commercial space, housing and public uses such as parks and schools replaced farms. The valleys of Santa Clara County were known for prunes, apricots and other fruit before the term "Silicon Valley" was created. As the local industry changed, land use changed to allow job creation and housing.

Coyote Valley is divided into three distinct planning areas by the City of San Jose. The three areas are North Coyote Valley, Mid-Coyote Valley, and South Coyote Valley, as shown on this map prepared by the City's Planning Department:

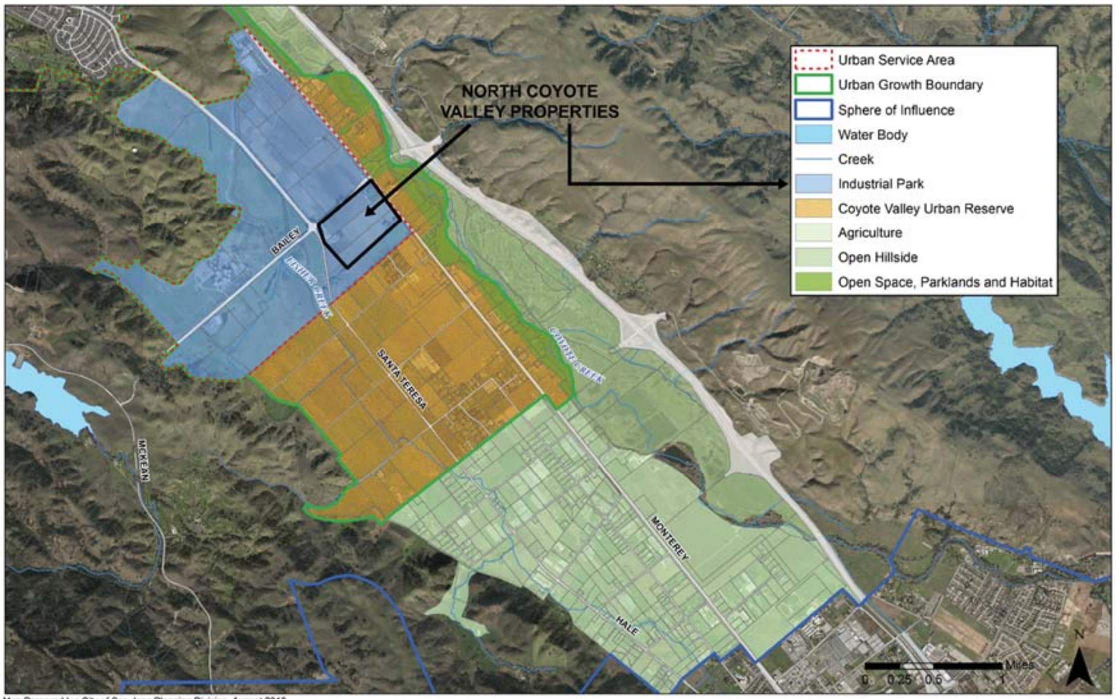



I understand that North Coyote Valley is the only area that is both within the City limits and within the City's Urban Service Area.

This report evaluates the economic situation and outlook for potential agricultural use of a 126.5-acre area of land in North Coyote Valley (NCV) in the City of San Jose (which I will usually refer to as the "the NCV properties" or "the properties"). In this report I review relevant materials and conduct independent analysis considering industry trends, market demands, and competitive factors.

The present land use designation of the NCV Properties is "Industrial Park," as shown on this map prepared by the City's Planning Department and marked to show the location of the NCV Properties:

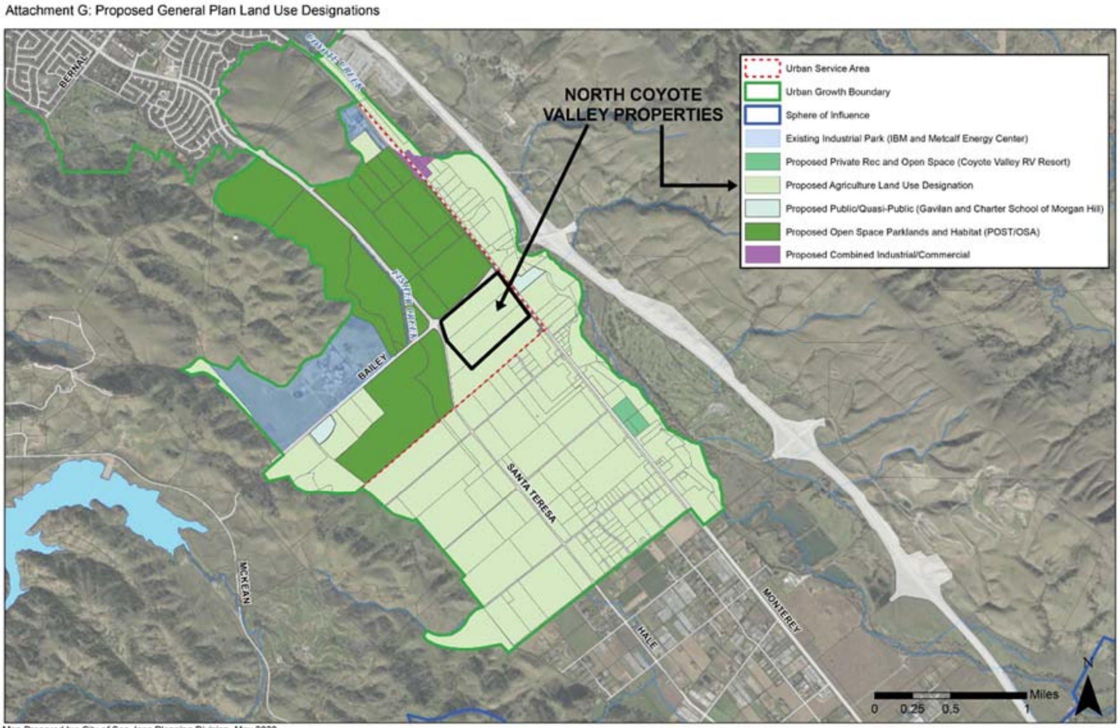
Attachment G: Existing Coyote Valley General Plan Land Use Designations




Map Prepared by: City of San Jose Planning Division, August 2018

On October 29, 2020, the City's Envision San Jose 2040 Task Force adopted a recommendation to change the General Plan land use designation of the properties from “Industrial Park” to "Agriculture." The proposed land use designation is shown on the following map prepared by the City's Planning Department, again marked to show the NCV properties:

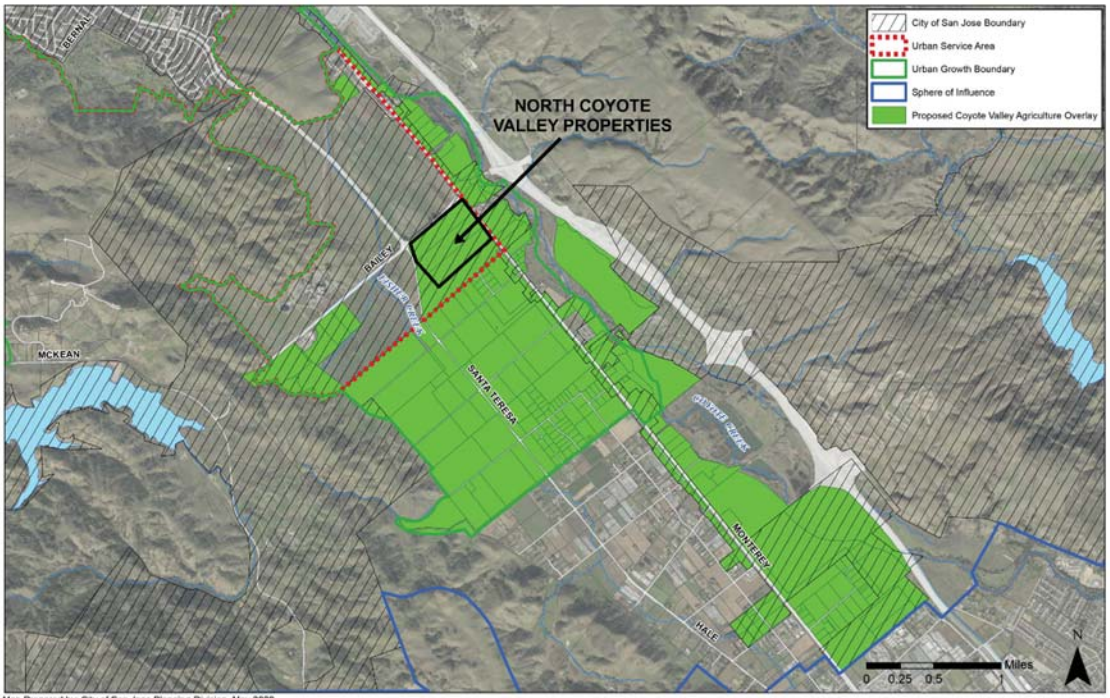
Attachment G: Proposed General Plan Land Use Designations




Map Prepared by: City of San Jose Planning Division, May 2020

The City's boundary in the area of the NCV properties is shown cross-hatched on the following map, also prepared by the City's Planning Department and marked to show the location of the NCV properties:

Attachment G: Proposed Coyote Valley Agriculture Overlay




Map Prepared by: City of San Jose Planning Division, May 2020

The Task Force's recommendation is expected to be considered for adoption by the City in the fall of 2021. This report is designed to contribute information and analysis that is useful for that consideration by San Jose decision makers.

In summary, I find that crop farming is not an economically viable or financially feasible use of the NCV properties. Cost of farming is already high on these properties and getting higher. Cost of hired labor, irrigation water, and general operations due to road congestion and the quasi-urban setting of the properties, place excessive financial burdens, reduce potential net revenue, and drive down land rent on the NCV properties. The conditions that have driven up costs of farming are becoming more burdensome and reducing economic viability further. The most telling evidence is that recent tenants have left the operation because they failed to maintain minimum financial feasibility. Moreover, the current farm tenant, the operator of B&T Farms, has stated explicitly that without the non-farm retail and seasonal recreation/entertainment businesses that have been associated with crop farming on the NCV properties, B&T Farms would decline to rent the properties. Crop farming on the NCV properties fails to meet basic criteria for economic viability and financial feasibility.

## II. Outline of the Report

This report is structured as follows. Section III provides background on economic terms and concepts, explains relevant economic principles, how the physical capabilities of the land relate to the economic situation and outlook for land use. Section IV describes the NCV properties, their recent uses, and the economic costs and returns. Section V describes the history, economic trends, current situation, and outlook for crop production in Santa Clara County as well as the nearby counties of Santa Cruz, San Benito and Monterey. Section VI uses economic concepts discussed in Section III, and the evidence of Sections IV and V to summarize the economic viability and financial feasibility of agricultural production on the NCV properties. The Appendix provides a summary of my assignment and qualifications.

## III. Background on Economic Terms and Concepts

In this report I use several terms and concepts that often arise when evaluating the economics of farm enterprises and investments and the agricultural use of land and other resources. I apply conventional economic principles and use terms in a manner broadly consistent with everyday language.

I use the term "feasibility" to describe economic or financial feasibility, not agronomic or physical feasibility of agricultural uses. Many crops may be technically feasible to grow in many regions of California. The soils and climates across California as well as within the Santa Clara Valley are capable of supporting a wide variety of crops. But among the many crops that are technically feasible, most are not within the set of economically viable or financially feasible uses of the land and other resources. For example, it may be technically and agronomically possible to grow bananas in the Coyote Valley by building and maintaining large enclosed greenhouses and using substantial energy to maintain appropriate temperatures, humidity and other climatic and physical conditions. But such an enterprise would be prohibitively costly, compared to bananas available from regions with much lower costs of production. Therefore, bananas are not an economically viable or financially feasible crop in the Coyote Valley.

Other examples underscore the importance of *relative* costs of production in determining the economic viability of a given agricultural use of land. While more than 1.3 million acres of almonds are grown in Central Valley of California, almonds have never been a significant commercial crop in Santa Clara County. Costs of production per pound of almonds, including costs of farmland, labor, irrigation water and other resources are substantially lower in the Central Valley. Therefore, almonds are not an economically viable or financially feasible crop in Santa Clara County, given the higher costs of production compared to the Central Valley.

Similarly, prunes are technically well suited to Northern Santa Clara County in terms of the region's climate and other agronomic conditions. Indeed, prunes used to be a major crop in the Coyote Valley. But while there are thousands of acres of commercial prune production in other parts of California, there is no longer a significant commercial prune industry in Northern Santa Clara County because the cost of production of prunes in Santa Clara County is high relative to costs in other parts of the state. That means that land use for prune production is not economically viable or financially feasible given the costs of production in other regions and the resulting market prices of prunes.

An economically viable or financially feasible use of land generates *expected* benefits that exceed *expected* costs to generate net returns that are high enough to keep the land employed at that use. This definition uses "expected" costs and returns because for relevant agricultural cases of resource use, farm costs and benefits are inherently uncertain and farmers apply reasoned estimates and projections to make risky decisions about what crops to grow or whether to plant a particular parcel of land.

Finally, economic analysis of feasibility, viability, costs, and benefits must be evaluated over extended time horizons. *Sustainability* of the land use is fundamental. Farming requires long-lasting investments to maintain land productivity and viability. For example, farm rental or lease arrangements for land often extend over several years and, even in annual arrangements landlords and tenants are required to maintain long-term productivity. Farm operators routinely adapt their farm practices, such as crop rotations, fertilizer applications, and farm equipment investments to maintain or enhance land productivity or reduce future costs. In short, planning for use of farmland takes into account longer term sustainability, not just immediate short-term returns. The choice to plant trees and vines, which last several decades, is an obvious example of a long-term horizon for farm investments. But similar reasoning applies to annual crops. To keep costs under control, a farm operator must use equipment adapted to the acres of specific crops. It is often not worthwhile to make needed investments today for equipment to farm acreage with problematic viability in the future. Similar considerations apply to arrangement for farm labor contracts, land improvement application and other investments that last over time. Land with poor prospects for the future is often more costly for farming even in the short term.

# IV. The Farming and Land Use Situation and Outlook for the NCV Properties

This section reviews the recent lease history and information about current land use of the NCV properties, and their current rental contracts. I also compare land rent on the NCV properties with land rents in the broader region. Finally I show that real estate taxes are high relative to land rents for these properties.

### *Brief agricultural history and current situation of the North Coyote Valley*

The NCV properties comprise four parcels that have a long history of agricultural use. The families that own the NCV properties have direct roots in farming on this land. Many years ago, these properties were farmed by the owners. Some portion of the land was devoted to tree crops such as prunes, as was common Northern Santa Clara County during the 1950s and 1960s. Fruit crop acreage gradually declined and some cropland shifted to vegetables. In the 1950 and 1960s there were fruit packing and processing facilities throughout Northern Santa Clara County. As fruit farming declined precipitously and vegetable acreage fell more gradually the ancillary farm service businesses exited the area as well (Santa Clara County Crop Reports, 1950, 1959, 1969 and 2019). As with other areas, much of the land that was once devoted to farming is now used for offices and urban uses that generate well-paid local employment or provide housing for workers employed in local businesses.  Simply put the business environment and land use in Northern Santa Clara County has evolved.  North Coyote Valley has evolved along with the rest of the area.

Long time agricultural business participant in the Coyote Valley, Art Gonzales, explained to me in an August 23, 2021 interview that there is very little land used for crops in the North Coyote Valley.  He noted that most of the remaining land currently used for crops is rented from the City of San Jose or other open-space entities and is used for dryland hay.  The rental rate on that land is very low, below $100 per acre.  Economic returns on hay acreage is also low.  One issue Mr. Gonzales raised was that the farm practices allowed on these hay fields are becoming more restrictive, consistent with preferences of urban neighbors, but less consistent with profitable farming.  The City's Envision San Jose 2040 Task Force has recommended these lands be designated as Open Space Parklands and Habitat, an indication that commercial farming may soon be abandoned on these properties and the land managed as open space.

### *Recent cropland rental experience of the NCV properties*

For many years, the NCV properties leased on an annual basis for several different but closely related uses.  These include a retail store (featuring produce), a seasonal (fall harvest time) entertainment business (featuring a pumpkin patch and crop-based activities such as a corn maze).  Two parcels are used for crop farming enterprises that complement the adjoining retail sales and seasonal entertainment land uses.  For example, crops planted include pumpkins and sweet corn that can be sold at the retail store and provide an appropriate background for visitors.

Four different tenants have leased the NCV properties in recent years.  Tenants that have operated the farm-related businesses changed as previous tenants have gone out of business.  The Spina family rented the NCV properties, farmed the land, and operated the retail store and entertainment businesses for many years.  Subsequently Uesugi Farms operated these businesses before itself going out of business.  Then Joe Aiello leased two of the NCV properties before another company, B&T Farms, became the tenant for all four NCV properties.  These changes were documented in my telephone interview with John Spina in June 2021, in the *Vegetable*

*Grower News* January 31, 2019, in information about tenants in the land lease contracts 2019-2020 and 2021-2022 and in my conversation with Gary Tognetti, owner of B&T Farms.

An examination of recent farmland lease contracts for the NCV properties provide useful information in assessing the economic viability and financial feasibility of the agricultural use of the properties. Two of the NCV Properties parcels accounting for approximately 80 acres of land are known as the Ramelli Property and the Two Oaks Ranch Property (Assessor Parcel Nos. 712-01-004 and 712-01-010 respectively). These two properties are used for commercial crop production. They were subject to three leases covering the period from January 2019 through the end of 2022. The 2019 calendar-year lease for use of the 80 acres of farmland was held by tenant Joe Aiello (who had been the previous tenant as the owner of Uesugi Farms). That lease had the provision that it could be extended for an additional year, calendar year 2020, at the same terms if requested by the tenant. The rental rate was $7,000 per quarter, or $350 per acre per year. The lease stated explicitly that use of the farmland is limited to planting, growing, and harvesting crops. The 2019 lease also covered three dwelling units on the Two Oaks Ranch property with separate rental rates and arrangements.

Tenant Joe Aiello exercised the provision to extend the lease at the same rental rate of $350 per acre per year for 2020 in a “First Amendment” to the 2019 lease. That “First Amendment” lease was subsequently extended at the request of the tenant for the period from January 1, 2021 through August 31, 2021. For this eight-month period the rental rate for the farm land was $23,333.33, or $437.50 per acre per year. As noted below, the ending date of this lease is important. It provides that a new tenant is operating the land during the period September through the end of the year while the adjoining seasonal recreation business is in full operation.

The current lease for the 80 acres of farm land comprising the Ramelli Property and the Two Oaks Ranch Property is laid out in a Farm lease Agreement with tenant B&T Farms dated January 13, 2021. The lease covers one year and four months from September 1, 2021 and to December 31, 2022. This lease provides for “agricultural use” and includes use of a barn and parking area.

The current rent for the land (not including the three dwelling units on the property) is $10,000 per quarter for use in planting, growing, and harvesting crops. The farmland rent of $10,000 per quarter for 80 acres works out to $500 per acre per year. The farmland lease explicitly prohibits selling produce from a farm stand, renting the land out for events, or hosting other recreational or income-generating activities. It is important to recognize that this lease covers two fall seasons when the seasonal retail and recreation businesses of the tenant are in peak operation on adjoining parcels. As noted in the following paragraphs, the period from September 1 through December 31 is crucial for the farm-stand retail business and the pumpkin patch seasonal activities that constitute a significant portion of the overall revenue of the landlord. This farmland lease covers two such periods.

The other two parcels of the NCV properties (Assessor Parcel Nos. 712-01-012 and 712-01-011) are subject to separate lease agreements with two Lester LLCs as landlord. The lease agreement from 2016 through 2019 was first with Uesugi Farms, then beginning on April 10, 2019, the tenant was Joe Aiello as an individual. The current agreement for the 2021 calendar year is with B&T Farms (MH Pumpkins, LLC) as Tenant and covers a "premise" of approximately 40 acres at the corner of Bailey Avenue and Santa Teresa Boulevard including the "Spina Shop/storage." The lease notes that the tenant has recently been leasing the premises as a subtenant. The use of the premises is for planting, growing and harvesting agricultural crops, and for a "fruit stand and a pumpkin patch operation with a train and other recreational facilities associated with the pumpkin patch operation."

The rental rate is $31,000 per year for the 40 acres and associated facilities. Calculated on a per-acre basis, the total rent is $775 per acre. However, this *not* a cropland rental rate because the retail and seasonal recreation and sales businesses are also operated on the premises. It is not clear how much, if any, of the land is used for commercial marketable crop production as distinct from the retail and seasonal recreation and sales businesses. Clearly, a substantial portion of the total rent is attributable to the latter; otherwise the 40 acres would be unlikely to command a significantly higher rent from the same tenant as compared to the (already inflated) cropland rent for the adjacent 80 acres.

I noted that the tenant growing crops on the Ramelli and Two Oaks Ranch Properties has been the same as the tenant operating the retail and seasonal recreation businesses at the corner of Bailey Avenue and Santa Teresa Boulevard. Based on conversations with a past and the current tenant, the crop activities on the Ramelli and Two Oaks Ranch Properties must be complementary to the retail and recreation activities, because the value of those businesses are enhanced by compatible farming on the nearby land. Therefore, the rental rate acceptable to the tenant of the crop farming activities is inflated because of the retail and recreation activities on an adjacent parcel. In addition, it is my understanding that a portion of the Ramelli and Two Oaks Ranch Properties are used for parking for the retail and seasonal recreational and sales businesses operated on the other parcels, which further inflates the rent for the crop farming activities on the Ramelli and Two Oaks Ranch Properties.

### *Current farming operations on the NCV properties*

The current tenant on all of the NCV properties, B&T Farms, also rents the property immediately south of the NCV properties also within the City of San Jose. In an August 24, 2021 interview, the operator of B&T Farms, Gary Tognetti, described his farming operations in the North Coyote Valley and other areas. B&T Farms grows peppers, cabbage and other vegetable crops in the Gilroy area of South Santa Clara County. It also operates retail fruit stands and a season pumpkin patch in the South Santa Clara Valley area.

In the North Coyote Valley B&T Farms grows mainly sweet corn and pumpkins. Mr. Tognetti said that peppers is not a suitable crop because of relatively low yields and high costs per acre. Other crops such as canning tomatoes do not have any processors willing to support the high transports costs to processing facilities. Mr. Tognetti stated that on the NCV properties, B&T Farms grows crops to complement sales through the seasonal pumpkin patch business, which attracts recreation customers who buy produce at retail prices. The rental rate currently paid on the NCV properties is more than double the rental rate paid on the other nearby properties used for crop production in the North Coyote Valley because of the adjacent retail business and the seasonal recreation business.

The costs of farming of B&T Farms have been rising. In the last year, labor costs rose by 19%, utilities, primarily used for irrigation pumps, has risen by 30%, fuel has risen by 20%, and irrigation materials costs have risen by 37%. Mr. Tognetti stated explicitly that without the retail store and the pumpkin patch business, B&T Farms would not consider farming the North Coyote Valley. Among the problems he cited were high cost of moving farm equipment on congested highways, high cost of transporting labor to locations that are far from their other farms, and generally higher farming costs. Additionally, scarce management hours are spent on the highway traveling between North Coyote Valley and the more economically viable farming operation in the Gilroy area.

### *Rental rates for farmland in the broader region*

Annual cropland rental rates reflect the balance of current per acre expected revenue and costs from crop operations. In order for a tenant to be willing to continue farming on rented land the rental rate paid by the tenant using the land for crops must be below the expected net returns on the crops. But, for the landlord to continue to rent the land for crops the land rent must be high enough to cover landlord costs, including taxes. Much land in Southern Santa Clara County and nearby counties meets these economic viability criteria.

Land rental rates on the NCV properties are unusually low compared to rates for nearby Central Coast cropland. According the *Trends Report*, 2019 published by the California Chapter of the American Association of Farm Managers and Rural Appraisers, Santa Clara County rental rates in the Gilroy area ranged from $400 - $1,000 per acre per year. The (inflated) rent paid in 2019 for the NCV properties cropland of $350 per acre is well below the low end for Santa Clara County properties.

Nearby San Benito County, to the south of Santa Clara County, had a cropland rental rate range of $450 - $1,800 and Santa Cruz County, Southwest of the NCV properties, had a rental rate range of $1,700 - $3,300 per acre. In short, a rental of $350 per acre per year is well below the low end in the nearby counties. The rental rate for 8 months in 2021, with an annualized rate of $437.50, is also lower than comparable crop land in the region. Even the annualized rental rate of $500 per acre for the 16-month period from September 1, 2021 through December 31, 2022 is at the low edge of 2019 rental rates for cropland in the region.

*Real estate taxes on the NCV properties*

Taxes and other ownership costs of the NCV Properties used as cropland are substantial relative to the cropland rental income. Generally, the cropland rent does not even cover taxes on the land. For cropland parcel 712-01-10 (the Two Oaks Ranch Property), the property tax and special assessments in 2020-21 were $21,522.66. For cropland parcel 712-01-04 (the Ramelli Property), the property tax and special assessments in 2020-21 were $19,512.38. The total for the cropland is $41,035.04. This $41,035.04 for property tax and special assessments in 2020-21 is greater than the cropland rent of $40,000 per year in 2021-22. Other cropland ownership costs such as insurance, legal fees, and bookkeeping further reduce the potential net return to renting the land for crop production.

The other two NCV parcels, 712-01-011 and 712-01-012, where the retail and seasonal recreation and sales activities are located, have a combined property tax of $6,108.28 per year. This cannot be readily compared to the cropland rent because, as explained above, the cropland rent is not separately stated in the lease.

# V. Economic Trends and the Current Situation and Outlook for Farming in Santa Clara County and the Nearby Counties

This section describes briefly the agricultural history of Santa Clara County and the surrounding region. The history documents the agricultural tradition in the area and shows how land uses changed radically in the second half of the twentieth century. It explains the economic forces driving land use in agriculture and the economic hardship of farm businesses. I then turn to data on prevailing costs and returns for crops enterprises in the region and show details of regional cropland rental rates that are consistent with crop costs. Finally this section outlines current challenges to sustained farming within the North Coyote Valley in the City of San Jose.

## *History of crop patterns in Santa Clara county*

For decades Santa Clara County, and especially Northern Santa Clara County, was known for fruit production. Fruit and vegetable crop production grew during the 1940s in Santa Clara County. Throughout the 1950s, fruit crops, especially prunes were the major crops in Santa Clara County with vegetable crops a distant second. The Santa Clara County 1959 Crop Report, listed 83,000 acres of fruit crops, including more than 43,000 acres of prunes, with another 28,000 acres devoted to vegetables.

The peak in farming in Santa Clara County occurred about six decades ago. Within the single decade from 1959 to 1969, acreage declined dramatically. By 1969, fruit acreage declined by more than 50%, to not quite 42,000 acres of fruit and less than 21,000 acres of prunes. Over the same period, vegetable acreage in Southern Santa Clara County fell to about 16,000 acres, based on data in the Santa Clara County 1969 Crop Report. In other words, in the course of a single decade, acreage dedicated to fruits and vegetables fell by almost 50%.

Over the subsequent five decades, commercial tree fruit production in Santa Clara County was essentially eliminated, with only a few acres of apricots and cherries remaining. Based on the Santa Clara Country 2019 Crop Report, about 1,700 acres of wine grapes remain in the Southern Santa Clara County. Vegetable acreage remains at about 14,000 acres, near its area in 1969. Commercial vegetable production mostly occurs in Southern Santa Clara County, near Gilroy, where commercial agriculture has continued.

## *Economic pressures on farming in the region*

The economics behind the decline in Northern Santa Clara County agriculture derives from a combination of factors. The suitability of the climate and the soils was not a driver of fewer farm acres, as suitability did not change significantly over the relevant period. Of course, an increased demand for urban land usage caused less land to be available for farming. However, if that were the main driving factor, the increasing scarcity of local cropland would have driven up rents for land used for crops compared to nearby areas. But there is no evidence that cropland rents or land prices rose above those in surrounding areas as cropland became more scarce in Northern Santa Clara County. Moreover, cropland scarcity alone would have caused cropland use to move towards crops that generate especially a high revenue per acre, such as apricots and berries, which did not happen.

So in addition to the expansion of urban land uses, the other factors driving fewer acres to be used for crops are issues within Santa Clara County farming. First, the crops that historically thrived in Santa Clara County were labor intensive. Wage rates in urbanizing areas are higher than those in more rural areas further away from urban job opportunities, where worker housing is less expensive. Increases in labor costs resulted from competition from urban jobs, high cost of living for hired farm workers, high cost of commuting to the farms for work, and compliance with local regulations.

Second, once harvested, farm produce requires processing, packaging and distribution. All these services are more expensive in urbanized areas compared to small towns surrounded by farm country. Santa Clara County used to have food processing plants, prune dehydrators and distribution centers. In fact, in the 1950s fruit was shipped into the county from other regions for processing and distribution. But as cost of doing agribusiness rose—wages, taxes, real estate prices, and the costs of transport congestion—the food industries that serviced the remaining local farms left Northern Santa Clara County. Third, farming itself becomes more costly per acre when larger farms are fragmented and remaining farms are surrounded by urbanization. For example, the cost of moving equipment between locations (most farms that operate at commercial scale own or rent land at more than one location) rises with congestion.

The demise of the two previous tenants of the NCV properties, the Spina farming operations several years ago and Uesugi Farms in 2019 are telling examples of the pressures on farming in Northern Santa Clara County and the North Coyote Valley in particular. John Spina, in our June 2021 interview, explained that his family had farmed in San Jose since 1944 and created the Spina Farms name for the Pumpkin Patch, fruit stand and related recreation activities. However, although Spina Farms name is still used for the retail and seasonal recreation businesses, the Spina family stopped farming in the region years ago. John Spina now farms in the San Joaquin Valley.

Uesugi Farms, which was owned and operated by Pete and Joe Aiello, went out of business at the end of the fall 2018 harvest after operating for about 40 years (*Vegetable Grower News*, January 31, 2019). Until they ceased operations, Uesugi Farms and Joe Aiello were farm operators and tenants on the NCV properties, and their operation was typical of commercial farms in Southern Santa Clara County. They rented land in Southern Santa Clara County with the aim of farming as far North as the NCV properties. The *Vegetable Grower News* article documents how costly farm labor and other economic pressures gradually undermined Uesugi Farms' economic viability. As emphasized by John Spina in my interview in June 2021, the high costs and other complications associated with farming in the region continually drained available financial feasibility.

The consequences of economic realities, such as those illustrated by the exit of the Spina family farming operation and the Uesugi Farms demise, are such that there are few potential tenants willing to consider renting land for commercial crop farming in Northern Santa Clara County and within the City of San Jose. As costs of farming have risen faster than potential revenue, first almost all orchards and now vegetable operations have exited. This has facilitated the shift of potential cropland to more economically viable and financially feasible commercial uses. Remaining land is left in farming temporarily with the expectation of shifting to other uses soon. Fortunately, those other uses generate jobs and substantial economic contributions that are simply not feasible for land used in farming or help alleviate the severe housing shortage in the region.

### *Regional farm cost and returns studies*

Farm cost and returns studies published by the University of California, Davis for nearby counties shed light on the economics of crop production in this region (https://coststudies.ucdavis.edu/en/current/). Although the University conducts many studies each year for crops around California, it has not produced a study for crops in Santa Clara County for several decades, because of the decline of economic viability of local crop farming and a consequent lack of sufficient interest in economic information about crops in the county. The University has, however, published recent studies of berry and vegetable costs and returns in nearby San Benito, Santa Cruz and Monterey Counties.

The 2019 study of the "Sample Costs to Produce and Harvest Romaine Hearts," considers costs and returns typical of a well-managed operation in three North Coast California Counties: Monterey, Santa Cruz, and San Benito County. Santa Clara County was left off this list because production is very small and costs may differ from the nearby counties. Similarly, recent studies of costs of broccoli and organic strawberries feature the other three counties that continue to have significant acreage and do not list Santa Clara County. These cost studies use representative land rent per acre of $1,450 for romaine lettuce, $1,350 for broccoli, and $3,000 per acre for organic strawberries. Under the costs and revenues considered representative for the crops and years evaluated, these land rents imply negative returns to these crop enterprises.

### *Farm labor and irrigation water costs*

University of California cost studies and other sources document serious concerns about labor costs both for farming broadly and for the NCV properties in particular. Farm labor costs, and especially harvest labor costs, are the largest variable cost for vegetable and berry farms. Labor costs have risen in recent years because of implementation of new minimum wage regulations, new rules on overtime wages and restrictions on hours of work per day and per week, higher wages and labor shortages at non-farm jobs and more expensive access to temporary immigrant workers for seasonal farm work. Only high-revenue per acre produce crops generate enough gross revenue per acre to have any hope of positive net returns from farming.

Water cost and availability is another crucial concern for crop farm viability, especially looking to the future with implementation of California's Sustainable Groundwater Management Act, which is only beginning to be implemented in 2021. There is also a historically-recognized understanding among farm managers and rural land appraisers that water use for environmental services and direct human consumption has precedence over crop irrigation water. Both groundwater pumping access and district surface water deliveries have become less reliable sources for crop irrigation.

The three University of California crop cost studies outlined in the previous subsection also provide information about costs of irrigation typical in Central Coast agriculture. In the organic strawberry cost study, the applicable cost of pumping ground water are $270 per acre-foot of water and apply to about 2.3 acre-feet per acre. Irrigation water cost equates to $619 per acre. For Romaine lettuce, the cost per acre-foot for pumping is $228 per acre-foot of water for 1.17 acre-feet of water per acre. Hence, total irrigation cost equals $266 per acre. For broccoli, the cost per acre-foot for pumping is $216 per acre-foot of water for 1.67 acre-feet of water applied per acre, implying irrigation cost of $360 per acre.

Water application rates differ by crop, location, and sometimes by field. Irrigation water costs per acre-foot depend on water district rates for water delivery, electricity rates, or other energy costs to operate pumps and labor costs for monitoring and repairs. Irrigation water availability is also a major concern and is becoming more vulnerable.

For the NCV properties, access to district water and groundwater pumping is governed by the Santa Clara Water District (https://www.valleywater.org/). The water agency responds to local and statewide weather and climate conditions. "The "2021-22 Protection and Augmentation of Water Supplies" or PAWS 2021 Report, presents the financial and water supply information that forms the basis for the fiscal year 2021-2022 wholesale water charges" (https://www.valleywater.org/).

According to the PAWS 2021 report, only about one percent of groundwater in zone W2, Northern Santa Clara County, is used for agriculture. The basic user charge for agricultural use of pumped ground water is $85.38 per acre-foot compared with $1,506 per municipal and industrial (M&I) use. The surface water charge, if surface water were to become available, is $126.48 per acre-foot for agricultural use and $1,547.10 for (M&I use (see the PAWS 2021, Appendix A, pages 79-80).

These water district charges apply on top of the cost to pump groundwater. Cost of pumping groundwater, mostly electricity for power to run the pumps and the cost of pump repair and maintenance, is likely to be in the same range as those in the three University of California studies cited above. That means full irrigation costs are in the range of $300 to $400 per acre-foot of irrigation water and between $350 and $1,000 per acre depending on how much irrigation water is needed per acre of the crops grown. For crops that use two acre-feet of irrigation water per acre per year, which is a reasonable average for sweet corn or pumpkins, district charges for access to groundwater raise farming costs by about $170 per acre.

I do not have access to detailed farm cost data for crops grown on the NCV properties. The current tenant is in the first year of renting the properties. However, based on the information that is available, I anticipate that farming costs, including farm labor and irrigation water costs, would be significantly higher than those described in the cited cost studies for the other three counties. Indeed high farming costs are reflected in low cropland rents of $350 to $500 per acre in recent years, which fail to cover even property tax bills. Low cropland rental rates are derived directly from moderate market prices for crops and either lower yields per acre or high farming costs per acre.

### *Data on farmland rental rates*

As noted above information about nearby cropland rental rates comes from the annual report, "Trends in Agricultural Land and Lease Values" that is produced and published by the California Chapter, American Society of Farm Managers and Rural Appraisers (https://calasfmra.com/wp-content/uploads/trends/trends2019.pdf).

**Table 1. Cropland Rental Rates, range in annual rent per acre**

| | Santa Clara, Gilroy | San Benito | Santa Cruz | Monterey |
|---|---|---|---|---|
| 2015 | $300 - $600 | $350 - $1,000 | $1,200 - $3,000 | $750 - $3,000 |
| 2019 | $400 - $1000 | $450 - $1,800 | $1,700 - $3,000 | $1,000 - $3,300 |
| 2020 | $400 - $1000 | $500 - $1,400 | $1,700 - $3,000 | $1,000 - $3,500 |

The data in Table 1 show that the land rent in the Gilroy region of Santa Clara has been and was in 2020 the lowest in the surrounding region. These lower cropland rental rates do not reflect poor soils or climate, but rather they reflect the higher costs of farming that reduce the economic returns to farms in Santa Clara County. The land rents on the NCV properties are lower than even those shown for the Gilroy area of Santa Clara County, and well below those in the other nearby counties.

*Drivers of farm costs and challenges in the North Coyote Valley*

With this background, it is important to consider the future economic situation for commercial crop production in the broader region and more specifically in Northern Santa Clara County and the City of San Jose. Economic viability and financial feasibility of crop farming requires examining the economic sustainability of crop farm investments and operations into the future. Several trends affect future prospects for farm sustainability and whether it likely that costs and returns difficulties will allow economic viability and financial feasibility of commercial crop farming on the NCV properties.

First, one must consider labor costs associated with farm enterprises. The City of San Jose has high wages relative to surrounding areas, so any crop farm within city limits must contend with relatively high wages. With minimum wages in the City above California's high minimum wage compared to other states, wages are a serious and growing challenge for any farm operations within San Jose. John Spina, Art Gonzales and Gary Tognetti all raised issues of high farm labor wages in my interviews with them. Without a land rent concession, a cropland tenant would locate outside of the city boundaries in order to reduce its labor costs.

The second issue is farming in a congested region, which was also raised by John Spina, Art Gonzales and Gary Tognetti in my interviews about farming in the region. The costs imposed by road congestion, in terms of out of pocket costs and farmer time spent moving between fields, is substantial. There is no indication that congestion and related costs will decline.

The third issue is access to local crop farm services. With very little farming left in the local area, there is no local access to marketing, farm supplies, equipment repair and myriad other needed services. The distance to services, together with congestion, adds to the cost of farming. There is no reasonable chance that scale of farming within San Jose will grow enough to attract a return of ancillary local services for farms.

The fourth issue is irrigation water costs and sustainability of water availability. Although it is highly subsidized compared with municipal and industrial rates, the cost of irrigation water is high in the Santa Clara Valley. Farms face increasing pressures of periodic droughts, implementation of the SGMA, and increased awareness of water scarcity. These concerns mean that with the high, and highly visible, use of water for crop irrigation, water challenges for agricultural use of the NCV properties are becoming increasingly severe.

## VI. Summary of the Economic Viability and Financial Feasibility of Agricultural Production on the NCV Properties

In order for a farming operation to be economically viable in a particular location and on a particular property, it needs to have a financially feasible and economically sustainable future. The information that I have reviewed and the evaluation that I have performed indicates that agricultural production is not economically viable or financially feasible on the NCV Properties.

Groups within the Santa Clara Valley have explored efforts to encourage farming, especially on small farms in the City of San Jose and nearby places. The Santa Clara Valley Agricultural Plan (https://www.openspaceauthority.org/conservation/conservation-priorities/santa-clara-valley-agricultural-plan.html) and the "Small Farm Big Potential" effort of the Santa Clara County Food System Alliance (January 2020) have focused on efforts to slow the conversion of farmland to non-farm uses in the region. These local documents are similar to those produced for other regions of the United States and emphasize potential local community benefits of local farming, where viable.

To their credit, the Santa Clara Open Space Authority, the Santa Clara County Food System Alliance and other organizations and their documents recognize the crucial requirement for economic viability not just physical feasibility as a precondition to sustainable urban farming in the region. Their websites have notable examples of individual local farmers who are often relatively new at farming and operate very small businesses that combine farming with retail or other local marketing operations. These examples do not provide data about cropland rents that these farm businesses offer to landlords or how they deal with the myriad concerns outlined above. And while generally positive, the examples note that such farm businesses face difficult financial challenges that threaten feasibility and may require local government subsidy and support.

Relying on the local small farms to offer competitive land rents in order to improve the economic viability and financial feasibility of farming on the NCV properties poses major difficulties.

Most such farms generate marginal net incomes and have limited opportunities for more income per acre sufficient to pay competitive land rent. Farming simply cannot generate enough net income to pay cropland rental rates that is high enough to be competitive.

In summary, as the rental history of the NCV properties demonstrates, farming on this land is not economically viable into the future. Moreover, labor costs are increasing, Santa Clara Valley irrigation water prospects are becoming more tenuous and congestion costs are high and rising. Therefore, the future of farming on the NCV properties is becoming even less economically viable and less financially feasible. The bottom line is that crop production on the NCV properties is not economically beneficial or productive.

## Appendix

### I. Assignment

This report evaluates the economics of the potential agricultural use of a 126.5-acre area of land in North Coyote Valley (NCV) in the City of San Jose. The NCV properties border the Southeast corner of the intersection of Bailey Avenue and Santa Teresa Boulevard and correspond with Santa Clara County Assessor's Parcel Numbers 712-01-010, 712-01-011, 712-01-012, and 712-01-004. The properties are owned by entities of the Lester, Benson, and Foster families.

I have been asked by the NCV property owners to prepare a written report on the economic viability and financial feasibility of agricultural uses of the NCV properties. In doing so, I review relevant materials and conduct independent research and analysis considering industry trends, market demands, and competitive factors. In this report, I consider information regarding the characteristics of the NCV properties, including regional crop market conditions, farm costs of production related to location and other factors, and local land ownership costs. In evaluating this information I draw on my experience and expertise as an agricultural economist.

I am being compensated for my work on this project at my standard rate of $850 per hour. My compensation is not tied to or contingent upon any results or opinions that I provide.

### II. Qualifications of author

I come to this assignment with several decades of experience as an economist focused on the economics of complex agricultural issues, including those impinging on the viability of farm operations. Over the course of my career, I have been engaged in university teaching, research, outreach, administration, consulting, and government service all related to the economics of agriculture.

I am the Frank H. Buck, Jr. Distinguished Professor in the Department of Agricultural and Resource Economics at the University of California, Davis, a position I have held since 1993. I teach courses on agricultural economics to graduate and undergraduate students, including a course focused specifically on the economic, social and environmental sustainability of farming in California. In addition, from 1998 to 2021, I was the director of the University of California Agricultural Issues Center, a University of California-wide applied research organization focused on a wide range of critical issues facing California agriculture.

In my work, close collaboration with agricultural scientists, county farm advisors, and farm organizations is crucial. I have conducted several dozens of studies to better understand pressing environmental, resource, and economic issues affecting California agriculture. Many of these studies concern the economic feasibility, viability, and productivity of California farms and ranches in different regions across the state.

My involvement and interest in California agriculture has always been an integral part of my life. I was raised on a small tree fruit farm in Solano County, California, where I took an active part in the family farming operations. My father was the local high school agriculture teacher, and in my youth, I participated in the local and regional 4-H and Future Farmers of America ("FFA") organizations. While still in high school, I was selected as the "Star State Farmer," the top honor for a California FFA member. I earned a BS in agricultural management from California State Polytechnic University, San Luis Obispo, an MS in economics from Michigan State University, and a Ph.D. in economics from the University of Chicago, with specialties in labor economics and agricultural economics.

I was an economics professor at North Carolina State University for a decade before entering federal government service from 1987 to 1993. In Washington, I first served at the President's Council of Economic Advisers during the Reagan Administration. I was subsequently appointed as Assistant Secretary of Agriculture for Economics by President George H.W. Bush, and was confirmed by the U.S. Senate early in 1992. At the U.S. Department of Agriculture (USDA), I was responsible for economic analysis of policy options on a range of issues facing agriculture and rural America, from issues involving food and farm programs to those involving trade, commodity markets, and the environment. In my role as supervisor of the USDA's economics and statistics agencies, which employed about 2,000 professionals, I was responsible for managing the government's agricultural data collection, outlook, forecasting and economic research.

At the University of California, I conduct and supervise economic studies examining a wide variety of agriculture-related industries and issues. For example, I supervise the preparation of the Farm Cost and Returns Studies, which includes reports on the local economic conditions of many fruit and vegetable crop enterprises. I recently published an article in a national agricultural economics outlet, *Choices,* on the impact of COVID-19 and the economic lockdowns on labor-intensive produce industries. I also regularly present results from my research and analysis to farmers and agribusiness audiences across California, including a presentation last year at the annual meeting of the California chapter of the American Society of Farm Managers and Rural Appraisers.

I have won numerous awards for my research, outreach, and publications. I have been honored by the Applied and Agricultural Economics Association (AAEA) for my outstanding agricultural policy contributions, Quality of Research Discovery as well as for the Quality of Communication of my research publications. I was named an AAEA Fellow, the highest honor awarded to its members. My co-authors and I won the award for best article in the *Australian Journal of Agricultural and Resource Economics* as well as the award for Quality of Communication from the Australian Society of Agricultural and Resource Economics. My co-authors and I won the award for Best Journal Article in the *American Journal of Agricultural Economics*, and I was invited to present the Fellows Lecture at the Agricultural and Applied Economics Association's annual meeting. In 2016, my co-authors and I won the award from the International Association of Agricultural Economists for the best article in *Agricultural Economics*.

I have testified on agricultural issues before the U.S. Congress, the U.S. International Trade Commission, the Canadian International Trade Tribunal, the World Trade Organization and the California State Legislature. Over the course of my career I have presented arbitration, deposition and court testimony many times in conjunction with State and Federal litigation on agricultural issues. I also regularly provide consulting services to farms, ranches, and other companies and organizations in the agriculture industry.

**ATTACHMENT 12**

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

200 E. Santa Clara St.,
3rd Floor, San José, CA 95113

Planning Division
**HEARING NOTICE**
**PLANNING COMMISSION**
**OCTOBER 27, 2021, 6:30 P.M.**
**CITY COUNCIL**
**NOVEMBER 16, 2021, 6:00 P.M.**

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This notice includes hearing details and information about File No(s) GP21-012/GPT21-002/C21-031/PDC21-033/PP21-012. Please learn about how to effectively participate at www.sanjoseca.gov/DevelopmentHearingGuide.

In response to COVID-19, this public meeting will take place on Zoom and is open to the public and their comments. The Planning Commission agenda and instructions on how to participate are posted online 7 days before the meeting and City Council agenda and instructions on how to participate are posted online 10 days before the meeting at: https://www.sanjoseca.gov/planningmeetings.

If the COVID-19 order is lifted, then we may meet in the Council Chambers at 200 East Santa Clara Street in San Jose. Please call Support Staff at
planningsupport
meeting location

TO:

LEE LESTER/BAILEY LLC
[redacted]

**<u>File Nos. GP21-012/GPT21-002/C21-031/PDC21-033/PP21-012:</u>**

Changes to the General Plan Land Use Transportation Diagram, Zoning Map and Municipal Code for properties within North, Mid- and South Coyote Valley associated with the Envision San Jose 2040 General Plan Four-Year Review. Project includes Rezoning of certain real properties located within North, Mid and South Coyote Valley from Zoning Districts that include Agriculture, R-1-5, R-1-1 Single Family Residence, Planned Development, Mobile home Park and Heavy Industrial Zoning Districts to Planned Development, Agriculture, Combined Industrial/Commercial, Industrial Park, and Public/Quasi Public Zoning District.

<u>CEQA</u>: Addendum to the Envision san Jose 2040 General Plan Final Program EIR and Supplemental EIR to the Envision San José General Plan Final Program EIR.

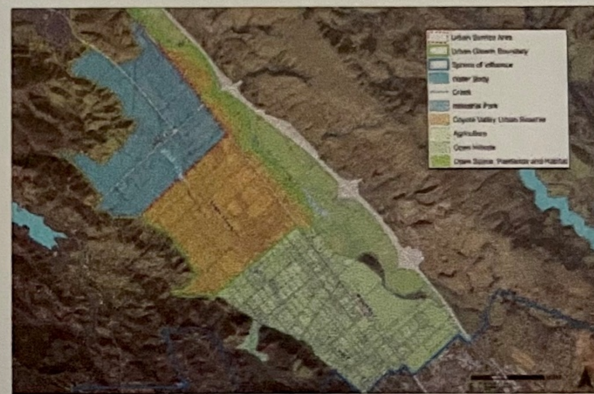
Council District: Citywide

For Americans with Disabilities Act accommodation, please call 408-535-1260 (Voice) or 1-800-735-2922 (TTY) at least two days before the hearing.

Para informacion en Español, comuniquese con Jennifer Provedor al 408-793-4100 y visite www.bit.ly/SJ-GuíaEspañol.

Muốn biết tin tức bằng tiếng Việt, xin quý vị liên lạc Thai Chau-Le số (408) 793-4174 và truy cập www.bit.ly/SJ-hướngdẫn

For questions/comments, contact Robert Rivera, Planning Project Manager at (408) 888-0286 or robert.rivera@sanjoseca.gov
Additional information at: www.sjpermits.org



**Project Location:
North, Mid and South Coyote Valley**

The file is available for review Monday through Friday 9:00 a.m.-12:00 p.m. | 1:00-5:00 p.m. by submitting an email request to robert.rivera@sanjoseca.gov