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## **APPENDIX B**

2020 NOTICE OF PREPARATION AND RESPONSES

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# Community Development Department

Karen L. Garner  
DIRECTOR

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<http://www.cityofgilroy.org>

## Revised Notice of Preparation

**SUBJECT:** Revised Notice of Preparation of a Draft Environmental Impact Report for the  
Gilroy 2040 General Plan (State Clearinghouse # 2015082014)

### Lead Agency:

Agency Name City of Gilroy  
Street Address 7351 Rosanna Street  
City/State/Zip Gilroy, CA 95020  
Contact Stan Ketchum  
General Plan Project Manager

### Consulting Firm:

Firm Name EMC Planning Group Inc.  
Street Address 301 Lighthouse Ave, Ste. C  
City/State/Zip Monterey, CA 93940  
Contact Teri Wissler Adam  
Senior Principal

The City of Gilroy will be the Lead Agency and will prepare an environmental impact report for the proposed Gilroy 2040 General Plan. We need to know the views of your agency as to the scope and content of the environmental information, which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency may need to use the EIR prepared by our agency when considering your permit or other approval for this project. The original NOP was circulated for public comment on August 6, 2015.

The project description, location, and the potential environmental effects are contained in the attached materials. An initial study was not prepared for this NOP, or for the original NOP.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but **not later than 30 days** after receipt of this notice.

You are invited to attend a public scoping meeting that will be held on **Tuesday, February 18, 2020** from 4:00 P.M. to 5:00 P.M. at the City of Gilroy City Hall Council Chambers. See address above.

Please send your response to Stan Ketchum, General Plan Project Manager, Gilroy Community Development Department, at the address shown above. We will need the name for a contact person in your agency.

**Project Title:** Gilroy 2040 General Plan

**Project Location:** City of Gilroy County of Santa Clara  
City (nearest) County

**Project Description:** (brief) Please see attached document

Date January 22, 2020

Signature

*Teri Wissler Adam*

Title

EIR Consultant

Telephone

Stan Ketchum (408-846-0566)

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375.



# GILROY 2040 GENERAL PLAN DRAFT EIR

## REVISED NOTICE OF PREPARATION

### GILROY 2040 GENERAL PLAN OVERVIEW

The City of Gilroy is located in south Santa Clara County. It is bisected by U.S. Highway 101 in a north-south direction and State Route 152 in an east-west direction. State Route 25 is located south of the city limits. The regional location of the City of Gilroy is presented in [Figure 1, Regional Map](#). The Gilroy city limits and planning area, as well as other relative boundaries, are presented in [Figure 2, Boundaries in the Gilroy Area](#).

[Figure 3, Existing General Plan Land Use Plan](#), presents Gilroy's existing planning area and land use designations. [Figure 4 presents the Gilroy 2040 General Plan Land Use Diagram – Preferred Alternative](#).

### *Original Notice of Preparation*

The original Notice of Preparation (NOP) associated with the 2040 General Plan was released in August 2015 for which comments were received by the City from local, regional, and state agencies and members of the public. Since 2015, the 2040 General Plan Preferred Alternative has been revised and therefore this revised NOP is being released to solicit comments regarding the content of the EIR, which will be prepared addressing the new Preferred Alternative.

### *Introduction*

Every city and county in California must have a general plan, which is the local government's long-term framework or "constitution" for future growth and development. The general plan represents the community's view of its future and expresses the community's development goals.

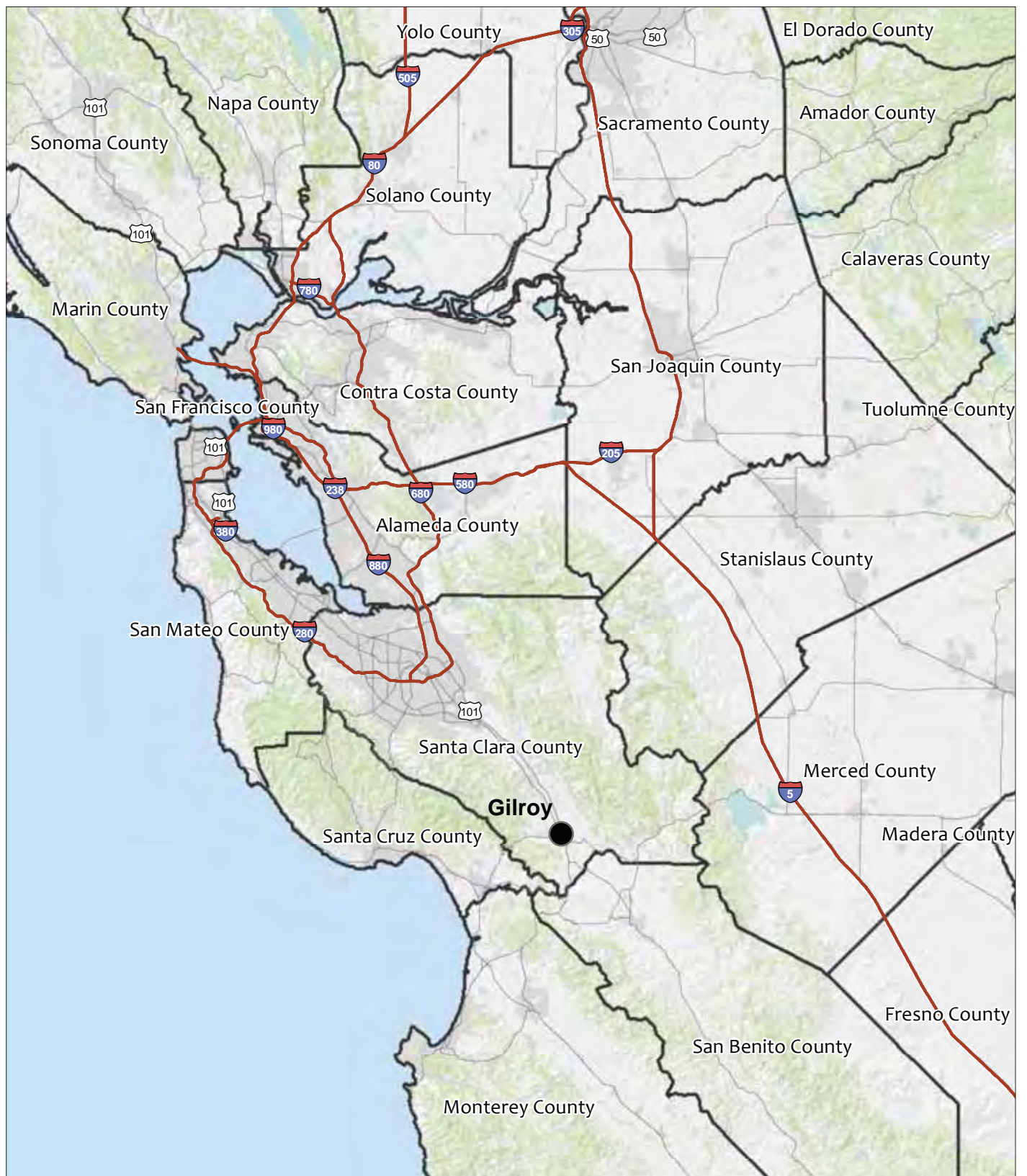
The general plan contains the goals and policies upon which the City Council and Planning Commission base their decisions. The general plan is made up of a collection of “elements,” or chapters, of which eight are mandatory. The eight State-mandated elements are: land use, circulation, housing, conservation, open space, noise, safety, and environmental justice.

The Gilroy 2040 General Plan will be used by the Gilroy City Council, Planning Commission, and City staff on a daily basis to make decisions with direct or indirect land use implications. It provides a framework for inter-jurisdictional coordination of planning efforts among officials and staff of the City and other government agencies (e.g., Federal, State, and local). Gilroy residents, property owners, and businesses also use the 2040 General Plan for City guidance for particular geographic areas or for particular subjects of interest to them.

The 2040 General Plan will provide the basis for a variety of City regulatory measures and administrative procedures. California planning law requires consistency between the general plan and its implementing programs, such as zoning and subdivision ordinances, capital improvement programs, specific plans, environmental impact procedures, and building and housing codes.

The Gilroy 2040 General Plan is made up of two documents: the Background Report and Policy Document. The Background Report is further divided into 13 chapters so that information can be easily referenced by subject or issue. The following paragraphs provide a summary of these two component documents:

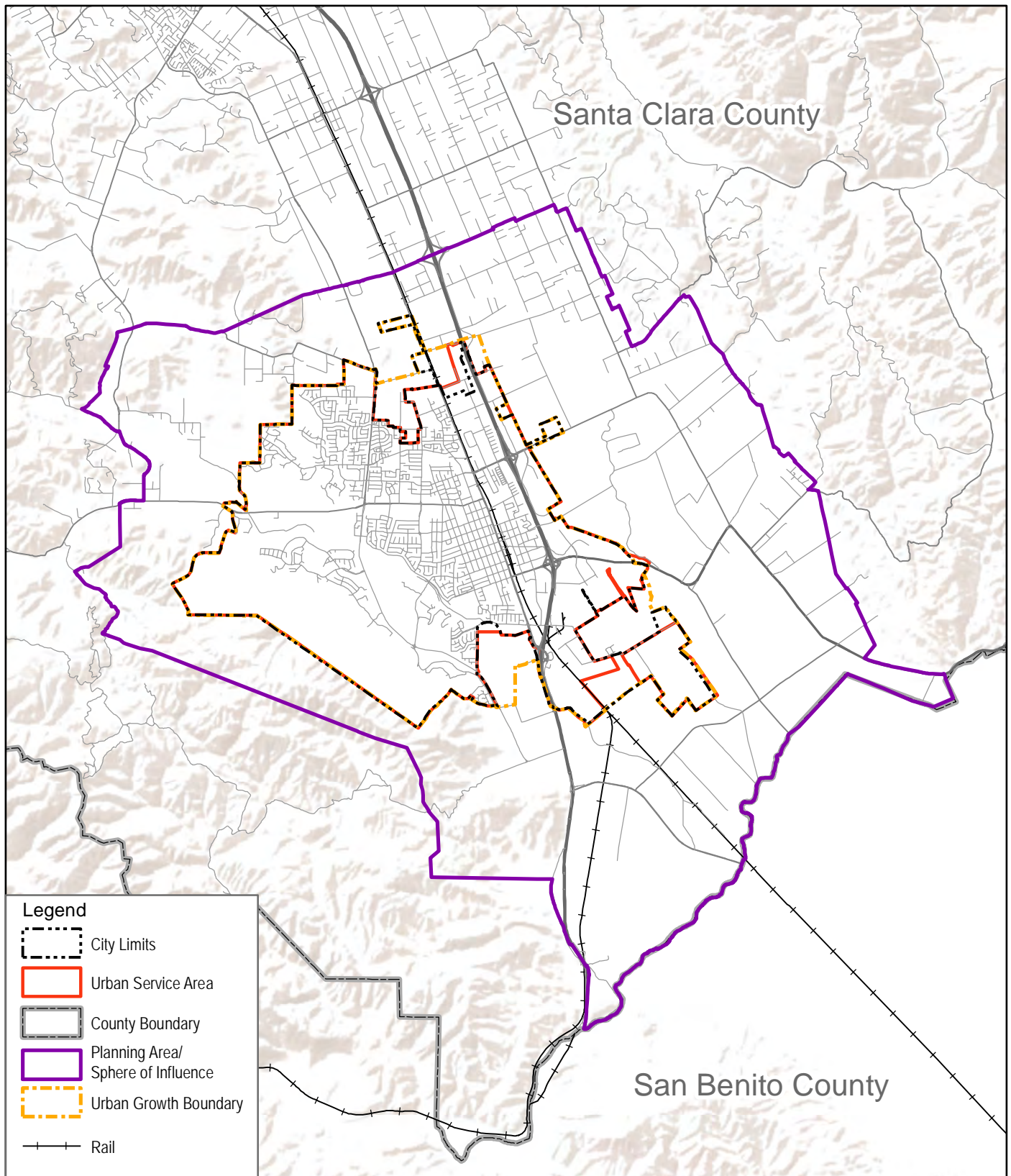
- **Background Report.** The Background Report takes a “snapshot” of current conditions and trends in Gilroy when the 2040 General Plan update process was initiated in 2014. It provides a detailed description of a wide range of topics within the Planning Area, such as demographic and economic conditions, land use, public facilities, and environmental resources. The report provides decision makers, the public, and local agencies with context for making policy decisions. Unlike the Policy Document, the Background Report is objective and policy-neutral. The Background Report also serves as the “Environmental Setting” section of the Environmental Impact Report (EIR) prepared for the 2040 General Plan.
- **Policy Document.** The Policy Document is the essence of the 2040 General Plan. It contains the goals and policies that will guide future decisions within the city. It also identifies a set of implementation programs that will ensure the goals and policies in the General Plan are carried out.



Source: ESRI 2020

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Source: City of Gilroy 2020

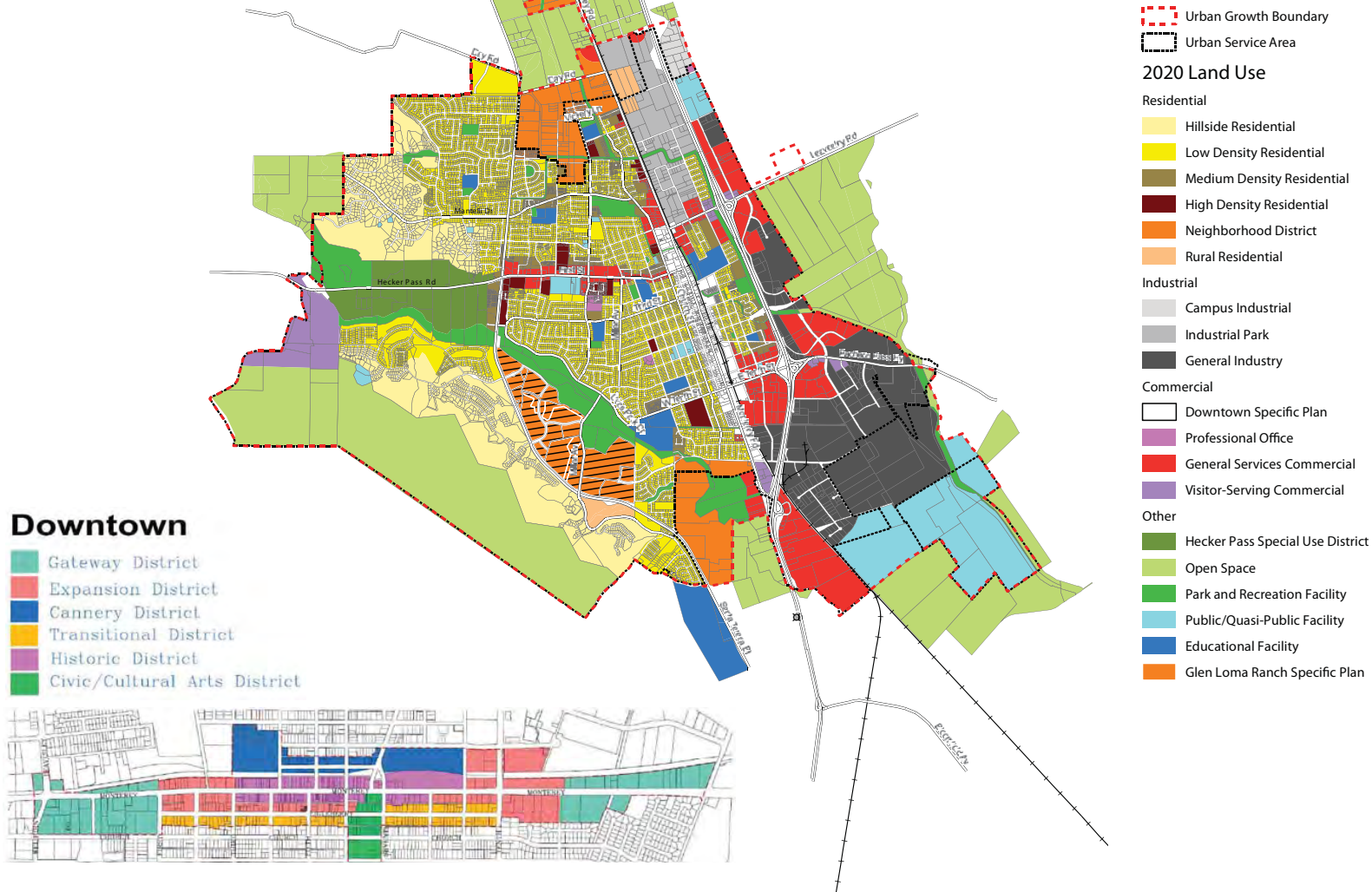
Figure 2

## Boundaries in the Gilroy Area

Gilroy 2040 General Plan Notice of Preparation of an EIR

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# Gilroy 2020 General Plan Land Use Diagram



Not to scale

Source: City of Gilroy 2016



Figure 3  
**Existing General Plan Land Use Plan**  
 Gilroy 2040 General Plan Notice of Preparation of an EIR

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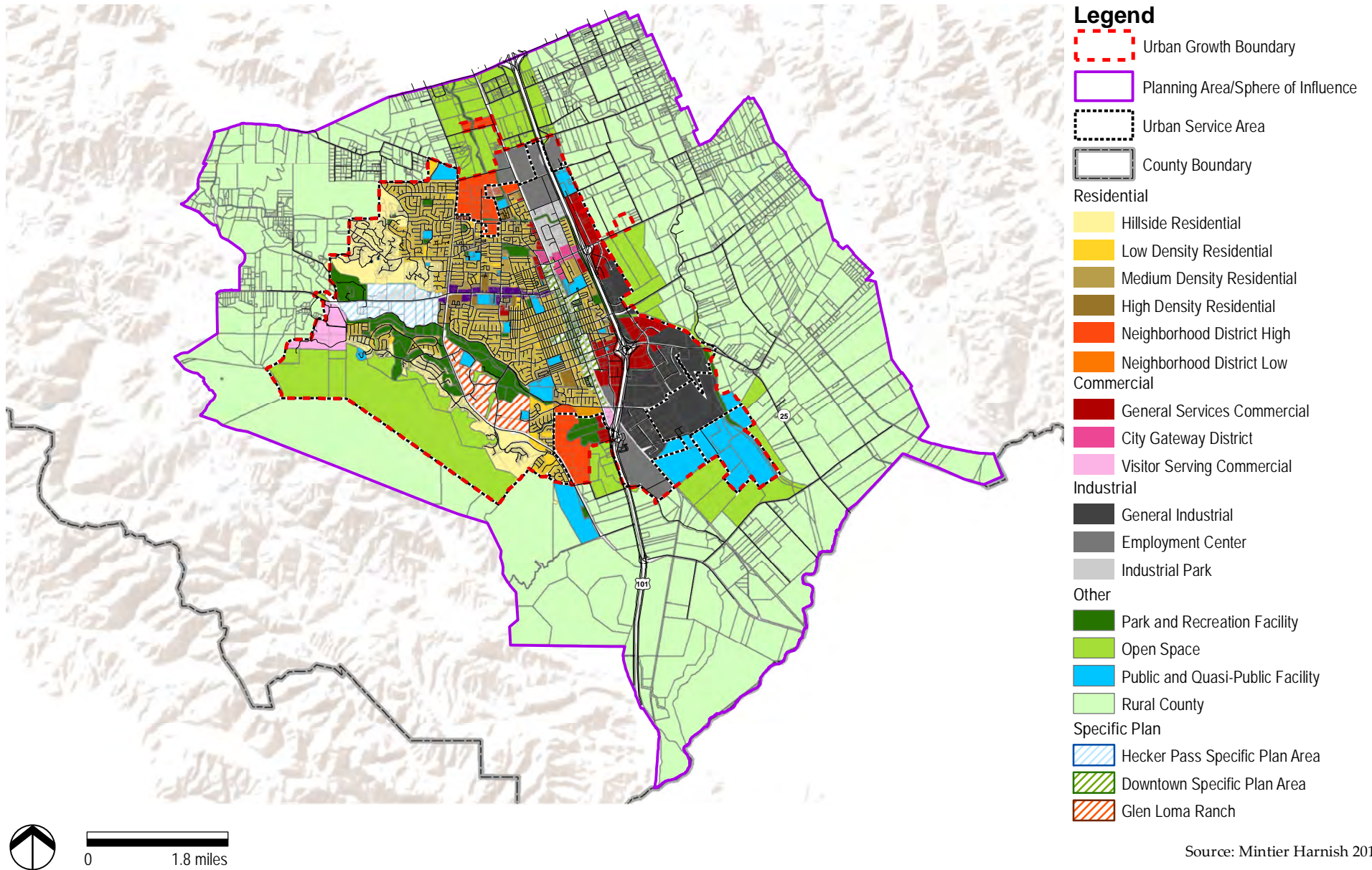


Figure 4

## Gilroy 2040 General Plan Land Use Diagram - Preferred Alternative

Gilroy 2040 General Plan Notice of Preparation of an EIR

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## ***Gilroy 2040 General Plan Vision Statement and Guiding Principles***

The Gilroy City Council established a vision and guiding principles upon which the 2040 General Plan goals, policies, and programs are based.

### **Vision Statement**

In 2040, Gilroy is a diverse and culturally rich community with a small-town feel. Gilroy's economy is thriving, with a healthy business environment and ample job opportunities for residents. Visitors come to Gilroy for its wineries, shopping, festivals, and recreational opportunities. It is well-known throughout the region for its excellent schools, agriculture, and downtown.

### **Guiding Principles**

1. **Foster Economic Growth.** Promote a strong local economy by fostering the growth and expansion of a diversified business community. Support businesses that create good jobs for Gilroy's resident workforce. Attract visitors to Gilroy's many destinations.
2. **Cultivate a Downtown Renaissance.** Restore downtown to a vibrant destination with unique retail, entertainment, arts, and dining options. Support and attract businesses. Provide the infrastructure and amenities needed for the growth of downtown. Preserve the historic character while supporting new development, including commercial, housing, and mixed-use projects.
3. **Balance Growth and Open Space.** Focus growth in areas that are already serviced by roads, sewers, and infrastructure. Support a balanced growth management strategy that protects productive agricultural lands and sensitive wildlife habitats while allowing for new economic opportunities. Ensure Gilroy retains its "small-town feel."
4. **Promote Fiscal Strength.** Plan land uses, their intensities, and their locations to provide the right balance of revenues and costs to allow the City to deliver high-quality services expected by the community. Manage fiscal resources in a responsible and efficient manner.
5. **Foster a sustainable community.** Balance resource conservation with economic growth. Ensure today's needs are met without jeopardizing the community's ability to meet future needs. Promote high-quality, long-lasting development that allows residents to meet daily needs, such as shopping, employment, and recreation, in close proximity to their homes.

Promote efficient use of energy, support alternative energy use, and protect natural resources.

6. **Ensure Public Safety.** Provide public safety services at a level that will keep the community safe, even as Gilroy grows. Manage growth to ensure that it does not create new threats to public safety, exacerbate existing hazards, or place undue strain on public safety services.
7. **Offer Recreation Opportunities.** Ensure all residents have easy access to high quality City parks and recreation opportunities. Expand park land and recreational programs to ensure high levels of use by both residents and visitors. Provide a variety of sports and activities for Gilroyans of all ages.
8. **Support Housing Options.** Encourage a mix of housing types to create diverse neighborhoods that meet the needs of all Gilroyans. Promote the building, retention, and renovation of quality housing for all incomes, ages, and abilities.

## ***Policy Document***

The Gilroy 2040 General Plan Policy Document contains nine elements. Each element is introduced below.

### **Land Use Element**

The Land Use Element establishes goals, policies, and programs to strategically accommodate future growth and change while preserving and enhancing the qualities that make Gilroy a great place to live and work. The Element contains the Land Use Diagram, a map of land uses within the planning area. It also contains a description of the land use designations. The goals, policies, and programs are designed to enhance Gilroy's neighborhoods and districts with an attractive mix of uses and amenities that expand the local economy, protect environmental resources, and improve the overall quality of life of residents. A variety of topics are discussed within the Element, including growth and change, mixed-use districts, residential neighborhoods, commercial and industrial areas, and community design.

Table 1, Development Potential, summarizes the development potential in the Gilroy 2040 General Plan.



**Table 1 Development Potential**

<b>Vacant or Under-utilized Land (Acres)</b>	<b>Designation</b>	<b>Single-Family Units</b>	<b>Multi-Family Units</b>	<b>Population</b>	<b>Jobs</b>
197	Hillside Residential	191	-	626	-
37	Low Density Residential	130	-	425	-
15	Medium Density Residential	-	127	352	-
15	High Density Residential	-	259	717	-
22	Downtown Specific Plan	149	1,045	3,308	2,843
90	General Services Commercial	-	-	-	1,594
619	General Industrial	-	-	-	3,821
60	Industrial Park	-	-	-	373
9	Public/Quasi-Public Facility	-	-	-	217
321	Hecker Pass Special Use District	127	-	416	-
292	Glen Loma Ranch Specific Plan	997	-	3,260	254
19	Mixed Use	-	143	397	584
420	Neighborhood District High	1,605	1,704	10,255	366
482	Employment Center	-	-	-	10,188
10	City Gateway District	-	-	-	1,063
6	Visitor Serving Commercial	-	-	-	131
<b>Totals</b>		<b>3,199</b>	<b>3,278</b>	<b>19,756</b>	<b>21,434</b>

**Residential Total****6,477**


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## Mobility Element

People and goods must be able to move within and through Gilroy to ensure community vitality and quality of life. When transportation networks are safe and efficient, they can contribute to the local economy, minimize impacts to the environment, and provide freedom of movement. When mobility networks are overburdened and inefficient, communities can fail to live up to their full potential, and the economy and overall quality of life can suffer.

The Mobility Element provides the framework for decisions in Gilroy concerning the citywide transportation system. It seeks to create a balanced transportation network that supports and encourages walking, bicycling, and transit ridership. The goals and policies address a variety of

topics, including multimodal transportation, complete streets, pedestrian facilities, bikeways, public transit, vehicular transportation, parking, and goods movement.

## **Economic Prosperity Element**

Gilroy has a rich history as an agricultural community and continues to be the home of major agricultural industries including Olam, Christopher Farms, Syngenta, International Paper, Monterey Foods, and others. Gilroy is located at the cross roads between the Bay Area, the Central Coast and the Central Valley, an important strategic location for many industries. The City's retail base is extensive and serves as a visitor attraction in its own right. The Economic Prosperity Element contains goals, policies, and programs that aim to improve the balance between jobs and Gilroy's workforce, grow businesses within Gilroy, and attract new businesses and industries.

## **2015–2023 Housing Element (Adopted December 2014)**

The adopted housing element includes existing and projected housing needs and resources and constraints to address these needs. Goals, policies and scheduled programs for the maintenance, improvement and development of housing are identified and analyzed in the housing element. The adopted housing element can be reviewed at <https://www.cityofgilroy.org/290/Housing-Element>. The adopted housing element will be updated in 2023.

## **Public Facilities and Services Element**

Gilroy residents, workers, and visitors rely on the public facilities and services provided by the City and other agencies and organizations to keep them safe; provide water, energy, communication services; and remove wastewater, stormwater, and solid waste. Gilroy businesses rely on these facilities and services as well. State-of-the art facilities and services (e.g., fiber-optic internet) can help grow Gilroy's economy. The Public Facilities and Services Element establishes goals and policies to guide the overall provision of public facilities and services in Gilroy. Implementing the policies will help to ensure Gilroy's public facilities and services are efficient and adequate for today and tomorrow.

## **Parks and Recreation Element**

The City provides high-quality facilities and services that help residents lead healthier, happier lives. Gilroy residents can walk, bike, hike, play, and learn in one of Gilroy's many parks or recreation facilities. The Gilroy Recreation Department sponsors extensive programs classes and activities for the youth of the community. Gilroy senior citizens enjoy a wide range of programs

at the Gilroy Senior Center. The Parks and Recreation Element builds on this legacy of excellence and plans for the future of Gilroy's park and recreation facility system and recreation and cultural program offerings.

## **Natural and Cultural Resources Element**

With its pristine mountainous backdrop, Gilroy is a relatively compact city surrounded by open space and agricultural land that separate it from adjacent communities. The Gilroy area contains some remaining natural areas, but primarily contains developed properties, agricultural lands, and landscaped ornamental areas such as parks and residential yards. Grassland, oak woodland, and riparian corridors (e.g. Llagas Creek and Uvas Creek) make up much of the natural area found in and near Gilroy. The Natural and Cultural Resources Element establishes goals, policies, and programs to preserve and enhance Gilroy's natural areas, plant and animal species, water, views, and historic and culturally significant resources.

## **Potential Hazards Element**

The city of Gilroy is located in a region that is susceptible to a variety of natural disasters. The city's geologic setting was formed by regional and local earthquake faults, many of which are still active and can pose significant risks to buildings and infrastructure in the event of an earthquake. The city's climate can also create hazardous conditions. Severe winter and spring storms can cause landslides in hillside areas and flooding along stream corridors. Dry weather during spring and summer months can create hazardous conditions related to wildland fires, which when combined with strong winds, pose a significant risk to hillside neighborhoods. Climate change is anticipated to increase the severity of weather conditions in the future, and will likely increase flood, landslide, and wildfire risks together with more extreme temperature events. In addition to natural hazards, Gilroy also has transportation facilities and industrial businesses that create risks for man-made hazards, such as hazardous material spills and exposure to excessive noise.

While it is impossible to completely avoid natural and man-made hazards, the Potential Hazards Element establishes goals and policies to protect life and minimize property damage during future disasters and emergencies. The goals and policies address regional hazards mitigation, seismic and geologic hazards, flood hazards, rising sea levels, wildland wildfires, hazardous materials, airport hazards, and noise.

## Environmental Justice Element

Legislation adopted in 2016, Senate Bill 1000, now requires both cities and counties that have disadvantaged communities to incorporate environmental justice policies into their general plans, either in a separate environmental justice element or by integrating related goals, policies, and objectives throughout the other elements. The City of Gilroy has chosen to prepare a separate Environmental Justice Element. Policies addressing environmental justice issues are addressed throughout the other elements of the general plan, and are summarized in the Environmental Justice Element. The element includes additional policies addressing community outreach and inclusion in the public decision-making process, access to health care and healthy foods, managing environmental concerns, and job training and development.

## PROBABLE ENVIRONMENTAL EFFECTS

The City of Gilroy has determined that a Program EIR will be prepared to evaluate the environmental issues associated with the adoption and buildout of the Gilroy 2040 General Plan.

CEQA Guidelines section 15146 states that, “The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” The underlying activity is adoption of the Gilroy 2040 General Plan. Therefore, the EIR will evaluate the environmental impacts of buildout of the Gilroy 2040 General Plan to the greatest degree feasible; however, additional environmental review in compliance with CEQA may be required when development proposals requiring discretionary action are proposed. This process is called “tiering.” “Tiering” or “tier” means the coverage of general matters and environmental effects in an EIR prepared for a policy, plan, program or ordinance followed by narrower or site-specific EIRs or negative declaration that incorporate by reference the discussion in any prior EIR and which concentrate on the environmental effects that (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior EIR.

Probable environmental effects associated with buildout of the Gilroy 2040 General Plan are discussed below.

## *Aesthetics*

The City values scenic views from the following locations, based upon policies in the current general plan:

- Hecker Pass Specific Plan Area;
- Hillsides;
- Hecker Pass Highway and Pacheco Pass Highway;
- Uvas Park Drive, Santa Teresa Boulevard, and Miller Avenue from First Street to Mesa Road;
- Farmland viewed from U.S. Highway 101; and
- Principal gateways to the City (north and south Monterey Street, State Route 152/Hecker Pass Highway, State Route 152/Pacheco Pass Highway, north and south Santa Teresa Boulevard, and at the U.S. Highway 101 interchanges at Masten Avenue, Buena Vista Avenue, Leavesley Road, and Tenth Street.

This section of the EIR will address the potential for visual impacts associated with implementation of the Gilroy 2040 General Plan.

## ***Agricultural Resources***

The City of Gilroy is adjacent to active, productive agricultural land to the north, south, and east. The most productive agricultural land has been identified as the land east and south of the city, as identified in the South County Agricultural Study.

This section of the EIR will address impacts to agricultural resources including the conversion of important farmlands (including prime farmland and farmland of statewide importance), potential conflicts with Williamson Act contracts, and potential impacts associated with land use conflicts where urban development could be proposed adjacent to active agricultural operations.

## ***Air Quality***

This section of the EIR will include an air quality analysis using the Bay Area Air Quality Management District's methodology focusing on consistency with current air quality plan control measures and the proposed Gilroy 2040 General Plan's projected vehicle miles travelled or vehicle trips.

## ***Biological Resources***

Much of the potential for development within Gilroy's Planning Boundary is subject to the requirements of the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan ("habitat plan"). This section of the EIR will focus on the following:

- impacts to species covered in the habitat plan;
- impacts to species not included in the habitat plan, but identified as candidate, sensitive, or special status species by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service;
- impacts to riparian habitat or other sensitive natural community;
- impacts to federally-protected wetlands;
- impacts to wildlife movement; and
- conflicts with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

## ***Cultural Resources (Pre-historic & Historic, and Paleontological)***

Over two dozen prehistoric sites have been recorded or are thought to exist within the general plan area, with the majority occurring along the Uvas Creek drainage or the upper elevations of the floodplain to the east. Historic sites include many within historic downtown Gilroy, as well as many historic farmsteads, buildings and roadway features located in the previously rural portions of the general plan area. Most of the recorded archaeological studies conducted in the area have occurred on small parcels (less than 20 acres) and have consisted mostly of lineal studies for street or utility projects. It is assumed that the probability of prehistoric and historic sites in some areas is high within some areas.

This section of the EIR will address the potential for impacts to pre-historic, historic, and paleontological resources associated with general plan buildout.

## ***Energy***

This section of the EIR will address anticipated energy consumption associated with buildout of the Gilroy 2040 General Plan, as well as proposed and or potential energy conservation measures.

## ***Geologic Hazards***

The following geology and soils issues will be addressed in this section of the EIR: earthquake faults, seismic ground shaking, ground failure, landslides, soil erosion, and expansive soils.

## ***Greenhouse Gas Emissions***

This section of the EIR will include greenhouse gas emissions analysis using the Bay Area Air Quality Management District's methodology and thresholds for evaluating a project's greenhouse gas emissions impacts.

## ***Hazardous Materials and Wildland Fire Hazards***

This section of the EIR will address the known hazardous materials within the Planning Boundary that are included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5. This section will also address exposure of people or structures to a significant risk of loss, injury, or death involving wildland fires.

## ***Flooding and Water Quality***

This section of the EIR will address flooding, storm drainage patterns and systems, water quality, and the City's storm water management requirements, including low impact development features that will need to be addressed in the review and approval of new development projects.

## ***Mineral Resources***

This section of the EIR will address potential impacts to mineral resources associated with buildout of the Gilroy 2040 General Plan.

## ***Noise***

This section of the EIR will describe impacts of Gilroy 2040 General Plan development policies and associated future buildout on the local noise/vibration environment. The EIR will also include short- and long-term noise measurements and existing noise contours. Projected noise modeling and contours under the 2040 General Plan will be developed. The EIR will analyze construction noise/vibration; traffic, and rail noise/vibration; and land use compatibility within the projected noise environment. The EIR will then identify effective and feasible mitigations that can be incorporated directly into 2040 General Plan policies.

## ***Police Protection Facilities***

This section of the EIR will be prepared based on consultation with the City of Gilroy Police Department regarding the capacity of the department to serve buildout of the Gilroy 2040 General Plan.

## ***Fire Protection Facilities***

This section of the EIR will be prepared based on consultation with the City of Gilroy Fire Department regarding the capacity of the department to serve buildout of the Gilroy 2040 General Plan.

## ***School Facilities***

This section of the EIR will be prepared based on consultation with the school district to determine capacity at existing schools, existing enrollment, and to estimate the number of students that would be generated by buildout of the Gilroy 2040 General Plan. The EIR will evaluate if existing and proposed school(s) have or would have sufficient capacity and whether additional facilities will be required.

## ***Park and Recreation Facilities***

This section of the EIR will be prepared based on consultation with the City of Gilroy Recreation Department regarding the capacity of the department to serve buildout of the Gilroy 2040 General Plan.



## ***Transportation and Mobility***

This section of the EIR will address potential impacts from buildout of the Gilroy 2040 General Plan on multimodal transportation, complete streets, pedestrian facilities, bikeways, public transit, vehicular transportation, parking, and goods movement.

## ***Water Service***

This section of the EIR will focus on the capability of the City and the Santa Clara Valley Water District to provide potable and recycled water to accommodate buildout of the Gilroy 2040 General Plan, and whether any new or expanded facilities are required.

This section will also address the project's effect on groundwater resources, which is the City's primary source of potable water.

## ***Wastewater Service***

This section of the EIR will focus on the capability of the South County Regional Wastewater Authority to provide wastewater services to accommodate buildout of the Gilroy 2040 General Plan, and whether any new or expanded facilities are required.

## ***Solid Waste Facilities***

This section of the EIR will address potential impacts to relevant landfill(s) based upon solid waste generated from buildout of the Gilroy 2040 General Plan.

## ***Cumulative Impacts***

The cumulative effects of buildout of the Gilroy 2040 General Plan, combined with other relevant plans and programs, will be analyzed in this section of the EIR. The following issues will be addressed in this section: mobility and transportation, air quality, greenhouse gas emissions, energy, groundwater, biological resources, solid waste, and wastewater.

## ***Growth Inducement***

In accordance with CEQA Guidelines section 15126.2(d) the EIR will include a discussion of the growth-inducing impacts of buildout of the Gilroy 2040 General Plan.

## ***Alternatives***

In accordance with CEQA Guidelines section 15126.6 the EIR will include analysis of a reasonable range of alternatives to the proposed project, or to the location of the project, which could feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. An evaluation of the comparative merits of the alternatives will be presented. The alternatives will include those considered during the alternatives consideration process for the Gilroy 2040 General Plan.



## NATIVE AMERICAN HERITAGE COMMISSION

February 4, 2020

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Gilroy, CA 95020

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**Re: 2015082014, General Plan EIR Project, Santa Clara County**

Dear Mr. Kethcum:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

**7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

**8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

**9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

**10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**

- a. Avoidance and preservation of the resources in place, including, but not limited to:
  - i. Planning and construction to avoid the resources and protect the cultural and natural context.
  - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - i. Protecting the cultural character and integrity of the resource.
  - ii. Protecting the traditional use of the resource.
  - iii. Protecting the confidentiality of the resource.
- c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
- e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
- f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

**11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code § 65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code § 65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code § 65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code § 5097.9 and § 5097.993 that are within the city's or county's jurisdiction. (Gov. Code § 65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

## NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
- a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
- a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: [Nancy.Gonzalez-Lopez@nahc.ca.gov](mailto:Nancy.Gonzalez-Lopez@nahc.ca.gov).

Sincerely,



Nancy Gonzalez-Lopez  
Staff Services Analyst

cc: State Clearinghouse



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



February 25, 2020

Mr. Stan Ketchum  
General Plan Project Manager  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

Subject: City of Gilroy General Plan, Notice of Preparation of a Draft Environmental Impact Report, SCH #2015082014, City of Gilroy, Santa Clara County

Dear Mr. Ketchum:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the City of Gilroy (City) for the City of Gilroy General Plan (Project, General Plan) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Gilroy

**Objective:** The General Plan will be used by the Gilroy City Council, Planning Commission, and City staff on a daily basis to make decisions with regards to land use, regulatory measures and administrative procedures. The General Plan includes the following elements: Land Use, Mobility, Economic Prosperity, 2015-2023 Housing Element (Adopted December 2014), Public

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.



Facilities and Services Element, Parks and Recreation Element, Natural and Cultural Resources Element, Potential Hazards Element, and Environmental Justice Element.

**Location:** City of Gilroy and related Planning Area/Sphere of Influence, Santa Clara County.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### **Public Resources Code Section 15124 Project Description**

NOP Figure 4, *Gilroy 2040 General Plan Land Use Diagram - Preferred Alternative*, shows Open Space within the Urban Growth Boundary. CDFW recommends that the draft EIR include information on specific land uses within areas designated as Open Space. This should include information pertaining to urban development and recreational use.

### **Public Resources Code Section 15125 Environmental Setting**

NOP, page 15, describes the Natural and Cultural Resources Element of the General Plan. Within this paragraph, it states that grassland, oak woodland, and riparian corridors (e.g. Llagas Creek and Uvas Creek) make up much of the natural area found in and near Gilroy. Specific habitats are found within the Urban Growth Boundary such as Willow Riparian Forest and Scrub, Mixed Riparian and Woodland Forest, Mixed Oak Woodland and Forest, Valley Oak Woodland, Coast Live Oak Forest and Woodland, Blue Oak Woodland, Northern Coast Scrub/Diablan sage Scrub, Northern Mixed Chaparral/Chamise Chaparral, California Annual Grassland, Grain-Row Crop-Hay and Pasture-Disked/Short Term Fallowed, Ponds, Golf Courses/Urban Parks, and other habitats for fish and wildlife [Santa Clara Valley Habitat Agency (SCVHA) 2020].

To properly describe the environmental setting, CDFW recommends that the draft EIR include a description of all wildlife habitat to be impacted, including but limited to those indicated above.

### **Public Resources Code Section 15126, Consideration and Discussion of Environmental Impacts, Section 15126.2 Consideration and Discussion of Significant Environmental Impacts, Section 15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects**

NOP, page 18, includes a brief list of the subject matter to be included within the draft EIR analysis of Biological Resources.

CDFW is concerned regarding potential impacts to special-status species that may be present within the Project location, including, but not limited to, those listed below (CDFW 2020, SCVHA 2020).

- White-tailed kite (*Elanus leucurus*) – State Fully Protected
- Least Bell's vireo (*Vireo bellii pusillus*) – State Endangered (SE) and Federal Endangered (FE)
- California tiger salamander (*Ambystoma californiense*) – Federal Threatened (FT), State Threatened (ST)

- Tricolored blackbird (*Agelaius tricolor*) – ST
- Steelhead (*Oncorhynchus mykiss irideus* pop. 9) – South-central California Coast Distinct Population Segment – FT
- California red-legged frog (*Rana draytonii*) – FT, State Species of Special Concern (SSC)
- American badger (*Taxidea taxus*) – SSC
- California giant salamander (*Dicamptodon ensatus*) – SSC
- Pallid bat (*Antrozous pallidus*) – SSC
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) – SSC
- Santa Cruz black salamander (*Aneides niger*) – SSC
- Western burrowing owl (*Athene cunicularia*) – SSC
- Western pond turtle (*Emmys marmorata*) – SSC
- Loma Prieta hoita (*Hoita strobilina*) – California Rare Plant Rank 1B.1
- Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*) – California Rare Plant Rank 1B.1
- Smooth lessingia (*Lessingia micradenia* var. *glabrata*) – California Rare Plant Rank 1B.2

The City of Gilroy is a co-permittee of the Santa Clara Valley Habitat Plan Natural Community Conservation Plan/Habitat Conservation Plan (SCVHP). Some of the wildlife and plant species listed above, in addition to other species, are covered by the SCVHP. The entire Project area is located within the SCVHP permit area, however, portions of the Project area are described as being Rural Development Not Covered and Urban Development less than 2 acres not covered (SCVHA 2020) and some specific activities may not be covered by the SCVHP; therefore, CDFW recommends that the City and future Project proponents consult with the SCVHA which is the entity implementing the SCVHP.

Due to the limited information provided in the NOP, CDFW is providing the general comments below with regards to potential impacts of the Project to special-status species and mitigation measures to offset any unavoidable impacts.

#### State Fully Protected Species and Nesting Birds:

*Issue:* State fully protected raptor species and other nesting birds may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

*Specific Impacts:* Without appropriate avoidance measures for nesting birds, potentially significant impacts associated with Project activities may include reduced reproductive success, reduced health and vigor, nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

*Evidence impact would be significant:* The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact nesting birds.

*Recommended Potentially Feasible Mitigation Measures:*

1. Nesting Bird Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for nesting bird species.
2. Bird Nest Surveys: A focused survey using appropriate protocols should be conducted throughout the nesting season by qualified biologists at Project locations prior to Project implementation. If Project activities are to take place during the nesting season, an additional pre-Project activity survey for active nests should be conducted by a qualified biologist no more than seven days prior to the start of Project activity.
3. Nest Avoidance: If an active nest is found within or adjacent to the Project site, a no-disturbance buffer should be established and monitoring of the active nest should be conducted by a qualified biologist during all Project-related construction activities. The qualified biologist should increase the buffer if the birds are showing signs of unusual or distressed behavior such as defensive flights/vocalizations, standing up from a brooding position, or flying away from the nest. Buffers should be maintained until the eggs have hatched and young have fledged.

State Threatened or Endangered Wildlife Species:

*Issue*: State threatened or endangered wildlife species may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

*Specific impact*: Potential impacts to State-listed wildlife species include the inability to reproduce, capture, burrow/den collapse, crushing as a result of burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, nest abandonment, loss of nest trees/breeding habitat, or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Unauthorized take of species listed as threatened or endangered pursuant to CESA is a violation of Fish and Game Code.

*Evidence impact would be significant*: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact State-listed wildlife species.

*Recommended Potentially Feasible Mitigation Measures:*

1. SCVHP Compliance: For activities that can be covered by the SCVHP, the draft EIR should describe habitats to be impacted within the Project location (habitats as described in the SCVHP). The draft EIR should analyze the potential impacts to these habitats and provide information on the SCVHP impact fees and mitigation measures that may be required.



2. State-listed Wildlife Species Focused Surveys: For activities that will not be covered by the SCVHP, the Project location should be surveyed for State-listed wildlife species by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, additional surveys may be necessary.
3. State-listed Species Take Authorization: If State-listed wildlife species are identified during surveys and full avoidance of take is not feasible, the Project proponents should apply to CDFW for take authorization through issuance of an Incidental Take Permit (ITP).

#### State Threatened, Endangered, or Rare Plant Species

*Issue*: State threatened, endangered or rare plant species may occur within the Project location. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

*Specific impact*: Potential impacts to special-status plants include inability to reproduce and direct mortality. Unauthorized take of plant species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

*Evidence impact would be significant*: Special-status plants are typically narrowly distributed endemic species. These species are susceptible to habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species. There is a potential for the Project have significant impacts to these species and their populations.

#### *Recommended Potentially Feasible Mitigation Measures:*

1. SCVHP Compliance: For activities that can be covered by the SCVHP, the draft EIR should analyze habitats to be impacted within the Project location (habitats as described in the SCVHP). The draft EIR should analyze the potential impacts to these habitats and provide information on SCVHP impact fees and mitigation measures that may be required.
2. Special-Status Plant Focused Surveys: For activities that will not be covered by the SCVHP, the Project location should be surveyed for State-listed plant species by a qualified biologist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.
3. Special-Status Plant Avoidance: For activities that will not be covered by the SCVHP, special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

4. Special-Status Plant Take Authorization: If State-listed plant species are identified during surveys and full avoidance of take is not feasible, take authorization through CDFW issuance of an ITP would be required.

#### State Species of Special Concern

*Issue*: Wildlife Species of Special Concern (SCC) may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

*Specific impact*: Potential impacts to SCC wildlife species include inability to reproduce, capture, burrow/den collapse, crushing as a result of burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, nest abandonment, loss of nest/breeding habitat, or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

*Evidence impact would be significant*: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact State-listed wildlife species.

#### *Recommended Potentially Feasible Mitigation Measures:*

1. SCVHP Compliance: For locations, activities, and species that can be covered by the SCVHP, the draft EIR should analyze habitats to be impacted within the Project location (habitats as described in the SCVHP). The draft EIR should analyze the potential impacts to these habitats and should discuss the potential SCVHP impact fees and potential SCVHP required wildlife surveys and other mitigation measures that may be required.
2. State Species of Special Concern Focused Surveys: For activities and species that will not be covered by the SCVHP, the Project area should be surveyed for SSC wildlife species by a qualified biologist. Focused surveys for burrowing owl nests in or near the Project location should occur during the breeding season and any nests found should remain undisturbed until the eggs have hatched and young have fledged.
3. State Species of Special Concern Avoidance: If SSC wildlife species are found within or adjacent to the Project site, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. The draft EIR should include additional minimization and mitigation measures for each SCC wildlife species that could be potentially impacted by Project activities.

CDFW is concerned regarding potential impacts to lakes and streams within the Project location. Due to the limited information provided in the NOP, CDFW is providing comments below with regards to potential impacts and mitigation measures for lakes and streams.



*Issue:* The Project area has the potential to contain water features subject to CDFW's lake and streambed alteration authority, pursuant Fish and Game Code § 1600 et seq. There may be a potential for Project implementation to have temporary and permanent impacts to these features.

*Specific impact:* Work within freshwater marsh, wetland, and riparian features has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water feature causing water pollution that is deleterious to fish and wildlife.

*Evidence impact is potentially significant:* The Project area has the potential to include features subject to CDFW's lake and streambed alteration regulatory authority. Construction activities within these features has the potential to impact downstream waters and to significantly impact the remaining acreage of freshwater marsh, wetland, and riparian communities.

*Recommended Potentially Feasible Mitigation Measures:*

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to, ponds, Uvas Creek, Llagas Creek, other creeks or streams, and drainages. For Project activities that can be covered by the SCVHP, habitat assessment should include identification and delineation of SCVHP stream buffers and setbacks.
2. Wetland Delineation: CDFW recommends a formal wetland delineation be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. Please note that, while there is overlap, State and Federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602, differ. Therefore, CDFW further recommends that the delineation identify both State and Federal wetlands as well as which activities may require Notification to comply with Fish and Game Code.
3. Notification of Lake or Streambed Alteration: Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) on potential impacts to federally listed species. Consultation with the USFWS and NMFS in order to comply with the federal Endangered Species Act is advised well in advance of Project implementation.

## ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or emailed to CNDDDB at the following email address: [cnddb@wildlife.ca.gov](mailto:cnddb@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Gilroy in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or, Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory) at (707) 944-5541 or by email at [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

## LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed February 19 and February 20, 2020.

Santa Clara Valley Habitat Agency (SCVHA). 2020. Santa Clara Valley Habitat Agency Geobrowser. <http://www.hcpmaps.com/habitat/>. Accessed February 19 and February 20, 2020.





BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

ALAMEDA COUNTY

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Connect with the  
Bay Area Air District:



February 26, 2020

Stan Ketchum  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

RE: City of Gilroy 2040 General Plan – Revised Notice of Preparation

Dear Mr. Ketchum,

Bay Area Air Quality Management District (Air District) staff has reviewed the revised Notice of Preparation of an Environmental Impact Report (EIR) for the City of Gilroy's 2040 General Plan (Plan). The City intends to prepare a program EIR to evaluate the environmental issues associated with the adoption and buildout of the Plan.

Air District staff recommends the EIR include the following information and analysis:

**The EIR should discuss how the Plan will address Senate Bill 1000 (SB 1000), the Planning for Healthy Communities Act.** SB 1000, which became effective January 1, 2018, requires all California jurisdictions to consider environmental justice issues in their General Plans. Environmental justice (EJ), as defined by the State, focuses on disproportionate and adverse human health impacts that affect low income and minority communities already suffering from cumulative and legacy environmental and health impacts. SB 1000 requires local jurisdictions that identify disadvantaged communities within the area covered by the city's or county's general plan to adopt an EJ element or incorporate EJ goals and policies into other elements of the general plan. The Air District commends the City for initial efforts to actively engage with the community.

Although EJ is not directly analyzed in CEQA, the Air District encourages the City to assess the cumulative impacts of air pollutant and greenhouse gas (GHG) emissions from the proposed buildout of the Plan by evaluating how these environmental impacts affect the City's identified Equity and Engagement Districts, given that these communities already face existing pollution burdens. Additionally, the City should focus on minimizing or



mitigating potential adverse impacts and risks as well as how the Plan could improve health conditions of the identified EJ communities. Air District staff encourage the City to consider involving representative expertise in the public health field, such as the County of Santa Clara Public Health Department, in the EIR review process.

- **The EIR should provide a detailed analysis of the Plan's potential effects on local and regional air quality.** The EIR should include a discussion on the Air District's attainment status for all criteria pollutants and the implications for the region if these standards are not attained or maintained by statutory deadlines. The Air District's CEQA Air Quality Guidelines, which provide guidance on how to evaluate a Plan's construction, operational, and cumulative air quality impacts, can be found on the Air District's website: <https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines>.
- **The GHG impact analysis should include an evaluation of the Plan's consistency with the most recent draft of the AB 32 Scoping Plan by the California Air Resources Board and with the State's 2030 and 2050 climate goals.** The Air District's current recommended GHG thresholds in our CEQA Guidelines are based on the State's 2020 GHG targets, which are now superseded by the 2030 GHG targets established in SB 32. The EIR should demonstrate how the Plan will be consistent with the Scoping Plan.
- **The EIR should estimate and evaluate the potential health risk to existing and future sensitive populations within and near the Plan area from toxic air contaminants (TAC) and fine particulate matter (PM<sub>2.5</sub>) as a result of the Plan's construction and operation.** Air District staff recommends that the EIR evaluate potential cumulative health risk impacts of TAC and PM<sub>2.5</sub> emissions on sensitive receptors within and near the Plan area.
- **The EIR should identify and evaluate all Plan-level design features that reduce criteria pollutants, TACs, and GHGs to reduce potential impacts.** Chapter 9, Section 6, of the Air District's CEQA Air Quality Guidelines provides recommended mitigation measures and policies for general plans.
- **The EIR should evaluate the Plan's consistency with the Air District's 2017 Clean Air Plan (2017 CAP).** The EIR should discuss 2017 CAP measures relevant to the Plan and show the Plan's consistency with the measures. The 2017 CAP can be found on the Air District's website: <http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans>.
- **The Air District's CEQA website contains several tools and resources to assist lead agencies in analyzing air quality and GHG impacts.** These tools include guidance on quantifying local emissions and exposure impacts. The tools can be found on the Air District's website: <http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools>. If the Plan requires a site-specific analysis, please contact Air District staff to obtain more recent data.

February 26, 2020

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We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, please contact Josephine Fong, Environmental Planner, at (415) 749-8637 or [jfong@baaqmd.gov](mailto:jfong@baaqmd.gov).

Sincerely,



Greg Nudd  
Deputy Air Pollution Control Officer

cc: BAAQMD Director Margaret Abe-Koga  
BAAQMD Vice Chair Cindy Chavez  
BAAQMD Director Liz Kniss  
BAAQMD Chair Rod G. Sinks





File: 32994  
Various

February 28, 2020

Mr. Stan Ketchum  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

Subject: Revised Notice of Preparation of a Draft Environmental Impact Report for the  
Gilroy 2040 General Plan

Dear Mr. Ketchum:

The Santa Clara Valley Water District (Valley Water) has reviewed the Notice of Preparation of a Draft Environmental Impact Report for the Gilroy 2040 General Plan, received by Valley Water on January 31, 2020. Valley Water is a special district with jurisdiction throughout Santa Clara County. The District acts as the County's groundwater management agency, wholesale water provider, principal water resources manager, flood protection agency and the steward for its watersheds, creeks, and underground aquifers. Valley Water requests the following concerns be addressed and discussed in the Draft EIR:

In addition to the issues generally outlined in the NOP, Valley Water would like the Draft EIR Flooding and Water Quality section to address the adequacy and capacity of existing creeks and channels operated and maintained by Valley Water to accommodate runoff from new development as identified in the 2040 General Plan. Please identify any appropriate mitigation measures that may be needed as a result of the potential to increase the frequency of flooding, exacerbate existing flooding, or induce flooding from existing creeks or channels.

In the Draft EIR's Biological Resource section, Valley Water recommends that Draft EIR address any impacts on riparian corridors resulting from the 2040 General plan. The Draft EIR should include mitigation measures that include policies for riparian corridor protection and enhancement from developments located along riparian corridors or floodplain areas.

Valley Water is dedicated to ensuring a reliable supply of healthy, clean drinking water now and in the future. New growth permitted under the General Plan has the potential to increase demands on the groundwater basin and degrade groundwater quality. The quality and quantity of groundwater must be sustained and protected. While a majority of groundwater replenishment comes from Valley Water activities, approximately 15 percent of the total County water supply comes from natural recharge. This natural recharge takes place in creeks and areas with appropriate soil characteristics to allow water to infiltrate to the groundwater basin. With this in mind, it is important to include policies to maintain infiltration of stormwater and natural groundwater recharge as much as possible when new development,



and re-development, is proposed under the General Plan. The impact of reduced natural groundwater recharge should be analyzed as a cumulative impact. To minimize impacts, Valley Water recommends incorporating Low Impact Development / Green Infrastructure (LID/GI) best practices. Such practices include, but are not limited to, preserving and recreating natural landscape features and minimizing effective imperviousness. By creating functional and appealing site drainage, stormwater can be treated as a resource rather than a waste product, while also protecting ground and surface water quality.

Water conservation and recycled water use are increasingly important components of Valley Water's water supply portfolio for the County. Water resource policies in the General Plan need to reflect the importance of these water supply issues to ensure water supplies are sufficient to support new growth. We suggest the following language that addresses water supply and groundwater protection:

- Locate and properly destroy abandoned wells and other conduits for contamination as a means of protecting groundwater quality;
- Avoid groundwater quality degradation when implementing storm water management and flood protection actions;
- Avoid high-risk land-use activities such as industrial use or chemical storage and handling in vulnerable areas, such as in groundwater recharge areas or near drinking water wells and waterways;
- Require water conservation measures above State standards (i.e., CALGreen);
- Require landscaping that exceeds current water efficient landscape regulations including weather- or soil-based irrigation controllers and dedicated landscape meters;
- Maximize the use of alternative water sources for non-potable uses including stormwater, rainwater, and graywater.
- Install separate submeters to each residential unit and individual spaces within commercial buildings to encourage efficient water use.

If you have any questions, or need further information, you can reach me at (408)630-3098, or e-mail at [tin@valleywater.org](mailto:tin@valleywater.org). Please reference District File No. 32994 on further correspondence regarding this project. Please forward a copy of the Draft EIR when available for public review.

Sincerely,



*for* TIN LIN, P.E., QSD, CFM  
Associate Engineer – Civil  
Community Projects Review unit  
Santa Clara Valley Water District

Cc: U. Chatwani, T. Lin, File





Local Agency  
Formation Commission  
of Santa Clara County  
777 North First Street  
Suite 410  
San Jose, CA 95112  
SantaClaraLAFCO.org

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Sequoia Hall  
Sergio Jimenez  
Linda J. LeZotte  
Rob Rennie  
Mike Wasserman  
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**Alternate Commissioners**  
Cindy Chavez  
Maya Esparza  
Yoriko Kishimoto  
Russ Melton  
Terry Trumbull  
**Executive Officer**  
Neelima Palacherla

February 28, 2020

**VIA E-MAIL** [Stan.Ketchum@ci.gilroy.ca.us]

Stan Ketchum  
General Plan Project Manager  
Gilroy Community Development Department  
7351 Rosanna Street  
Gilroy, CA 95020

**RE: Revised Notice of Preparation of a Draft Environmental Impact Report for  
the Gilroy 2040 General Plan**

Dear Mr. Ketchum:

Thank you for sending the Local Agency Formation Commission of Santa Clara County (LAFCO) a copy of the Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report for the Gilroy 2040 General Plan via email on January 31, 2020 and for providing us with an opportunity to comment on the NOP. As described in the NOP, the project will result in a new General Plan for the City, including new policies for land use, mobility, economic prosperity, public facilities and services, parks and recreation, natural and cultural resources, hazards, and environmental justice. According to the NOP, a Program EIR will be prepared to evaluate environmental issues associated with the adoption and buildout of the Gilroy 2040 General Plan.

LAFCO offers the following comments for the City's consideration:

Please clarify if LAFCO is a Responsible Agency as it relates to Program EIR. If so, please indicate the types of LAFCO approvals that the City anticipates seeking. We also suggest that an additional section be included in the Draft EIR briefly identifying all Responsible Agencies for the Program EIR and providing brief information on the types of approvals or permits that the City anticipates seeking from the identified agencies.

Please also clarify whether the City anticipates tiering from the Program EIR for potential projects that require LAFCO approval.

Additionally, several of the areas identified in Figure 4 – Gilroy 2040 General Plan Land Use Diagram – Preferred Alternative are outside the City Limits and the City's Urban Service Area. We encourage the City to evaluate a project alternative that plans for anticipated future growth within the existing City limits and City USA. This approach to planning for future growth is in alignment with the goals of Play Bay Area and would help to minimize climate change risks.

Lastly, please notify us when the City's Draft General Plan and associated Draft EIR become available for public review. We look forward to reviewing both documents and providing comments, as necessary. If you have any questions regarding these comments, please contact Lakshmi Rajagopalan at (408) 993-4709.

Thank you again for providing us with the opportunity to comment on this important Project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Neelima Palacherla".

Neelima Palacherla  
LAFCO Executive Officer

Cc: LAFCO Members