

**Appendix A**  
**NOP Comments**



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

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



April 4, 2022

Shannon Hill, Environmental Project Manager  
City of San José  
200 E. Santa Clara Street, 3rd Floor Tower  
San Jose, CA 95113  
[shannon.hill@sanjoseca.gov](mailto:shannon.hill@sanjoseca.gov)

Subject: 0 Seely Avenue Mixed-Use Project, Notice of Preparation of a Draft  
Environmental Impact Report, SCH No. 2022020565, City of San José,  
Santa Clara County

Dear Shannon Hill:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft Environmental Impact Report (DEIR) from the City of San José (City) for the 0 Seely Avenue Mixed-Use Project (Project) 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. 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 California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

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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.

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proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** The Hanover Company

**Objective:** The Project is the development of 1,470 residential units, 52,000 square feet of retail space, a public park, and installation of a domestic water well to service these facilities.

**Location:** The Project is located adjacent to Seely Avenue in the City of San José. The coordinates for the approximate center of the Project are 37.397633° N latitude and 121.917652 W longitude (NAD 83 or WGS 84). The Assessor's Parcel Numbers are 097-15-033 and 097-15-034.

## **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. Based on potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

### **Mitigation Measures and Impacts**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?**

**COMMENT #1:** Biological Resources, page 2

**Issue:** The NOP does not discuss potential impacts of the Project to western burrowing owl (*Athene cunicularia*, State Species of Special Concern). In review of Google Earth aerials, the Project site includes row-crop agriculture and open land with ruderal grass and herbaceous vegetation. Ruderal grass and herbaceous vegetation are also located adjacent to and along the eastern border of the Project site. Please be advised that there are known western burrowing owl occurrences within 0.2 miles of the Project site (CDFW 2022). The Project site and adjacent grassland areas could potentially support western burrowing owl foraging and/or nesting habitat. The Project is also located within the Santa Clara Valley Habitat Plan Natural Community Conservation Plan/Habitat Conservation Plan (SCVHP)

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permit boundary. However, the NOP does not state if the Project will be covered by the SCVHP.

**Specific impact:** Direct mortality through crushing of adults or young within burrows, loss of nesting burrows, loss of nesting habitat, loss of foraging habitat resulting in reduced nesting success (loss or reduced health or vigor of eggs or young), nest abandonment, and reduced frequency or duration of care for young resulting in reduced health or vigor of young.

**Why impact would occur:** The proposed Project includes construction of buildings, parking lots, recreational parks, and other permanent structures in ruderal grass and herbaceous vegetation that is potential burrowing owl nesting and foraging habitat. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact nesting or overwintering owls.

**Evidence impact would be significant:** Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). Burrowing owl is designated by CDFW as a California Species of Special Concern due to population decline and breeding range retraction. The species has also experienced a severe population decline in Santa Clara County. Project impacts may result in take of burrowing owls, unmitigated habitat loss resulting in further species population decline and cumulative impacts resulting in the restriction in the range of the species.

**Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:**

**Mitigation Measure #1: Habitat Assessment and Surveys**

The DEIR should include a thorough habitat assessment of potential burrowing owl habitat within the Project area and surrounding areas. A qualified biologist should conduct a field assessment that includes all areas that could be directly or indirectly impacted by the Project and include data such as vegetation type, vegetation structure and presence of burrows.

A qualified biologist should conduct protocol-level surveys in all suitable burrowing owl habitat within the Project area and surrounding areas where Project activities could adversely affect burrowing owls during both the nesting (February 1 to August 31) or overwintering season.

Specific information on habitat assessment, burrowing owl survey methods, buffer distances and mitigation is provided in the *CDFW Staff Report on Burrowing Owl*

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*Mitigation*, dated March 7, 2012, and available at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

**Mitigation Measure #2: Burrowing Owl Avoidance**

The DEIR should state that if burrowing owls are detected during surveys within or near the Project area, a protective buffer in which construction activities will be avoided will be established. Appropriate buffers typically have a 50- to 500-meter radius and vary depending on the level of disturbance and timing of construction. If the burrowing owls show signs of distress (e.g., defensive vocalizations and/or flying away from the nest), the buffer distance should be increased.

**Mitigation Measure #3: Compensatory Mitigation**

If permanent or temporary impacts of the proposed Project to burrowing owl foraging and/or nesting habitat cannot be completely avoided, the DEIR should include measures to minimize the impacts of construction on owls and their habitat, and effective compensatory mitigation to offset all habitat loss. A mitigation plan should be prepared in consultation with CDFW.

**Mitigation Measure #4: SCVHP Burrowing Owl Compliance**

The City should determine if the Project would be covered by the SCVHP. If the Project is expected to be covered under the SCVHP, the DEIR should state that payment of appropriate SCVHP impact fees will be made to the Santa Clara Valley Habitat Agency, which is the entity implementing the SCVHP, and that all SCVHP burrowing owl conditions will be followed.

**COMMENT #2: Biological Resources, page 2.**

**Issue:** The NOP does not discuss potential impacts to the golden eagle (*Aquila chrysaetos*, State Fully Protected and Federally Protected under the Bald and Golden Eagle Protection Act). Please be advised that a golden eagle pair has successfully nested within the past several years approximately 2.5 miles from the Project site (Menzel and Higgins 2020, Menzel and Higgins 2022). The Project area and surrounding grasslands are within a typical golden eagle pair's home range (Katzner et al. 2012a, Katzner et al. 2012b) and could potentially support eagle nesting and foraging habitat. See also Comment #3 below on nesting habitat.

**Specific impact:** Loss of nesting and foraging habitat resulting in take or reduced nesting success (loss or reduced health or vigor of eggs or young).

**Why impact would occur:** The Project includes construction of buildings, parking lots, recreational parks, and other permanent structures in ruderal grass and

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herbaceous vegetation that is potential golden eagle foraging habitat, and proposes loss of trees.

**Evidence impact would be significant:** Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). The golden eagle is a Fully Protected Species under California Fish and Game Code (§ 3511). Project impacts may result in unmitigated foraging habitat loss, impacts to nesting golden eagles, and cumulative impacts resulting in the restriction in the range of this species.

**Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:**

**Mitigation Measure #1: Habitat Assessment and Surveys**

The DEIR should include a thorough habitat assessment of potential golden eagle nesting and foraging habitat within the Project area and surrounding areas. A qualified biologist should conduct a field assessment that includes all areas that could be directly or indirectly impacted by the Project and include data such as vegetation type, vegetation structure, and evidence of type and abundance of prey.

A qualified biologist should conduct protocol-level surveys in all suitable golden eagle habitat within the Project area and surrounding areas where Project activities could adversely affect eagles during the nesting season (late January to August).

Guidance and resources can be found on our website at [Golden Eagles in California](#) and in consultation with the USFWS Migratory Bird Program.

**Mitigation Measure #2: Compensatory Mitigation**

If permanent or temporary impacts of the proposed Project to golden eagle nesting or foraging habitat cannot be completely avoided, the DEIR should include effective compensatory mitigation to offset all eagle habitat loss. A mitigation plan should be prepared in consultation with CDFW and USFWS.

**COMMENT #3: Biological Resources, page 2**

**Issue:** The NOP states that 584 trees will be removed from the Project site. Additionally, the Project is located adjacent to Coyote Creek riparian habitat. Trees located on the Project site and within adjacent riparian habitat are potential habitat for nesting birds.

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**Specific impact:** Direct mortality, nest abandonment, reduced reproductive success, and loss or reduced health or vigor of eggs or young.

**Why impact would occur:** The Project proposes to remove 584 trees from the Project site. The Project would also include impacts such as noise, groundwork, and movement of workers that may occur adjacent to riparian habitat and may potentially significantly impact nesting birds.

**Evidence impact would be significant:** Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). Project impacts may potentially substantially reduce the abundance and diversity of avian species within the riparian corridor.

**Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:**

**Mitigation Measure #1: Nesting Bird Surveys**

If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist should conduct a minimum of two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. However, species-specific survey protocols may be available and should be followed. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.

**Mitigation Measure #2: Active Nest Buffers**

If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority

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to cease all construction work in the area until the young have fledged and the nest is no longer active.

**Would the Project interfere substantially with movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede use of native wildlife nursery sites?**

**COMMENT #4:** Biological Resources, page 2

**Issue:** The NOP does not discuss the height of buildings to be constructed within the Project area. In review of the NOP Figure 4 Rendering, the computer-generated drawing of the constructed Project shows residential and/or retail buildings that would be approximately 7 stories high. The buildings would be constructed adjacent to the Coyote Creek riparian area (measured in Google Earth to be 120 to 290 feet between the buildings and the riparian area). The tall buildings located near the Coyote Creek riparian area could result in avian collisions with the buildings.

**Specific impact:** Direct mortality or injury and potential inability to reproduce or reduced reproductive success due to injury.

**Why impact would occur:** The presence of buildings, including glass windows, close to the Coyote Creek riparian movement corridor may result in avian collision with the buildings.

**Evidence impact would be significant:** Project impacts may potentially substantially reduce the abundance and diversity of avian species within the riparian corridor.

**Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:**

**Mitigation Measure #1:** Assessment of Building Height and Location

CDFW recommends that the DEIR include building height and location alternatives that reduce environmental impacts such as locating tall buildings at a biologically appropriate distance away from the riparian area.

**Mitigation Measure #2:** Building Design Assessment

The DEIR should analyze all potential impacts on avian species resulting from building height, types of materials used on the exterior façade of buildings, and other design features, and include avoidance and minimization measures that reduce those impacts to a less-than-significant level.



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**Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?**

**COMMENT #5:** Biological Resources, pages 1-2

**Issue:** The NOP, page 1, states that a domestic water well will be constructed. The NOP does not discuss the impacts of well operation on Coyote Creek.

**Specific impact:** Well operation could result in diversion of water from Coyote Creek.

**Why impact would occur:** NOP Figure 3, Conceptual Site Plan, shows a well located in the southeastern corner of the Project site. As measured in Google Earth, the well would be located approximately 130 feet from the Coyote Creek channel.

**Evidence impact would be significant:** Unauthorized diversion of natural flow from Coyote Creek would be a violation under Fish and Game Code §1602.

**Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:**

**Mitigation Measure #1:** Hydrology Analysis

The DEIR should include a hydrological analysis to determine if well operation would adversely affect surface or subsurface flow in Coyote Creek, including a written report of results. If well operation could adversely affect aquatic or riparian resources, the DEIR should include adequate avoidance, minimization, and/or mitigation measures to reduce the impacts to less than significant levels.

**Mitigation Measure #2:** Notification of Lake and 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. Operation of the well may require that the Project proponent submit a notification of Lake and Streambed Alteration to CDFW. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. Additional information can be found at <https://www.wildlife.ca.gov/Conservation/LSA>.

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## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database 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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. 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. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Erin Chappell  
Regional Manager  
Bay Delta Region

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

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## REFERENCES

California Department of Fish and Wildlife (CDFW). 2022. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed March 16, 2022.

Katzner, T., B. W. Smith, T.A. Miller, D. Brandes, J. Cooper, M. Lanzone, D. Brauning, C. Farmer, S. Harding, D.E. Kramar, C. Koppie, C. Maisonneuve, M. Martell, E.K. Mojica, C. Todd, J.A. Tremblay, M. Wheeler, D.F. Brinker, T.E. Chubbs, R. Gubler, K. O'Malley, S. Mehus, B. Porter, R.P. Brooks, B.D. Watts, and K.L. Bildstein. 2012a. Status, Biology, and Conservation Priorities for North America's Eastern Golden Eagle (*aquila chrysaetos*) Population. *The Auk* 129(1):168–176.

Katzner, T., P. Turk, A. Duerr, D. Brandes, T. Miller, and M. Lanzone. 2012b. Golden Eagle Home Range, Habitat Use, Demography and Renewable Energy Development In The California Desert, an Interim Report Submitted to the: Bureau of Land Management, California State Office (CASO). West Virginia University, Morgantown, West Virginia, USA.

Menzel, S. and P. Higgins. 2020. San José-Santa Clara Regional Wastewater Facility Bufferlands Burrowing Owl Management Year 3: October 2018–September 2019 Summary Report for the Burrowing Owl Expert Adaptive Management Team (Dr. Lynne Trulio and Debra Chromczak). Santa Clara Valley Audubon Society, Cupertino, California, USA.

Menzel, S. and P. Higgins. 2022. San José-Santa Clara Regional Wastewater Facility Bufferlands Burrowing Owl Management Year 5 Summary Report: October 2020–December 2021. Santa Clara Valley Audubon Society, Cupertino, California, USA and Talon Ecological Research Group, San Jose, California, USA.



March 25, 2022

Ms. Thai-Chau Le  
Planning and Code Enforcement  
City of San José  
Submitted via email: Thai-Chau.Le@sanjoseca.gov

Re: Comments on Notice of Preparation for the 0 Seely Avenue Mixed-Use Project (PDC21-035/PD22-022/ER21) (Project)

Dear Ms. Le,

The Sierra Club Loma Prieta Chapter and the Santa Clara Valley Audubon Society (collectively, the “environmental organizations”) are committed to preserving the health and integrity of wildlife habitat, including waterways and their riparian ecosystems. The environmental organizations appreciate the opportunity to provide these comments on the Seely Avenue Mixed Use Project (“Project”) Notice of Preparation (“NOP”).

The Project proposes to develop 1,470 residential units and approximately 52,000 square-feet of retail space, as well as a public park on an approximately 22-acre site. The proposed Project would also include the construction of a domestic water well and associated infrastructure and new private streets. The Project is adjacent to Coyote Creek (a category 1 stream).

Please accept the following scoping comments:

Coyote Creek riparian corridor

Consistent with San Jose’s definition of “riparian project”, please delineate the riparian vegetation edge of Coyote Creek adjacent to the Project AND the top of the bank of Coyote Creek. Please analyze compliance with:

- The San Jose General Plan Envision 2040;
- The San Jose Riparian Corridor Policy Study and Council Policy 6-34 Riparian Corridor Protection and Bird Safe Design<sup>1</sup>, both of which provide, "Setback is measured from the outside dripline of

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<sup>1</sup> <https://www.sanjoseca.gov/home/showpublisheddocument?id=12815>

the Riparian Corridor vegetation or top-of-bank, **whichever is greater...**". Please discuss how the proposed setback complies or does not comply with the Valley Habitat Plan.

The Habitat Agency provides clarification and Interpretation on the Valley Habitat Plan Condition 11 Stream Setback Applicability<sup>2</sup>. This document states that the riparian setback should be 100-ft from the top-of-the-bank of Coyote Creek (a Category 1 stream) and that under no circumstances, a setback of less than 50-ft from the top-of-the-bank is allowed. Please analyze the project compliance with the Valley Habitat Plan in light of this guidance.

### Bird Safety

- Please provide mitigation for the potential of the Project to cause bird collisions with glass and other man-made structures
- Please analyze compliance with Council Policy 6-34 which provides (for all riparian projects in San Jose); 4) Materials and Lighting
  - New development should use materials and lighting that are designed and constructed to reduce light and glare impacts to Riparian Corridors. For example, the use of bright colors, and glossy, reflective, see through or glare producing Building and material finishes is discouraged on Buildings and Structures.
- Since the North San Jose Design Guidelines and standards is silent regarding bird collision, the Citywide Guidelines apply (Staff answers to questions, Public meeting March 7, 2022) Please analyze compliance with the San Jose San Jose Citywide Design Standards and Guidelines<sup>3</sup> section 3.3.6 Bird Safety.

### Lighting

Please describe lighting on the site in detail that is sufficient for the public to review and comment, and analyze compliance with :

- Council Policy 6-34 section 4) Materials and Lighting.
- Compliance with the specific Lighting (2.3.7) and Landscaping (2.3.8) standards of the San Jose Citywide Design Guidelines and standards
- The following General Plan policies, which were designed to mitigate the impacts of lighting on natural ecosystems:
  - ER-2.3 Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise and toxic substances into the riparian zone.

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<sup>2</sup> <https://www.scv-habitatagency.org/DocumentCenter/View/1494/No-2021-01-Stream-Setback-Applicability>

<sup>3</sup> <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/start-a-new-project-or-use/design-guidelines>

- ER-6.3 Employ low-glare lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.
- ER-6.4 Site public facilities such as ballparks and fields that require high-intensity night lighting at least 0.5 mile from sensitive habitats to minimize light pollution, unless it can be demonstrated that lighting systems will not substantially increase lighting within natural areas (e.g., due to screening topography or vegetation).

In addition, please evaluate impacts of Correlated Color Temperature and require lighting design that uses the latest scientific understanding of the impacts of high Correlated Color Temperature on human and ecosystem health<sup>4</sup>. We recommend using fixtures that emit less than 2700K in areas further than 300-ft from Coyote Creek corridor, and no more than 2400K within 300-ft of the riparian edge.

#### Loss of Trees

The Project will destroy 584 orchard and other trees. Please discuss this loss in the context of the continued decline and shrinkage of San Jose's community/urban canopy and forest and provide feasible and meaningful mitigation for the loss.

#### Nesting Birds

Birds on this property may nest in trees, shrubs, man-made structures, and on the ground. Please mitigate by applying avoidance measures. Mitigation must be feasible and biologically relevant to species that may nest at the site.

#### Burrowing owls

Existing conditions on the site include open land with ruderal grass and herbaceous vegetation. Western burrowing owl, a State Species of Special Concern, nest within 2.5 miles of the site (CDFW 2020), and the site could potentially contain western burrowing owl foraging and/or nesting habitat. Surveys and mitigation for this species are needed.

#### Traffic and air pollution

At over 2000 cars, using convention commute averages, we expect the project to generate over 26M vehicle miles traveled. If we assume that 1/3 of the vehicles will be electric, the site will generate over 6000 MT of CO2 per year according to the EPA estimate of 4.6MT per vehicle average per year<sup>5</sup>.

- Please provide detailed analysis and describe the Project's impact to the City's vehicle miles traveled due to changing this site from industrial park to this mixed-use (mostly housing) project? How will the project impact the city's overall VMT reduction plan? How will it impact the City's Climate Action Plan?

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<sup>4</sup> <https://link.springer.com/article/10.1007/s10980-020-01053-1>

<sup>5</sup> <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle>

- To reduce VMT, consider providing two free e-bikes with each unit, installing a slow streets network similar to one Oakland installed during Covid19, pricing parking at destination sites, and unbundling parking at this site.
- According to the California Air Resource Board, the state must achieve a 7 percent VMT reduction translates to a reduction, on average, of 1.5 miles/person/day from projected levels in 2030<sup>6</sup>. The EIR should analyze and describe how the city will achieve the state’s reduction goal expressed by CARB as well as the city’s Climate plan goal.
  - Feasible mitigation would be to design the project as an energy and water microgrid.
- In light of the California Transportation Assessment Report<sup>7</sup>, please analyze and describe whether the Project’s impacts would impede the opportunity for San Jose to meet its National Ambient Air Quality Standard in the future.
- The city also regularly fails in the American Lung Association’s State of the Air report<sup>8</sup>. Will the Project exacerbate this problem?
- AB285<sup>9</sup> shows that the widening has increased traffic and worsened congestion.
  - The EIR should analyze how road widening on Montague and its interchanges have contributed to air quality nonattainment in the basin and how this project will worsen the situation including adding to impacted roads leading to vicious cycle of expansion. Mitigation would be similar to the mitigation we propose for VMT above, especially sending feasible price signals to change behavior like cities like San Francisco<sup>10</sup>.
- This project will not improve alternatives to driving because the city remains unsafe for bicyclists and pedestrians<sup>11</sup>. Mayor Liccardo recently said, “We have been suffering from an epidemic of traffic fatalities in our city”.
  - A feasible mitigation would be for San Jose to use the proceeds from this project to build out a slow street network similar to one Oakland implemented for essential workers in 2020.
- Will the project cause Transit to decline? Because the project is auto friendly with bundled parking there will continue to be decreased incentives for residents to take transit. For the last 20 years congestion has increased and transit services have been cut<sup>12</sup>.

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<sup>6</sup> [7 percent VMT reduction translates to a reduction, on average, of 1.5 miles/person/day from projected levels in 2030 \(page 101\)?](#)

<sup>7</sup> [https://sgc.ca.gov/resources/docs/20220218-AB\\_285\\_REPORT.pdf](https://sgc.ca.gov/resources/docs/20220218-AB_285_REPORT.pdf)

<sup>8</sup> <https://www.lung.org/research/sota>

<sup>9</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB285](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB285)

<sup>10</sup> <https://www.governing.com/next/searching-for-ways-to-limit-induced-demand-in-a-car-loving-society>

<sup>11</sup> <https://www.ktvu.com/news/san-joses-alarmingly-high-traffic-fatalities-cause-for-concern-among-city-leaders-residents>

<sup>12</sup> <https://www.pressreader.com/usa/the-mercury-news-weekend/20200124/281513638120850>

- The EIR should study the impact of this project on the long term decline of transit in San Jose. A feasible alternative would be unbundle parking and provide two free ebikes with each unit. Putting in car share like Austin TX would allow for a reduction of 20 spaces for every car share provided.

### New Well

The proposed Project also includes the construction of a domestic water well and on-site water pipes. Please describe the intended purpose and use for the well as well as any evidence supporting the well's use of groundwater for its intended purpose. If the well is intended to supply drinking water, please analyze the suitability of this location and the groundwater for this purpose.

- Please provide a description of all cleanup sites (closed and active) within one mile of the project
  - Please provide analysis of water quality of the water that will be drunk by San Joseans
  - Identify other wells within a mile. Discuss the potential for subsidence from over-pumping, specific to the well and cumulatively with nearby wells, including the Trimble and Agnews Municipal Groundwater Wells.
- Has land subsidence occurred on the project site or its vicinity?
- The general plan states: "However, areas near the San Francisco Bay experience saltwater intrusion; and the migration of saline water through tidal channels causes contamination. These occurrences of saltwater intrusion are possible because of the aforementioned subsidence which has resulted from historical groundwater overdraft."
  - Please discuss the potential for saltwater intrusion. How do the flows of the underground water compare to the pumping plans? Will the pump operate simultaneously to other nearby pumps? Now? In 2040? How will SJ recharge the groundwater?

### Hazards

- Agricultural land is often contaminated with pesticides and fertilizers. Please test the soil within the Project area for all potential contaminants, including pesticides, and disclose the results.
- Please provide a detailed DTSC Removal Action or other Work Plan for the remediation of Naturally Occurring Asbestos (NOA) during any soil disturbance during the construction of the Groundwater Wells and any other projects on the site.

### Agriculture

Loss of the remaining Prime Farmland in North San Jose should be analyzed and considered a Significant Unavoidable Impact. It also contributes to cumulative impacts to agricultural resources in San Jose.

### Range of Alternatives

The environmental organizations believe that an alternative should be analyzed and included for evaluation that provides parkland along the Coyote Creek levee. A park along the levee should allow for the minimum 100-ft riparian buffer from the top-of-the-bank.



We appreciate the opportunity to provide scoping comments,

A handwritten signature in black ink, appearing to read "Gladwyn d'Souza". The signature is fluid and cursive, with a large initial 'G'.

Gladwyn d'Souza  
Conservation Committee Chair  
Sierra Club Loma Prieta Chapter

A handwritten signature in black ink, appearing to read "Shani Kleinhaus". The signature is cursive and somewhat stylized.

Shani Kleinhaus, Ph.D.  
Environmental Advocate  
Santa Clara Valley Audubon Society

# NATIVE AMERICAN HERITAGE COMMISSION

Governor's Office of Planning & Research

February 24, 2022

**Feb 25 2022**

Shannon Hill, Environmental Planner  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113-1905

## STATE CLEARING HOUSE

**Re: 2022020565, 0 Seely Avenue Mixed-Use Project, Santa Clara County**

Dear Ms. Hill:

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.**



CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

SECRETARY  
**Sara Dutschke**  
Miwok

COMMISSIONER  
**William Mungay**  
Paiute/White Mountain  
Apache

COMMISSIONER  
**Isaac Bojorquez**  
Ohlone-Costanoan

COMMISSIONER  
**Buffy McQuillen**  
Yokayo Pomo, Yuki,  
Nomlaki

COMMISSIONER  
**Wayne Nelson**  
Luiseño

COMMISSIONER  
**Stanley Rodriguez**  
Kumeyaay

EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo

**NAHC HEADQUARTERS**  
1550 Harbor Boulevard  
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California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)

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, subs. (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:  
[Cody.Campagne@nahc.ca.gov](mailto:Cody.Campagne@nahc.ca.gov).

Sincerely,

*Cody Campagne*

Cody Campagne  
Cultural Resources Analyst

cc: State Clearinghouse



# **CARPENTERS LOCAL UNION 405**

**SERVING SANTA CLARA & SAN BENITO COUNTIES**

City of San José, Department of Planning, Building and Code Enforcement  
Attn: Shannon Hill, Environmental Project Manager  
200 East Santa Clara Street, 3rd Floor Tower  
San José, CA 95113-1905  
E-mail: shannon.hill@sanjoseca.gov

Dear Ms. Hill:

Please accept these comments on behalf of the members of Carpenters Local 405, representing thousands of construction workers in San José and Santa Clara County. Due to our union's deep and enduring connection to the City of San José, Local 405 and its members take great interest in the City's analysis of both the construction and operational phases of the Project.

We request that we be put on the list of interested parties who receive notices regarding the issuance of environmental review documents or project-related public hearings.

The Project presents tremendous economic opportunities if properly implemented, but also presents the potential for significant avoidable environmental impacts. Local 405 intends to participate in the CEQA process to ensure that the City complies with CEQA's mandate to minimize the Project's avoidable environmental impacts while maximizing its benefits for the community and skilled trades workers. In particular, we request that the City analyze all impacts required by CEQA, including, but not limited to the following:

- Environmental impacts of construction
- Impacts resulting from construction related employment

## **1. Construction Impacts**

Workers, including members of Local 405, and nearby residents will be exposed to these impacts for the entire construction phase of the project. The EIR should analyze measures to minimize construction impacts, including the impacts of construction worker commutes. In particular, the EIR should analyze the impacts of whether or not the Project applicant and implements local employment preferences for construction workers (especially the use of local hiring halls) that will greatly reduce vehicle emissions from worker commutes to and from the Project site.

## **2. Economic Impacts of the Project's Construction Employment.**

Since the Project will undoubtedly have significant, unmitigated environmental impacts, a statement of overriding considerations will be required (14 Cal.Code Regs. §15093(b)). The agency must make "a fully informed and publicly disclosed" decision that "specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project." (14 Cal.Code Regs. §15043(b)) Key among the findings that the lead agency must make is that:

“Specific economic, legal, social, technological, or other considerations, including the provision of **employment opportunities for highly trained workers**, make infeasible the mitigation measures or alternatives identified in the environmental impact report... [and that those] benefits of the project outweigh the significant effects on the environment.”

- Pub. Res. Code §21081(a)(3), (b)), emphasis added

The EIR must analyze the likelihood that the Project will provide “employment opportunities for highly trained workers.” Many projects in San José and surrounding communities have been constructed with lower-wage, out-of-area workers, while failing to offer meaningful training opportunities for the region’s future construction workforce. Further, a significant portion of the City’s construction workforce commutes to San Francisco and other Bay Area communities.

The EIR and/or any Statement of Overriding Considerations must analyze the employment impacts, and compare the economic impacts of the Project with and without a local hiring preference, commitment to utilization of local apprentices, or other mechanism to increase the likelihood of local employment and training for skilled craft workers. Also, the EIR and/or any Statement of Overriding Considerations must set forth the assumptions being used for the underlying hourly-wage assumptions. In particular, does the analysis assume that workers will be paid prevailing wages, and if so, on what facts is that assumption based?

Finally, if the applicant does not impose local-hiring preferences on its contractors, what will be the impact on the jobs-housing balance for the area? In particular, will there be impacts on overcrowding and blight conditions and on public services from an increase of low-wage workers in lower-cost residential neighborhoods in San José, Santa Clara County, and throughout the region?

**The City of San José Should Bar Issuance of Project Approvals Unless the Development adheres to Standards Implementing Viable Apprenticeship Programs, Health Care, and Local Hire**

The Project will undoubtedly have significant and unavoidable economic impacts. In that case, a Statement of Overriding Consideration will be required. To address the potential impacts outlined above, the Carpenters propose that all projects be subject to prequalification standards that include apprenticeship and local hire. The City should require development proponents, their construction managers and general contractors meet the following requirements before the City proceeds with the entitlement process (including but not limited to a potential development agreement):

**Apprenticeship:**

For every apprenticeable craft on the project, each general contractor and each subcontractor will participate in a Joint Apprenticeship Program Approved by the State of California, Division of Apprenticeship Standards **OR** in an apprenticeship program approved by the State of California Division of Apprenticeship Standards that has a graduation rate of 50% or higher and has graduated at least thirty (30) apprentices each consecutive year for the five (5)



years immediately preceding submission of the pre-qualification documents. Construction contractors without construction craft employees shall show a contractual obligation that its subcontractors so comply.

#### Local Hire Policy:

Contractors must provide documentation that contractors will hire a minimum of twenty-five percent (25%) of staff for any job classification with more than four (4) employees employed whose primary residence, which is not a post office box, has been within the Counties of Santa Clara or San Mateo within 180 days of the expected date of issuance of the Notice to Proceed for the project.

While there has been a remarkable economic expansion in San José since 2010, rising inequality and displacement adds to the City's affordability crisis and threatens to undermine the region's strong economy. The San José General Plan calls for a greenhouse gas reduction program and sustainable development, as well as improvement to the City's jobs/housing balance to encourage office and residential growth to occur in tandem as well as efforts to minimize vehicle trips. Policies that require the utilization of apprentices and a local construction workforce, in tandem with programs currently operational by Local 405 outlined below, will help right that imbalance and ensure that this project helps the City meet the goals of the San José General Plan.

Local 405 has implemented many programs that will enable the City to meet the General Plan goals. These programs include a robust Joint Apprenticeship Training Committee, vigorous utilization of apprentices in San José, healthcare coverage for all members and their families, and innovation within the construction industry.

Joint Apprenticeship Training Committees (JATC's), such as the Carpenters Training Committee for Northern California (CTCNC), are a proven method of career training built around a strong partnership between employers, training programs and the government. This tripartite system is financially beneficial not only for the apprentice, but is a major benefit for the employer and the overall economy of San José. The CTCNC monitors current market conditions and adjusts the workflow of apprentices to meet the needs of the community, heading off any shortage of skilled workers. History has demonstrated that strong utilization of apprentices throughout the private sector helped California builders produce millions of units of housing.

CTCNC recruitment strategies include robust diversity and inclusionary outreach programs, such as pre-apprenticeship, with proven results in representative workplaces and strong local economies. It is imperative that our underserved populations have supportive and effective pathways to viable construction careers, while ensuring that employers are able to find and develop the best and brightest talent needed to thrive in a competitive economy.

Apprentices participating in the CTCNC receive the benefits of Union membership, including health insurance. Employer-paid health insurance plans for our members and their families provides preventative services to stay healthy and prevent serious illness. Timely care reduces the fiscal burden for our members and their families, and significantly reduces the utilization of safety-net programs administered by San José and Santa Clara County.

Embracing new technologies and delivery systems will have a significant impact on the construction industry, particularly the residential sector. Increasing housing delivery methods reduces project durations and provides San José residents housing sooner. Local 405 is at the forefront of ensuring that new construction technologies deliver those benefits while also creating work opportunities for those already in the trades as well as those looking to begin a construction career. These technologies could help the City meet its jobs/housing linkage goals within the San José General Plan.

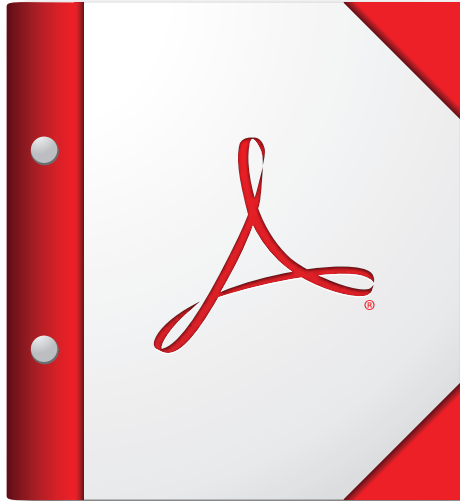
Local 405 urges the City of San José to adopt the Mandatory local hire and apprenticeship requirements proposed. Mandatory local hire and apprenticeship requirement would help the City use the 0 Seely Avenue project to meet the goals of the San José General Plan. A local hire policy is a critical part of sustainable building and development, while also minimizing vehicle trips and reducing greenhouse gas emissions. Apprenticeship utilization will ensure an adequate skilled workforce to meet the housing goals of the General Plan.

Carpenters Local 405 looks forward to working with the City and its staff as you consider the project and prepare the Draft Environmental Impact Report. Please contact me if you have any questions or concerns or need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Samuel Munoz". The signature is written in black ink and is positioned above the printed name and title.

Samuel Munoz  
Senior Field Representative



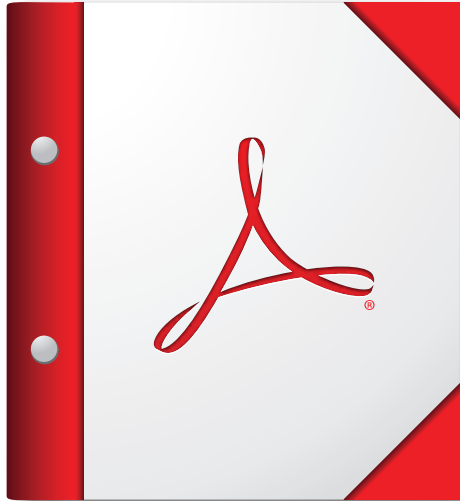
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## Leianne Humble

---

**From:** Hill, Shannon <Shannon.Hill@sanjoseca.gov>  
**Sent:** Tuesday, March 22, 2022 11:16 AM  
**To:** Robyn Simpson  
**Cc:** Leianne Humble; Le, Thai-Chau  
**Subject:** FW: Seely Ave New Development (NOP Comments)

Hi Robyn,

Please refer to the comments in the email below on the scope of the EIR, in response to the NOP. In addition, I provided the following explanation about issues to be discussed in the EIR:

*"I have highlighted topics in your email below that will be included in the California Environmental Quality Act (CEQA) compliance analysis. Other issues are related to design and will be reviewed by the development review project manager (Alec Atienza) and other City Departments (e.g., Parks Recreation and Neighborhood Services Department for sufficiency of the size of the proposed park):*

- *Analysis of the proposed projects compatibility with surrounding development will be discussed in the Aesthetics section of the EIR. However, Alec will review the proposed heights to determine consistency with the City's Municipal Code and Envision San Jose 2040 General Plan as part of the development review process as well.*
- *Analysis of transportation issues in compliance with CEQA requirements the is a required component of the EIR, which will be covered in the Transportation section.*
- *Potential impacts related to flooding will be discussed in the Hydrology and Water Quality section of the EIR.*
- *Potential impacts related to wildfire will be discussed in the Wildfire section of the EIR."*

Thank you,

Shannon Hill  
Planner, Environmental Review  
Planning, Building & Code Enforcement  
City of San José | 200 East Santa Clara Street  
[Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov) | (408) 535 - 7872

---

**From:** Ying-Ying Chang <yyc29616@yahoo.com>  
**Sent:** Friday, March 18, 2022 8:21 PM  
**To:** Atienza, Manuel <Alec.Atienza@sanjoseca.gov>; Hill, Shannon <Shannon.Hill@sanjoseca.gov>  
**Cc:** Jean Marlowe <jean@jeanmarlowe.com>; District4 <District4@sanjoseca.gov>; Jimenez, Hugo <Hugo.Jimenez@sanjoseca.gov>  
**Subject:** Seely Ave New Development

You don't often get email from [yyc29616@yahoo.com](mailto:yyc29616@yahoo.com). [Learn why this is important](#)

[External Email]

Hi, Alec Atienza,

I have participated in the March 7 Zoom Meeting and saw the new housing project plan at Seely Ave. My husband and I are residents at nearby Parkside Townhome for 19 years. As a responsible citizen, my comments are following:

- 1) The proposed three apartment buildings facing Seely will be seven stories high. This is too high for this area. The nearby Epic Apartment building is only 5 stories high.
- 2) The new plan will bring thousand residents into this community, the existing road traffic has been very busy already. Do you have a traffic plan to handle the increase in population?
- 3) The park is only 2.5 acres, too small for such upcoming huge population. We need a park at least double the size with playground for children in the new development.
- 4) The building's parking will be underground, but as we know that the water table in this area was high. During the wet season, Coyote Creek swells as a big river. One year, Coyote Creek in front of our home was almost flood the area. Is the levee along the Coyote Creek sufficient against the flood? Sounds a joke at this year of severe drought, but world climate changes, you never know. Prevention is the better policy.
- 5) Homeless people station at the woods across the Coyote Creek. With the new project, I envision that will attract more homeless in this area. Last summer, we had two wild fires in the woods across Coyote Creek presumably set by homeless people. To solve the homeless problem is more urgent than before.

Thank you for listening.

Sincerely,  
Ying-Ying Chang  
Resident at Parkside

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# County of Santa Clara

Roads and Airports Department

101 Skyport Drive  
San Jose, CA 95110-1302  
(408) 573-2460 FAX 441-0276



**March 25, 2022**

## **Shannon Hill**

Planner, Environmental Review  
Planning, Building & Code Enforcement  
City of San José | 200 East Santa Clara Street  
Shannon.Hill@sanjoseca.gov | (408) 535-7872

### **SUBJECT: Notice of Preparation for the 0 Seely Avenue Mixed-Use Project Environmental Impact Report**

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Notice of Preparation for the 0 Seely Avenue Mixed-Use Project Environmental Impact Report. We submit the following comments related to:

#### Traffic Study and Significant and Unavoidable Impacts

- a) We understand that the EIR will evaluate the project's effects on transportation according to Senate Bill 743 and the City's Transportation Analysis Policy (Council Policy 5-1); that Level of Service is no longer a consideration for CEQA mitigation. However due to the signal operations that involve progressive signal timing needed to move expressway traffic flows, and the operational and safety impacts associated with introducing a new signal within close proximity of the existing signals, we believe that a Local Transportation Analysis (LTA) is necessary.
- b) The VMT analysis needs to demonstrate how existing or planned transit routes will serve the project to reduce miles travelled.
- c) The County provided comments to the City in December 2021 regarding the preparation of a local traffic impact analysis (TIA) and our objection to the proposed signalization of Seely Ave and Montague Expressway because the proposed signal location is too close to the existing signals at Trimble Rd and McCarthy Blvd. Since then, the County has not seen a revised TIA to determine whether or not our comments have been addressed.
- d) The TIA in the DEIR needs to include a Cumulative Condition Analysis that covers, at a minimum, the long-term Build Scenario inclusive of planned improvements at Trimble Rd, McCarthy Blvd, and widening over I-880 to demonstrate the significance of operational and safety impacts due to introducing a new traffic signal and its proximity to existing intersections.
- e) The introduction of a new signal at Seely requires Board Of Supervisors action as it is less than 0.5 miles from the nearest signal. Having a signal at Seely will severely impact the design of the planned flyover at Trimble. The project needs to demonstrate that the flyover ramps will not be impacted by this signal regarding proper ramp design, intersection visibility, left turn storage capacity, and traffic spill over onto the expressway.
- f) Montague Expressway is a regional facility, and its impact can have significant issues to other parts of the city or neighboring cities. Therefore, along with the signal warrant study, the City should also study the corridor impact with the introduction of a signal at Seely.





- g) The TIA needs to describe how the proposed signal will align with Kruse Dr. Please submit additional plan sets as needed for County review.
- h) The TIA should study all signalized intersections on Montague Expressway from US 101 to I-680 as study intersections.
- i) Evaluation of Vehicle Queuing needs to include the I-880 on-ramps.
- j) Project Trip Generation Estimates need to include Recreational Land Use for the proposed public park.
- k) Should this project trigger any significant and unavoidable impacts that cannot be met with mitigation, the County would intend to utilize the mitigational contributions toward the cost of the planned improvements of Montague Expressway as identified in the 2006 Settlement Agreement.

#### Pedestrian and Bike Circulation

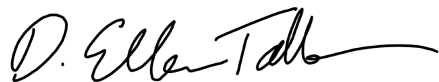
- a) The residential and mixed uses correspond to anticipated higher pedestrian circulation demand along Montague Expressway. Due to the higher volumes and higher traffic speeds of Montague Expressway, the sidewalks should be consistent and free of gaps in the network. Therefore, sidewalk frontage improvement would be required upon development application for an encroachment permit.
- b) Development plan submittals to the County need to indicate how the project will improve the existing trailhead to the Coyote Creek trail close to Montague Expressway. The existing trailhead access should be maintained but relocated away from the expressway. The development and City should jointly work to improve bicycle and pedestrian access to the Coyote Creek trailhead and creek through public-private easements or other means of public access.

#### Maintenance

- a) Maintenance of non-standard improvements in the County's right of way will be subject to a maintenance indemnification agreement between the encroachment permit applicant and the County unless otherwise coordinated between the City and County.

Thank you again for your continued outreach and coordination with the County. If you have any questions or concerns about these comments, please feel free to contact me at [ellen.talbo@rda.sccgov.org](mailto:ellen.talbo@rda.sccgov.org).

Thank you,



Ellen Talbo  
County Transportation Planner

# Memorandum

**TO:** Shannon Hill  
PBCE

**FROM:** Ricardo Rubio-Benitez  
Municipal Water System

**SUBJECT:** Muni Water Comments on **DATE:** March 22, 2022  
**NOP of the EIR for the**  
**0 SEELY AVE Mixed-Use**  
**Project**

San Jose Municipal Water System has reviewed a copy of a **Notice of Preparation of a Draft Environmental Impact Report for the 0 Seely Avenue Mixed-Use Project**. The project includes the development of 1,470 residential units, approximately 52,000 square-feet of retail space, and a public park on an approximately 22-acre site located at 0 Seely Avenue.

Please include the following comments on behalf of ESD/Municipal Water System:

- Page 4 – **Potential Environmental Impacts of the Project – 16. Utilities**. Revise the first sentence to *“The EIR will evaluate the ability of existing and proposed utilities to serve the proposed project, including the provision of water, construction of a public groundwater well, wastewater treatment, and solid waste disposal.”*

Thank you for the opportunity to comment.

*Ricardo Rubio-Benitez*  
Digitally signed by Ricardo Rubio-Benitez  
DN: cn=,  
E=ricardo.rubio-benitez@sanjoseca.gov,  
O=City of San Jose, OU=San Jose Municipal  
Water, OU=Ricardo Rubio-Benitez  
Date: 2022.03.22 08:17:33-0700

Ricardo Rubio-Benitez  
Associate Engineer  
ESD/Municipal Water System



**PRESERVATION ACTION  
COUNCIL OF SAN JOSE**  
History Park  
1650 Senter Road  
San Jose, CA 95112  
Phone: 408-998-8105  
[www.preservation.org](http://www.preservation.org)

March 25, 2022

Shannon Hill  
Environmental Project Manager  
City of San José Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street, 3rd Floor Tower  
San José CA 95113-1905

VIA EMAIL ([Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov))

RE: 0 SEELY AVENUE MIXED-USE PROJECT (PDC21-035/PD22-022/ER21-284)  
Draft EIR SCOPING COMMENTS

Dear Ms. Hill,

The Preservation Action Council of San Jose (PAC\* SJ) appreciates the opportunity to provide Draft EIR scoping comments for the proposed Seely Avenue Mixed-Use Project. As currently described, the developer proposes to build on this 22-acre site, 1,470 residential units and approximately 52,000 square feet of retail space, vehicle parking totaling 1897 spaces for the residences, and 253 spaces for its retail space occupants and their customers, plus a 2.5-acre park. To make way for this project, the applicant (The Hanover Company), proposes to remove nearly 600 fruit and shade trees, two farmhouses, a barn structure and other orchard related structures that are undoubtedly of historic significance across many periods of the Valley's development.

As a part of the EIR's analysis of Cultural and Tribal Cultural Resources, PAC\* SJ requests that a comprehensive historic report be produced that provides a detailed analysis of the contents of all the structures on the parcel as individual elements, but also as an integrated whole. PAC\* SJ requests serious consideration as to whether the structures are individually eligible for listing on the NRHP, CRHR or as a City Landmark and/or as a whole, and under what criteria.

**PAC\* SJ BOARD**

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Given that this site location and its elements are very much representative of Santa Clara County's long period of agricultural significance, and that it is one of the very last large remaining parcels zoned for agriculture in the County's once sprawling landscape of fruit orchards and supporting industries, PAC\* SJ is interested in an analysis of the cumulative impact of the loss of these buildings, this farm and as an example of our history in North San Jose, and across the County. We are keenly interested in a reporting of significant events, along with a complete telling of the people who owned and/or worked on this orchard over time. In addition to information on persons of historic prominence, we are also interested in those representing chronically underrepresented people groups from the tribal period forward, including the Turn of the Century, the Great Depression, World War II/internment period and subsequent eras when the Valley of the Heart's Delight transitioned to the commercial and residential period of what is currently known as Silicon Valley.

As a part of the analysis of methods for reducing adverse impacts through the identification of project alternatives, PAC\* SJ is looking for multiple alternative plans for incorporating and activating as many of the structures as possible within the new development insitu (same location/orientation) or via relocation. An example of project alternatives that includes relocation of elements of the parcel, PAC\* SJ requests at least one plan that incorporates all of the current elements within the 2.5-acres of the park/flex space currently forecast to be located along the Coyote Creek Trail. In all cases, PAC\* SJ is interested in an analysis of how the project interacts with the Coyote River area for any design which utilizes the existing buildings as a transition zone from the proposed mixed-use project to the Coyote River corridor. In all cases, PAC\* SJ is interested in alternatives that include adaptive reuse options.

Finally, as a worst-case alternative where none of the existing structures are proposed to be accommodated within this 22-acre project, PAC\* SJ is interested in possible mitigation measures that pay substantial tribute to the significance of the multiple eras represented by this orchard/farm.

Sincerely,

J. Michael Sodergren  
Vice President & Advocacy Committee Chair  
Preservation Action Council of San Jose (PAC\* SJ)

[mike@preservation.org](mailto:mike@preservation.org)  
408-930-2561

## Robyn Simpson

---

**From:** Hill, Shannon <Shannon.Hill@sanjoseca.gov>  
**Sent:** Tuesday, April 5, 2022 10:08 AM  
**To:** Robyn Simpson  
**Cc:** Leianne Humble  
**Subject:** FW: Seely Ave Mixed-Use (PDC21-035): NOP Comments - Jean Marlowe (River Oaks Neighborhood Association)

Please refer to the comments below.

Thanks,

Shannon Hill  
Planner, Environmental Review  
Planning, Building & Code Enforcement  
City of San José | 200 East Santa Clara Street  
[Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov) | (408) 535 - 7872

---

**From:** Jean Marlowe <jean@jeanmarlowe.com>  
**Sent:** Tuesday, April 5, 2022 8:50 AM  
**To:** Atienza, Manuel <Alec.Atienza@sanjoseca.gov>; Hill, Shannon <Shannon.Hill@sanjoseca.gov>  
**Cc:** Jean Marlowe <jean@jeanmarlowe.com>  
**Subject:** 0 Seely Ave Mixed-Use Project

[External Email]

Hi Shannon,

I feel like this project is on steroids and is overly ambitious for Seely. I accept that there needs to be high density, but it must be live-able. What is being proposed on Seely is not in keeping with the neighborhood, nor is it wise in regards to traffic or general livability. These are my comments for the project.

### **Noise/Vibration:**

ROP is a short road that is about 1.5 miles from end to end with over 4000 units starting from First Street to the end of Seely with a new school at Zanker and ROP. About 6 years ago when one of the new apartment complex called Verona was being built there were a lot of dump trucks going from Zanker to the site on ROP carting loads of dirt away back down ROP to Zanker. These double bottom hauling trucks were going up and down ROP all day for days on end on both sides of the road. The pounding was so intense that the lights from the street lamps along ROP were crashing down on the road and the weight of the heavy dirt haulers left indentation marks from the tires in the road.

I know this topic has to do with the site at Seely, but what happens when Montague is backed up? What roads do these haulers take then? This project impacts the entire neighborhood.

### **Transportation/Circulation:**

When addressing the EIR, I want the various entities be aware that if you are coming from 880 and enter Seely from Montague Expressway, you cannot exit and go back the way you came. You have either travel through residential, 2-lane roads to get back to Montague, or re-enter Montague and go up to the next light to turn around to get back to 880.

Seely does not connect to Trimble unless you go through Cadence and trespass through the business park. Which will probably happen because the lights on Montague are long. Also, Seely and River Oaks Parkway are 2-lane roads, as are all the roads in the neighborhood.

The circulation system as it stands when Seely is built out will inundate ROP, Research, Innovation and Village Center Drive Dr. (a Pvt RD). Traffic will be the biggest impact and burden coming from this site.

### **Air Quality**

My building backs onto ROP. I have lived here for 27 years. A lot of the buildings here in Villagio (and the other communities) back up on to ROP. I can stand out on my deck and see ROP. We have many apartments and homeowner units that sits along ROP as well. Only a sidewalk separates the units from the road. A lot of the units have their front doors and balconies open onto ROP. The dust and dirt is a real problem today when it wasn't a mere 10 years ago. A lot of people are complaining that they are having respiratory issues in the area. I have to keep my windows closed at all times because of the black dust that settles on my floors and coffee table. I believe it comes from tire dust from the cars. In the past we only had 900 market rate residential units on ROP and it was very quiet. Now we have over 4000 units along ROP and there are plans for more.

Lifetime Cumulative Exposure to rubber dust and fumes are associated with increased mortality from all cancers (<https://pubmed.ncbi.nlm.nih.gov/30772818/>)

While tailpipe emissions are tightly regulated, PM from tire wear is not. (<https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/preliminary-investigations/brake-wear-emissions-pi-a11y.pdf>)

If you allow more cars on ROP it will become a health hazard for children and adults with breathing issues if it has not already. With a new school just down the road, on an already busy street, it feels like the city is endangering the children by encouraging more traffic in the area. Remember, this place needs to be livable.

I know that the City thinks that if they create places where there are not enough parking spots or traffic is a pain, people will take public transportation, but the reality is that people will not visit retail if they cannot park their car near by to put their loot. And this neighborhood has limited access to public transportation which is less time efficient. As a result, everyone drives.

Bottom line, if Seely was a road that was easy to navigate, and would not end up funneling more traffic onto a residential 2-lane roads and private roads, most of these issues would not be a problem. Air Quality is still a problem. The simplest way to avoid most issues is for this project to not allow the retail space access to Seely. It should enter and exit via Montague only. Or there should far less retail. Allowing this amount of retail and the associated traffic will be a huge detriment to not only the neighborhood but the whole area. Business offices would be wiser for the area, as it was zoned, and have far less impact.

In addition to these issues, I would like to note that

1. The apartments are too high and do not fit in with the rest of the neighborhood. They should not be any higher than Epic Apartments next door to them.
2. The Affordable housing number is too low. It should be 20% and there should not be any in lieu fees for this. There were supposed to be 1600 built in the first phase and they were kicked down the road. Well the road is here. We have too many "luxury apartments" in the neighborhood and little to no affordable housing and NO Senior housing. The city should be ashamed to encourage the building of un-affordable housing.
3. What little Affordable housing there is, should not be isolated and put in the worst corner of the property, i.e., where all the traffic and noise is. It should be integrated and spread out over the whole project. The city should not allow these units to be singled out.
4. The property is too close to the riparian corridor. There isn't a 100' set back. This project isn't just residential, it is retail that will bring in more traffic and cause harm to the wildlife. When I first moved here, we actually saw

quite a bit of wildlife, now it's just crows and squirrels. There needs to be a real study to see how this impacts the wildlife.

5. And where is the fire truck road access behind the property, like all the other projects on ROP have? There is another hidden factor and that is the homeless population living along Coyote Creek. We had 5 alarm fire last year started by a homeless person. A fire anywhere near a project this size is going to be a catastrophe if there are no fire truck access roads.
6. The park is too small for the amount of residential units. It needs be 5 acres+ for this density. Here are the current parks in the neighborhood:
  - Riverview Park 5 acre for 1508 units on 32.8 acres
  - River Oaks park 5 acres for 1900 units on 38.25 acres
  - Vista Montaña Park 6 acres for 998 units on 12.1 acre
  - For comparison: the proposed Seely project 2.5 acres for 1470 units on 22 acres.

It doesn't add up. For a livable neighborhood, we need parks.

In short, Seely is a problematic road and to invite 52,000 sq ft of retail on this corner is to invite problems. It will cause traffic issues that will radiate out not only on Montague, but it will affect the neighborhood at large, impact existing businesses, and increase pollution/air quality issues.

Sincerely,

Jean Marlowe  
President of the River Oaks Neighborhood Association

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March 25, 2022

City of San José Department of Planning, Building, and Code Enforcement  
200 E. Santa Clara St., 3<sup>rd</sup> Floor  
San José, CA 95113

Attn: Shannon Hill, Environmental Project Manager  
By Email: [shannon.hill@sanjoseca.gov](mailto:shannon.hill@sanjoseca.gov)

Dear Shannon,

VTA appreciates the opportunity to comment on the Notice of Preparation (NOP) for the 0 Seely Avenue Mixed-Use Project. VTA has reviewed the document and has the following comments:

#### Project Description

The project description in the NOP states that the project includes intersection improvements at Seely Avenue and Montague Expressway that will “better accommodate project-generated traffic.” The project description should be updated to reflect that a new signal will be installed at Seely Avenue and Montague Expressway as shown in the Conceptual Site Plan on Page 9 of the NOP.

#### Pedestrian Access to be Studied in EIR

As mentioned in both VTA’s Traffic Impact Analysis letter dated October 2021, VTA again recommends the project install a sidewalk/trail from the cul-de-sac at the south end of the project site that connects to Montague Expressway. In addition, VTA recommends the project close the sidewalk gap on the north side of Montague Expressway near the Coyote Creek Trail. The development should widen the sidewalk with a landscape strip and pedestrian scale lighting. As the sidewalk along Montague Expressway will be the primary access point to the Coyote Creek Trail and to VTA bus stops along Montague Expressway, pedestrians and bicycles should be considered.

VTA appreciates the curb ramps and crosswalks shown in the Conceptual Site Plan. High-visibility crosswalks should be installed at every crossing to connect curb ramps.

We anticipate that the new signal at Seely Avenue and Montague Expressway will include improvements such as leading pedestrian intervals, high visibility crosswalks, reduced curb radii, and medians.

#### Bicycle Accommodations

The project borders the unpaved portion of Coyote Creek Trail. VTA recommends this project contributes funding to upgrade the trail to Class I paved trail, create a trailhead on the north side of Montague Expressway, and perhaps create trailhead/upgrade access point on the south side of Montague Expressway.

Coyote Creek north of Montague Expressway is an Across Barrier Connection. VTA recommends that



this project could contribute to a bridge over the creek as an off-setting measure should impacts be identified to the CMP network.

Current access from River Oaks Parkway to the Coyote Creek Trail does not meet Class I bike path standards as it has narrow pedestrian path/public access way through residential development to the north, with signs requiring bicyclists to dismount. This development should create access to the Coyote Creek Trail for bicyclists, like the access from Iris Park.

VTA appreciates what appears to be speed humps shown along the major roadways in the Conceptual Site Plan. VTA recommends these include slots to allow for bicyclists to more easily navigate and not be jarred when traveling over. Slotted speed humps are often appreciated by emergency services as well since they are typically spaced to be as wide as an emergency vehicle tires and therefore do not need to slow down as much during an emergency.

#### Site Design

VTA recommends the layout of the site be adjusted to better align the roadways to not have offset intersections. These are present at the intersections of C Street and B Street/Private Drive, at A Street and D Street/C Street, and A Street and E Street/F Street. Caltrans does not recommend offset intersections as they have, "issues related to sightlines at one end of the crosswalk and conflicts between turning motor vehicles and pedestrians and bicyclists."<sup>1</sup> If crosswalks are not marked, pedestrians may be confused to which legal crossing they should use, causing more conflict to vulnerable users in the area. Squaring up the intersections could alleviate these issues.

VTA recommends all curb radii be reduced for all intersections to shorten crossing distances for pedestrians and to slow drivers down as they make turns.

#### Land Use

Overall, VTA is supportive of the proposed density and mixed-use aspect of the project. VTA would like more information on the proposed share of affordable units, and whether that will be in excess of San José's inclusionary requirement.

#### Relationship of Project to the North San José Area Development Policy

VTA notes that the 0 Seely Avenue Mixed-Use Project falls within the boundaries of the North San José Area Development Policy which is currently in place as of March 2022. VTA is aware that the City is in the process of "retiring" the Policy and associated Traffic Impact Fee (TIF) for future development projects, and that this policy change may be completed before the release of the Draft Environmental Impact Report for the Seely Avenue Project. VTA also understands that following the City Council approval of the proposed policy changes, individual development projects in North San José will be evaluated on a project-by-project basis for CEQA and the City's Local Transportation Analysis purposes per Council Transportation Policy 5-1. VTA notes that this analysis will need to address the requirements

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<sup>1</sup> [https://nacto.org/docs/usdg/complete\\_intersections\\_caltrans.pdf](https://nacto.org/docs/usdg/complete_intersections_caltrans.pdf)

of the Congestion Management Program (CMP) for Santa Clara County, administered by VTA.

#### Transportation Analysis

For the CEQA transportation section, it is VTA's understanding that this project will not be eligible to be "screened out" of Vehicle Miles Traveled (VMT) analysis because it falls outside of the area of transit proximity defined in Council Transportation Policy 5-1. Based on the VMT Per Capital map on the City's website ([www.sanjoseca.gov/vmt](http://www.sanjoseca.gov/vmt)) it appears that this project falls in the range that is above the City's residential VMT average but is still mitigatable. However, this will likely require substantial VMT reduction measures which may be more challenging due to the site's considerable distance from transit.

For the CMP transportation analysis, the City should refer to the 2014 VTA TIA Guidelines regarding CMP roadway analysis, as well as transit, bicycle, and pedestrian analysis (including transit travel time analysis). The CMP roadway analysis should consider the following CMP intersections:

- N First Street & Montague Expressway
- Zanker Road & Montague Expressway
- E. Trimble Road & Zanker Road
- E. Trimble Road & Montague Expressway
- McCarthy Boulevard/ O'Toole Avenue & Montague Expressway
- S. Main Street/ Old Oakland Road & Montague Expressway

Assuming that the City Council has approved the "retirement" of the North San José Area Development Policy before this project's transportation analysis is conducted, the CMP analysis should reflect the latest status of the North San José Multimodal Improvement Plan (previously "Deficiency Plan") when it is conducted. For instance, if the City and VTA are moving in the direction of scaling back the MIP to match just the North San José Phase 1 development levels, the CMP analysis will likely need to treat the transportation improvements associated with Phase 1 as part of the Background conditions, and then determine any CMP impacts and mitigation measures based on the Background Plus Project scenario. VTA encourages City staff to reach out to VTA staff to discuss the parameters of the CMP analysis before it is conducted.

For any impacts identified through the CEQA or Local/CMP analysis, VTA encourages the City and applicant to focus on transit, pedestrian and bicycle improvements, transportation demand management programs, parking management, and offsetting roadway improvements (such as operational strategies) rather than physical capacity increases.

If the CMP analysis finds impacts to regional transportation facilities such as freeway segments, VTA encourages the City and applicant to identify contributions to regional improvements in Valley Transportation Plan 2040 such as VTA light rail improvements, I-880 Express Lanes (Alameda County to US 101), or I-880/Montague Expressway Interchange improvements.

Thank you again for the opportunity to review this project. If you have any questions, please do not hesitate to contact me at 408-321-5830 or [lola.torney@vta.org](mailto:lola.torney@vta.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Lola Torney', written in a cursive style.

Lola Torney  
Transportation Planner III

SJ1809