

## California Department of Transportation

DISTRICT 4  
OFFICE OF REGIONAL AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660  
[www.dot.ca.gov](http://www.dot.ca.gov)



September 6, 2023

SCH #: 2023060571  
GTS #: 04-SM-2023-00531  
GTS ID: 30144  
Co/Rt/Pm: SM/1/R47.1

Michael Von Lonkhuysen, Planning Manager  
City of Daly City  
333 90th Street  
Daly City, CA 94015

### **Re: Serramonte Del Rey Campus Redevelopment Project– Draft Environmental Impact Report (DEIR)**

Dear Michael Von Lonkhuysen:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Serramonte Del Rey Campus Redevelopment Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system.

The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities. The following comments are based on our review of the July 2023 DEIR.

#### **Project Understanding**

This project proposes to redevelop the site of the Jefferson Union High School District office buildings into a mix use development. It would have up to 1,235 units of affordable housing and market-rate rental housing with 14,000 square feet of retail and commercial use space. The project site is located across the on- and off-ramps at Serramonte Blvd.

#### **Travel Demand Analysis**

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide ([link](#)).

The project VMT analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research’s (OPR) Technical Advisory. Per the DEIR, this project is found to have less than significant impacts with mitigation. Caltrans commends the Lead Agency in developing the Transportation Demand Management (TDM) Plan to reduce employee and guest VMT, therefore working towards meeting the State’s goal of a 15-percent reduction. The proposed measures identified in the TDM plan should be documented with annual monitoring reports to demonstrate effectiveness.

Please reach out to Caltrans for further information about TDM measures and a toolbox for implementing these measures in land use projects. Additionally, refer to the California Air Pollution Control Officers Association (CAPCOA) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity ([link](#)).

**State Projects within Vicinity**

The following Caltrans’ projects are planned and included in the State Highway Operation and Protection Program (SHOPP), the State’s “fix-it-first” program that funds the repair, safety improvements, some highway operational improvements, and preservation of the State Highway System (SHS).

County	Route	Post Mile(s)	Target Program	EA	Description	Project Cost (\$K)	Construction Date
SM	1/280	SM R44/R48	2020 SHOPP	0Q440	Install Best Management Practices (Stormwater and Trash Devices) along SM-1 and SM-280 within Significant Trash Generation Area (STGA). This is to meet Caltrans D4 obligations under the Trash Cease and Desist Order (CDO).	7575	2022/23
SM	1	SM 29.034/46.716	Middle Mile Broadband Network	1Y960	Install broadband conduit and fiber optic as part of the Broadband Middle Mile Network.	8540	2024/25

**Transportation Impact Fees**

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements necessitated by the proposed project; viable funding sources such as development and/or transportation impact fees should also be identified. We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

### **Construction-Related Impacts**

Potential impacts to the State Right-of-Way (ROW) from project-related temporary access points should be analyzed. Mitigation for significant impacts due to construction and noise should be identified. Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, please visit Caltrans Transportation Permits ([link](#)).

Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the STN.

### **Lead Agency**

As the Lead Agency, the City of Daly City is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

### **Equitable Access**

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

### **Encroachment Permit**

In Section 3.17, two planned improvements are mentioned involving the intersection of State Route (SR)-1/ Clarinada and of SR-1/ Serramonte Boulevard. Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' ROW requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans' ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to [D4Permits@dot.ca.gov](mailto:D4Permits@dot.ca.gov).

To obtain information about the most current encroachment permit process and to download the permit application, please visit Caltrans Encroachment Permits ([link](#)).

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Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Marley Mathews, Transportation Planner, via [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov).

For future early coordination opportunities or project referrals, please contact [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Laurel Sears".

LAUREL SEARS  
Acting District Branch Chief  
Local Development Review

c: State Clearinghouse





San Francisco International Airport

August 10, 2023

Michael Van Lonkhuysen  
 City of Daly City  
 Economic and Community Development Department  
 333 90th Street  
 Daly City, California 94015

**TRANSMITTAL VIA EMAIL ONLY**  
 mvanlonkhuysen@dalycity.org

***Subject: Comments on Draft Environmental Impact Report: Serramonte Del Rey Campus  
 Redevelopment Project, Daly City, California***

Thank you for notifying the San Francisco International Airport (SFO or the Airport) of the availability of the Draft Environmental Impact Report (DEIR) for the Serramonte Del Rey Campus Redevelopment Project (Proposed Project), located in the City of Daly City (City). We appreciate this opportunity to review and provide comments on the DEIR.

As described in the DEIR, the Proposed Project is located on the south side of Serramonte Boulevard between the intersections of Callan Boulevard/Serramonte Boulevard and St. Francis Boulevard/Serramonte Boulevard on an approximately 22-acre site (Assessor's Parcel Number 091-211-230). The site is occupied by the following land uses: a 1960s-era building containing nonprofit organizations and offices for the Jefferson Union High School District (JUHSD); some temporary buildings; surface parking; and a construction staging area for the JUHSD faculty and staff housing project.

In 1985, the City approved the Serramonte Del Rey Precise Plan (1985 Precise Plan) for a larger 50-acre area that includes the Proposed Project site. Phase I of the 1985 Precise Plan, which covered the 28-acre area to the south of the Proposed Project site, has been implemented, and Phase II allows for the development of up to 175 residential units and approximately 700,000 square feet of office space on the Proposed Project site.

The Proposed Project consists of a new Serramonte Del Rey Precise Plan (2023 Precise Plan) and a specific development project at the northeast corner of the site. The 2023 Precise Plan would replace Phase II of the 1985 Precise Plan; it would divide the Proposed Project site into six parcels and allow for the development of up to 1,235 residential units, approximately 14,000 square feet of retail space, a 1,400-square-foot childcare facility, and various infrastructure improvements. Allowable building heights under the 2023 Precise Plan would range from 77 feet to 150 feet.

The specific development project, which would be on Parcel B at the northeast corner of the site, consists of demolishing the existing temporary education building and surface parking lot and constructing a seven-story building containing 201 residential units and approximately 8,000 square feet of retail space.

The Proposed Project site is within two Airport Influence Areas (AIAs): Area A – Real Estate Disclosure Area (all of San Mateo County) and Area B – Policy/Project Referral Area (a smaller subarea in the northern part of San Mateo County), as defined by the *Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport* (SFO ALUCP). Within Area A, the real estate disclosure requirements of state law apply (see attachment). A property owner offering a property for sale or lease must disclose the presence of planned or existing airports within two miles of the property. Within Area B, the Board of Directors of the City/County Association of Governments of San Mateo County, acting as the designated Airport Land Use Commission (ALUC), shall review proposed land use policy actions, including

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*Michael Van Lonkhuysen, City of Daly City  
August 10, 2023  
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new general plans, specific plans, zoning ordinances, plan amendments and rezonings, and land development proposals (see attachment). The real estate disclosure requirements in Area A also apply in Area B.

The Proposed Project site is located outside of the 65-decibel Community Noise Equivalent Level (CNEL) contour and all safety compatibility zones and, therefore, the Proposed Project would not appear to be inconsistent with the Noise and Safety Compatibility Policies adopted in the SFO ALUCP.

As described in Exhibit IV-17 of the SFO ALUCP (see attachment), the critical aeronautical surfaces at the Proposed Project location are at an elevation of approximately 800 feet above mean sea level (AMSL) as defined from the origin of the North American Vertical Datum of 1988. The elevation of the Proposed Project site is approximately 485 feet AMSL. The maximum building height proposed under the Precise Plan is 150 feet above ground level (AGL), and the height of the Parcel B development project is 85 feet AGL, measured to the top of the elevator penthouse. Both of these heights would be below the height of the lowest critical aeronautical surfaces (315 feet AGL), and the Proposed Project would not appear to be inconsistent with the Airspace Protection Policies of the SFO ALUCP, subject to the issuance of a Determination of No Hazard from the Federal Aviation Administration (see below) for any proposed structures and determinations from the City/County Association of Governments of San Mateo County as the designated ALUC.

This evaluation does not waive the requirement for the Proposed Project sponsor to undergo Federal Aviation Administration airspace review as described in 14 Code of Federal Regulations Part 77 for both (1) the permanent structures and (2) any equipment taller than the permanent structures required to construct those structures.

The Airport recommends the following revisions (deletions shown in ~~striketrough~~ and new text shown in double underline) on page 102 of the DEIR:

~~San Mateo County~~ Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport

Daly City is within the jurisdiction of the ~~San Francisco Airport (SFO) Land Use Plan component of the San Mateo County~~ Comprehensive Airport Land Use Compatibility Plan for the Environs of San Francisco International Airport (SFO ALUCP), adopted in ~~December 1996 and updated in 2001 November 2012~~. Established in the ~~CLUP-SFO ALUCP~~ are procedures used by the San Mateo City and County Association of Governments (C/CAG) to review land use decisions in the vicinity of San ~~Mateo County airports~~ Francisco International Airport. Airport planning boundaries define where height, noise and safety standards, policies, and criteria are applied to certain proposed land use policy actions.

The Airport recommends the following revisions (deletions shown in ~~striketrough~~ and new text shown in double underline) to the last paragraph on page 104 of the DEIR:

The project site is located within the SFO ~~CLUP-ALUCP~~ Airport Influence Area B, which requires projects to be consistent with the goals and policies of the ~~CLUP-SFO ALUCP~~. The project site is approximately five miles northwest from the runway termination point of the San Francisco International Airport, beyond the outer boundary of safety compatibility zones and outside of the

Michael Van Lonkhuysen, City of Daly City  
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Community Noise Equivalent Level (CNEL) noise contours for the airport, as delineated in the ~~CLUP~~ SFO ALUCP.

The text at the bottom of page 128 of the DEIR includes a cross reference to Section 4.10, Land Use, but Section 4.10 does not exist. Furthermore, the Land Use section of the DEIR does not discuss airport land use compatibility issues. The Airport recommends the following revisions (deletions shown in ~~striketrough~~ and new text shown in double underline) to the text at the bottom of page 128 and the top of page 129 of the DEIR:

Comprehensive Airport Land Use Compatibility Plan for the Environs of ~~the~~ San Francisco International Airport

~~As discussed in more detail in Section 4.10 Land Use,~~ The project site is located within the Airport Influence Area (AIA) of the San Francisco International Airport (SFO). Properties within the AIA may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (e.g., noise, vibration, and odors). The airport/land use compatibility of a proposed development or land use policy action shall be determined by comparing the proposed development or land use policy action with the safety compatibility criteria, noise compatibility criteria, and airspace protection/height limitation criteria in the SFO ALUCP. The site is located outside of the SFO 65 dB CNEL noise contour.

\* \* \*

The Airport appreciates your consideration of these comments. If I can be of assistance, please do not hesitate to contact me at (650) 821-6678 or at nupur.sinha@flysfo.com.

Sincerely,

DocuSigned by:

*Nupur Sinha*

7D552AE6A4CE495...

Nupur Sinha  
Director of Planning and Environmental Affairs  
San Francisco International Airport

Attachment

cc: Audrey Park, SFO  
Chris DiPrima, SFO

## 4.2 Airport Influence Area (AIA)

The AIA for SFO includes two parts: Area A and Area B. Area A is the larger of the two areas and encompasses all of San Mateo County. Area B lies within Area A and includes land exposed to aircraft noise above CNEL 65 dB or lying below critical airspace.

Area A, depicted on **Exhibit IV-1**, includes the entire county, all of which is overflown by aircraft flying to and from SFO at least once per week at altitudes of 10,000 feet or less above mean sea level (MSL). (Appendix L explains the rationale for defining the AIA Area A boundary.)

Area B of the AIA, depicted on **Exhibit IV-2**, is based on a combination of the outer boundaries of the noise compatibility and safety zones, the 14 CFR Part 77 conical surface, and the TERPS approach and One-Engine Inoperative (OEI) departure surfaces.<sup>1</sup> As depicted on Exhibit IV-2, the Area B boundary has been adjusted to follow streets, highways, and corporate boundaries to make it easier to identify and implement. See **Exhibit IV-3** for a close-up view of the northwestern half of Area B and **Exhibit IV-4** for a close-up view of the southeastern half.

The following AIA policies (IP) shall apply to the ALUCP.

### IP-1 AIRPORT INFLUENCE AREA A – REAL ESTATE DISCLOSURE AREA

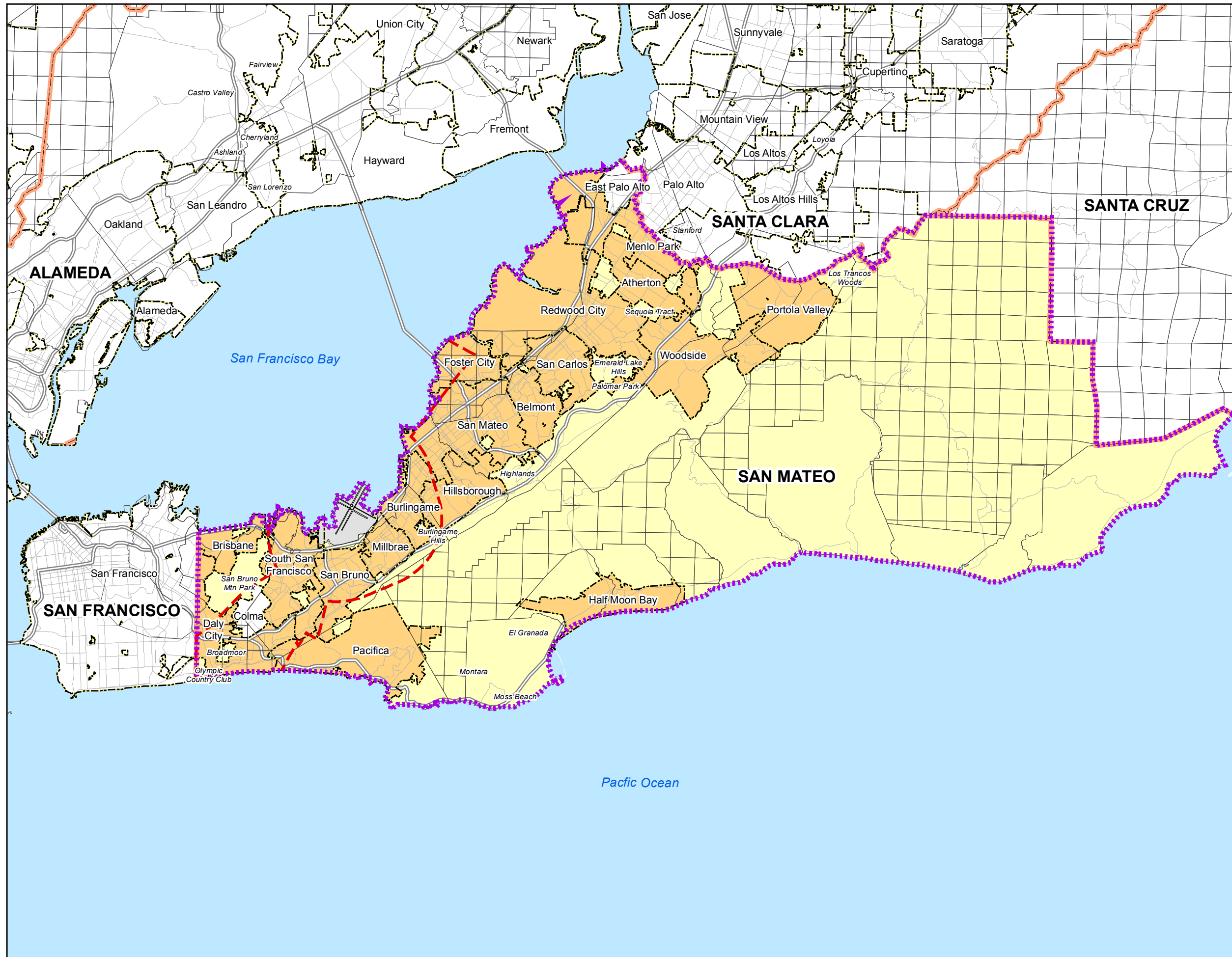
Within Area A, the real estate disclosure requirements of state law apply. Section 11010 of the Business and Professions Code requires people offering subdivided property for sale or lease to disclose the presence of all existing and planned airports within two miles of the property.<sup>2</sup> The law requires that, if the property is within an “airport influence area” designated by the airport land use commission, the following statement must be included in the notice of intention to offer the property for sale:

#### **NOTICE OF AIRPORT IN VICINITY**

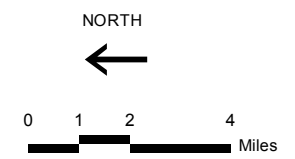
*This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.*

<sup>1</sup> On the northwest side, the Area B boundary corresponds to the 800-foot elevation line of the TERPS approach surface and the OEI departure surface. On the southeast side, the Area B boundary corresponds with the transitional surfaces rising from the flat, central portion of the TERPS surface having an elevation of 210 feet MSL. See Exhibits IV-17 and IV-18 for a detailed depiction of the airspace surfaces.

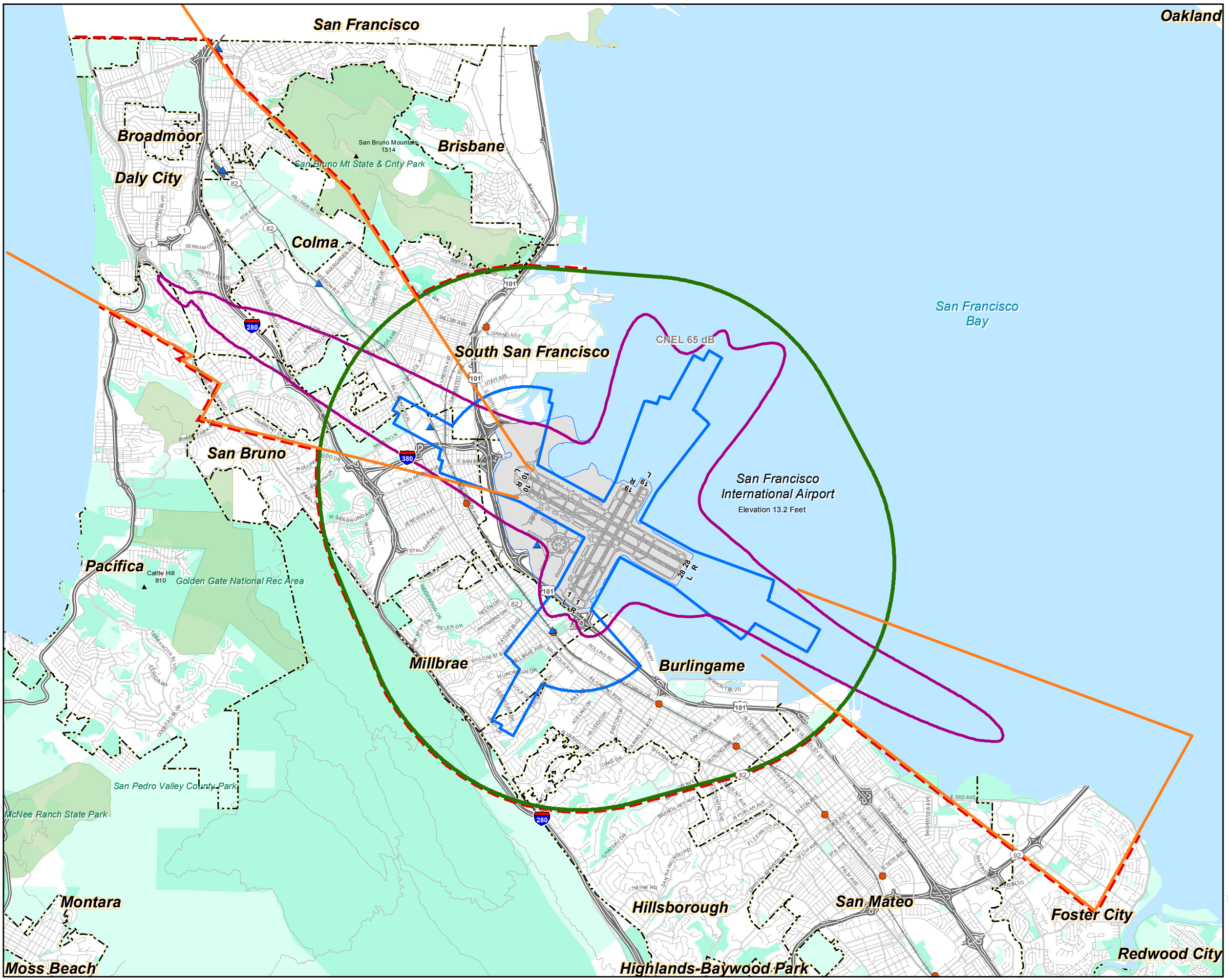
<sup>2</sup> California Business and Professions Code, Section 11010(b)(13).



- LEGEND**
- - - Boundary for Airport Influence Area B
  - - - - - Airport Influence Area A Boundary
  - - - - - County Boundary
  - - - - - City Boundary
  - - - - - Range/ Township/ Section and Rancho Lines
  - Freeways
  - Roads
  - Municipal Members of SFO/Community Roundtable
  - Unincorporated San Mateo County







- LEGEND**
- - - Boundary for Airport Influence Area B
  - Outer Boundary of Safety Zones
  - CNEL Contour, 2020 Forecast
  - 14 CFR Part 77 Conical Surface
  - Outer Boundary of TERPS Approach and OEI Departure Surfaces
  - Airport Property
  - ▲ BART Station
  - CALTRAIN Station
  - Municipal Boundary
  - Railroad
  - Freeway
  - Road
  - Local Park, Golf Course, Cemetery
  - Regional Park or Recreation Area
  - Open Space

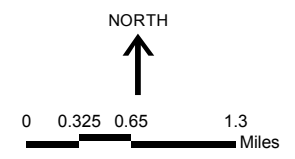
Sources:

100:1 FAA Notification Zone: Ricondo & Associates, Inc. and Jacobs Consultancy, based on 14 CFR Part 77, Subpart B, Section 77.9.

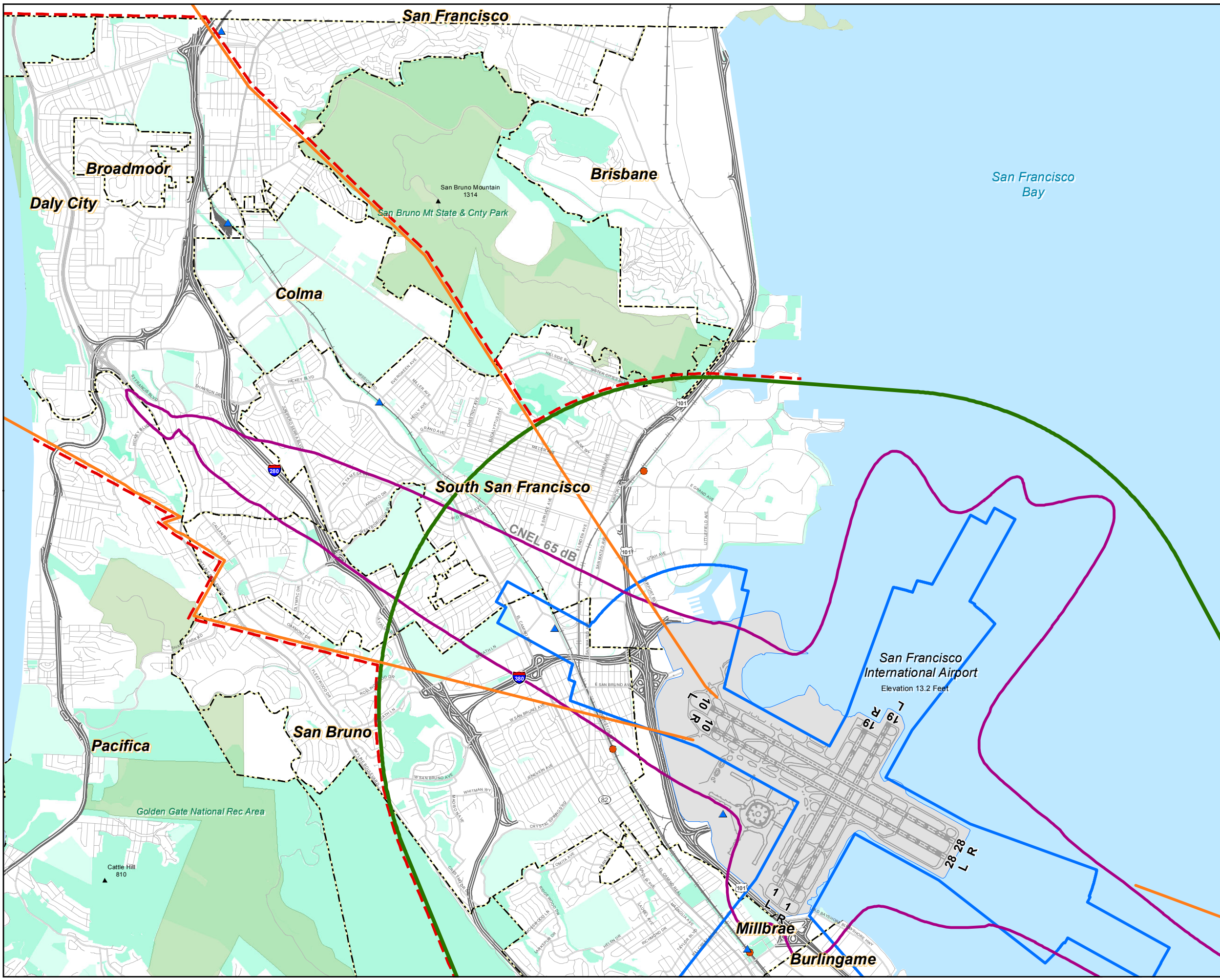
Outer Boundary of TERPS Approach and OEI Departure Surfaces: San Francisco International Airport, Jacobs Consultancy, and Planning Technology Inc., 2009

Safety Compatibility Zones: Jacobs Consultancy Team, 2009; Ricondo & Associates, Inc., 2011

Noise Contour: URS Corporation and BridgeNet International. Draft Environmental Assessment, San Francisco International Airport Proposed Runway Safety Area Program, June 2011







- LEGEND**
- Boundary for Airport Influence Area B
  - Outer Boundary of Safety Zones
  - CNEL Contour, 2020 Forecast
  - 14 CFR Part 77 Conical Surface
  - Outer Boundary of TERPS Approach and OEI Departure Surfaces
  - Airport Property
  - ▲ BART Station
  - CALTRAIN Station
  - Municipal Boundary
  - Railroad
  - Freeway
  - Road
  - Local Park, Golf Course, Cemetery
  - Regional Park or Recreation Area
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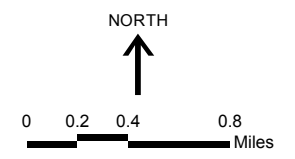
Sources:

100:1 FAA Notification Zone: Ricondo & Associates, Inc. and Jacobs Consultancy, based on 14 CFR Part 77, Subpart B, Section 77.9.

Outer Boundary of TERPS Approach and OEI Departure Surfaces: San Francisco International Airport, Jacobs Consultancy, and Planning Technology Inc., 2009

Safety Compatibility Zones: Jacobs Consultancy Team, 2009; Ricondo & Associates, Inc., 2011

Noise Contour: URS Corporation and BridgeNet International. Draft Environmental Assessment, San Francisco International Airport Proposed Runway Safety Area Program, June 2011



**IP-2 AIRPORT INFLUENCE AREA B – POLICY/PROJECT REFERRAL AREA**

Within Area B, the Airport Land Use Commission (the C/CAG Board) shall exercise its statutory duties to review proposed land use policy actions, including new general plans, specific plans, zoning ordinances, plan amendments and rezonings, and land development proposals. The real estate disclosure requirements in Area A also apply in Area B. For the purposes of this policy, parcels along the edge of the Area B Boundary that are split by the boundary shall be considered as fully being within Area B.

Portions of unincorporated San Mateo County and the following municipalities are located within Area B:

- Daly City – small part of the city in the Serramonte area
- Colma –the entire town
- Pacifica – north and northeast of the city
- South San Francisco – all but north and west sides of the city
- San Bruno – all but northwest corner of the city
- Millbrae – the entire city
- Burlingame – the entire city
- Hillsborough – the northern part of the town, north of Chateau Drive
- San Mateo – a few blocks in the City of San Mateo
- Foster City – the northern part of the City
- Unincorporated San Mateo County: California Golf Club, Country Club Park, Burlingame Hills, and San Francisco International Airport

The following special districts are located within Area B of the AIA:

- North San Mateo County Sanitation District
- Peninsula Health Care District
- San Mateo County Flood Control District
- San Mateo County Harbor District
- San Mateo County Mosquito & Vector Control District
- Westborough County Water District

The following school districts and community college district are located within Area B:

- Bayshore Elementary School District
- Brisbane Elementary School District
- Burlingame Elementary School District



- Hillsborough City Elementary School District
- Jefferson Elementary School District
- Jefferson Union High School District
- Millbrae Elementary School District
- Pacifica School District
- San Bruno Park Elementary School District
- San Mateo County Community College District
- San Mateo Foster City Elementary School District
- San Mateo Union High School District
- South San Francisco Elementary School District

## 4.3 Noise Compatibility Policies

The airport noise compatibility policies described in this section have a two-fold purpose:

1. To protect the public health, safety, and welfare by minimizing the exposure of residents and occupants of future noise-sensitive development to excessive noise.
2. To protect the public interest in providing for the orderly development of SFO by ensuring that new development in the Airport environs complies with all requirements necessary to ensure compatibility with aircraft noise in the area. The intent is to avoid the introduction of new incompatible land uses into the Airport's "noise impact area" so that the Airport will continue to be in compliance with the State Noise Standards for airports (California Code of Regulations, Title 21, Sections 5012 and 5014).<sup>3</sup>

The following noise compatibility policies (NP) shall apply to the ALUCP.

### NP-1 NOISE COMPATIBILITY ZONES

For the purposes of this ALUCP, the projected 2020 CNEL noise contour map from the Draft Environmental Assessment for the Proposed Runway Safety Area Program shall define the boundaries within which noise compatibility policies described in this Section shall apply.<sup>4</sup> **Exhibit IV-5** depicts the noise compatibility zones. More detail is provided on **Exhibit IV-6**. The zones are defined by the CNEL 65, 70 and 75 dB contours.

<sup>3</sup> In 2002, the San Mateo County Board of Supervisors declared that the Airport had eliminated its "noise impact area," as defined under state law -- California Code of Regulations, Title 21, Sections 5012 and 5014.

<sup>4</sup> URS Corporation and BridgeNet International. *Draft Environmental Assessment, Proposed Runway Safety Area Program, San Francisco International Airport*, June 2011.

and associated with human disease of varying severity.

- b. Biosafety Level 3 practices, safety equipment, and facility design and construction are applicable to clinical, diagnostic, teaching, research, or production facilities in which work is done with indigenous or exotic agents with a potential for respiratory transmission, and which may cause serious and potentially lethal infection.
- c. Biosafety Level 4 practices, safety equipment, and facility design and construction are applicable for work with dangerous and exotic agents that pose a high individual risk of life-threatening disease, which may be transmitted via the aerosol route and for which there is no available vaccine or therapy.

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## 4.5 Airspace Protection

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The compatibility of proposed land uses with respect to airspace protection shall be evaluated in accordance with the policies set forth in this section. These policies are established with a twofold purpose:

1. To protect the public health, safety, and welfare by minimizing the public's exposure to potential safety hazards that could be created through the construction of tall structures.
2. To protect the public interest in providing for the orderly development of SFO by ensuring that new development in the Airport environs avoids compromising the airspace in the Airport vicinity. This avoids the degradation in the safety, utility, efficiency, and air service capability of the Airport that could be caused by the attendant need to raise visibility minimums, increase minimum rates of climb, or cancel, restrict, or redesign flight procedures.

### 4.5.1 FEDERAL REGULATIONS REGARDING TALL STRUCTURES

14 Code of Federal Regulations (CFR) Part 77, *Safe, Efficient Use and Preservation of the Navigable Airspace*, governs the FAA's review of proposed construction exceeding certain height limits, defines airspace obstruction criteria, and provides for FAA aeronautical studies of proposed construction. **Appendix F** describes the FAA airspace review process and the extent of FAA authority related to airspace protection.

### 4.5.2 PART 77, SUBPART B, NOTIFICATION PROCESS

Federal regulations require any person proposing to build a new structure or alter an existing structure with a height that would exceed the elevations described in CFR Part 77, Subpart B, Section 77.9, to prepare an FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, and submit the notice to the FAA. The regulations apply to buildings and other structures or portions of structures, such as mechanical equipment, flag poles, and other projections that may exceed the aforementioned elevations.

**Exhibit IV-10** depicts the approximate elevations at which the 14 CFR Part 77 notification requirements would be triggered; see **Exhibit IV-11** for a close-up view of the northern half and **Exhibit IV-12** for a close-up view of the southern half of the area. These exhibits are provided for informational purposes only. Official determinations of the areas and elevations within which the federal notification requirements apply are subject to the authority of the FAA. The FAA is empowered to require the filing of notices for proposed construction based on considerations other than height. For example, in some areas of complex airspace and high air traffic volumes, the FAA may be concerned about the potential for new construction of any height to interfere with electronic navigation aids. In these areas, the FAA will want to review all proposed construction projects.

The FAA has developed an on-line tool for project sponsors to use in determining whether they are required to file a Notice of Proposed Construction or Alteration. Sponsors of proposed projects are urged to refer to this website to determine whether they are required to file Form 7460-1 with the FAA:

<https://oeaaa.faa.gov/oeaaa/external/gisTools/gisAction.jsp?action=showNoNoticeRequiredToolForm>

### 4.5.3 AIRSPACE MAPPING

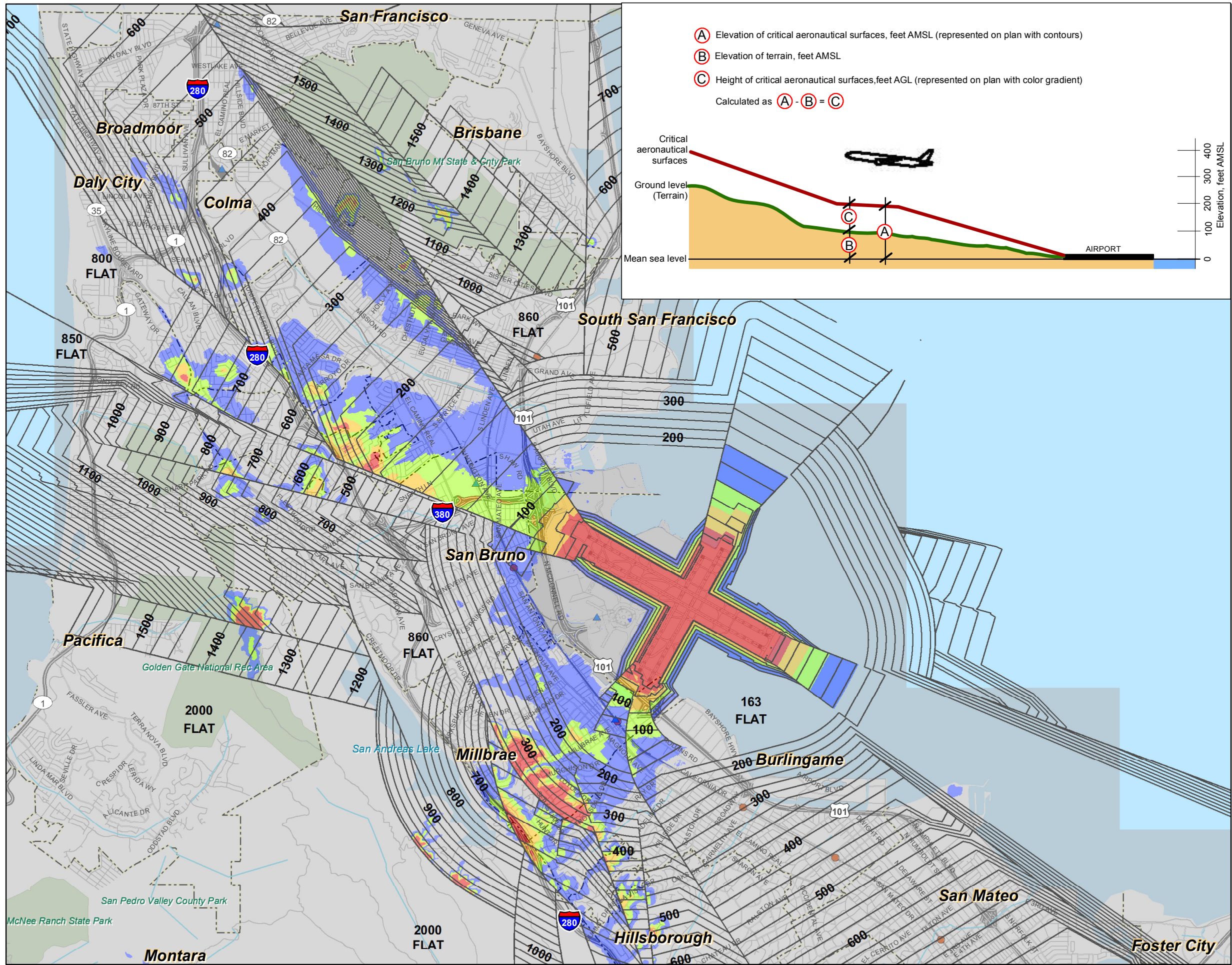
Part 77, Subpart C, establishes obstruction standards for the airspace around airports including approach zones, conical zones, transitional zones, and horizontal zones known as “imaginary surfaces.” **Exhibit IV-13** depicts the Part 77 Civil Airport Imaginary Surfaces at SFO. The imaginary surfaces rise from the primary surface, which is at ground level immediately around the runways. The surfaces rise gradually along the approach slopes associated with each runway end and somewhat more steeply off the sides of the runways. The FAA considers any objects penetrating these surfaces, whether buildings, trees or vehicles travelling on roads and railroads, as obstructions to air navigation. Obstructions may occur without compromising safe air navigation, but they must be marked, lighted, and noted on aeronautical publications to ensure that pilots can see and avoid them.

Close-up views of the north and south sides of the Part 77 surfaces are provided in **Exhibit IV-14** and **Exhibit IV-15**, respectively. Additionally, **Exhibit IV-16** provides an illustration of the outer approach and transitional surfaces located on the southeast side of the Part 77 surfaces.

Together with its tenant airlines, SFO has undertaken a mapping effort to illustrate the critical aeronautical surfaces that protect the airspace required for multiple types of flight procedures such as those typically factored into FAA aeronautical studies, as shown on **Exhibit IV-17** and **Exhibit IV-18**. These aeronautical surfaces include those established in accordance with FAA Order 8260.3B, *U.S. Standard for Terminal Instrument Procedures (TERPS)*, and a surface representing the airspace required for One-Engine Inoperative (OEI) departures from Runway 28L (to the west through the San Bruno Gap).<sup>16</sup> The exhibits depict the lowest elevations from the combination of the OEI procedure surface and all TERPS surfaces. The surfaces are defined with Required Obstacle Clearance (ROC) criteria to ensure safe separation of aircraft using the procedures from the underlying obstacles. Any proposed structures penetrating these surfaces are likely to receive Determinations of Hazard (DOH) from the FAA through the 7460-1 aeronautical study process. These surfaces indicate the maximum height at which structures can be considered compatible with Airport operations.

<sup>16</sup> See Appendix F, Section F.3.2 for a discussion of one-engine inoperative procedures.

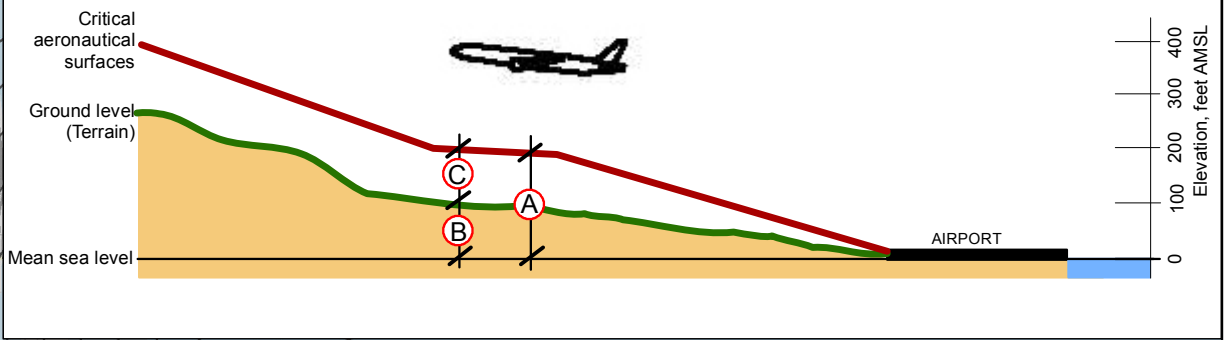




**LEGEND**

- (A) — 100 — Elevation of critical aeronautical surfaces, feet Above Mean Sea Level (AMSL), North American Vertical Datum of 1988 (NAVD88)
- (C) **Height of Critical Aeronautical Surfaces, Feet Above Ground Level (AGL)**
  - 35 and lower
  - 35- 65
  - 65 - 100
  - 100 - 150
  - 150 and more
- Airport Property
- BART Station
- CALTRAIN Station
- Regional Park or Recreation Area
- Municipal Boundary
- Railroad
- Freeway
- Road

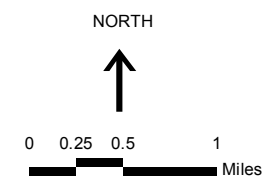
(A) Elevation of critical aeronautical surfaces, feet AMSL (represented on plan with contours)  
 (B) Elevation of terrain, feet AMSL  
 (C) Height of critical aeronautical surfaces, feet AGL (represented on plan with color gradient)  
 Calculated as  $(A) - (B) = (C)$



**Notes:**

- This map is intended for informational and conceptual planning purposes, generally representing the aeronautical surfaces considered most critical by San Francisco International Airport (SFO) and its constituent airlines. It does not represent actual survey data, nor should it be used as the sole source of information regarding compatibility with airspace clearance requirements in the development of data for an FAA Form 7460-1, Notice of Proposed Construction or Alteration. SFO does not certify its accuracy, information, or title to the properties contained in this plan. SFO does make any warrants of any kind, express or implied, in fact or by law, with respect to boundaries, easements, restrictions, claims, overlaps, or other encumbrances affecting such properties.
- This map does not replace the FAA's obstruction evaluation / airport airspace analysis (OE/AAA) review process. Proposing construction at elevations and heights that are lower than the critical aeronautical surfaces shown on this map, (a) does not relieve the construction sponsor of the obligation to file an FAA Form 7460-1, and (b) does not ensure that the proposal will be acceptable to the FAA, SFO, air carriers, or other agencies or stakeholders. SFO, San Mateo County, and local authorities having jurisdiction reserve the right to re-assess, review, and seek modifications to projects that may be consistent with this critical aeronautical surfaces map but that through the FAA OE/AAA process are found to have unexpected impacts to the safety or efficiency of operations at SFO.

Sources: San Francisco International Airport, Jacobs Consultancy, and Planning Technology Inc., 2009





**Exhibit IV-19**, which is provided for information purposes only, depicts a profile view of the lowest critical airspace surfaces along the extended centerline of Runway 10L-28R – the TERPS Obstacle Departure Procedure (ODP) surface, representing standard all-engines departures, and the approximate OEI surface developed by SFO through independent study in consultation with the airlines serving SFO. The exhibit also shows the terrain elevation beneath the airspace surfaces and various aircraft approach and departure profiles, based on varying operating assumptions. The exhibit illustrates a fundamental principle related to the design of airspace protection surfaces. The surfaces are always designed below the actual aircraft flight profile which they are designed to protect, thus providing a margin of safety. Note that the ODP climb profile is above the ODP airspace surface, and the OEI climb profile is above the OEI airspace surface.

#### 4.5.4 AIRSPACE PROTECTION POLICIES

The following airspace protection policies (AP) shall apply to the ALUCP.

##### **AP-1 COMPLIANCE WITH 14 CFR PART 77, SUBPART B, NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION**

###### **AP-1.1 Local Government Responsibility to Notify Project Sponsors**

Local governments should notify sponsors of proposed projects at the earliest opportunity to file Form 7460-1, *Notice of Proposed Construction or Alteration*, with the FAA for any proposed project that would exceed the FAA notification heights, as shown approximately on Exhibit IV-10. Under Federal law, it is the responsibility of the project sponsor to comply with all notification and other requirements described in 14 CFR Part 77. This requirement applies independent of this ALUCP.

###### **AP-1.2 FAA Aeronautical Study Findings Required Before Processing Development Application**

The sponsor of a proposed project that would exceed the FAA notification heights, as shown approximately on Exhibit IV-10, shall present to the local government permitting agency with his or her application for a development permit, a copy of the findings of the FAA's aeronautical study, or evidence demonstrating that he or she is exempt from having to file an FAA Form 7460-1. It is the responsibility of the local agency to consider the FAA determination study findings as part of its review and decision on the proposed project.

##### **AP-2 COMPLIANCE WITH FINDINGS OF FAA AERONAUTICAL STUDIES**

Project sponsors shall be required to comply with the findings of FAA aeronautical studies with respect to any recommended alterations in the building design and height and any recommended marking and lighting of their structures for their proposed projects to be deemed consistent with this ALUCP.

**AP-3 MAXIMUM COMPATIBLE BUILDING HEIGHT**

In order to be deemed consistent with the ALUCP, the maximum height of a new building must be the lower of (1) the height shown on the SFO critical aeronautical surfaces map (Exhibits IV-17 and IV-18), or (2) the maximum height determined not to be a “hazard to air navigation” by the FAA in an aeronautical study prepared pursuant to the filing of Form 7460-1.

For the vast majority of parcels, the height limits established in local zoning ordinances are lower than the critical airspace surfaces. In those cases, the zoning district height regulations will control. Compliance with the zoning district height and the SFO critical aeronautical surfaces map, however, does not relieve the construction sponsor of the obligation to file a FAA Form 7460-1 *Notice of Proposed Construction or Alteration*, if required, and to comply with the determinations resulting from the FAA’s aeronautical study.

For a project to be consistent with this ALUCP, no local agency development permits shall be issued for any proposed structure that would penetrate the aeronautical surfaces shown on Exhibits IV-17 and IV-18 or the construction of which **has not** received a Determination of No Hazard from the FAA, or which would cause the FAA to increase the minimum visibility requirements for any instrument approach or departure procedure at the Airport.

**AP-4 OTHER FLIGHT HAZARDS ARE INCOMPATIBLE**

Proposed land uses with characteristics that may cause visual, electronic, or wildlife hazards, particularly bird strike hazards, to aircraft taking off or landing at the Airport or in flight are incompatible in Area B of the Airport Influence Area. They may be permitted only if the uses are consistent with FAA rules and regulations. Proof of consistency with FAA rules and regulations and with any performance standards cited below must be provided to the Airport Land Use Commission (C/CAG Board) by the sponsor of the proposed land use action.

Specific characteristics that may create hazards to aircraft in flight and which are incompatible include:

- (a) Sources of glare, such as highly reflective buildings or building features, or bright lights, including search lights or laser displays, which would interfere with the vision of pilots making approaches to the Airport.
- (b) Distracting lights that that could be mistaken by pilots on approach to the Airport for airport identification lighting, runway edge lighting, runway end identification lighting, or runway approach lighting.
- (c) Sources of dust, smoke, or water vapor that may impair the vision of pilots making approaches to the Airport.
- (d) Sources of electrical interference with aircraft or air traffic control communications or navigation equipment, including radar.
- (e) Land uses that, as a regular byproduct of their operations, produce thermal plumes with the potential to rise high enough and at sufficient velocities to interfere with the control of aircraft in

flight. Upward velocities of 4.3 meters (14.1 feet) per second at altitudes above 200 feet above the ground shall be considered as potentially interfering with the control of aircraft in flight.<sup>17</sup>

(f) Any use that creates an increased attraction for wildlife, particularly large flocks of birds, that is inconsistent with FAA rules and regulations, including, but not limited to, FAA Order 5200.5A, *Waste Disposal Sites On or Near Airports*, FAA Advisory Circular 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports*, and any successor or replacement orders or advisory circulars. Exceptions to this policy are acceptable for wetlands or other environmental mitigation projects required by ordinance, statute, court order, or Record of Decision issued by a federal agency under the National Environmental Policy Act.

#### 4.5.5 iALP AIRSPACE TOOL

In consultation with C/CAG, SFO developed the iALP Airspace Tool, a web-based, interactive tool to evaluate the relationship of proposed buildings with the Airport's critical airspace surfaces. The iALP Airspace Tool is designed to assist planners, developers, and other interested persons with the implementation of the airspace protection policies of the SFO ALUCP. The tool helps users determine: (1) the maximum allowable building height at a given site, and/or (2) whether a building penetrates a critical airspace surface, and by how much, given the proposed building height.

A more detailed description of the iALP Airspace Tool and a tutorial explaining how to use it is presented in **Appendix J**. Use of this tool, however, does not relieve a project sponsor of the duty to comply with all federal regulations, including the obligation to file Form 7460-1, Notice of Proposed Construction or Alteration, with the FAA.

<sup>17</sup> This is a threshold established by the California Energy Commission in its review of power plant licensing applications. See *Blythe Solar Power Project: Supplemental Staff Assessment, Part 2*, CEC-700-2010-004-REVI-SUP-PT2, July 2010. California Energy Commission. Docket Number 09-AFC-6, p. 25. This criterion is based on guidance established by the Australian Government Civil Aviation Authority (Advisory Circular AC 139-05(0), June 2004). The FAA's Airport Obstructions Standards Committee (AOSC) is studying this matter but has not yet issued specific guidance.



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## San Francisco Bay Regional Water Quality Control Board

September 8, 2023

City of Daly City, Planning Division  
333 90th Street, Daly City, CA 94015  
Attn: Michael Van Lonkhuysen ([mvanlonkhuysen@dalycity.org](mailto:mvanlonkhuysen@dalycity.org))

**Subject: Comments on Draft Environmental Impact Report, Serramonte Del Rey Campus Redevelopment, City of Daly City, California**

We have reviewed Draft Environmental Impact Report (DEIR) (State Clearinhouse No. 2023060571) for the Serramonte Del Rey Campus Redevelopment (Project). The Project consists of development of a new approximately 22-acre Serramonte Del Rey Precise Plan and a specific development proposal for the approximately 4.3-acre Parcel B within a portion of the new Precise Plan.

We appreciate the importance of redevelopment projects that include affordable and market-rate rental housing as well as infrastructure improvements. However, we have concerns about the existing wetlands on-site and the corresponding Wetland Assessment provided in Appendix E of the DEIR. Specifically, we are concerned that there has been a wetlands jurisdictional determination made without consultation with the Water Board. Moving forward that jurisdictional determination, without securing Waste Discharge Requirements (WDRs), via the Porter-Cologne Act, from the Water Board, or a concurrence that no state regulated wetlands exist at the site, is not recommended because we do not agree with the assertion made in the DEIR that waters of the State do not exist that the Project site.

***Comments on Appendix E, Wetland Assessment***

The memo in Appendix E states that the Porter-Cologne Act's jurisdiction does not extend to the site, but the reasons provided in Appendix E are not sufficient to determine whether jurisdictional waters of the State exist at the site. Furthermore, the Water Board, as the agency that issues WDRs, has not been consulted about this jurisdictional determination.

The Water Board does not agree with the basis used in determining whether the on-site wetlands are waters of the State. The jurisdictional determination made regarding the wetlands on-site is premised on the assumptions that 1) the wetland does not meet the U.S. Army Corps of Engineers' (Corps) three-wetland parameter test, and 2) the wetlands are artificial and transient. First, a jurisdictional wetland determination (JD) does not appear to have been conducted. Instead, the memo in Appendix E references excerpts from the Exhibits therein, which do not make any definitive determinations regarding whether wetlands exist. Both Exhibits in Appendix E were conducted to



assess the site drainage. A JD must be conducted to verify whether there are hydric soils, wetland vegetation, and wetland hydrology. Additionally, Procedures for *Discharges of Dredged or Fill Material to Waters of the State* (Dredge and Fill Procedures) states that only two of the three Corps parameters must be fulfilled to qualify as a State regulated wetland. Second, Appendix E focuses on excerpts from Dredge and Fill Procedures that are taken out of context and misinterprets the terms “transient” and “artificial” regarding regulated waterbodies. For example, seasonal wetlands, intermittent streams, and ephemeral streams, are all transient waterbodies that are waters of the State. Under the Dredge and Fill Procedures, an area is defined as wetland as follows: “An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area’s vegetation is dominated by hydrophytes or the area lacks vegetation.” This definition is further elaborated on in the Dredge and Fill Procedures, but the on-site wetland can still be a water of the State if it was formed from a lack of maintenance over the years and is currently functioning as a wetland without intervention, which appears to be the case on-site. We encourage you to coordinate with the Water Board to further examine the on-site wetlands to verify whether or not State wetlands exist and determine whether WDRs are required to fill the wetlands.

Projects with potential fill-related impacts to State waters, such as the Project, must first demonstrate their design avoids and minimizes those impacts to the extent practicable. As part of the WDRs process, we will require a thorough analysis of all the proposed alternatives, including their long-term indirect effects. The Water Board adopted U.S. Environmental Protection Agency’s Section 404(b)(1), “Guidelines for Specification of Disposal Sites for Dredge or Fill Material,” dated December 24, 1980, in its Basin Plan and Dredge and Fill Procedures for determining the circumstance under which filling of waters of the State may be permitted. The Section 404(b)(1) Guidelines and Dredge and Fill Procedures prohibit discharges of fill material into waters of the United States and in the case of the Dredge and Fill Procedures, waters of the State, unless a discharge, as proposed, constitutes the least environmentally damaging practicable alternative that will achieve the project purpose. To accomplish this, the Guidelines and Procedures sequence the order in which proposals must be approached: 1) Avoid - avoid impacts to waters; 2) Minimize – once impacts have been avoided to the maximum extent practicable, modify the project to minimize impacts to waters; and 3) Compensate – once impacts have been fully minimized, compensate for unavoidable impacts to waters.

### **Summary**

We are supportive of the Project’s intent, but the determination regarding jurisdictional waterbodies at the Project site must be made by the Water Board. The arguments for why the wetlands on-site are not considered waters of the State is insufficient, and a JD must be conducted, and the Water Board must be consulted about potentially jurisdictional features to determine whether WDRs are needed. We look forward to

hearing from and working on this Project as it moves forward. If you have any questions, please do not hesitate to reach out.

Sincerely,

Tahsa Sturgis  
Water Resource Control Engineer  
Watershed Management Division

---

**From:** Nancy Lacsamana [REDACTED]  
**Sent:** Sunday, July 30, 2023 7:11 PM  
**To:** Michael Van Lonkhuisen <mvanlonkhuisen@dalycity.org>  
**Subject:** [EXTERNAL] minor error in copy Draft EIR pg 161

CAUTION: EXTERNAL SENDER. Verify before you respond, click links or open attachments. Questions? Contact ISD.

pg 161  
Serramonte condominiums/ Daly City is noted as being in the Brisbane School district.  
It is not.  
location 525-595 Serramonte Blvd. on table 3.0-1

thanks  
Nancy Lacsamana

**From:** Sabrina Brennan <[REDACTED]>

**Sent:** Tuesday, August 1, 2023 6:03 PM

**To:** Michael Van Lonkhuisen <[mvanlonkhuisen@dalycity.org](mailto:mvanlonkhuisen@dalycity.org)>

**Cc:** [REDACTED]

**Subject:** Re: [EXTERNAL] SERRAMONTE DEL REY Development Agreement

**CAUTION: EXTERNAL SENDER.** Verify before you respond, click links or open attachments. Questions? Contact ISD.

Hello Michael,

The links appear to be working now.

Are you planning to include letters from the NAACP, other organizations and individuals?

Link to **Sierra**

**Club** Letters: [https://link.edgepilot.com/s/cffab6ee/csUuYiF8BkmXPnlroHo1WA?  
u=https://www.communitygardenalliance.org/sierra-club-letters](https://link.edgepilot.com/s/cffab6ee/csUuYiF8BkmXPnlroHo1WA?u=https://www.communitygardenalliance.org/sierra-club-letters)

Link to **NAACP** Letters: [https://link.edgepilot.com/s/4547fa78/MbR\\_Btrfn0GwUUU4G5b5Uw?  
u=https://www.communitygardenalliance.org/naacp-letters](https://link.edgepilot.com/s/4547fa78/MbR_Btrfn0GwUUU4G5b5Uw?u=https://www.communitygardenalliance.org/naacp-letters)

Link to **Pacifica Social Justice**

**Letter:** [https://link.edgepilot.com/s/f91f3444/nm5Xdq9mYU6tqDI4Mcm0sg?  
u=https://www.communitygardenalliance.org/pacifica-social-justice](https://link.edgepilot.com/s/f91f3444/nm5Xdq9mYU6tqDI4Mcm0sg?u=https://www.communitygardenalliance.org/pacifica-social-justice)

Thanks,  
Sabrina

On Aug 1, 2023, at 10:01 AM, Michael Van Lonkhuisen  
<[mvanlonkhuisen@dalycity.org](mailto:mvanlonkhuisen@dalycity.org)> wrote:

Hi, Sabrina. Can you check Appendix A now? It should be working.

---

**From:** Sabrina Brennan [REDACTED]

**Sent:** Monday, July 31, 2023 4:12 PM

**To:** Michael Van Lonkhuisen <[mvanlonkhuisen@dalycity.org](mailto:mvanlonkhuisen@dalycity.org)>

**Cc:** [REDACTED]

**Subject:** Re: [EXTERNAL] SERRAMONTE DEL REY Development Agreement

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CAUTION: EXTERNAL SENDER. Verify before you respond, click links or open attachments.  
Questions? Contact ISD.

I mean the links included in various NOP letters are not working, they are published here: <https://link.edgepilot.com/s/38461664/bBzNCQrJdkCXS4pt-hPSzA?u=https://www.dalycity.org/DocumentCenter/View/7812/Appendix-A-NOP-Comments?bidId%3D>

The public should be able to click on working links provided in NOP letters. It appears you stripped out all the links so we can not read the letters as they were intended by the sender.

Thank you,  
Sabrina

On Jul 31, 2023, at 3:59 PM, Michael Van Lonkhuyzen  
<[mvanlonkhuyzen@dalycity.org](mailto:mvanlonkhuyzen@dalycity.org)> wrote:

Strange. I just checked the links and they appear to be working -----  
- <https://link.edgepilot.com/s/1f17f539/OH-dbCxW00Cd339cr5kVpg?u=http://www.dalycity.org/sdrdeir>. Please call to discuss if you continue to have problems and I'll be back in touch concerning the Development Agreement question.

---

**From:** Sabrina Brennan [REDACTED] >  
**Sent:** Monday, July 31, 2023 3:53 PM  
**To:** Michael Van Lonkhuyzen <[mvanlonkhuyzen@dalycity.org](mailto:mvanlonkhuyzen@dalycity.org)>  
**Cc:** [REDACTED]  
**Subject:** [EXTERNAL] SERRAMONTE DEL REY Development Agreement

CAUTION: EXTERNAL SENDER. Verify before you respond, click links or open attachments. Questions? Contact ISD.

Hello Michael,

Please provide a current draft of the SDR development agreement. Based on the [DEIR](#) it appears the JUHSD project has changed since the City Council last discussed it at a public meeting. We would like to know what's included in the development agreement. Please also provide the timeline for completing the development agreement.

I noticed that the links provided in NOP letters are not working in the DEIR. Please provide working links here: <https://link.edgepilot.com/s/38461664/bBzNCQrJdkCXS4pt-hPSzA?>

[u=https://www.dalycity.org/DocumentCenter/View/7812/Appendix-A-NOP-Comments?bidId%3D](https://www.dalycity.org/DocumentCenter/View/7812/Appendix-A-NOP-Comments?bidId%3D)

Thank you,  
Sabrina

<image001.png><image002.png>



Michael Van Lonkhuysen  
Planning Manager, City of Daly City  
333 90<sup>th</sup> Street  
Daly City, CA 94015,

August 21, 2023

**SUBJECT: COMMENTS ON SERRAMONTE DEL REY CAMPUS REDEVELOPMENT  
PROJECT DRAFT ENVIRONMENTAL IMPACT REPORT (SCH# 2023060571)**

Dear Mr. Van Lonkhuysen;

Grassetti Environmental Consulting (GECO) is submitting this comment letter on the Serramonte Del Rey Project Draft EIR on behalf of Pacifica Social Justice. As GECO's Principal, I have reviewed the document and offer comments on three issue areas: Project Description, Inclusionary Housing, and Alternatives. My experience includes over 40 years of preparing, reviewing, and teaching about the California Environmental Quality Act (CEQA) processes and documents. My qualifications are attached to this letter.

As detailed below, the DEIR is deficient in fully and accurately describing the project, its analysis of inclusionary housing policy conformance, and the range of alternatives considered in the document. In addition, the DEIR fails to correctly describe and characterize the use of, and potential impacts on, the approximately 1-2-acre community garden on the project site.

**Discussion**

***Project Description Issues***

An "accurate, stable, and finite project description" "is the *sine qua non* of an informative and legally sufficient EIR." (*Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 673.). Further, The project description shouldn't supply extensive detail beyond that needed to evaluate the project's environmental impacts, but should contain a sufficient degree of analysis to allow decisionmakers to make an informed decision intelligently considering environmental consequences; impact evaluation needn't be exhaustive, and is reviewed in light of what is reasonably feasible, with courts looking not for perfection, but adequacy, completeness, and a good faith effort at full disclosure. (*Tiburon*, at 738, 726; CEQA Guidelines, §§ 15124, 15151.)

The DEIR's Project Description describes in detail an entirely unrelated project (the District Offices Project – Figure 2.2-6) yet fails to identify any potential development plans on Areas C-F of the project site. That said, the hydrology section includes impervious/pervious surface calculations down to the exact square foot. Similarly, the noise analysis identifies each specific piece of equipment and duration of operation for each of the project phases



The Precise Plan is available on the District's website ([https://www.juhsd.net/site/handlers/filedownload.ashx?moduleinstanceid=5196&dataid=8067&FileName=Serramonte%20Del%20Rey%20Precise%20Plan\\_Draft%20Precise%20Plan.pdf](https://www.juhsd.net/site/handlers/filedownload.ashx?moduleinstanceid=5196&dataid=8067&FileName=Serramonte%20Del%20Rey%20Precise%20Plan_Draft%20Precise%20Plan.pdf)) yet it is not described in the DEIR, which includes only the parcel plan (Figure 2.2-5) and Area B plans from the Precise Plan. The DEIR fails to show even the most basic development plans other than for Areas A and B – no access improvements, no infrastructure improvements, no general site layout, no maximum building heights, nothing.

Further, the Precise Plan shows most of the trees surrounding the site being retained (see, for example, Figures 3.4, Street Frontage, and 4.2, Vehicular Circulation in the Precise Plan). In fact, the Precise Plan states,

“A distinguishing feature of the Precise Plan are the hillsides to the west and east of the plan area which contain numerous trees, all trees planted as part of development of District property. Trees range from young to mature, are in varying health and are densely planted. The intent is to care for the hillside wooded areas to reduce fire hazards, enhance existing vegetation and promote urban forestry. A tree succession plan for aging mature trees will guide the replacement of existing trees over time due to age or fire vulnerability. Removed trees will be replaced with a diverse plant ecology governed by the area's unique coastal/Mediterranean climate including evergreen and deciduous species.”

However, the EIR analyses appear to assume that most of the existing trees (and the community garden) will be removed. Similarly, the visual simulations contained in the Precise Plan also show them being removed. The DEIR Project Description is mute on the topic. These contradictions and lack of detail in the DEIR result in an unstable Project Description, which is inadequate for the environmental analysis.

***Failure to Accurately Consider the Land Use Impacts of the Community Garden and Groves of Mature Trees Surrounding the Site.***

A review of comments submitted to the City in response to the Notice of Preparation and prior to that time indicates that the Community Garden that has occupied a portion of Parcel D for decades is an important land use. Representatives of the Native American community have also stated that it is important as a cultural resource (<https://www.change.org/p/juslyn-manalo-save-mystic-community-garden>), and over 4,000 community members have identified it as a unique and valued land use. Yet the DEIR fails entirely to accurately characterize this land use and therefore fails to correctly identify the significance of its loss. The proposed extirpation of the garden represents a significant land use impact.

The EIR blindly uses only the Initial Study Checklist as its significance criteria. However, the Courts have ruled that even if a project impact is not identified in the Checklist questions, it must be considered (see: *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal.App.4th 1099, 2004). Therefore, loss of important land uses also should be considered as a land use impact, as it is a physical impact on the environment. In this case, there is substantial evidence on the record that the garden comprises a unique and highly valued community open space, cultural, and educational resource. The EIR must fully identify and consider the land use, cultural, educational, and agricultural value of the garden and forest of mature trees surrounding the site, and the significance of their



loss as a land use impact. Further, as discussed below, one or more alternatives that preserve the garden must be added to the EIR.

***Failure to Adequately Consider Wetlands Habitats***

The DEIR states (p.67):

While the Biological Resource Assessment identifies the presence of wetland features, it does not reach a definitive conclusion about the meadow qualifying as a jurisdictional wetland and recommends a formal wetland delineation be performed prior to project implementation to allow the US Army Corp and/or the Regional Water Quality Control Board to determine whether to assert jurisdiction over the meadow as a wetland. The Biological Peer Review, however, agrees with the findings of the Wetland Assessment and concludes that the meadow would not qualify as a jurisdictional wetland under the Clean Water Act or Porter-Cologne Act.

CEQA does not care about legal definitions of jurisdictional wetlands. It cares about the habitat values afforded by the wetlands. The DEIR finds no impact on wetlands solely on the basis of legal administrative classifications. Please revise to address the impacts associated with the actual habitats.

***Project Non-Conformance with RHNA and City Inclusionary Housing Ordinance***

As noted in numerous comments on the NOP, including comments from the City's Director of Economic and Community Development, Housing and Community Development Supervisor, and Housing Coordinator (Memo from the above to the Mayor, Affordable Housing Community, and Councilmember Glenn Sylvester, November 15, 2021) the project fails to conform with the City's inclusionary housing ordinance:

The affordable housing proposed by JUHSD for the Serramonte Del Rey site is not strictly consistent with the terms of the City's Inclusionary Housing Ordinance in two ways:

1. The City's Inclusionary Housing Ordinance requires that affordable units are phased in at the same time as the market rate units. Subsequent to the development of housing for District staff on Parcel A, the JUHSD proposal envisions completion of 201 market rate<sup>1</sup> units on Parcel B before any affordable housing units for the general public are developed. The result of this phasing is that the 20 inclusionary units required from the 200 units developed on Parcel B, would be delayed for an estimated two years until the 100 affordable units on Parcel C are constructed.\
2. The City's Inclusionary Housing Ordinance requires that affordable units are physically distributed equally throughout a development. In the JUHSD proposal, the majority of the affordable units would be concentrated on one of six parcels.

The EIR must address this non-conformance, which brings the project further into conflict with its own objectives, discussed above.

Further, the project would do nothing to achieve, the City's compliance with its RHNA objectives. According to RHNA Plan, Daly City is allocated a total of 4,838 total housing units. This includes 1,336 very-low-income units, 769 low-income units, 762 moderate-income units, and 1,971 above-moderate-income units. The proposed project's minimal

provision of affordable units makes it nearly impossible for the City to achieve its overall RHNA requirement of about 43% very-low and low-income units. The project's 1235 units comprise about 26 % of the 4838 total units, but it proposes to provide only 6% of the required affordable units. This means that future residential development in the City would be required to exceed 50% affordable units in order to meet its RHNA/Housing Element requirements. Table HE 49a in the Draft Housing Element shows this shortfall. Instead of helping the City meet its RHNA requirements, the project further impedes this. The EIR should describe conformance with the RHNA/Housing Element this would be achieved.

### *Project Objectives Deficiencies*

Project objectives inform, in part, the selection of project alternatives. Alternatives are intended to reduce potentially significant project impacts while achieving most of the project objectives (Guidelines Section 15126.6 (a)). One of the project objectives is to maximize affordable housing, yet, as discussed above, the project includes the minimum number of affordable units per the City's Inclusionary Housing ordinance, fails to comply with the unit distribution and timing components of that ordinance, and substantially impedes the City's compliance with its own RHNA requirements. Further, as detailed above, the project makes it nearly impossible for the City to achieve its RHNA affordable housing requirements. In this case, the project does not meet its own objective.

### *Inadequate Range of Alternatives*

The project includes only the no-project alternative, with variants for existing conditions and future development conditions. It then identifies the latter no-project alternative variant as the CEQA-mandated environmentally superior alternative. Per CEQA Guidelines Section 15126.6(e)(2), the two variants comprise the CEQA-mandated No Project Alternative. This minimal range of alternatives fails to meet CEQA's requirement of a reasonable range of potentially feasible alternatives that may reduce project impacts and meet most of the project objectives (Guidelines Section 15126.6(a)). Project-related impacts to vehicular emissions, noise, VMT, biological resources, and land use (i.e., impacts from removal of the community park and non-conformance with the RNHA) must be considered in selecting alternatives. At a minimum, given the potential land use and plan non-conformance issues discussed above, one or more alternatives that preserve the community garden (i.e. no development or reduced development in Parcel D), preserve the mature trees surrounding the property, and meet the City's Inclusionary Housing Ordinance and RNHA affordable housing mandates must be included.

In addition, the City of Daly City is highly unbalanced in terms of jobs/housing, with under 0.5 jobs/resident. This means that residents need to travel longer distances to their jobs, resulting in relatively high VMT levels. A project alternative that included a larger employment component (and also preserved the garden and trees) would further reduce project impacts, and should be added to the EIR.

### *Impermissible Environmentally Superior Alternative*

CEQA further requires that an EIR to identify an environmentally superior alternative "among the other alternatives" if the no-project alternative is otherwise the environmentally superior alternative to the project (Guidelines section 15126.6(e)(2)). In this case there are no other alternatives from which to pick. One or more actual "environmentally superior" alternatives must be developed and analyzed in the EIR.

## Conclusions

It is my professional opinion, supported by the facts summarized above, that the DEIR is inadequate to meet basic CEQA requirements, particularly with respect to its treatment of project alternatives. In addition, the project fails to meaningfully contribute to the City's RHNA affordable housing allocation as described in the City's Draft Housing Element. The City should revise and re-circulate the DEIR for the statutory 45-day minimum review period.

Sincerely



Richard Grassetto  
Principal  
Grassetto Environmental Consulting

## *GECO QUALIFICATIONS*

### **A. INTRODUCTION TO THE FIRM**

Grassetti Environmental Consulting (GECO) is a specialty environmental planning firm with expertise in environmental assessment, CEQA/NEPA compliance analyses, third party review, CEQA project management, and preparation of geologic and water resource studies. The firm focuses on working with clients towards full disclosure of environmental impacts and development of practical mitigation measures for those impacts. Our working ethic is to efficiently ensure full compliance with CEQA/NEPA regulations and guidelines while minimizing duplicative studies and regulatory confusion. We are proficient in preparing responsive environmental documentation for technically complex projects, and can provide our clients with a working understanding of the appropriate level of effort needed to comply with applicable environmental regulations. We also have expertise in preparing peer reviews of CEQA and NEPA documents, and have earned the respect of project proponents and critics alike. We strive to provide our clients with a level of personal service not generally found in larger firms.

The firm's Principal, Mr. Richard Grassetti, has over 38 years of experience preparing and reviewing environmental documents throughout California. Mr. Grassetti has worked on over 350 environmental impact reports, initial studies, environmental assessments, exemptions, and environmental impact statements. He has substantial expertise reviewing environmental assessments for regulatory compliance and technical adequacy, has conducted over 50 peer reviews of NEPA and CEQA documents, and has testified as an expert witness regarding CEQA adequacy issues. He also has prepared various other environmental analyses including environmental constraint assessments and feasibility studies. Mr. Grassetti has experience in both technical analysis and project management for environmental impact assessments of many types of projects including industrial development, power generation projects, airports, waste management and pollution control projects, mixed use urban development, residential projects, recreation/resort developments, planning studies, transportation improvements, and other infrastructure development.

GECO works with a group of affiliated environmental professionals on a regular basis. This collaboration provides our clients with a broad range of expertise, without the overhead burden of a large consulting firm. Our goal is to provide our clients with personalized service tailored to their specific needs. Each individual included on a GECO project team is a highly experienced, senior-level professional with extensive experience working for both public- and private-sector clients. Our services range from initial project scoping through project implementation and monitoring. Our staff and affiliates are highly qualified to assist clients in negotiating the maze of environmental compliance regulations. Through these reciprocal working arrangements, we offer technical experts of the highest caliber at modest cost. Our combined skills and experience offer a complete range of environmental assessment services.

## *GECO QUALIFICATIONS*

### **B. REPRESENTATIVE PROJECT EXPERIENCE**

#### **RECENT URBAN DEVELOPMENT EXPERIENCE**

**Hanna Court Wine Warehouse Project CEQA Initial Study/Mitigated Negative Declaration.** GECO prepared the IS/MND for a large wine warehouse project in American Canyon. Major issues were seismic hazards, biological resources, and traffic. Client: Stravinski Development Group and City of American Canyon. Project was approved and constructed after redesign to avoid on-site earthquake fault.

**Green Island Road Wine Warehouse Project CEQA Initial Study/Mitigated Negative Declaration.** GECO prepared the IS/MND for a large wine warehouse project on Green Island Road in American Canyon. Major issues were wetlands, traffic, and air quality traffic. Client: ICG and City of American Canyon. Project was approved and constructed after redesign to add parking lot.

**Commerce 330 Wine Warehouse Project CEQA Initial Study/Mitigated Negative Declaration.** GECO prepared the IS/MND for a large wine warehouse project on Commerce Boulevard in American Canyon. Project involved subdividing a large parcel into three parcels for potential warehouse use, as well as constructing a road extension to serve the new parcels. Major issues were wetlands, traffic, and air quality traffic. Client: ICG and City of American Canyon. Project was approved and is under construction.

***Gee Bridge Project IS/MND.*** GECO is preparing an IS/MND for a bridge on a private parcel in Northern Marin County. Client: Marin County Community Development Department.

***Albion Monolith Development Plan Initial Study/Mitigated Negative Declaration.*** GECO prepared a detailed IS/MND for an eight-unit residential project on an open parcel in Marin County near the City of San Rafael. Major issues were biological resources and traffic hazards. Client: Marin County Community Development Department.

***Hamilton Wetlands/Todds Road CEQA Review.*** GECO prepared the CEQA Initial Study for an alternative access road for truck traffic to the Hamilton Wetlands Restoration Project in Novato to reduce the project's potential noise impacts. Client: California State Coastal Conservancy.

#### **SOLID WASTE MANAGEMENT PROJECTS**

***Forward Landfill Expansion Project EIRs.*** GECO prepared four EIRs and Supplemental EIRs for the Forward Landfill in San Joaquin County. Most recently, we prepared of a 17-acre addition to the landfill. Previously, we prepared an EIR and Supplemental EIR for a 170-acre expansion of the Landfill, an EIR for consolidation of the Forward and Austin Road Landfills, and another EIR for a minor addition to the Landfill. Major issues include air quality, health and safety, biological resources, and traffic. Client: San Joaquin County Community Development Department.

## GECO QUALIFICATIONS

### WETLANDS RESTORATION CEQA EXPERIENCE

***Cascade Canyon Bridges CEQA Initial Study/Mitigated Negative Declaration.*** GECO is preparing an IS/MND for construction of two bike/pedestrian bridges in the Cascade Canyon Preserve in Marin County. Major issues are biological resources, cultural resources, and noise. Client: Marin County Parks and Open Space District.

***Rockville Trails Preserve Master Plan IS/MND.*** GECO prepared an IS/MND for a major open space preserve in Solano County. Project included new trails, a parking lot/staging area, and a new access road. Major issues were biological resources, cultural resources, and traffic safety. Client: Solano Land Trust.

***Rush Ranch Preserve Master Plan IS/MND.*** GECO prepared an IS/MND for a master plan for the Rush Ranch preserve, which included both visitor center improvements, trails improvements, and habitat restoration elements. Major issues included biological resources, water quality, and recreation. Client: Solano Land Trust.

***Bolinas Lagoon Open Space Preserve, Invasive Spartina Management Project Initial Study/MND.*** GECO prepared a CEQA Initial Study for a long-term management plan to control invasive Spartina species in Bolinas Lagoon. Client: Marin County Parks and Open Space District.

***Kent Island Restoration at Bolinas Lagoon Joint Environmental Assessment (EA) and Initial Study (IS).*** GECO prepared a combined CEQA Initial Study and federal Environmental Assessment for a proposal to restore Kent Island's ecosystem. The EA was for the US Army Corps of Engineers permit, and the IS was prepared for the Marin County Open Space District. Client: Marin County Parks and Open Space District.

***San Francisco Bay Water Trail Program EIR.*** GECO assisted in the preparation of the EIR for a "water trail" for small non-motorized boats throughout San Francisco Bay. The project involves designation of 115 access sites as well as policies for stewardship and education. Client: California State Coastal Conservancy.

***Upper Putah Creek Restoration Project Program EIR.*** GECO prepared a Program Environmental Impact Report on restoration of approximately 25 linear miles of stream channel of Putah Creek, near Davis, CA. Major issues included biological resources and recreational access. Client: Wetlands and Water Resources, for the Putah Creek Conservancy.

***Sonoma Creek Marsh Joint Environmental Assessment (EA) and Initial Study (IS).*** GECO prepared a joint IS/EA for the California Regional Water Quality Control Board (San Francisco Bay Region) and the US Fish and Wildlife Service for a plan to enhance tidal marshes and reduce mosquito production in a 300-acre marsh at the mouth of Sonoma Creek. Client: Wetlands and Water Resources and Audubon Society.

***Upper Putah Creek Restoration Project Program EIR.*** GECO prepared a Program Environmental Impact Report on restoration of approximately 25 linear miles of stream channel of Putah Creek, near Davis, CA. Client: Wetlands and Water Resources, for the Putah Creek Conservancy.

## **GECO QUALIFICATIONS**

***Prospect Island Restoration Project.*** Mr. Grassetti provided CEQA guidance and prepared a number of technical analyses for an EIR on a proposed 1400-acre fisheries enhancement project in the northern Sacramento/San Joaquin River Delta. Client: Stillwater Sciences, for California Department of Water Resources.

***Dutch Slough Restoration Project/Oakley Community Park EIR.*** GECO prepared the EIR for a 1400-acre wetland restoration and 80-acre community park on former diked lands in Oakley. Major issues include fisheries, water quality, historic architectural resources, and wetlands. Client: California State Coastal Conservancy.

***Aramburu Island Shoreline Protection and Ecological Enhancement Project Initial Study.*** GECO managed preparation of an Initial Study for a proposal by the Audubon Society to stabilize the shoreline and improve bird and seal habitat on the 34-acre Aramburu Island site in Marin County. Client: Wetlands and Water Resources.

***Salt River Ecosystem Restoration Project EIR.*** GECO prepared an Environmental Impact Report for the restoration of a large area of former marsh and open channel near Ferndale in Humboldt County. The project included creation of a new seven-mile-long river channel and a 400-acre wetland restoration. Client: Humboldt County Resource Conservation District.

***Parsons Slough Project CEQA Review:*** GECO prepared an expanded Initial Study for a tidal sill (dam) project to reduce scour in Parsons Slough, an arm of the ecologically sensitive Elkhorn Slough. Client: Vinnedge Consulting/Elkhorn Slough National Estuary Reserve.

***San Francisco Bay Estuary Invasive Spartina Control Project EIR/EIS and Addendum.*** GECO prepared the programmatic EIR/EIS on a plan to control invasive cordgrasses throughout the San Francisco Bay. Mr. Grassetti subsequently prepared an addendum for the addition of a new herbicide to the Spartina Control Program. Client: California State Coastal Conservancy.

## **SCHOOL DISTRICT CEQA DOCUMENTS**

***Distaff Thistle Control Project IS/ND.*** GECO prepared an IS/ND for the Marin County Office of Education (MCOE) on a project to remove invasive thistles from about 500 acres of rangeland at MCOE's Walker Creek Ranch. Client: MCOE.

***Novato Unified School District CEQA Projects.*** GECO has prepared over 25 Notices of Exemption and IS/MNDs for the Novato Unified School District.

***Allen Elementary School Replacement Project Initial Study/Mitigated Negative Declaration.*** GECO is currently preparing an IS/MND for the replacement of Decima Allen Elementary School in San Bruno. Client: San Bruno Park School District.

***Mills High School Athletic Fields Modernization Project Initial Study/Mitigated Negative Declaration:*** GECO is currently preparing an IS/MND for lighting and relocating athletic fields on the Mills High School campus in Millbrae. Client: San Mateo Union High School District.

## *GECO QUALIFICATIONS*

***Capuchino High School Athletic Fields Modernization Project Initial Study/Mitigated Negative Declaration:*** GECO is currently preparing an IS/MND for lighting and relocating athletic fields on the Capuchino High School campus in Millbrae. It is possible that this document may become a focused EIR due to potential noise issues. Client: San Mateo Union High School District.

***San Mateo Union High School District New Continuation High School Initial Study/Mitigated Negative Declaration.*** GECO prepared a detailed IS/MND for a new continuation high school at the site of an existing warehouse building in Burlingame. Client: San Mateo Union High School District.

***Novato Unified School District GMO Building Initial Study/Mitigated Negative Declaration.*** GECO prepared the IS/MND for a new grounds, operations, and maintenance building in the Hamilton Air Base area of Novato. Client: Novato Unified School District.

***Union School District M&O Building Initial Study/Mitigated Negative Declaration.*** GECO prepared the IS/MND for a new District maintenance and operations building on a vacant portion of the Cinnabar Elementary School grounds in San Jose. Client: Union School District.

***San Marin High School STEM/PAC Initial Study/Mitigated Negative Declaration.*** GECO prepared an IS/MND for new science and performing arts buildings and relocation of certain athletic fields at San Marin High School in Novato. Client: Novato Unified School District.

***Novato High School STEM/PAC Initial Study/Mitigated Negative Declaration.*** GECO prepared an IS/MND for new science and performing arts buildings and relocation of certain athletic fields at Novato High School in Novato. Client: Novato Unified School District.

***Stevenson/Theuerkauf School Expansion Initial Study:*** GECO prepared a detailed IS/MND for expansion of two elementary schools, construction of a new preschool, and replacement of the District Office Building on a 15-acre site in Mountain View, CA. Client: Mountain View Whisman School District.

***Crittenden Track and Field Project Initial Study/Mitigated Negative Declaration:*** GECO prepared a detailed IS/MND for a project to upgrade an existing track and field, including upgraded lighting, for the Mountain View Whisman School District (MVWSD). Major issues included light and glare and removal of a row of mature redwood trees (visual and biological impacts). Client: Mountain View Whisman School District.

***New Slater Elementary School IS/MND.*** GECO is preparing an Initial Study/Mitigated negative declaration for a proposed new 450-student elementary school in the Mountain View Whisman School District. Major issues include traffic, noise, and construction impacts. Client: Mountain View Whisman School District.



## **GECO QUALIFICATIONS**

***San Mateo USD District Office Building Replacement Project Initial Study/Mitigated Negative Declaration.*** GECO prepared a detailed Initial Study/Mitigated Negative Declaration for a new school district office building to replace two existing buildings in San Mateo. Key staff involved: Richard Grassetti, GECO). Contact: Todd Lee, Principal, Greystone West Company, (707) 933-0624.

## **OTHER SELECTED CEQA AND NEPA DOCUMENTS**

***San Francisco PUC Water Supply Improvement Program CEQA.*** GECO assisted in the preparation of the San Francisco Public Utility Commission's Water Supply Improvement Project Program EIR, as well as two other CEQA documents for individual projects under that program. Major issues include hydrology, water supply, and fisheries. Client: Water Resources Engineering/Orion Associates.

***State Water Board Water Supply Upgrade Projects CEQA Documentation.*** GECO prepared approximately 15 CEQA Exemptions and 5 IS/MNDs for small water supply system upgrades throughout California. Client: Northgate Environmental Management and State Water Resources Control Board.

***Carmel Area Water District Calle La Cruz Pipeline Replacement Project.*** GECO prepared the IS/MND for replacement of two wastewater lines crossing the Carmel River Lagoon. Major issues included biological resources, cultural resources and water quality. Client: Johnson Marigot Consulting and Carmel Area Wastewater District.

***Forward Landfill Expansion Project EIR.*** GECO prepared an EIR and Supplemental EIR for a 170-acre expansion of the Forward Landfill in San Joaquin County. This is the third EIR that GECO and its Principal, Richard Grassetti, has prepared for this landfill over a period of 20 years. Major issues include air quality, health and safety, biological resources, and traffic. Client: San Joaquin County Community Development Department.

## **SELECTED PEER REVIEW PROJECTS**

***John Smith Road Landfill Expansion EIR Peer Review.*** GECO is currently preparing a peer review of an applicant-prepared EIR on large and controversial landfill expansion in San Benito County. Major issues included air quality, noise, traffic, health risk, land use, and biological resources. Client: San Benito County Resource management Agency

***Alameda County Solar Projects EIRs Peer Review.*** GECO prepared peer reviews and comment letters on EIRs on two solar energy projects in agricultural open space lands in eastern Alameda County. Major issues included biological resources, visual quality, and land use planning compliance. Client: Private party in advance of potential litigation.

***Harris Quarry EIR Peer Reviews.*** GECO, in association with The RCH Group, conducted peer reviews of two CEQA EIRs for proposed expansions of the Harris Quarry in Mendocino County. The first EIR was rejected by the courts partially on the basis of our review. Client: Keep the Code (Citizens Group).

## **GECO QUALIFICATIONS**

***BLM Southern Nevada Water Project NEPA EIS Peer Review.*** GECO conducted a peer review of a Bureau of Land Management Environmental Impact Statement for a large-scale project to extract and transport water from rural areas throughout the state of Nevada for use in the Las Vegas area. Major issues were water supply, biological resources, dust/air quality, and loss of agriculture. Client: Confederated Tribes of the Goshute Indian Reservation

***PG&E San Francisco Facilities Acquisition Project Peer Review.*** GECO conducted a peer review of a CEQA IS/MND on the City's proposed acquisition of PG&E facilities. Client: Cox, Castle, Nicholson.

***Jackson State Forest CEQA Review.*** GECO prepared a detailed analysis of the CEQA adequacy of the California Department of Forestry's EIR on a new management plan for the 40,000-acre Jackson State Forest. Major issues included forestry practices, water quality, and biological resources. Client: Dharma Cloud Foundation

***Lawson's Landing Master Plan EIR Peer Review.*** GECO conducted detailed per reviews of numerous CEQA documents for the proposed master plan for the Lawson's Landing mobile home park and campground in Marin County. Client: Environmental Action Committee of West Marin.

***Fairfax/Artesa Vineyards Conversion EIR Peer Review.*** GECO conducted a peer review of an EIR von conversion of forest lands to vineyards in northern Sonoma County. Major issues were biological resources, hydrology/water supply, and land use compatibility. Client: Friends of the Gualala River.

***Grist Creek Gravel Mining Project Initial Study Peer Review.*** GECO conducted a peer review of an Initial Study on a proposed gravel mine in Sonoma County. Major issues were fisheries, water supply, and cultural resources. Client: Round Valley Indian Tribes.

***Morongo Mining Projects Environmental Reviews.*** GECO provided CEQA, NEPA, and technical consulting to the Morongo Band of Mission Indians regarding two aggregate mines adjacent to their reservation in Riverside County, CA. Client: Law Office of Alexander & Karshmer.

***Headwaters Forest Project EIR/EIS Review.*** GECO conducted an expert review of the CEQA and NEPA adequacy and technical validity of EIR/EIS on the Headwaters Forest Habitat Conservation Plan, Sustained Yield Plan, and land purchase. Clients: Environmental Law Foundation; Environmental Protection and Information Center, and Sierra Club.

***Metropolitan Oakland International Airport Development Plan Environmental Impact Report CEQA Review.*** GECO performed a critical review and assisted in the preparation of comments and ultimately successful litigation regarding the proposed expansion of Metropolitan Oakland International Airport. Major issues included noise, cumulative impacts, and alternatives selection/analyses. Client: Law Office of John Shordike.

## **GECO QUALIFICATIONS**

***San Francisco International Airport Environmental Liaison Office Consulting.*** GECO conducted various internal peer review tasks associated with environmental studies being prepared for SFIA's proposed runway expansion. Client: LSA Associates, Inc.

***Alamo Gate Permitting Review.*** GECO performed a critical review and prepared expert testimony and correspondence regarding the adequacy of CEQA and land use permitting and studies for a proposed gate on Las Trampas Road, which would preclude vehicular access to an EBRPD regional park staging area. Client: Las Trampas Trails Advocates.

***Save Our Forests and Rangelands Expert Review and Witness Services.*** GECO provided expert review, consulting services, and expert witness testimony on CEQA issues for a successful legal challenge to an EIR and Area Plan for 200,000 acres in the Central Mountain Sub-region of San Diego County. Client: Law Offices of Milberg, Weiss, Bershad, Specthrie, & Lerach.

***Gregory Canyon Landfill Environmental Processing Review.*** GECO was retained to review the environmental permitting and CEQA analyses for the proposed Gregory Canyon Landfill in northern San Diego County. Procedural issues include landfill siting requirements and CEQA process compliance. Technical issues include cultural resources, hydrology, endangered species, traffic, and health and safety. Client: Law Offices of Alexander & Karshmer and Pala Band of Mission Indians.

## Richard Grassetti

PRINCIPAL

### *Expertise*

- CEQA Environmental Assessment/Report Preparation
- CEQA Project Management
- CEQA Training
- CEQA Document Peer Review / Litigation Assistance

### *Principal Professional Responsibilities*

Mr. Grassetti is an environmental planner with over 40 years of experience in environmental impact analysis, project management, and regulatory compliance. He is a recognized expert on California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) processes, and has served as an expert witness on CEQA and planning issues. Mr. Grassetti regularly conducts peer review and QC/QA for all types of environmental impact analyses, and works frequently with public agencies, citizens groups, and applicants. He has managed the preparation of over 100 CEQA and NEPA documents, as well as numerous local agency planning and permitting documents. Mr. Grassetti has prepared over 200 hydrologic, geologic, and other technical analyses for CEQA and NEPA documents. He has analyzed the environmental impacts of a wide range of projects including infrastructure improvements, ecological restoration projects, waste management projects, mixed-use development, energy development, residential projects, and recreational facilities throughout the western U.S. Mr. Grassetti also has prepared numerous peer reviews of CEQA and NEPA documents for agencies, applicants, Native American tribes, and citizens groups. In addition to his consulting practice, Mr. Grassetti regularly conducts professional training workshops on CEQA and NEPA compliance, and was a lecturer at California State University, East Bay, where he taught courses on environmental impact assessment for 15 years.

### *Professional Services*

- Management and preparation of all types of environmental impact assessment and documentation for public agencies, applicants, citizens groups, and attorneys
- Peer review of environmental documents for technical adequacy and regulatory compliance

## GECO QUALIFICATIONS

- Expert witness services
- Assisting clients in CEQA and NEPA process compliance
- Preparation of hydrologic and geologic analyses for EIRs and EISs
- Preparation of project feasibility, opportunities, and constraints analyses, and mitigation monitoring and reporting plans

### *Education*

University of Oregon, Eugene, Department of Geography, M.A., Geography (Emphasis on Fluvial Geomorphology and Water Resources Planning), 1981.

University of California, Berkeley, Department of Geography, B.A., Physical Geography, 1978.

### *Professional Experience*

1992-Present	Principal, GECO Environmental Consulting, Berkeley, CA
1994-Present	Adjunct Professor, Department of Geography and Environmental Studies, California State University, Hayward, CA
1988-1992	Environmental Group Co-Manager / Senior Project Manager, LSA Associates, Inc. Richmond, CA
1987-1988	Independent Environmental Consultant, Berkeley, CA
1986-1987	Environmental/Urban Planner, City of Richmond, CA
1982-1986	Senior Technical Associate - Hydrology and Geology - Environmental Science Associates, Inc. San Francisco, CA
1979-1981	Graduate Teaching Fellow, Department of Geography, University of Oregon, Eugene, OR
1978	Intern, California Division of Mines and Geology, San Francisco, CA

### *Professional Affiliations and Certifications*

Member and Past Chapter Director, Association of Environmental Professionals, San Francisco Bay Chapter

*GECO QUALIFICATIONS*

Member, International Association for Impact Assessment

## GECO QUALIFICATIONS

### *Publications and Presentations*

Grassetti, R. *Round Up The Usual Suspects: Common Deficiencies in US and California Environmental Impact assessments*. Paper Presented at International Association for Impact Assessment Conference, Vancouver, Canada. May 2004.

Grassetti, R. *Understanding Environmental Impact Assessment – A Layperson's Guide to Environmental Impact Documents and Processes*. (in press).

Grassetti, R. *Developing a Citizens Handbook for Impact Assessment*. Paper Presented at International Association for Impact Assessment Conference, Marrakech, Morocco. June 2003

Grassetti, R. *CEQA and Sustainability*. Paper Presented at Association of Environmental Professionals Conference, Palm Springs, California. April 2002.

Grassetti, R. and M. Kent. *Certifying Green Development, an Incentive-Based Application of Environmental Impact Assessment*. Paper Presented at International Association for Impact Assessment Conference, Cartagena, Colombia. May 2001

Grassetti, Richard. *Report from the Headwaters: Promises and Failures of Strategic Environmental Assessment in Preserving California's Ancient Redwoods*. Paper Presented at International Association for Impact Assessment Conference, Glasgow, Scotland. June 1999.

Grassetti, R. A., N. Dennis, and R. Odland. *An Analytical Framework for Sustainable Development in EIA in the USA*. Paper Presented at International Association for Impact Assessment Conference, Christchurch, New Zealand. April 1998.

Grassetti, R. A. *Ethics, Public Policy, and the Environmental Professional*. Presentation at the Association of Environmental Professionals Annual Conference, San Diego. May 1992.

Grassetti, R. A. *Regulation and Development of Urban Area Wetlands in the United States: The San Francisco Bay Area Case Study*. Water Quality Bulletin, United Nations/World Health Organization Collaborating Centre on Surface and Ground Water Quality. April 1989.

Grassetti, R. A. *Cumulative Impacts Analysis, An Overview*. Journal of Pesticide Reform. Fall 1986.

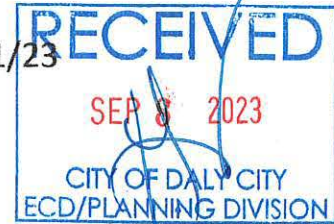
1986, 1987. Guest Lecturer, Environmental Studies Program, University of California, Berkeley.

*GECO QUALIFICATIONS*



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



Re: Serramonte Del Rey Campus Redevelopment Project  
Draft Environmental Impact Report

I am a resident of the Serramonte Ridge Apartments and will be greatly affected by the destruction of the Community Garden and the 15-year timeline in construction of this phased development.

Please SAVE The Garden

- Where the community grows herbs, fruits and vegetables
- It is home to over 100 trees and many different animals, birds, butterflies
- The location has special significance and recognition for Native Ohlone Indians
- It is an area that is shared and respected by people from all over Daly City along with students at Shasta High School by peacefully being in Nature

The Long Construction Timeline

- Last over 15 years? This is not fair to our community for quality of living.
- Air Quality with the fog and dust will linger on our cars and walkways
- Constant Noise of Construction on weekdays 8-5pm with many of us working remotely or trying to get day sleep for those of us who work in the service industry?

I understand that this is the Environmental Review of the Project --- but my health and Safety living and renting thru this project development should be a consideration.

Sincerely,

Michael Von Lonkhuisen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

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Sincerely,

Chamzellam

Save The Garden!

Michael Von Lonkhuisen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



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Sincerely,

Chloe Costa Amador



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
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The Long Construction Timeline

- Last over 15 years? This is not fair to our community for quality of living.
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I understand that this is the Environmental Review of the Project --- but my health and Safety living and renting thru this project development should be a consideration.

Sincerely,

CRISTINA FRANCISCO

I personally have been enjoying the garden since I moved in 2019. The welcoming vibe is AMAZING. Keep the good work. Thank you WORK MAKES THE difference.



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



Re: Serramonte Del Rey Campus Redevelopment Project  
Draft Environmental Impact Report

I am a resident of the Serramonte Ridge Apartments and will be greatly affected by the destruction of the Community Garden and the 15-year timeline in construction of this phased development.

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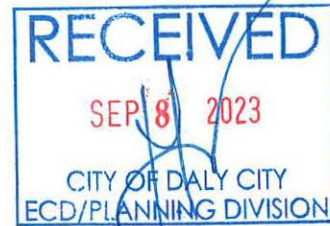
Casey Quon



This is a great environment.

Michael Von Lonkhuisen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



Re: Serramonte Del Rey Campus Redevelopment Project  
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Sincerely,

*Catherine VanEtten*

*Please don't destroy this environmental gem!*

Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



Re: Serramonte Del Rey Campus Redevelopment Project  
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Sincerely,

Eduardo Silva Amado

[Redacted signature area]



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



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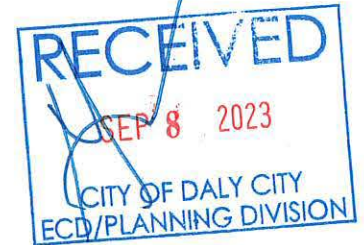
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Sincerely,

Eric Campbell  
care taker of green space!

Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



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Sincerely,

*Jana Lopez*

save the garden 0



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



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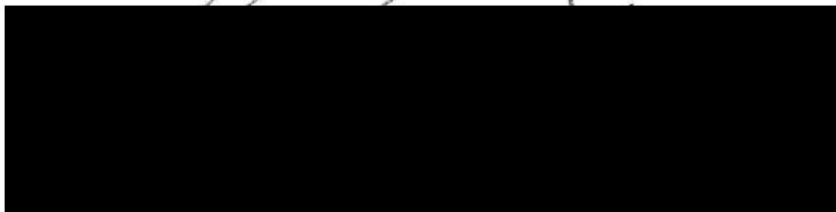
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Sincerely,



Henry Guedens-Bornham

My dogs & I enjoy relaxing in the gorgeous park when I get home from work. It's a shame that some one wants to ruin this awesome park.



Michael Von Lonkhuisen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



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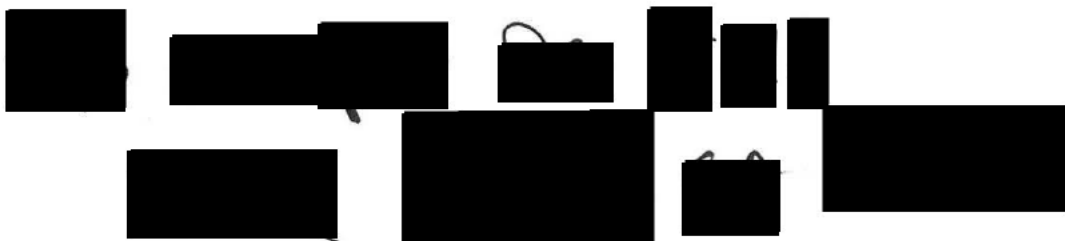
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Sincerely,

Monica Costa Arendt



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



Re: Serramonte Del Rey Campus Redevelopment Project  
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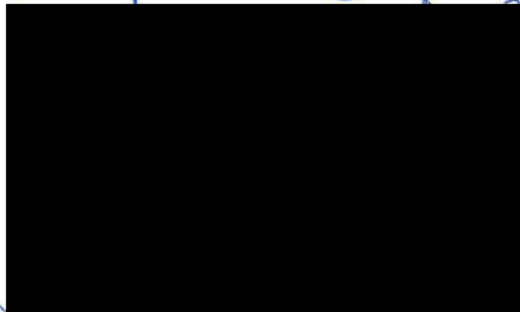
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Sincerely,

Monique Bidegain



I love the garden, its a place where I find myself, when I need to love myself! To

PLANT A GARDEN IS TO BELIEVE IN TOMORROW !

SAVE THIS GARDEN

Michael Von Lonkhuisen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



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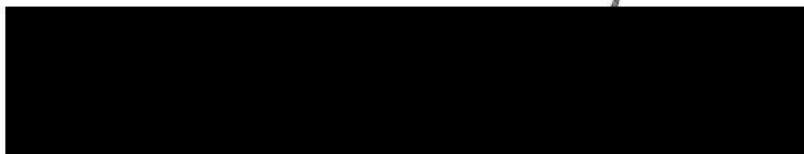
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Sincerely,





Daly city Resident for 49 years



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



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Sincerely,

A handwritten signature in blue ink, appearing to be "Michael Von Lonkhuysen".

A handwritten signature in blue ink, appearing to be "Patrick Robertson".



I'VE BEEN COMING TO THIS BEAUTIFUL GARDEN FOR THE PAST  
"15 YEARS. I'VE SEEN A BEAUTIFUL PLACE GROW. KIDS GROWING  
... .."

How much Money IS Really enough... When you need  
to get away from the world where do you go...

Come by the Garden with your lunch and some music  
and enjoy the Real Garden Experience.

Thank you for Reading.

Pat -

Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



Re: Serramonte Del Rey Campus Redevelopment Project  
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Sincerely,

Hayden (Shasta Student)



Michael Von Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
444 90<sup>th</sup> Street  
Daly City, Ca 94015

9/1/23



Re: Serramonte Del Rey Campus Redevelopment Project  
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I understand that this is the Environmental Review of the Project --- but my health and Safety living and renting thru this project development should be a consideration.

Sincerely,

(Shasta Student)

---

**From:** Andrew Sielen [REDACTED]  
**Sent:** Sunday, September 3, 2023 10:58 PM  
**To:** Michael Van Lonkhuysen <mvanlonkhuysen@dalycity.org>  
[REDACTED]  
**Subject:** [EXTERNAL] Not enough community spaces

**CAUTION: EXTERNAL SENDER.** Verify before you respond, click links or open attachments. Questions? Contact ISD.

Mr. Van Lonkhuysen,

My family and I moved to Daly City in 2020, we bought a house in Westlake and we plan on making it our forever home. One disappointment though is that this city does not seem to invest in community spaces and the school district is hostile to the community. Locking its gates to families who would benefit from some extra space for their kids to run around (and in the case of Westlake, the neighborhood was specifically built around the elementary school grounds as a park for neighborhood children, now it is just locked up and only used by the school a couple times a year) and now looking to destroy the only community garden in the city.

It is important to me that my son has exposure to where our food comes from, community gardens are a great opportunity to show him this. We have been attempting to grow vegetables in our backyard (photos attached) and frequent the seed bank at Westlake Library. Our foggy weather makes this difficult and we would benefit from a meeting ground such as this garden where we can meet and learn from our neighbors who have been doing this for years.

The school district has already taken out other community space when they decided to develop the land next to Westmoor High. Don't let them take this one away also. They are not a private corporation, and they should be accountable to us the tax payers. It is great we are building so much more housing, but without the community, we are just housing people who may live here but spend their lives in our neighbor cities like SF or South City. Let's make our city a place to thrive.

This city has so much promise, great neighbors and community but it needs some new energy, taking away these spaces is going in the wrong direction. We don't want to go in the direction of SF.

As my family and I establish our roots in this city, we look forward to getting more engaged.

Andrew Sielen  
[REDACTED]

Building our garden bed



A work in progress



---

**From:** Emma Hartung [REDACTED] >  
**Sent:** Monday, September 4, 2023 2:44 PM  
**To:** Michael Van Lonkhuysen <mvanlonkhuysen@dalycity.org>  
**Subject:** [EXTERNAL] Serramonte Del Rey Redevelopment DEIR Comment

**CAUTION: EXTERNAL SENDER.** Verify before you respond, click links or open attachments. Questions? Contact ISD.

To Daly City Planning Manager Michael Van Lonkhuysen:

I am writing to comment on the Serramonte Del Rey Redevelopment DEIR and to urge you to oppose the demolition of Daly City's only community garden. The DEIR makes it clear that this project would have detrimental impact to local habitat that is already severely limited by negatively impacting foliage, wetlands, wildlife habitat and the creek. This community garden is a resource that is crucial to the local community. I hope that Daly City will reflect on these negative impacts found and act swiftly to preserve the garden in recognition of the critical environmental and social resources that it provides.

Sincerely,  
Emma Hartung

## Daly City Community Garden Alliance

Michael Von Lonkhuysen, Planning Manager

City of Daly City, Planning Division

333 90th Street

Daly City, CA 94015

Via email: [mvanlonkhuysen@dalycity.org](mailto:mvanlonkhuysen@dalycity.org)

September 6, 2023

**Re: Serramonte Del Rey Campus Redevelopment: 699 Serramonte Boulevard APN 091-211-230**

Dear Mr. Van Lonkhuysen,

Visualize the place that you go that brings you peace and helps calm your mind and soul, the Daly City Community Garden is that place for me and many people and their families. This garden is the only community garden in Daly City which has less than 5% of the urban canopy of trees that cover our city (Excellence, 2020). This unique garden is located across from the Jefferson High School District building and is part of the Serramonte Del Rey Campus Development. This only green space includes over 100 redwood trees, 100 fruit trees, and native trees that include Douglas Firs, Madrones, Buckeyes, Live Oak, White Oak, Catalina, and Ironwood trees.

The Mission Blue Butterfly has also found a home in our garden and because of habitat loss in response to land degradation as a result of housing and retail development, this beautiful species is almost extinct and, on the Fish and Wildlife website is categorized in red as



endangered (Endangered Species, 2023). I have seen these butterflies' multiple times in the garden with Erik, the caretaker. What will happen to the ecosystem if the small piece of land is destroyed to build more apartments which are for market rate and more retail stores, has the city noticed that retail industry has taken a financial hit which will just be more stores that are empty, once the development is finished. Daly City residents will also not be able to afford to live in these for market rate apartments and the affordable housing that we are promised is under the requirements of percentage that is necessary. They will also have one building out of the five that will house all the affordable housing, that should be considered discrimination.

I have lived at the Serramonte Ridge Apartments since January 2015, and I have been going to the garden soon after I moved in. My son attends Summit Shasta High School, he started his freshman year at Shasta High School in 2020 during Covid and the garden became our sanctuary since we could not leave our apartment. He currently is a senior and is in his last year of high school. Throughout the time that we lived at Serramonte Ridge, together we planted potatoes, sun flowers, peas, green beans, beets, rosemary, and sage. I am a single mom, and this food source helps with our food expenses. People from the community that go to the garden, leave with fresh fruit, vegetables, and herbs that are completely free and so fresh, garden to table.

The garden is a place for kids of all ages to go and spend time with friends and family, this is especially important for high school kids. My son goes and hangs out with friends or works in the garden, he has helped build fences, learned about landscaping, and even has a plot where he has planted different types of lettuce. It puts my mind at ease knowing that he is in the garden and not out running the streets causing trouble. Shasta High School also has a plot for the students to grow a variety of plants, vegetables, and herbs. This opportunity gives them

hands on learning that they will take with them long after graduation. Global warming is a threatening presence, and the youngest generations are dealing with how to help, and the garden will teach them the importance of ecology and conservation.

Change.org has a petition of over 4,500 signatures of people agreeing to Daly City's need of this community garden, mother nature has an amazing resilience to the harm humans have caused but the time to help her is of extreme importance for all things living. Nature is a healing spiritual resource for anyone that can enjoy the magic and the healing nature of places like the Daly City Community Garden. The earth has an adaptable nature but if all of nature has been turned into developments of apartments and office space with an area on top of a parking garage, that does not have the resource of over twenty years of growth in that location, and nature will not have the ability to heal itself or us. I request that you read this letter and all the letters you receive, in the Daly City Community Garden. It might open your mind and the minds of the people that are in support of this development. Instead of following the dollar signs, listen to the community that is seeing the signs that this earth will not be able to continue in its destruction.

Thank you for your time working with us and for reading my letter.

Kind Regards,

Melissa Kallstrom

Daly City Community Garden Alliance

## References

Excellence, C. C. (2020, July 1). *Greening the Concrete Jungle: Daly City Partners With Residents*. Retrieved from WesternCity.com: <https://www.westerncity.com/article/greening-concrete-jungle-daly-city-partners-residents>

The United States Environmental Protection Agency. (2023, August 14). *Endangered Species*. Retrieved from EPA.GOV: <https://www.epa.gov/endangered-species/endangered-species-save-our-species-information-mission-blue-butterfly#:~:text=This%20small%20butterfly%20spends%20its,offices%2C%20factories%2C%20and%20farms.>

---

**From:** Muchia Te [REDACTED] >  
**Sent:** Wednesday, September 6, 2023 9:58 AM  
**To:** Michael Van Lonkhuysen <mvanlonkhuysen@dalycity.org>  
**Subject:** [EXTERNAL] Attn: Mr. Michael Van Lonkhuysen : Daly City Community Garden

CAUTION: EXTERNAL SENDER. Verify before you respond, click links or open attachments. Questions? Contact ISD.

Greetings,

My name is Catalina Gomes and I am a descendant of the Ramaytush people from Timigtac Village site near Calera Creek. I am writing to express the need to protect the Daly City Community Garden which is situated nearby the land my ancestors lived. There has been a long Indigenous history on that land - most of which has been obscured, erased, and violently destroyed. Given the historical context and what little remains, it is of the utmost importance that this garden not also be destroyed for the benefit of a private development opportunity.

Being the only community garden in Daly city, it provides much needed green space (most of which is rapidly disappearing) while also acting as a food source for people who are food compromised. Filled with native trees, established fruit trees, soil that has been built over years, and a diverse array of wildlife that has built complex interspecies relationships, replacing this would certainly not be achievable with a few raised beds as it would take decades to replace the mature trees that would be destroyed by this proposed development.

Daly City is in great need of an urban forest. There are several other phases of this project that could take place without the destruction of this vital, thriving, living asset to the community! Not only as a green oasis, in an urban setting, but also as a place of cultural relevance. As the site of decades, if not thousands of years of Indigenous ceremonies. I am hopeful that you take advantage of this opportunity to protect this garden that is of great value to the community at large!

--

~Catalina Gomes

Founder  
Executive Director  
Muchia Te' Indigenous Land Trust

[muchiateilt.org](http://muchiateilt.org)







September 7, 2023

**Via Read Receipt Email**

Mr. Michael Van Lonkhuysen  
Economic and Community Development Department  
City of Daly City  
333 90th Street  
Daly City, California 94015  
mvanlonkhuysen@dalycity.org

**Re: Comments on the Serramonte Del Rey Campus Redevelopment Draft Environmental Impact Report**

Dear Mr. Van Lonkhuysen:

Cossart-Daly Law, A.P.C. represents the Loma Prieta Chapter of the Sierra Club (“Sierra Club”) with respect to the Serramonte Del Rey Campus Redevelopment Draft Environmental Impact Report.

The Loma Prieta Chapter of the Sierra Club offers local members and supporters opportunities to actively contribute to the environmental work of the Sierra Club, which promotes the responsible use of the earth’s ecosystems and resources, and aims to protect and restore the quality of the natural and human environment. Sierra Club has a strong interest in addressing the environmental and environmental justice impacts of development projects, including the proposed Serramonte Del Rey Campus Redevelopment in Daly City (the “Project”). Cossart-Daly Law, A.P.C. submits the following comments on the Draft Environmental Impact Report (“DEIR”) on Sierra Club’s behalf.

The Project is a massive undertaking that will result in significant environmental impacts. In order to construct the Project, the City of Daly City (“City”) developed an approximately 22-acre Serramonte Del Rey Precise Plan (“Precise Plan”) unique to the Project, as well as a specific development proposal for an approximately 4.3-acre Parcel B within a portion of the Precise Plan. (DEIR p. iv.)

**Cossart-Daly Law, A.P.C.**

1117 State Street, Santa Barbara, California, 93101  
805-380-8408 | [www.cossart-dalylaw.com](http://www.cossart-dalylaw.com)

The Project, as proposed, would include a project site area with “up to” 1,235 units of affordable and market-rate rental housing. (DEIR p. iv.) Affordable housing would primarily be segregated into Parcels A and C. (DEIR Appendix A, p. 14; Jefferson Union High School District, *The Serramonte Del Rey Neighborhood*, available at <https://serramontedelrey.org/masterplan/>.) The Project would also include “up to” 14,000 square feet of retail or commercial use area. (*Ibid.*) 22 acres of the Project site would be used to construct “up to” 1,113 units of affordable and market-rate rental housing, in addition to the 122 currently-existing units on Parcel A. (*Ibid.*) It would also include the construction of a mixed-use building with 201 residential units and approximately 8,000 square feet of retail space including two levels of parking on a 4.3 acre portion of the site. (*Ibid.*) There is a long standing Community Garden, a wetland, many trees, and greenspace, including a meadow, located on the Project site. (DEIR, pp. 10, 67, Figs. 2.2-5, 3.4-1.) The Community Garden and a majority of the parcel’s green space is located on Parcel F. (See DEIR Fig. 2.2-5.) According to the DEIR, “[t]he proposed Precise Plan would remove the existing garden and use the space as a construction staging area until Parcel F is fully developed with up to 400 units and 6,000 square feet of retail uses.” (DEIR, p. 10.) This would result in the destruction of the Community Garden, the wetland, and a majority, if not all, of the green space located around the Community Garden.

This Project will create significant environmental impacts, and thus requires a careful, complete and thorough environmental analysis under the California Environmental Quality Act (“CEQA”). “CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment.” (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* [“*Union of Medical Marijuana Patients*”] (2019) 7 Cal.5th 1171, 1184, citing *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 382.) “CEQA embodies a central state policy to require state and local governmental entities to perform their duties ‘so that major consideration is given to preventing environmental damage.’” (*Union of Medical Marijuana Patients, supra* 7 Cal.5th at 1185, citing *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 711-712.)

As explained herein, the DEIR mischaracterizes the Project setting, relies on an unstable Project description, and does not provide an adequate analysis or mitigation for impacts to Biological Resources, Recreation, or Land Use. Most importantly, the DEIR alternatives analysis is insufficient because it does not include nor adopt an alternative that would disperse affordable

housing throughout the Project and preserve the Community Garden, wetland, and surrounding green space. Please remedy these deficiencies as outlined and requested below in order to ensure that the environmental review documents for the Project comply with CEQA.

**I. The DEIR's Description of the Project Site is Inaccurate, As it Mischaracterizes the On-Site Community Garden, Wetland, and Greenspace.**

According to the CEQA Guidelines, an EIR must correctly describe the environmental setting for the project. (14 Cal Code Regs § 15125(a), (c); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 726 [voiding EIR for failure to contain accurate site description].) The description of the environmental setting should include “the area in which significant effects would occur either directly or indirectly as a result of the project.” (*Id.* at § 15360.) These existing physical conditions “will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (See *Neighbors for Smart Rail v Exposition Metro Line Constr. Auth.* (2013) 57 C4th 439, 448, *Communities for a Better Env't v South Coast Air Quality Mgmt. Dist.* (2010) 48 C4th 310, 320.) “[S]pecial emphasis should be placed on environmental resources that are rare or unique to the region and that would be affected by the project.” (14 Cal Code Regs §15125(c).) “The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.” (*Id.* at §15125(a).) Courts and lead agencies “must interpret the Guidelines to afford the fullest possible protection to the environment.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.)

Environmental conditions must be described as they exist. (*Id.* at §15125(a).) Including a correct and pertinent description of existing environmental resources is critical for a DEIR to comply with CEQA. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 726; *Sierra Watch v County of Placer* (2021) 69 Cal. App. 5th 86; *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer* (2022) 75 CA5th 63, 97.) Without correct and comprehensive information of environmental resources that will be potentially impacted, the lead agency cannot correctly assess significant impacts nor what measures, if any, could mitigate these impacts. (See *ibid.*)

As described herein, the DEIR mischaracterizes the Project site. It states that no sensitive plant or animal species have been observed onsite, when several endangered or special status species have been observed on and around the Community Garden, wetland, and open space located on Parcel F. (Compare DEIR p. 61, 62 with Exhibit A, Althouse and Meade, Inc.

Correspondence, pp. 2-4.) The DEIR indicates that there is a wetland onsite, but fails to describe how this wetland may or may not support riparian habitat, what it entails, and what wetland-specific species exist on site. (Compare DEIR, p. 59 with Exhibit A, Althouse and Meade, Inc. Correspondence, pp. 2-4.)

The DEIR also does not adequately describe the Community Garden. The Biological Resources Environmental Setting only briefly mentions the Community Garden, and does not discuss its function or importance in supporting sensitive species. (See DEIR, p. 59 [“although native plant species are present in the Demonstration Garden as a result of being planted by gardeners...”]). But, as further explained herein, the Community Garden and the surrounding trees and open space serve as important habitat for sensitive species, an important wildlife corridor, and important urban “green space [which] supports a diverse array of nesting habitat with varied vegetation strata to support cavity-, ground-, shrub-, and canopy-nesting birds.” (See Exhibit A, Althouse and Meade, Inc. Comment Letter, p. 10.)

What’s more, the DEIR downplays the important recreational, historic, and community functions of the Community Garden. The DEIR’s only full description of the Community Garden states:

There is an approximately 0.5-acre school demonstration garden located in the southwest corner of the Precise Plan area. This garden was started 20 years ago and used by JUHSD for adult education as a demonstration garden. In 2019, the garden was listed as a “community garden” by the County of San Mateo; however, the listing occurred without the knowledge or permission of JUHSD leadership, and therefore the garden was removed from the list. (DEIR, p. 10.)

The Community Garden has not been used as a “demonstration garden,” as claimed by the DEIR, but has existed as a community garden, open to the public, for an extended period of time. (See Exhibit B, video from CBS Bay Area, *Daly City Housing Development Squeezing out Beloved Community Garden*, available at <https://www.cbsnews.com/sanfrancisco/news/daly-city-housing-development-plans-squeezing-out-beloved-community-garden/?intcid=CNM-00-10abd1h>; see also Exhibit C, Petition, *Help Save Daly City’s Only Community Garden*.) Residents of the Serramonte Ridge Apartment Homes, adjacent to the Project Site, have used the Community Garden since the construction of Serramonte Ridge in the 1980s. (See Figure 3.17-1; Serramonte Ridge Renters Association September 26, 2021 Comment Letter, available at <https://static1.squarespace.com/static/52a4b6b8e4b020f5799aacd9/t/623f69221e2f0172f42a9e80/1648322851095/Serramonte+Ridge+Renters+Association+Letter+to+City+of+Daly+City+v.3.p>

df.) The DEIR, likewise, does not discuss or disclose that the Community Garden is Daly City's only community garden, or that the Community Garden provides a unique space which permits community members to grow culturally relevant foods, provides access to gardening for those who would not otherwise have it, and provides on open space for indigenous community members to hold religious ceremonies. (See Exhibit C, Petition, *Help Save Daly City's Only Community Garden*; Sierra Club August 12, 2021 Comment Letter, available at <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/loma-prieta-chapter/conservelatters/Letter%20to%20David%20Canepa%208.13.21.pdf>.)

As discussed herein, removal of the Community Garden will result in significant impacts to habitat for sensitive and endangered species and on recreation. Because the DEIR mischaracterizes the Community Garden, it does not analyze the removal of the Community Garden as having a significant impact on Biological Resources, and does not provide appropriate mitigation for such impacts.

If the City adopts the DEIR without updating the description and analysis of the wetland, open space, and Community Garden, it will violate CEQA. In order to comply with CEQA, please update the DEIR to accurately reflect the function, history, and use of the Community Garden, and conduct adequate studies on and identify the sensitive species that currently exist within the wetland, open space, and Community Garden. Please also characterize the impact of removing the Community Garden on biological resources as significant, and fashion mitigation and/or an alternative that preserves the Community Garden space, wetland, and open space in Parcel F as discussed in this correspondence's Alternatives discussion, in order to avoid significant environmental impacts.

## **II. The DEIR Does Not Include an Accurate or Finite Project Description.**

“Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the ‘no project’ alternative), and weigh other alternatives in the balance.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 [“*County of Inyo*”].) “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Id.* at p. 193 [italics omitted].)

The Project description is anything but finite or stable. The Project includes both “the development of a new approximately 22-acre Serramonte Del Rey Precise Plan” and “a specific development proposal for the approximately 4.3-acre Parcel B within a portion of the new Precise



Plan.” (DEIR, p. iv.) The majority of the Project description does not designate specific plans, numbers of buildings to be constructed, or other relevant information for the Project. Most of the Project description hedges as to what the Project will actually include. For example, the Precise Plan would permit “up to” a certain amount of units, “up to” a certain amount of retail/commercial uses on several parcels. (DEIR, p. iv.) Likewise, except for Parcels A and B, the Project would allow “up to” or a “maximum” of a certain number of units on each individual parcel. (*Id.* at pp. 3-4.) The DEIR explains that Parcels C-F “may” provide retail/commercial space. (*Id.* at p. 4.) The Precise Plan, appended in Appendix D, provides development guidelines, but does not provide more clarity or information on specifically what will be developed on the Project site, including what type of development will be constructed, when and if additional facilities will be constructed, etc.

As the DEIR relies on a nebulous Project description, it does not and cannot provide an accurate analysis of the Project’s impacts to Biological Resources, Land Use, Traffic and Circulation, Global Climate Change, Air Quality, or a complete discussion of Project alternatives. Please update the DEIR to provide a specific number, square footage, size, and location of facilities and buildings that will be included in the Project, and reflect how this data alters the evidence, project impacts, mitigation and alternatives in a Recirculated DEIR.

### **III. The DEIR’s Conclusions Regarding Biological Resources Are Based on Insufficient Research and Analysis, and thus Are Not Supported by Substantial Evidence.**

When conducting an environmental impact analysis, an agency’s findings must be supported by evidence in the record. (Cal. Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Cal. Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency’s failure to do so constitutes an abuse of discretion and must be reversed by a reviewing court. (See *ibid.*)

#### **A. The DEIR’s conclusion that there are no sensitive natural communities onsite is not supported by substantial evidence.**

The DEIR asserts that there are no sensitive natural communities, including riparian or wetland communities, present within the project site. (DEIR, p. 59.) This is not based on substantial evidence, or an accurate description of the wetland habitat. The DEIR does not adequately describe nor provide any study of such wetland habitat, though the DEIR mentions a wetland, community group Community Garden Alliance has provided evidence of a wetland onsite, and, according to

expert biologists from Althouse and Meade, Inc., the Native Arroyo Willow thickets “clearly indicates that surface and shallow groundwater is present in sufficient quantities to support hydrophytic plants.” (See DEIR, p. 67; Exhibit A, Althouse and Meade, Inc. Correspondence, p. 3; See Community Garden Alliance, *Wetland*, available at <https://www.communitygardenalliance.org/wetland> [videos of wetland onsite].) Expert Biologists Ms. Guttilla and Mr. Magney explain “[w]etland habitats are documented as present onsite,” and provide numerous significant wetland functions. (*Id.* at p. 4.) The DEIR likewise states “The Biological Resource Assessment (see Appendix D), Biological Peer Review (see Appendix F), and Wetland Assessment (see Appendix E) all agree that the approximately 865 square foot meadow in the southwest corner of the project site appears to contain wetland features.” (DEIR, p. 67.)

Yet the DEIR fails to conduct any study of the wetland because they claim that any such wetland must be manmade. However, “While the recent Supreme Court decision about Clean Water Act jurisdiction may have eliminated U.S. Army Corps of Engineers (Corps) jurisdiction on the wetlands onsite, wetland habitat is still present and represents a sensitive habitat that provides numerous functions (Brinson 1993<sup>1</sup>, Brinson et al. 1995<sup>2</sup>) and would be considered significant.” (Exhibit A, Althouse and Meade, Inc. Correspondence, p. 4.) “[A]ll wetland habitats, including willow wetlands, in California are considered sensitive habitats because they have been reduced in area by over 90% and because they provide habitat for a wide variety of native species of wildlife.” (Exhibit A, Althouse and Meade, Inc. Correspondence, p. 3.) As such, the DEIR should characterize this area as a sensitive natural community, accurately state that the Project will impact such a natural community, and mitigate such impacts by relocating proposed construction and development away from the wetland.

**B. The DEIR findings that there are no sensitive, threatened, or endangered plant or animal species on site is not supported by substantial evidence.**

The DEIR’s conclusion that there are no sensitive, threatened, or endangered plant or animal species on site, and therefore, that the Project will not have significant biological resources impacts is not supported by the evidence, and is based upon incomplete biological analyses. (See Exhibit A, Althouse and Meade, Inc. Correspondence.) The DEIR’s botanical surveys do not

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<sup>1</sup> Brinson, M.M. 1993. A Hydrogeomorphic Classification for Wetlands. (Technical Report WRP-DE-4.) Engineer Waterways Experiment Station, U. S. Army Corps of Engineers, Vicksburg, Mississippi.

<sup>2</sup> Brinson, M.M., F.R. Hauer, L.C. Lee, W.L. Nutter, R.D. Rheinhardt, R.D. Smith, and D. Whigham. 1995. Guidebook for Application of Hydrogeomorphic Assessments to Riverine Wetlands. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, Mississippi.

provide sufficient evidence to support a finding that there are no impacts to sensitive, threatened, or endangered plant or animal species on site. The DEIR's timed botanical surveys occurred outside the bloom period for native plants known to occur onsite and found in wetland and riparian communities. (*Id.* at p.3) It does not appear that DEIR biologists reviewed "sensitive plant species listed in CNDDDB and CNPS rare plant inventory to determine if they would be in bloom during January, April, and June site visits to proposed project site." (*Ibid.*) Without the analysis, outlined herein and in Ms. Gutilla and Mr. Magney's comment letter, the DEIR cannot accurately conclude that there are no sensitive plant species on site.

Likewise, the DEIR states that the Project will not have significant impacts on special status wildlife. (DEIR, p. 64.) But the DEIR's biological surveys were incomplete and did not target specific sensitive species likely to occur on site. The DEIR's "April and June field surveys were focused on the willow and meadow habitats. It does not appear that seasonal surveys for plants or wildlife were conducted to detect all potential plant or wildlife species that could occur onsite." (See Description in Exhibit A, Althouse and Meade, Inc. Correspondence, p. 13.) The Biological Resources Analysis mentions only a few species, and lacks "any lists of plants or wildlife observed onsite." (See *ibid.*) Without a list of species observed, the public and decisionmakers have no means to determine if the field surveys were sufficient. (*Ibid.*) DEIR biologists also did not conduct field studies specific to the Western Bumble Bee, Mission Blue Butterfly, special status mollusks, and red-legged frog, which, as described in Ms. Gutilla and Mr. Magney's letter, are likely to occur onsite. (See analysis in Exhibit A, Althouse and Meade, Inc. Correspondence, pp. 4-9.) Without such studies, the DEIR cannot accurately represent that such species are not present onsite. In addition, the DEIR mischaracterizes the Western Bumble Bee as having no protection status and states that it does not have habitat onsite. (*Id.* p. 62.) This is incorrect. "California Fish and Game Commission elevated its status, and the status of three other bumble bee species to be candidates as Endangered under the California Endangered Species Act since 2019," and suitable habitat for such species occurs at the Project site. (See Exhibit A, Althouse and Meade, Inc. Correspondence, p. 4.) The DEIR's conclusion that the Project will not have significant impacts on special status wildlife, therefore, is not supported by substantial evidence.

In fact, the evidence demonstrates that sensitive species exist, or have a high probability of existing onsite in the Community Garden, the wetland, and the open space located on and around Parcel F. (Compare DEIR Fig. 3.4-1 with 2.2-5.) A plethora of Mission Blue Butterflies, which are on the Federal Endangered Species list, have been observed onsite; the site is rife with its host plant, *Lupinus albus*; and Mission Blue Butterfly are known to be present within a mile of the Project site. (Exhibit A, Althouse and Meade, Inc. Correspondence, p. 5; Exhibit D, California

Department of Fish and Wildlife, *Threatened or Endangered Species Animal Species List*; Garden Alliance Member Photos of Mission Blue Butterflies, available at <https://spaces.hightail.com/space/Rnj8vvpFV0/files#pageThumbnail-1>.) The site is also within the range of the California red-legged frog, which likewise are listed on the California Endangered Species List, and riparian habitat is present. (Exhibit A, Althouse and Meade, Inc. Correspondence, p. 5; Exhibit D California Department of Fish and Wildlife, *Threatened or Endangered Species Animal Species List*.) Special-status mollusks are also likely to occur on the Project site. (*Id.* p. 5, Table 3.) Community Garden Alliance volunteers have observed numerous species in and around the Community Garden which are candidates for, or included on, California and Federal threatened or endangered species, including the California Monarch Butterflies, Mission Blue Butterflies, Garter snakes, Bald Eagles, and Mountain Lions. (See Exhibit A, Althouse and Meade, Inc. Correspondence, Table 2.)

As such, destruction of the Community Garden, wetland, and surrounding greenspace on Parcel F will result in destruction of the habitat (whether man made or naturally occurring) for and harm to sensitive species and would result in a significant impact such species.

**C. The DEIR's conclusion that the Project will not significantly interfere with wildlife corridors is not supported by substantial evidence.**

What's more, contrary to the conclusions of the DEIR, destruction of this habitat will significantly interfere with wildlife corridors. (See description in Exhibit A, Althouse and Meade, Inc. Correspondence, p. 13.) According to Ms. Guttilla and Mr. Magney:

that wildlife corridor function of open space/green belts in urban settings becomes significantly more important as natural habitats are reduced to disparate islands across the landscape. Keeping only mature trees on edge of property reduces cover for wildlife, making them vulnerable to predation, increased risk of collisions with vehicles, and pets. Increased infrastructure and resulting lighting and associated noise interferes with bat foraging activity and nocturnal wildlife. It reduces breeding and foraging habitat. (*Ibid.*)

The elimination of this greenspace will result in significant impacts to wildlife in an area with already limited open space and safe wildlife passages. The DEIR's conclusion that the Project will not impact wildlife corridors, therefore, is not supported by substantial evidence.

**D. The DEIR's does not provide appropriate, effective mitigation for impacts to nesting birds and special species bats.**

As described in Ms. Guttilla and Mr. Magney’s correspondence, the DEIR’s conclusions that the Project would have a less than significant impact on nesting birds and bats with mitigation are also not supported by the evidence. (See Exhibit A, Althouse and Meade, Inc. Correspondence, pp. 10-12.) What’s more, the mitigation provided in the DEIR is insufficient.

An agency “shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures,” and must have a monitoring program to ensure the implementation of mitigation. (Cal. Pub. Resources Code, § 21081.6 (a) and (d).) “*The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.*” (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, citing *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261, Cal. Pub. Resources Code, § 21002.1(b) [emphasis in original].)

The DEIR provides that construction and demolition can proceed with no restrictions outside of nesting season and if there are no active nests identified during a construction survey period. (*Id.* at pp. 10-12.) As birds build nests outside of the typical nesting season and often do so on and around active construction sites, the DEIR’s mitigation should be updated, as described in Ms. Guttilla and Mr. Magney’s correspondence to protect nesting birds. (*Ibid.*) Likewise, the DEIR’s mitigation to protect special status bats should be updated per Ms. Guttilla and Mr. Magney’s recommendations. (See *id.* at p. 12-13.)

**E. In order to comply with CEQA, the DEIR must be amended to recognize and mitigate the Project’s significant impacts to Biological Resources.**

Please conduct additional studies, consistent with the recommendations outlined herein and in Ms. Guttilla and Mr. Magney’s correspondence, updated the DEIR to reflect the presence of sensitive species on site, update the DEIR’s conclusions to recognize significant impacts to sensitive natural communities as well as sensitive plant and animal species, and provide mitigation that would preserve the Community Garden, greenspace, and wetland habitat.

**IV. The DEIR’s Conclusion that the Project Will Not Have a Significant Impact on Recreation Is Not Supported by the Evidence.**



The DEIR concludes the Project will have a less than significant impact on Recreation is also not supported by the evidence. (DEIR, pp. 165-166.) The Community Garden provides unique recreational resources to the City of Daly City. The Community Garden on site is the only community garden in Daly City. (Exhibit [Petition].) According to the Community Garden Alliance:

Community gardens function as ecological green space, a gathering place for neighbors, as well as a place for solitude, reflection and study. They also make a positive contribution to the community by reducing food insecurity, providing access to culturally relevant foods, promoting healthier eating through education programs, and providing access to gardening for those who otherwise could not have a garden, such as families with young children, the elderly, recent immigrants, multifamily dwellers, and or the homeless. (*Ibid.*)

The record is full of letters and comments from citizens espousing the unique recreational value of the Community Garden and imploring the City not to destroy such a valued resource. (See e.g. Sept. 3, 2023 Email to Michael Van Lonkhuysen from Andrew Sielen.) A recent Petition to save the Community Garden garnered more than 4,000 signatures because of the unique, important recreational value the Community Garden provides. (Exhibit [Petition].)

The DEIR suggests that it will mitigate the loss of the Community Garden with a small set of raised planter beds off site. (See DEIR p. 10 [“JUHSD is providing raised planter beds at their new adult education building located at 123 Edgemont Drive...”].) The DEIR does not discuss this alternative in any additional detail, except to show approximately six raised garden beds in an extremely small space off site. (*Id.* Fig. 2.2-6.)

The proposed off site garden beds will not provide the public with the same resources nor recreational opportunities as the existing Community Garden, and are insufficient mitigation for the destruction of such an important resource. (Compare DEIR, Figure 2.2-6 with Photos of Garden, available at <https://spaces.hightail.com/space/Rnj8vgpFV0/files#pageThumbnail-1>.)<sup>3</sup>

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<sup>3</sup> Even if the City of Daly City believes that the destruction of the Community Garden should not be assessed with respect to its recreational impacts, the DEIR should assess the significance of impacts in the context of the social effects of removing the Garden. “[S]ocial effects of a project may be used to determine the significance of physical changes caused by the project.” (14 Cal Code Regs § 15131(a),(b); see accord *Christward Ministry v. Superior Court* (1986) 184 Cal. App. 3d 180, 197.) Physically removing the Garden will remove this important social and cultural resource. As such, the biological resources and land use impacts of removing the Community Garden will be significant.

The raised beds are not located adjacent to greenspace, will not provide habitat for sensitive species, will not permit community gardeners to cultivate plants, will not provide sufficient space for indigenous religious ceremony, and will not provide the same recreational opportunity as the existing space. Please update the DEIR to reflect that the removal of the Community Garden will have significant impacts to recreation, and provide mitigation and/or an alternative which preserves the Community Garden.

**V. The DEIR Fails to Analyze Relevant Land Use Plans, Policies, and Regulations, and Therefore, Its Conclusion that the Project Will Not Have Significant Land Use Impacts is Not Supported by the Evidence.**

The DEIR concludes that the Project will have less than significant impacts on relevant land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect. (DEIR, p. 123.) Yet, in its analysis, it incorrectly asserts that the Project complies with the City’s Inclusionary Housing Ordinance and ignores relevant land use policies. (See DEIR.)

The Project does not comply with the Inclusionary Housing Ordinance, which, as explained in the DEIR, mitigates negative effects on the environment. (DEIR, p. 124.) In Project proposals, the City has indicated that affordable housing units will be separated from the rest of the Project. (See November 15, 2021 Memorandum to the Mayor, Affordable Housing Committee, and Councilmember Glenn Sylvester.) Though the Precise Plan asserts that affordable housing will be “mixed throughout the site,” it indicates that an “affordable housing development is planned... at the southeast corner of the Plan Area.” (DEIR Appendix B, p. 14.) The Project website shows “workforce housing” segregated onto Parcel C. (Jefferson Union High School District, *The Serramonte Del Rey Neighborhood*, available at <https://serramontedelrey.org/masterplan/>.) If the Project, in fact, will segregate all or the majority of low income housing onto specific parcels, away from the rest of the Project, this should be explicitly noted in the DEIR. (See Discussion of CEQA Requirements for an Accurate Description of the Project, above.)

If the Project in fact segregates such housing, the Project will fail to comply with the Inclusionary Housing Ordinance.<sup>4</sup> The Inclusionary Housing Ordinance was enacted to “provide for integration of low- and moderate-income households with households in market-rate

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<sup>4</sup> As noted in the DEIR, the Inclusionary Housing Ordinance was adopted for the purpose of avoiding or mitigating an environmental effect, and therefore, the DEIR must examine conflicts with the Ordinance. (DEIR, p. 124.)

neighborhoods.” (Daly City Municipal Code [“DCMC”] § 17.47.010(c).) The Ordinance mandates: “[M]ultifamily Inclusionary Units shall be located so as not to create a geographic concentration of Inclusionary Units within the Residential Development.” (DCMC § 17.47.100 (A).) Such a conflict constitutes a significant land use impact. Please update the DEIR to reflect and mitigate this impact by dispersing the low-income housing throughout the Project, and/or fashion a project alternative that would do so.

As the Project would segregate low-income housing from market-rate housing, it would also impermissibly discriminate against Black, Latino, and Indigenous residents. (See accord NAACP’s June 10, 2022 and October 6, 2022 Letters to Daly City Mayor, available at <https://www.communitygardenalliance.org/naacp-letters>.) Empirical evidence demonstrates that Black, Latino, and Indigenous families have lower income, less wealth, and are more likely to be extremely low-income, and thus are more likely to utilize affordable housing. Black, Latino, and Indigenous households “are more likely than white households to be extremely low-income renters.” (Exhibit E, *National Low Income Housing Coalition*, Racial Disparities Among Extremely Low Income Renters (Apr. 2019).) Because of decades of racist policies and practices, “[f]or every \$1 that white families earn, Black families earn \$0.60 and Latino families earn \$0.52.” (Exhibit F, Public Policy Institute of California Fact Sheet, *Income Inequality in California* (March 2023); see also Exhibit E, *National Low Income Housing Coalition*, Racial Disparities Among Extremely Low Income Renters (Apr. 2019).) The data also demonstrates that Black and Latino families have significantly less wealth than white families. According to the U.S. Department of the Treasury, “the median white family had \$184,000 in wealth in 2019 compared to just \$38,000 and \$23,000 for the median Hispanic and Black families, respectively.” (See Exhibit G, U.S. Department of the Treasury, *Racial Differences in Economic Security: The Racial Wealth Gap* (Sept. 2022); see also Exhibit H, de Costa, Pedro, Economic Policy Institute, *Housing Discrimination Underpins The Staggering Wealth Gap Between Blacks and Whites* (Apr. 2019).) As Black, Latino, and Indigenous people are more likely to utilize affordable housing, and the Project, as proposed, would segregate affordable housing from market rate housing, the Project would, therefore, segregate Black, Latino, and Indigenous residents in the Serramonte Del Rey Development.

Approval of the Project thus would enable the Project to discriminate on the basis of race and ethnic background, and violates General Plan Policy HE-16, which provides that the City must

“[p]revent housing discrimination based on age, race, religion, sex, ethnic background, or familial status, and work...”<sup>5</sup>

Likewise, if the City approves the Project, it would fail to comply with General Plan Task HE-16.1. General Plan Task HE-16.1 mandates: “[t]he City shall assist in the implementation and enforcement of State and federal fair housing and civil rights laws.” State Civil Rights laws, including the Unruh Civil Rights Act and Fair Employment and Housing Act (“FEHA”) prohibit discrimination on the basis of race, color, or ancestry in housing. (See Cal. Civil Code § 51; Gov. Code §§ 12900 *et seq.*) This would also contravene the City’s obligation to affirmatively further fair housing, and the prohibition on discrimination in any program or activity funded by the state of California. (See Gov. Code §§ 65584(e), 11135.)<sup>6</sup> If the City were to approve the Project, it would permit the violation of the Unruh Civil Rights Act and FEHA and would contravene Government Code sections 11135 and 65584. The City, therefore, would thus fail to comply with General Plan Task HE-16.1.

The Project also does not comply with Daly City General Plan Policy LU-18, which provides:

Development activities shall not be allowed to significantly disrupt the natural or urban environment and all reasonable measures shall be taken to identify and prevent or mitigate potentially significant effects.

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<sup>5</sup> Segregated housing leads to deleterious physical changes in the environment. (See Exhibit I, Vermer, Danielle, University of Michigan, *Redlining and Environmental Racism*, available at <https://seas.umich.edu/news/redlining-and-environmental-racism> (Aug. 2021); Exhibit J, University of Washington, *More Air Pollution Present in Areas with Historical Redlining*, available at <https://www.washington.edu/news/2022/03/09/more-air-pollution-present-in-areas-with-historical-redlining/> (Mar. 2022); Exhibit K, Mizutani, Julia, *In the Backyard of Segregated Neighborhoods: An Environmental Justice Case Study of Louisiana*, *Georgetown Env'tl. Law Review*, Vol. 31:363, 368.) Anti-discrimination laws in housing thus serve to mitigate the negative environmental impacts associates with housing discrimination, and should be analyzed in the DEIR.

<sup>6</sup> Affirmatively furthering fair housing means: “Taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” (Gov. Code §§ 65584(e).)

Despite this Policy, as discussed herein, the Project will significantly disrupt the natural environment – it will destroy the Community Garden, as well as essential urban habitat for sensitive species, resulting in significant environmental effects. (DEIR, p. 10.) The Project also fails to take all reasonable measures to prevent such effects. The Project, therefore, would have significant land use impacts.

The DEIR, however, does not recognize these inconsistencies with the City’s Ordinance, City General Plan, and state law as significant impacts. The DEIR’s finding that the Project would not result in significant land use impacts, therefore, is not supported by substantial evidence. What’s more, because the DEIR fails to recognize such impacts, it fails to provide legally-required mitigation measures or alternatives to mitigate such impacts.

As such, in order to comply with CEQA, please update the DEIR to analyze the land use inconsistencies discussed above, provide mitigation for these inconsistencies including dispersing affordable housing throughout the Project, and update the DEIR’s alternatives analysis to account for these significant impacts.

**VI. The DEIR Alternatives Analysis Does Not Sufficiently Examine Nor Adopt Alternatives That Would Mitigate Project Impacts.**

The CEQA alternatives analysis has been described by the California Supreme Court as the “core of an EIR.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) An EIR must include a sufficient range of alternatives to permit a reasoned choice between alternatives and foster public participation. (Cal. Code Regs., tit. 14, § 15126.6(f); *Bay Area Citizens v. Association of Bay Area Gov’ts* (2016) 248 Cal. 4th 477.) CEQA provides a “*substantive mandate* that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures” that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, citing Pub. Resources Code § 21081 [emphasis added].) “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 [“*Laurel Heights*”]; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350.)

A lead agency’s ability to comply with this mandate is predicated on a clear analysis of correct findings of a project’s impacts and a feasible set of project objectives. An EIR’s review of project alternatives must analyze alternatives “which are capable of avoiding or substantially



lessening any significant effects of the project.” (Cal. Code Regs., tit. 14, § 15126.6(b).) It’s very purpose is to identify ways to reduce or avoid significant environmental impacts. (*Laurel Heights, supra*, 47 Cal.3d at 403.) In order to achieve this purpose, the EIR must correctly identify project impacts.

Yet the Project alternatives analysis, as drafted, does not adequately assess whether alternatives would avoid or substantially lessen significant Project effects, because the DEIR incorrectly identifies a number of impacts – including impacts to biological resources, recreation, and land use – as less than significant. The DEIR’s alternatives analysis, therefore, does not sufficiently examine whether the alternatives listed would mitigate or avoid such impacts. (See DEIR, pp. 209.)

For this reason, the DEIR does not consider alternatives that would mitigate substantial land use, recreation, and biological resources impacts. (DEIR, pp. 211-215.) Sierra Club and the Daly City Community Garden Alliance have repeatedly requested that the City require the Developer to mass the buildings closer to Serramonte Boulevard; convert the Community Garden into a public park, in order to preserve it; continue to permit public use of the Community Garden; and disperse affordable housing throughout the Project. (See Sierra Club September 8, 2021 Daly City Council Letter, available at [https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u18061/Daly%20City%20Council%20Letter%20on%20SDR%20GPU%20and%20SDM%2091321\\_9.8.21.pdf](https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u18061/Daly%20City%20Council%20Letter%20on%20SDR%20GPU%20and%20SDM%2091321_9.8.21.pdf) ; Sierra Club Board of Supervisors August 13, 2021 Letter, available at <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/loma-prieta-chapter/conservelatters/Letter%20to%20David%20Canepa%208.13.21.pdf>.) An alternative that does so would avoid significant land use biological resources and recreation impacts, and would conform with the Inclusionary Housing Ordinance, the General Plan, and relevant civil rights laws. Yet the DEIR does not identify any such alternative nor make any effort to mitigate significant land use and biological resources impacts related to the segregation of affordable housing or the destruction of the Community Garden, wetland, and greenspace. (DEIR, pp. 211-215.)

Though CEQA “compels government... to mitigate... adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives,” the DEIR does not select a feasible alternative which would mitigate the significant biological resources, recreation, and land use impacts discussed in this correspondence. (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4<sup>th</sup> 1215, 1233, see also Pub. Resources Code § 21002.)

Adoption of the DEIR without substantive changes to the Alternatives analysis would violate CEQA. Please update the DEIR to both articulate and select an alternative that would preserve the Community Garden and surrounding greenspace, and disperse affordable housing throughout the Project, as articulated herein.

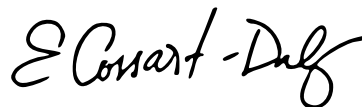
## **VII. Conclusion**

For the foregoing reasons, Daly City will violate CEQA if they adopt the DEIR and the Project without substantial changes. Please update the Project and the DEIR to adequately address the issues raised in these comments, then recirculate a revised DEIR with the information and analysis requested herein.

Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, please notify Sierra Club of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Laws. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the City or any other public entity in connection with this Project, and add Sierra Club to the list of interested parties in connection with this Project. Please send all notices by email to Gladwyn d'Souza at [goodsouza@mac.com](mailto:goodsouza@mac.com) and Sabrina Brennan at [sabrina@dfm.com](mailto:sabrina@dfm.com). If email is unavailable, by U.S. Mail to Sabrina Brennan, 165 La Grande Avenue, Moss Beach, California 94038.

Thank you for your careful attention to these important matters.

Best Regards,

A handwritten signature in black ink that reads "Elise Cossart-Daly". The signature is written in a cursive, flowing style.

Elise Cossart-Daly

# **Exhibit A**



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September 7, 2023

Ms. Elise Cossart-Daly, Esq.  
Cossart-Daly Law, A.P.C.  
1117 State Street  
Santa Barbara, California 93101

Via email: [ecd@cossart-dalylaw.com](mailto:ecd@cossart-dalylaw.com)

Subject: Daly City Serramonte Del Rey Campus Redevelopment DEIR  
Biological Resource Issues

Dear Ms. Cossart-Daly, Esq.;

Per your request the Biological Resources section of the Draft Environmental Impact Report (DEIR) was reviewed by Althouse and Meade, Inc. (A&M) Principal Biologist David Magney and Senior Biologist Darcee Guttilla.

David Magney is a California Certified Consulting Botanist (#0001), ISA Certified Arborist (#WE-4746), approved biological consultant for Santa Barbara, Ventura, Los Angeles, and San Luis Obispo Counties, and has served as an Expert Witness for the U.S. Department of Justice on an EPA wetlands violation case in Santa Barbara County. He has extensive knowledge and experience with the biological resources of California and the Bay Area. Mr. Magney also serves as the Rare Plant Program Manager for the California Native Plant Society (CNPS). He is also researching the flora of Ventura County and has authored several publications on biological resources. Mr. Magney is the chair of the California Board of Certification<sup>1</sup>, serving in that capacity since its inception in 2015. His resume is attached to establish his expertise and experience in biological resource issues.

Darcee Guttilla is a Certified Wildlife Biologist® with 28 years of experience as a field biologist in California. Ms. Guttilla possesses the expertise and qualifications to expertly evaluate the quality and completeness of biological resource assessment reports. She holds a M.S. in Biology from California State University, Fullerton and a B.S. in Zoology from the University of California, Santa Barbara, demonstrating her strong educational foundation in the biological sciences. Ms. Guttilla's experience includes obtaining recovery permits from USFWS to conduct activities with federally threatened and endangered species such as the California tiger salamander and California red-legged frog. She has worked as an authorized biologist on multiple projects involving these protected species across several California counties. Ms. Guttilla has demonstrated

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<sup>1</sup> California Board of Certification for botanists: <https://www.cnps.org/education/botanist-certification/board>

application of ecological principles for the sound management of rare and sensitive species and habitats. With her extensive experience conducting field surveys of various taxa, managing habitats, and implementing protocols to avoid and minimize impacts to sensitive species, Ms. Guttilla has the expertise to evaluate the thoroughness and scientific rigor of biological assessments to ensure complete disclosure of potential project impacts and effectiveness of proposed mitigation measures. Ms. Guttilla's combination of educational background, regulatory experience, and applied skills make her exceptionally qualified to review and critique biological resource reports.

A&M generally finds the assessment of biological resources inadequate in fully characterizing the conditions of the biological resources of the project site and failing to properly identify sensitive resources that should either be avoided or mitigated to a less-than-significant level. Details of our review are provided below.

Policy LU-18 Development activities shall not be allowed to significantly disrupt the natural or urban environment and all reasonable measures shall be taken to identify and prevent or mitigate potentially significant effects.

**DEIR Page 59, Sensitive Natural Communities**, states that there are “No riparian, native grassland, valley oak woodland, or other sensitive natural communities are present withing the project site” but claims that the “Demonstration Garden” is of planted species therefore does not qualify as a sensitive natural community. However, it is stated that there are “two separate stands of native arroyo willow” onsite. The DEIR claims that the site has been significantly disturbed in the past and that the biologists did not find a natural stream that these Arroyo Willow thickets to not meet the definition of a sensitive natural community.



Photo 1. Blue Butterfly from the community garden site.



This conclusion as at least two flaws in logic. First, because the project biologists did not find a natural water source does not mean that one is not present. If fact, natural seepage is documented by the Daly City Community Garden Alliance as present, with standing and flowing water from the adjacent slopes to the west that ponds onsite as a result of a clogged drainage system.

The fact that Arroyo Willow thickets have become established onsite clearly indicates that surface and shallow groundwater is present in sufficient quantities to support hydrophytic plants. Furthermore, the presence of an unmaintained drainage system is also evidence of a need to convey surface water, presumably at least in part from the seeps found onsite.

Second, all wetland habitats, including willow wetlands, in California are considered sensitive habitats because they have been reduced in area by over 90% and because they provide habitat for a wide variety of native species of wildlife.

### Special Status Plants

Seasonally timed botanical surveys are found to be insufficient with site visitations occurring only in January, April, and June 2021. The bloom period for perennial herb, Water Star Grass (*Heteranthera dubia*) is July-August. This species is found in wetland and riparian communities, which are known to occur onsite.

There is also no mention of visitation to botanical reference sites for sensitive plant species listed in CNDDDB and CNPS rare plant inventory to determine if they would be in bloom during January, April, and June site visits to proposed project site. These are important resources that the project biologist needs to examine to determine which special-status species have potential to occur on the project site.

**TABLE 1. VASCULAR PLANTS IDENTIFIED FROM COMMUNITY GARDEN PHOTOGRAPHS (1/9/23)**

Scientific Name	Common Name
<i>Aesculus californica</i> – 2	California Buckeye
<i>Arbutus menziesii</i> – 3	Pacific Madrone
<i>Carex</i> sp.	a Sedge
<i>Ceanothus griseous</i>	Carmel Ceanothus
<i>Cyperus eragrostis</i>	Tall Flatsedge
<i>Frangula californica</i> – 4	Coffeeberry
<i>Hedera canariensis</i>	Canary Ivy
<i>Hesperocyparis macrocarpa</i> - 5	Monterey Cypress
<i>Heteromeles arbutifolia</i>	Toyon
<i>Juncus</i> sp.	a Rush species
<i>Malacothamnus</i> sp.	a Bushmallow sp.
<i>Oenothera elata</i>	Tall Evening Primrose
<i>Quercus agrifolia</i>	Coast Live Oak
<i>Pinus radiata</i> – 100+	Monterey Pine
<i>Pseudotsuga menziesii</i> – 2	Douglas-fir

Scientific Name	Common Name
<i>Ribes</i> sp.	a Currant
<i>Salix lasiolepis</i>	Arroyo Willow
<i>Salvia spathacea</i>	Hummingbird Sage
<i>Sequoia sempervirens</i> - 27	Coast Redwood
<i>Umbellularia californica</i> – 1	California Bay
<i>Verbena lasiostachys</i>	Western Vervain

A thorough floristic survey needs to be conducted of the project site, indicating which plants were planted versus naturally occurring, not just assuming all plants were planted.

### Wetland Habitats

Wetland habitats are documented as present onsite. While the recent Supreme Court decision about Clean Water Act jurisdiction may have eliminated U.S. Army Corps of Engineers (Corps) jurisdiction on the wetlands onsite, wetland habitat is still present and represents a sensitive habitat that provides numerous functions (Brinson 1993<sup>2</sup>, Brinson et al. 1995<sup>3</sup>) and would be considered significant. These functions can be measured by using a Hydrogeomorphic Assessment Methods (HGM) model that allows for an objective and holistic approach to measuring wetland functionality (Hruby 1999<sup>4</sup>). A regional HGM model for riverine wetlands was developed for the California central coast (Lee et al. 1996<sup>5</sup>) and could be applicable here.

Impacts to wetland habitats need to either be avoided or fully mitigated. A permit from the California Department of Fish and Wildlife (CDFW) pursuant to Section 1600 et seq. will be required for any alteration of the wetland habitats onsite.

### Special-status Wildlife

The DEIR on Page 62 states that no special-status wildlife species were observed onsite. It further states that the Western Bumble Bee (*Bombus occidentalis occidentalis*) has no protection status; however, the California Fish and Game Commission elevated its status, and the status of three other bumble bee species to be candidates as Endangered under the California Endangered Species Act since 2019. Suitable habitat for Western Bumble Bee does occur onsite (shrublands, chaparral, gardens, and urban parks) and is known from northern Mexico to central British Columbia. The

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<sup>2</sup> Brinson, M.M. 1993. A Hydrogeomorphic Classification for Wetlands. (Technical Report WRP-DE-4.) Engineer Waterways Experiment Station, U. S. Army Corps of Engineers, Vicksburg, Mississippi.

<sup>3</sup> Brinson, M.M., F.R. Hauer, L.C. Lee, W.L. Nutter, R.D. Rheinhardt, R.D. Smith, and D. Whigham. 1995. Guidebook for Application of Hydrogeomorphic Assessments to Riverine Wetlands. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, Mississippi.

<sup>4</sup> Hruby, Thomas. 1999. Assessments of Wetland Functions: What They Are and What They Are Not. *Environmental Management* 23:1(75-85).

<sup>5</sup> Lee, L.C., M.C. Rains, J.A. Mason, and W.J. Kleindl. 1996. Draft Guidebook to Functional Assessments in 3<sup>rd</sup> and 4<sup>th</sup> Order Riverine Waters/Wetlands of the Central California Coast. April. The National Wetland Science Training Cooperative, Seattle, Washington. Prepared for U.S. Environmental Protection Agency, Region IX, San Francisco, California.

DEIR’s statement that “range of the western bumble bee, which is not a protected species under federal or state law but is being closely monitored due to declines in numbers and distribution over the past two decades, does not encompass the project site” is inaccurate. Suitable habitat for the Western Bumble Bee is indeed present. For example, A&M biologists just found Crotch Bumble Bee (*Bombus crotchii*), a species also given candidate status under the California Endangered Species Act, on a site in the upper Salinas River Valley that no one considered suitable for it. Field surveys need to be conducted specifically for bumble bees to determine if they are present or not.

Mission Blue Butterfly is known from approximately 1 mile from the project site as reported in the CNDDDB. Daly City Community Garden Alliance members have reported seeing hundreds of Mission Blue Butterfly individuals onsite and its host plant, *Lupinus albifrons*, occurs onsite. Protocol level surveys for the Mission Blue Butterfly should be conducted before any conclusive statements can be made about its potential presence onsite and how impacts to it can be avoided.

California red-legged frog (*Rana draytonii*; CRLF) has a 2019 CNDDDB record within two miles of proposed project site. U.S. Fish and Wildlife Service Revised Guidance on Site Assessment and Field Surveys for the California red-legged frog (2005) does not require a site assessment if not within 1-mile of known location; however, the proposed project site is within the current range of California red-legged frog (<https://www.fws.gov/species/california-red-legged-frog-rana-draytonii>), within the Colma Creek watershed (<https://www.flowstobay.org/data-resources/maps/watershed-map/>), and less than one mile to from Colma Creek (which runs parallel with State Highway 82). This should warrant, at minimum, targeted nocturnal eyeshine surveys when water is present and nocturnal eyeshine surveys during rain events when CRLF move over upland habitat. The above USFWS guidance (2005 [file:///C:/Users/darceeg/Downloads/CRF-Survey-Guidance%20Aug2005\\_FINAL%20\(1\).pdf](file:///C:/Users/darceeg/Downloads/CRF-Survey-Guidance%20Aug2005_FINAL%20(1).pdf)) also provides optimal periods for detection of all life stages of CRLF.

A species list provided by community garden volunteers identified numerous species of wildlife. This is followed by a list of native terrestrial mollusks (snails and slugs) that are known to occur form San Mateo County, some of which could occur onsite. Some of these are endemic to the region and quite rare, and should be surveyed for and assessed for project-related impacts.

Table 2 is an example of what should have been provided in Environmental Collaborative’s report. Besides direct observations made during the seasonal field surveys, other sources of evidence should be accessed, such as from individuals using the project site and from records posted on Calflora and iNaturalist websites.

**TABLE 2. SPECIES LIST REPORTED FROM THE COMMUNITY GARDEN VOLUNTEERS ONSITE (8/27/23)**

Scientific Name	Common Name	Special Status	Habitat Type
<b>Invertebrates – 7 Species</b>			
<i>Apis mellifera</i>	European Honey Bee	None	Hollow trees, man-made wooden hives; colonies located near flowering plants, such as meadows, woods, agricultural areas and gardens.

Scientific Name	Common Name	Special Status	Habitat Type
<i>Danaus plexippus</i> pop1.	Monarch - California overwintering population	ESA Candidate	Forested groves, nectaring plants and milkweed
<i>Icaricia icarioides missionensis</i>	Mission Blue Butterfly	Endangered	Coastal grassland habitat, Silver Bush Lupine( <i>Lupinus albifrons</i> ) and Summer Lupine ( <i>Lupinus formosus</i> ) are host plants.
<i>Papilio glaucus</i>	Tiger Swallowtail	None	Riparian corridors near rivers, lakes and streams, woodland gardens, parks, canyons, and roadside meadows.
<i>Speyeria idalia</i>	Regal Fritillary	None	Tall-grass prairie, open sites , damp meadows, marshes, wet fields, and mountain pastures.
<i>Vanessa atalanta</i>	Red Admiral Butterfly		Violets for larval feeding, nectar plants, tall grass, scattered shrubs, leaf litter
<b>Amphibians - 1 Species</b>			
Class Amphibia	Frogs and tadpoles (species not specified)		Forest, woodland, chaparral, grassland, pastures, desert streams and oases, underground caves, and urban areas.
<b>Reptiles – 3 Species</b>			
<i>Elgaria multicarinata multicarinata</i>	California Alligator Lizard	None	Open grassland, woodland, chaparral
<i>Sceloporus occidentalis bocourtii</i>	Coast Range Fence Lizard	None	Wide range; variety of habitats
<i>Thamnophis sirtalis tetrataenia</i> or <i>Thamnophis elegans terrestris</i>	Unknown spp. of Gartersnake (Ranger overlap for San Francisco gartersnake and Coast Gartersnake)	SFGS- Federally Endangered/ State Endangered Coast GS- None	SFGS requires aquatic fresh water and upland habitats. Aquatic habitats include ponds, creeks, marshes, canals and other water sources, which they use for foraging and basking during the day. Grasslands, woodlands, and coniferous forests, from sea level up to 3,962 m.
<b>Birds – 3 Species</b>			
<i>Buteo jamaicensis</i>	Red-tailed Hawk	None	Open, semi-open country
<i>Corvus corax</i>	Common Raven	None	Riparian, chaparral, and woodlands. Variety of habitats

Scientific Name	Common Name	Special Status	Habitat Type
<i>Haliaeetus leucocephalus</i>	Bald Eagle	State Endangered Federally Protected	Forested areas near water
<b>Mammals – 5 Species</b>			
<i>Canis latrans</i>	Coyote	None	Open woodlands, brushy areas, suburban and urban , and agricultural areas, wide ranging.
<i>Mephitis mephitis</i>	Striped Skunk	None	Open woodlands, brushy areas, wide ranging.
<i>Microtus californicus</i>	California Vole	None	Mixed woods, brush, semi-open country
<i>Procyon lotor</i>	Raccoon	None	Grassland meadows, wooded areas near water, suburbs, cities, and parks
<i>Puma concolor</i>	Mountain Lion	CDFW Species of Special Concern	Streams, lakes, rock cliffs, dens in trees

**TABLE 3. TERRESTRIAL SNAILS KNOWN FROM SAN MATEO COUNTY**

Scientific Name	Common Name	Special Status	Habitat Type
<b>Invertebrates – 22 Species</b>			
<i>Ariolimax [columbianus] californicus</i>	California Banana Slug	None; G2-Imperiled	California endemic. Known only from Sonoma, San Mateo, and Santa Clara Counties.
<i>Ariolimax columbianus stramineus</i>	South Coast Banana Slug	None	California coast endemic. Known only from San Mateo, Santa Clara, Monterey, San Luis Obispo, Santa Barbara, and Ventura Counties.
<i>Mediappendis [Catinella] rehderi</i>	Chrome Ambersnail	None; G3-Vulnerable	Widespread in California. Known from Mono, Lassen, Shasta, Mendocino, Lake, Sonoma, Marin,- San Francisco, San Mateo, Contra Costa, Alameda, San Joaquin, Santa Cruz, Santa Clara, San Benito, Tulare, Inyo, San Luis Obispo, Kern, Santa Barbara, Ventura, Los Angeles, San Bernardino, and San Diego Counties. Also in Washington, Idaho, Montana, and Wyoming.



Scientific Name	Common Name	Special Status	Habitat Type
<i>Mediappendix</i> [ <i>Catinella</i> ] <i>vermeta</i>	Ambersnail	None; G5-Secure	Widespread in California. Known from Siskiyou, Mono, Trinity, Lake, Nevada, Sonoma, San Francisco, San Mateo, Contra Costa, Alameda, Calaveras, Fresno, Tulare, San Luis Obispo, Kern, Ventura, Los Angeles, Riverside, and San Diego Counties.
<i>Deroceras leave</i>		None; G5-Secure	Widespread but disjunct California distribution. Known from Shasta, Lake, Nevada, Placer, Marin, Alameda, San Francisco, San Mateo, Santa Cruz, San Bernardino, and San Diego Counties.
<i>Haplotrema minimum</i>	California Lancetooth	None; G1-Critically Imperiled	California coast endemic. Known from Humboldt, Mendocino, Sonoma, Napa, Marin, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, Santa Clara, Monterey, and San Luis Obispo Counties.
<i>Hawaiiia minuscula</i>	Minute Gem Snail	None; G5-Secure	Known from Napa, Alameda, San Mateo, Santa Clara, Monterey, Los Angeles, San Bernardino, Riverside, and San Diego Counties.
<i>Helminthoglypta arrosa arrosa</i>	Bronze Shoulderband Snail	None; G2-Imperiled	Bay Area endemic. Known only from Marin, Sonoma, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, and Santa Clara Counties.
<i>Helminthoglypta exarata</i>	San Lorenzo Shoulderband Snail	None; G2-Imperiled	California endemic. Known only from San Mateo, Santa Cruz, Santa Clara, and San Benito Counties.
<i>Helminthoglypta nickliniana nickliniana</i>	Coast Range Shoulderband Snail	None; G3-Vulnerable	California central coast endemic. Known from Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Santa Clara, and Monterey Counties.
<i>Helminthoglypta sequoicola sequoicola</i>	Redwood Shoulderband Snail	None; G2-Imperiled	California endemic. Known only from San Mateo, Santa Cruz, and San Benito Counties.
<i>Hesperarion hemphilli</i>	Hemphill Westernslug	None; G2-Imperiled	California endemic. Known from San Mateo, Alameda, Monterey, San Benito, San Luis Obispo, Santa Barbara, Los Angeles, and Orange Counties.

Scientific Name	Common Name	Special Status	Habitat Type
<i>Hesperarion niger</i>	Black Westernslug	None; G2-Imperiled	California endemic. Known from Humboldt, Trinity, Shasta, Glenn, Colusa, Sonoma, Napa, Marin, Contra Costa, Alameda, Calaveras, San Mateo, Santa Cruz, Monterey, Tulare, San Luis Obispo, and Kern Counties.
<i>Vertigo</i> [ <i>Nearctula</i> ] <i>rowellii rowellii</i>	Threaded Vertigo	None; G4-Apparently Secure	California endemic restricted to Sonoma, San Francisco, San Mateo, Alameda, Santa Cruz, Monterey, and Santa Barbara Counties.
<i>Nearctula</i> sp. nov. p	Undescribed Vertigo	None: ?	An undescribed species occurring along the California coast. Known from Del Norte, Humboldt, Trinity, Mendocino, Sonoma, Marin, Alameda, San Francisco, San Mateo, Santa Clara, Monterey, and San Benito Counties.
<i>Paralaoma servilis</i>	Pinhead Spot	None; G5-Secure	Widespread in California. Known from Del Norte, Humboldt, Tehama, Butte, Plumas, Yuba, Mendocino, Sonoma, Napa, Marin, Contra Costa, Alameda, San Joaquin, Calaveras, Tuolumne, San Francisco, San Mateo, Santa Cruz, Santa Clara, Monterey, San Benito, Stanislaus, Tulare, San Luis Obispo, Kern, Santa Barbara, Los Angeles, San Bernardino, Orange, and San Diego Counties.
<i>Prophysaon andersoni</i>	Reticulate Taildropper	None; G5-Secure	Northern California distribution. Known from Del Norte, Humboldt, Trinity, Siskiyou, Mendocino, Lake, Sonoma, Marin, Sacramento, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, and Santa Clara Counties.
<i>Punctum californicum</i>	Ribbed- Spot Snail	None; G5-Secure	Widespread in California. Known from Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Mendocino, Plumas, Nevada, Placer, El Dorado, Amador, Marin, San Fransisco, San Mateo, Alameda, Calaveras, Tuolumne, Madera, Mono, Monterey, San Benito, Fresno, Tulare, Inyo, San Bernardino, Ventura, Los Angeles, Riverside, and San Diego Counties.

Scientific Name	Common Name	Special Status	Habitat Type
<i>Striatura pugetensis</i>	Northwest Striate Snail	None; G5-Secure	Widespread on West Coast. Occurs in all coastal counties except Los Angeles, as well as several Sierra Nevada counties and San Bernardino and Riverside Counties.
<i>Trilobopsis loricata</i>	Scaly Chaparral Snail	None; G2-Imperiled	California endemic. Known only from Humboldt, Tehama, Sacramento, Marin, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, and Monterey Counties.
<i>Vespericola armiger</i>	Santa Cruz Hesperian	None; G1-Critically Imperiled	California endemic. Known only from San Mateo, Santa Cruz, Santa Clara, and Monterey Counties.
<i>Vespericola pilosus</i>	Brushfield Hesperian	None; G2-Imperiled	California narrow endemic. Known only from San Francisco, San Mateo, and Santa Cruz Counties.

## Nesting Birds

**BRA page 6, paragraph 2** states, *‘No evidence of any bird nesting was observed during the field reconnaissance surveys; however, nesting bird surveys are not described in methods section, yet page 15 of BRA Discussion 1) Less than Significant Impact with Mitigation Incorporated, states, ‘There was no evidence of any bird nesting on the site during the field reconnaissance survey conducted in January 2021.’ Yet in the same paragraph, the author references bird nesting season as February 1 to August 31. This suggests that the biologist did not perform seasonally appropriate nesting bird surveys. It should be clear that not noticing nesting activity is not equivalent to seasonally-timed multiple negative targeted nesting bird surveys. Nesting birds are often intentionally inconspicuous to avoid nest depredation, so it could very easily be the case that nests would not be encountered if targeted surveys were not performed.*

Photos provided in the BRA and by Community Garden volunteers demonstrate this remnant parcel of green space supports a diverse array of nesting habitat with varied vegetation strata to support cavity-, ground-, shrub-, and canopy-nesting birds. The importance of this open space to native wildlife is critical even if habitat composition is not pristine native or sensitive habitat. Open spaces landlocked by urban sprawl are important to conserving native species.

**BRA page 6** states, *‘The intensity of human activity on the developed portion of the site limits the likelihood of any bird nesting, although there remains a remote potential for nests in the limited landscaping and existing structures. Although no evidence of active nests was observed during the field reconnaissance surveys, new nests of more bird species could be established in the future in advance of project construction. Preconstruction surveys are typically performed in advance of vegetation removal or building demolition where occupation by nesting birds is considered possible.’*

These assumptions are flawed for the following reasons:

- 1) different bird species have varying tolerances to human activity;

- 2) birds are known to nest in human-occupied urban and suburban areas, on homes, porches and yards, and in active construction sites.
- 3) 14 days is too large of a time span for nesting preconstruction surveys as birds, namely house finches, can build a complete nest and lay an egg in one day.
- 4) Birds build nests on active construction sites so monitoring for nesting birds is necessary if construction overlaps with nesting season to dissuade or prevent nests from being built and if active nests are encountered, they must be properly buffered and protected until chicks successfully fledge.
- 5) A mechanism must be in place that contractors are held accountable for violations for Migratory Bird Treaty Act and Fish & Game Code violations. Include provisions for punishments for violations of these regulations.

### DEIR Mitigation Measures page 65

#### **Mitigation Measure Bio-1.1 is inadequate at protecting nesting birds and bats.**

MM BIO-1.1 states,

- *If construction is initiated during the non-breeding season (September 1 to January 31), then vegetation removal, building demolition and other construction may proceed with no restrictions.*

Nesting birds are protected if they are nesting, which includes activities in selecting and building a nest. Some birds like hummingbirds and owls begin nesting in January, and some birds have double clutches or failed and re-nest attempts that extend nesting past the typical nesting season window. Neither of these scenarios would preclude protection of nesting birds. Therefore, any time birds are actively nesting, even during construction activities, the nesting birds shall be protected. The statement “without restrictions” should be struck out of measure.

The language in this mitigation measure does not adequately protect bats. In addition to text about birds, address that this measure could impact bats, refer to MM BIO-1.2 for more information.

- *If initial building demolition, vegetation removal, and construction is proposed during the nesting season (February 1 to August 31), a focused survey for nesting raptors and other native birds shall be conducted by a qualified biologist within 14 days prior to the onset of construction in order to determine whether any active nests are present on the site and surrounding area within 250 feet of proposed construction. The survey shall be reconducted any time construction has been delayed or curtailed for more than 14 days during the nesting season.*

As stated above, 14 days is too long of a lag time between survey date and construction initiation. If the contractor needs an advance window to mobilize for construction initiation, it is recommended to perform a minimum of nesting bird surveys every other day until construction is initiated.

- *If no active nests are identified during the construction survey period, then building demolition, vegetation removal, and other construction may proceed with no restrictions.*

The text “without restrictions” should be struck out of measure. As stated above, birds build nests in and around active construction sites. Replacement text should include “A full-time qualified biological monitor is recommended to ensure nesting birds are dissuaded or prevented from building nests in the active construction zone, and active nests that become established are

protected. This includes nests built in remaining habitat that may be impacted by construction activities. A qualified biologist shall determine the appropriately sized nest buffer to protect birds based on nest location, visual barriers, and birds' tolerance to human and construction activity. The biologist has the authority to stop work if construction activities are believed to cause distress to nesting birds until an alternative can be found. Alternatives may include installation of visual blinds and/or reduced access to designated areas of the construction site until chicks fledge.

#### DEIR Mitigation Measure BIO 1.2 page 66

#### **Adequate measures shall be taken to avoid roosting by special-status bat species because of tree removal and building demolition, specifically:**

- *'To the extent feasible, any tree removal or trimming that is deemed necessary by a certified arborist to maintain tree health shall be conducted outside of the bat maternity season (i.e. generally avoiding tree removal or trimming April through October).'*

**Additional text recommended:** Prior to removal of any trees greater than 20-inches DBH, a qualified biologist shall inspect trees deemed for removal and surrounding trees for cavities and sloughing bark, guano and urine staining, conduct acoustic surveys (>10 days winter and  $\geq 3$  days summer), and emergence surveys and prepare and submit a report of findings to CDFW and Daly City Natural Resources Manager. If bats are found in tree cavities, the biologist shall coordinate with CDFW preparation and implementation of a CDFW-approved bat exclusion plan that includes a sufficient number of appropriately sized and placed supplemental bat housing/bat boxes to accommodate the number of displaced bats.

- *'Building demolition shall, to the extent feasible, be conducted outside of the bat maternity season (i.e. generally avoiding demolition April through October).'*

**Alternate text recommended:** Building demolition shall, to the extent feasible, be conducted outside of the bat maternity season (i.e. generally avoiding demolition April through October). To avoid impacts to bats roosting in tight spaces, siding, crawl spaces, and attics of buildings, a qualified biologist shall conduct preconstruction bat emergence surveys and inspect entire building interior (including crawl spaces/ attics/chimney) and exterior for bat sign (e.g. guano, insect carapaces) prior to building demolition. The biologist shall prepare and submit a report of findings to CDFW and Daly City Natural Resources Manager. If bats are found in buildings, the biologist shall coordinate with CDFW preparation and implementation of a CDFW-approved bat exclusion plan that includes a sufficient number of appropriately sized and placed supplemental bat housing/bat boxes to accommodate the number of displaced bats.

- *'If tree removal, trimming, or building demolition occurs within bat maternity season (i.e. generally April through October), a pre-construction bat roost assessment shall be conducted by a qualified biologist at least 14 days and no more than 30 days prior to tree removal or building demolition to determine if bats roosts are present that may be impacted by project activities.'*

Comment: a more conservative survey window may be required to adequately perform all three preconstruction surveys trees/building inspection, emergence survey, and acoustic surveys. Caltrans has extensive bat mitigation measures that can be adapted for this project. (<https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/caltrans-bat-mitigation-guide-all1y.pdf>)



**DEIR Page 68 Impact BIO-4** *The project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (Less than Significant Impact)*

We counter that wildlife corridor function of open space/green belts in urban settings becomes significantly more important as natural habitats are reduced to disparate islands across the landscape. Keeping only mature trees on edge of property reduces cover for wildlife, making them vulnerable to predation, increased risk of collisions with vehicles, and pets. Increased infrastructure and resulting lighting and associated noise interferes with bat foraging activity and nocturnal wildlife. It reduces breeding and foraging habitat.

**DEIR Page 68 Impact BIO-6:** *The project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. (No Impact)*

While the community garden does not have any habitat conservation plan or natural community conservation plan, or other local plan, the garden has been in place for decades and portions of it have provided important habitat for wildlife in an urban environment. Preserving this small part of the project site would retain the important biological resources currently using this area but would not adversely impact the goals of the redevelopment of the larger site.

**DEIR Page Cumulative Impacts Impact BIO-C:** *'The project would not result in a cumulatively considerable contribution to a cumulatively significant biological resources impact. (Less than Significant Cumulative Impact with Mitigation Incorporated)'*

We disagree with this assessment. In addition to habitat loss from Parcel F and surrounding area, and a significant reduction in habitat quality for remaining habitat, there is the added impact of significant increase in light pollution extending several stories into the skyline, with all of the added noise, vehicles, light pollution, air pollution, and congestion associated with 1,457 new residences and 32,00 SF of commercial/retail space to an already impacted, populous area. The pen space and landscape plan proposes to provide an ecologically sterile, grass park which is a poor choice for water conservation in the face of rising temperatures and drought. Landscaping with native, local drought tolerant species would be a vast improvement.

### **Environmental Collaborate Biological Resources Assessment**

A Environmental Collaborative biologist conducted reconnaissance level surveys of the project site on 14 January, 5 April, and 16 June 2021. The April and June field surveys were focused on the willow and meadow habitats. It does not appear that seasonal surveys for plants or wildlife were conducted to detect all potential plant or wildlife species that could occur onsite.

The BRA lacks any lists of plants or wildlife observed onsite. Only a few species are mentioned in the text, which is insufficient. Botanical surveys should be floristic in nature to ensure that all plants that are considered sensitive (statewide or locally) are detected. The reviewer has no means to determine if the field surveys were sufficient since there are no lists of what was observed.

### **Cultural and Social Significance of Open Space**

From a cultural and social perspective, this open space supports a vital community garden that adds intrinsic cultural and educational value as a gathering place for the local community and provides a means to grow produce, connect with nature, and each other.

### **Conclusion**

Based on our assessment of the methods and conclusions presented in the DEIR and supporting documents, the assessment of impacts on biological resources at the project site are inadequate and failed to follow specific methods and to identify potentially significant adverse impacts to those resources.

Appropriate seasonal field surveys must be conducted before conclusions about the presence or absence of sensitive resources can be made. The project site does contain sensitive resources, such as wetland habitats, which should either be protected or mitigated, preferably onsite.

An alternative could be to just avoid areas with wetlands and wildlife habitat, which would avoid many if not all potentially significant impacts to those resources.

Please contact us if you have any questions or require further information.

Respectfully,



David L. Magney, Principal Biologist  
Certified California Consulting Botanist #0001  
ISA Certified Arborist #WE-7674



Darcee Guttilla, Senior Biologist  
Certified Wildlife Biologist



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## **David L. Magney, Principal Biologist**

**Certified Consulting Botanist #0001,  
ISA Certified Arborist #WE-7974A**

### **Overview**

David L. Magney, Principal Biologist, is a botanist/biologist and physical geographer with a thorough knowledge of the flora of California. He has over 30 years of field experience in biological studies throughout the west. Mr. Magney has worked on and managed a large variety of projects throughout the West, primarily in California. These include biological resource inventories, vegetation mapping and classification, wetland delineations and restoration, rare plant surveys and ecological studies, tree assessments, fisheries habitat assessment and mitigation design, fisheries monitoring, small mammal trapping and surveys, biological impact analysis and mitigation, and construction and mitigation monitoring. He has managed and worked on a variety of projects, including energy, residential, commercial, flood control, and landfill projects. Mr. Magney has also worked on off-highway vehicles trail siting, mining, electrical, transmission/pipeline, communication corridor, transportation, restoration, and dam developments. He came to Althouse and Meade after nearly 7 years managing the California Native Plant Society Rare Plant Program and running David Magney Environmental Consulting since 1997. Prior to that he managed the Natural Resources Division at Fugro West, 6 years with Jones & Stokes Associates, and 3 years with Dames & Moore.

Mr. Magney earned a BA in Geography and Environmental Studies (emphasis in botany) in 1985 from the University of California, Santa Barbara. He also holds an A.S. in Landscape Horticulture and Certificate of Completion in Natural Resources (1975) from Ventura College, Ventura, California. He is a Certified Consulting Botanist (#0001) and an ISA Certified Arborist (WE-7674A). He is an expert in wetland sciences including applying the Corps of Engineers Hydrogeomorphic Assessment Methods (HGM), and CEQA and NEPA for biology. Mr. Magney has taught courses or given presentations on plant family identification, wetland/riparian plant identification, wetland impacts and mitigation, HGM, CEQA, Clean Water Act permitting, water quality, and wetland delineation methodology. Mr. Magney has authored two floras in California and presented numerous papers on vegetation and water quality. He served on the Environmental Review Board for Los Angeles County Regional Planning, City of Ojai's Tree Committee, and on the Ventura County Planning Division's Interagency Biology Committee and the Locally Important Species Committee. Mr. Magney currently is the chairman of the Board of Certification overseeing the certification of botanists in California.

### **Education**

B.A. Environmental Studies and Geography (emphasis is botany, cartography, and remote sensing), University of California at Santa Barbara, 1985.

A.S. Landscape Horticulture and Certificate of Completion in Natural Resources, Ventura College, 1975.

## Permits

- Certified Arborist: International Society of Arboriculture (certification #WE-7674A)
- Certified Consulting Botanist #0001, California Native Plant Society, Board of Certification Approved Biologist: Los Angeles County Regional Planning Department, Sensitive Ecological Areas
- Approved Biologist: Ventura County Planning Division
- Approved Biologist: Santa Barbara County Planning Department
- Approved Arborist: City of Oxnard
- Expert Witness, Botanist: U.S. Department of Justice
- California Dept. of Fish and Game Scientific Collecting Permit #801066-05

## Professional Work Experience

### Principal Biologist

May 2023 – present

*Althouse and Meade, Inc. Paso Robles, CA*

Expert consulting biologist, botanist, and arborist.

### Owner & Operator

July 1997 – present

*David Magney Environmental Consulting, California*

Own and operate environmental consultancy focusing on biological resources.

### Special Projects Program Manager

February 2021 – May 2023

*California Native Plant Society, Sacramento, CA*

Lead the effort to identify locally rare plants, generally at the county level, and to promote the research and development of local floras, within California. Oversaw the Rare Plant Treasure Hunt and California Rare Plant Rescue projects, and train botanists on CEQA, mitigation and monitoring, and plant identification, as well as lead the California Botanist Certification program. Projects include the Utom River Conservation Fund that focuses on conserving the biological and cultural resources of the Santa Clara River watershed in Ventura and Los Angeles Counties, and work on the Ventura Marsh Milkvetch.

### Rare Plant Program Manager

June 2016 – February 2021

*California Native Plant Society, Sacramento, California*

### Manager, Natural Resources Group

February 1995 – April 1997

*Fugro West, Inc., Ventura, California*

Managed the biological and cultural resources staff and oversaw projects involving these disciplines for all California offices, based in the Ventura office. Hired and managed key biology and archaeology staff at various Fugro West offices.

## Training

- Improving Wetland Restoration Success: Riverine/Riparian Wetland Restoration Webinar, Assoc. of State Wetland Managers, 9 June 2015
- Hydrogeomorphic Assessment of Wetland Function training course: National Wetland Science Training Cooperative, 1996.
- Hydrogeomorphic Approach to Assessment of Functions of Waters of the U.S., Including Wetlands, in the Santa Margarita Watershed. National Wetland Science Training Cooperative, 1997.
- Wetland Delineation, Federal Wetland Policy: Wetland Training Institute, 1989, 1991.
- Desert Tortoise Handling and Surveying: trained by Desert Tortoise Council (John Weir), 1988. Hazardous Waste Health and Safety Monitoring Training: Dames & Moore, 1987.
- ArcView 3 (GIS) training: Geo InSight International, 1998.
- ArcGIS 10.4 (GIS) trainings: beginning and intermediate, ESRI 2017
- Vegetation Rapid Assessment Classification: California Native Plant Society, 2003.
- Successful CEQA Compliance 2005: Ron Bass, for Ventura County Resource Management Agency, 16 June 2005. CEQA = California Environmental Quality Act.
- California Red-legged Frog Survey Methods: Vince Semonsen 2005.
- The Wildlife Society San Joaquin Valley Chapter workshop: Habitat Conservation Planning, 1992.
- American Association for the Advancement of Science symposium: Vernal Pools, 1989. Professional Soil Scientists of California workshop: Field Identification of Hydric Soils, 1989. SPOT Image Corporation: Satellite Imagery and GIS training course, 1995.
- Jones & Stokes Associates workshops: Project Management Seminars, 1990-92, Hydric Soils, 1991, 1992; Clean Water Act Regulations Concerning Wetlands (1989), and CEQA Requirements and Document Preparation, 1993, 1990, 1989; WordPerfect, Lotus 1-2-3 and Allways, Microsoft Word, Excel, ArcView, and GRASS software programs.
- Project Management Training: Dames & Moore seminar, 1988. California Agricultural Pest Control Adviser's License, 1975-77 (expired).

## Publications

Magney, David L. in ed. *A Flora of Ventura County*. David Magney Environmental Consulting, Cedar Ridge, California.



- Magney, David L., Jordan Collins, and Adam Hoeft. 2023. Botanical Resources of the Utom (Santa Clara) River Watershed. 8 February 2023. (PN 60-6013-1.) California Native Plant Society, Sacramento, California. Prepared for the Utom River Conservation Fund, Santa Monica, California. Published on <https://venturaflora.com/files/vcflora.htm>
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- Magney, David L. in ed. A Comparison of Swedish and American Wetland Protection Laws.
- Magney, D.L., J. Broberg, J. Logan, and V. Peters. 2015. A Preliminary Draft Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Wetland Functions of Playa Depressional Wetlands in the Mojave Desert. (PN 12-0004.) David Magney Environmental Consulting, Ojai, California. Prepared for U.S. Army Corps of Engineers, Los Angeles, California. Prepared on behalf of Richard and Laurie Lyons, Ojai, California.
- Magney, David L. 2015. Lichens of Ventura County: Annotated Checklist. (Version 1.3.) David Magney Environmental Consulting, Ojai, California. First published January 2014. [http://www.magney.org/photofiles/Ventura\\_County\\_Lichens.htm](http://www.magney.org/photofiles/Ventura_County_Lichens.htm)
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- Magney, David L. 2011. Checklist of Vascular Plant Flora of Ventura County, California. 19 October 2011. Ojai, California. [www.venturaflora.com](http://www.venturaflora.com)
- Magney, David L. 2011. Vascular Plants of the Palos Verdes Peninsula, Los Angeles County, California. 20 July 2011. David Magney Environmental Consulting, Ojai, California.
- Magney, David L. 2010. Flora of Kings County, California. 6 December 2010. David Magney Environmental Consulting, Ojai, California. <http://magney.org/files/research.htm>
- Magney, David L. 2010. Native Trees of Southern California (list). (30 December 2010.) California Native Plant Society, Channel Islands Chapter, Ojai, California. <http://cnpsci.org/html/PlantInfo/Checklists.htm>
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- Magney, David L., and Callen L. Huff. 2010. Preliminary Checklist of Los Angeles County Bryophytes. 16 March 2010. David Magney Environmental Consulting, Ojai, California.
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David Magney Environmental Consulting, Ojai, California.  
<http://www.magney.org/photofiles/VenturaCountySnails1.htm>.
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- Knudsen, Ken, and David L. Magney. 2006. Rare Lichen Habitats and Rare Lichen Species of Ventura County, California. January 2006. *Opuscula Philolichenum* 3:49-52.
- Magney, David L. 2006. Vascular Plants of South Ormond Beach, Oxnard, Ventura County, California. California Native Plant Society, Channel Islands Chapter, Ojai, California. Published on  
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<http://magney.org/photofiles/GraniteMtns.htm>
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- Magney, David L., and K.G. Niessen. 2005. Oak Tree Data Assessment Solutions Using GIS. 9 May 2005. David Magney Environmental Consulting, Ojai, California. Presented to ESRI ArcView User's Group, Ventura College, California.
- Magney, David L. 2005. Atlas of California Native Terrestrial Snails in Ventura County. 16 March 2005. David Magney Environmental Consulting, Ojai, California. Prepared for County of Ventura, Resource Management Agency, Planning Division. Ventura, California.
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- Magney, David L. 1988. Analysis of water quality of an intermittent stream, Santa Barbara County, California. (Presented as a poster at the California Riparian Systems Conference), Davis, California, September.
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Ferren, Wayne, and David Magney. 1986. Wetland Vegetation of the Proposed Mandalay Beach State Park. Campbell & Campbell Associates, Santa Monica, California.

Magney, David L. 1986. A Flora of Dry Lakes Ridge, Ventura County, California. (Herbarium Publication No. 5.) University of California, Santa Barbara.

## **Professional Memberships**

- Association of State Wetland Scientists Botanical Society of America California Botanical Society
- California Lichen Society, Conservation Committee
- California Native Plant Society (President 1991-1994; Chairman of Chapter Council 2011-2014; Board Member 2002-2007, VP Conservation 1996; VP Legislation 1995; Channel Islands Chapter President 2004-2013, Redbud Chapter Conservation Committee Chairman 2010-2016), Fellow, Botanist Certification Program Committee & Board of Certification Chairman (2014-)
- Channel Islands Regional Geographic Information Systems (CIRGIS), incorporator and charter board member
- International Society for Arboriculture (ISA), Western Chapter ISA, 2006-present
- Northern California Botanists
- Society of Wetland Scientists
- Southern California Academy of Sciences
- Southern California Botanists



**Darcee Guttilla, M.S.,**  
**Certified Wildlife Biologist®**  
**Senior Biologist**

## **Overview**

Ms. Guttilla has 26 years of field experience working in California. She possesses an M.S. in Biology from California State University, Fullerton, and a B.S. in Zoology from the University of California, Santa Barbara. Ms. Guttilla has a 10(a)(1)(A) permit (TE37607D-0) to conduct activities with respect to California red-legged frog (*Rana draytonii*; CRLF) and California tiger salamander (*Ambystoma californiense*; CTS). She is a CDFW and USFWS CTS/CRLF authorized biologist for California Flats Solar Project, and USFWS authorized CRLF biologist for San Luis Ranch Development and Pennington Creek fish ladder removal project in San Luis Obispo County, and Narlon Bridge replacement, Vandenberg Air Force Base, Santa Barbara County. Ms. Guttilla maintains her CDFW plant voucher collecting permit. Darcee has a strong foundation in principles of ecology, conservation-based land management, and study design. She has extensive experience with construction monitoring, amphibian surveys, pitfall trap arrays, dip-netting and seining, identification of birds by sight/sound, nest surveys, live-trapping/handling mammals, radio telemetry, track plates, camera traps, spotlight surveys, burrow excavation, habitat restoration, chemical/mechanical control of noxious weeds, vegetation identification and habitat mapping, and use of ATVs/4WD vehicles. She is skilled in preparation of regulatory permits and technical reports.

## **Certifications**

- Certified Wildlife Biologist ®, The Wildlife Society 2022

## **Permits**

- 10(a)(1)(A) permit (TE37607D-0) for California red-legged frog and California tiger salamander United States Fish and Wildlife Service
- California Department of Fish and Wildlife Authorization to Collect Voucher Specimens of State-listed Endangered, Threatened, and Rare Plants Permit No. 2081(a)-20-076-V
- California Department of Fish and Wildlife Scientific Collecting Permit # SC-001074.

## **Education**

M.S. Biology. California State University, Fullerton, CA, May 2007

Thesis Title: Effects of sterilization on movement, home range behavior and habitat use of feral cats on Santa Catalina Island, CA

B.S. Zoology. University of California, Santa Barbara, CA, June 1995



## **Trainings and Workshops**

- 2020 8-Hour HAZWOPER refresher Certification, May
- 2019 California Native Plant Society Mitigation Measures & Monitoring workshop, October
- 2018 Association of Environmental Professionals CEQA Essentials Workshop, November
- 2018 California Native Plant Society San Luis Obispo County Flora, April
- 2017 California Native Plant Society CEQA Impact Assessment, October
- 2015 Western pond turtle workshop, October
- 2015 CPR/First Aid, March
- 2014 Amphibians of the San Francisco Bay Area, November
- 2013 California red-legged frog workshop, May
- 2013 Transforming Stakeholder Conflict at the Human-Animal Interface, March
- 2011 Wildlife-Human Conflict Resolution, November
- 2011 Remote Camera Techniques, April
- 2009 40-hour HAZWOPER Certification, December
- 2009 ATV Rider Course, July
- 2008 Euthanasia Technician, October
- 2008 Program Distance, October

## **Professional Work Experience**

### **Senior Biologist**

July 2016 – present

*Althouse and Meade, Inc., Paso Robles, CA*

Duties include project management, proposal preparation, aquatic and wildlife field surveys, writing and preparation of biological documents and regulatory permits, habitat assessments, construction monitoring for environmental compliance, and manage biological data. Write botanical, biological, constraints, mitigation, protocol, and wetland delineation reports.

### **Staff Biologist II**

April 2014 - March 2016

*Condor Country Consulting, Inc., Martinez, CA*

Project Manager for Department of Defense Remedial Investigations and Military Munitions Response Programs at Concord Naval Weapons Station, Military Ocean Terminal Concord, Mare Island, Vallejo, and Camp Parks Reserve Forces Training Area, Dublin, CA. Supervisor: Sean Dexter, President/CEO.

Provided biological oversight and training, and technical advice with regard to interpretation and implementation of the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), CA Endangered Species Act, and USFWS Programmatic Biological Opinions to technical staff (8 ppl) and non-technical staff and clients (>200 ppl).

Implemented preconstruction surveys and monitoring programs for federally and state listed species and species of concern: CTS, CRLF, western pond turtle, salt marsh harvest mouse, Ridgway's rail, California black rail, California least tern, western burrowing owl, golden eagle, delta smelt, steelhead, soft bird's-beak, Congdon's tarplant, delta tule pea, Suisun marsh aster, and Mason's Lilaeopsis).

Implemented database management QA/QC methods for data entry. Maintained records for CNDDDB, 10(a)(1)(A) permits, agencies, and clients. Acquired and maintained spatial data updates in ArcGIS. Directed/supported business development activities including proposal preparation, work plans, budgets, and after-action reports.

**Senior Biologist**

March 2011 - March 2014

*CB&I, Concord, CA*

Senior technical (biological) lead for Military Munitions Response Program, Vandenberg Air Force Base, CA. Supervisor, Dan Baden, Northern California Manager, Applied Science and Engineering. Proposal preparation, budget planning, strategic planning, and after-action reports.

Supervised natural and cultural resources personnel. Provided technical training and supervision for field labor personnel (40-100 ppl).

Provided training and technical advice with regard to interpretation and implementation of the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), CA Endangered Species Act, and USFWS Biological Opinions.

Implemented monitoring program for species of conservation concern: El Segundo blue butterfly, California red-legged frog, vernal pool fairy shrimp, Western snowy plover, California least tern, and Gaviota tarplant, dune thistle, beach layia, and Gambel's watercress. Additional species consulted on: California tiger salamander and California burrowing owl.

**Avian Biologist**

May - June 2010 (contract work)

*Point Blue Conservation Science, Vandenberg Air Force Base, Lompoc, CA*

Performed variable circular plot point counts for passerines in riparian corridors. Duties included identification of birds by sight and sound, and web-based data management. Performed site reconnaissance and trail maintenance. Proficient at navigation/GPS, and ArcGIS. Ability to work independently in remote areas and complete contracts on time and under budget.

**Biological Technician**

December 2009 - March 2011

*NorthWind Group, Lompoc, CA*

Performed biological monitoring for federally threatened and endangered species for Military Munitions Response Program, Vandenberg Air Force Base, CA.

Trained personnel in identification of species of concern and ensured compliance with environmental protection plan and USFWS Biological Opinion for El Segundo blue butterfly, California red-legged frog, vernal pool fairy shrimp, Western snowy plover, California least tern, Gaviota tarplant, dune thistle, beach layia, and Gambel's watercress.

**Ecologist**

January 2009 - June 2010

*Native Range, Inc. Ventura, CA*

Island conservation and habitat restoration programs on Santa Cruz Island, CA. Project supervisor for invasive plant eradication program. Database management (MS Access and ArcGIS), vegetation mapping, and chemical and manual treatment of noxious weed species.

Trained and supervised field crew in remote locations under long-term living conditions. Collected population and survival rate estimates for federally endangered Island fox and Island spotted skunk, which included trapping, handling, and microchipping animals. Maintained disease management program which included vaccination and blood collection and archival. Collected fox scat for additional research conducted on Island fox diet analysis. Monitored for nonnative vertebrates at anchorages. Extensive experience utilizing helicopters for vegetation surveys.

**Adjunct Instructor**

August - December 2008

*Golden West College, Huntington Beach, CA*

Instructor for undergraduate level biology course (Bio 100, 4 units). Developed course syllabus for survey course emphasizing basic concepts of cell biology, animal and plant physiology, genetics and evolution, and plant, animal and human ecology. Prepared and conducted PowerPoint lectures and laboratory/field sessions, and graded written assignments and tests.

**Wildlife Biologist and Research Coordinator**

May 2005 - January 2009

*Catalina Island Conservancy, Avalon, CA*

Coordinated island research needs and collected and interpreted ecological data pertinent to informing land management practices on Santa Catalina Island, CA. Managed conservation research program.

Issued and managed research permits, coordinated logistics, training, and volunteers for researchers. Participated in multidisciplinary research projects. Tracked and edited technical reports and publications. Maintained research database and tracked research efforts/needs. Developed and managed Pets and Wildlife (P.A.W.) Program which focused on human-wildlife conflict, emergency response to injured wildlife, public outreach, serving as liaison for animal control issues and participating in the City of Avalon's animal control task force, advising animal-related civil code for the City.

Coordinated, trained and supervised staff and volunteers in data collection protocols and methodology for wildlife surveys. Implemented variable circular plot point counts and point-intercept vegetation transects for land birds in riparian, oak woodland, grassland, chaparral, and coastal sage scrub habitats. Conducted mark-recapture live-trapping for federally endangered Island fox, collected blood/fecal samples, administered vaccinations, and provided veterinary assistance. Conducted search and recovery for injured/dead radio-collared animals, conducted aerial radio telemetry surveys, and provided care and maintenance of captive island fox population.

Initiated feral cat management program. Collaborated with regulatory agencies and stakeholders to assess status of feral population, controlled the population on Conservancy property, and promoted responsible pet ownership. Maintained database, tracking capture events, health and disease, habitat use, and population estimates.

Conducted mule deer spotlight transect surveys for population trends and habitat use. Analyzed data with Program Distance and ArcGIS. Performed annual marine mammal visual transect surveys via boat. Employed pitfall arrays (animals were identified, measured, weighed, aged, sexed, and marked) in coastal sage scrub, chaparral, California grassland, riparian, and oak woodland habitats. Conducted walking-transect surveys for California mountain kingsnakes.

Performed invertebrate surveys using pitfall arrays, leaf litter collection, sifting, aspirator, beat sheets, bait, insect nets, and yellow pan traps in oak woodland, riparian, grassland, coastal sage scrub, chaparral and coastal dune, and intertidal habitats.

Collaborated on watershed prioritization land management plan in which historical and current data on wildlife, endemic plants, noxious weeds, and land use were converted into geospatial format; employed presence-absence modeling for data sets; watersheds were then ranked and prioritized on their ecological importance.

Conducted rare plant surveys using historical data of previously known populations. Delivered numerous nature programs for island residents and visitors. Provided program and research briefings to management, board of directors, and stakeholders for various programs.

Worked with camps and cove operators to assess feral cat/Island fox populations on their property, and implemented best management practices to minimize presence of cats and reduce threats to foxes. Collaborated in production of field guides and nature center exhibit content. Constructed 10 ft. deer enclosure fences to quantify effects of mule deer on post-fire vegetation recovery.

**Wildlife Technician**

June 2002 – June 2004

*Bald Eagle Reintroduction Program, Institute for Wildlife Studies, Avalon, CA*

Assisted in feeding, training and care of captive disabled bald eagle utilized for conservation outreach.

**Principal Investigator**

May 2002 – May 2005

*California State University, Fullerton, CA*

Investigated the spatial organization, health, and diet of feral cats on Santa Catalina Island, CA as part of master's thesis. Advisor: Dr. Paul Stapp, Department of Biological Science, California State University, Fullerton.

Developed and implemented study design and budget to assess, home range behavior, habitat use, health, disease, diet, and population size of feral cats. Authored successful \$50,000 grant to support research. Produced peer-reviewed publications, thesis, and technical reports.

Recruited, trained, and supervised staff and volunteers (20 ppl). Live-trapped feral cats and endangered Santa Catalina Island fox, performing physical exams, euthanasia, disease and diet (scat/gut) analysis, radio telemetry; implemented track plates, and spotlight surveys.

Conducted analyses on abundance, home range, home range overlap, habitat use, disease prevalence, and diet composition using Microsoft Access, Program Distance 5.0, Location of a Signal (LOAS), Arcview 3.2 with Animal Movement and Spatial Analyst extensions, and SAS. Developed and managed relational and geospatial databases.

Performed public outreach, presented research both locally and at professional conferences, produced peer-reviewed journal articles, master's thesis, developed website content and

developed partnerships with island stakeholders. Developed education outreach literature for island residents and visitors.

**Coordinator of Volunteers**

March 1998 - April 2002

*Catalina Island Conservancy, Avalon, CA*

Managed a volunteer base of over 1,500 individuals, approximately 12,000 hours annually. Coordinated travel and project logistics, planned budgets for Volunteer Vacations program. Recruited, interviewed, placed, trained, supervised, and evaluated volunteers.

Supported restoration efforts for 80 acres of decommissioned hayfields within riparian, coastal sage scrub, grassland, and oak woodland habitats. Program involved employing chemical and mechanical control of noxious weeds, collecting native seed, creating grassland seed production trials, seeding, plant propagation, outplanting, waddling, constructing herbivore enclosure fences, coordinating staff/volunteers, and establishing a long-term monitoring program.

Wildlife and vegetation monitoring, invasive weed control, fence enclosure construction, erosion control, native plant propagation, and habitat restoration. Coordinated and provided educational lectures for volunteer groups. Developed web page layout, brochures, recruitment flyers, outreach materials and quarterly newsletters.

**Custodian**

July 1997 – January 1998

*L.A. County Department of Parks and Recreation, Catalina Island Interpretive Center, Avalon, CA*

Developed and instructed environmental education activities for grades K-6. Maintained native plant garden. Greeted guests and led interpretive hikes.

**Wildlife Technician**

January - June 1997

*Integrated Hardwood Range Management Program, UC Berkeley Cooperative Extension, U.S. Army Camp Roberts, CA*

Conducted wildlife surveys investigating the effects of prescribed burns in oak woodlands. Conducted winter and spring passerine surveys in oak woodlands using point counts and transects. Conducted mark-recapture surveys of small mammals. Surveyed herpetofauna with cover boards

**Field Assistant**

October - December 1996

*San Marino Environmental Associates, Gaviota, CA*

Monitored sensitive riparian corridor, translocated tidewater gobies and California red-legged frogs out of construction zone, and installed temporary exclusion fencing to keep species out of construction site.

**Field Assistant**

November - December 1995; October 1996 - January 1997

*Greeneridge Sciences, Santa Barbara, CA*

Monitored the presence of marine mammals during seismic profiling of the sea floor in the Santa Barbara Channel. Identified species and vocalizations, recorded animals' response to seismic surveys, conducted radio communication with operations crew, and transcribed data.

**Biological Technician Internship**

July - October 1996; May 2000

*U.S. Fish & Wildlife Service, California Condor Recovery Program, Ventura, CA*

Monitored free-flying population of condors in Los Padres National Forest, collected and distributed supplemental diet for the condors, aided in construction and maintenance of chick rearing facility, monitored and cared for juvenile condors.

Assisted monitoring mist nets for MAPS (monitoring avian productivity and survivorship) station at Hopper Mountain NWR. Maintained public relations with local ranchers, land owners and nature enthusiasts.

**Research Assistant**

April - July 1996

*University of California, Santa Barbara, Vandenberg Air Force Base, Lompoc, CA*

Assisted Ph.D. research on brown-headed cowbirds' impacts on wetland passerines. Identified birds by sight and song. Conducted point counts, behavior surveys, nest searches, banding, and radio tracking. Set up and maintained cowbird decoy traps.

**Field Assistant**

March 1996

*University of California, Davis, Santa Cruz and Santa Rosa Islands, CA*

Surveyed for hanta virus in deer mouse populations.

**Research Assistant**

January 1995 - March 1996

*University of California, Santa Barbara, CA*

Graduate research involving chemosensory response and infrasonic vocalizations of Asian elephants at the Santa Barbara Zoo, CA. Recorded behavior and vocalizations with video, hydrophone, and DAT recorder. Analyzed vocalizations with a specialized DOS program.

**Research Assistant**

Winter 1994

*University of California, Santa Barbara, CA*

Surveyed Belding Savannah Sparrows at Carpenteria Salt Marsh Reserve using mist-net and banding techniques.

**Publications**

Guttilla, D. and P. Stapp. 2010. Effects of sterilization on movements of feral cats at the wildland-urban interface. *Journal of Mammalogy* 91(2):482–489.

Guttilla, D. 2007. Wildlife of Santa Catalina Island: Introduction to familiar species. In K. Anderson and C. de la Rosa, editors. *A pocket naturalist guide*. Waterford Press, Inc. Phoenix, Arizona.

Guttilla, D. 2007. Birds of Santa Catalina Island: Introduction to familiar species. In K. Anderson and C. de la Rosa, editors. *A pocket naturalist guide*. Waterford Press, Inc. Phoenix, Arizona.

Guttilla, D. A. 2007. Effects of sterilization on movement, home range behavior and habitat use of feral cats on Santa Catalina Island, California. Thesis, California State University, Fullerton, California.



Stapp, P. and D. A. Guttilla. 2006. Population density and habitat use of mule deer (*Odocoileus hemionus*) on Santa Catalina Island, California. *South Western Naturalist* 51: 572-578.

### **Oral Presentations**

- 2011 Ecological impacts and management of feral cats on the California Channel Islands. The Wildlife Society Western Section Annual Meeting, Riverside, CA. February 10, 2011.
- 2008 Pets And Wildlife (P.A.W.) Program on Santa Catalina Island, California. Catalina Conservancy mini-symposium, Cabrillo Marine Aquarium, San Pedro, CA. November 15, 2008.
- 2007 Management of non-native ungulates on Catalina Island, California. Integrated Hardwood Range Management Program working group, Avalon, CA. May 9, 2007.
- 2007 Issues surrounding free-roaming/feral cats on Santa Catalina Island, California. Avalon Animal Control Task Force, Avalon, CA. April 2, 2007.
- 2006 Feral cat ecology and conservation challenges on Santa Catalina Island, California. Society for Range Management's fall meeting, Avalon, CA. November 2, 2006.
- 2005 Effects of sterilization on spatial organization of feral cats on Santa Catalina Island, California. American Society of Mammalogists, Springfield, MO.
- 2004 Ecology of feral cat populations on Santa Catalina Island, California (oral presentation). Graduate Women in Science Sigma Chapter, Fullerton, CA.
- 2003 Effects of sterilization on home-range behavior and habitat utilization of feral (*Felis catus*) cats on Santa Catalina Island, California. Sixth California Islands Symposium, Ventura, CA.

### **Poster Presentations**

- 2011 Relative Habitat use and diet of feral cats on Santa Catalina Island, California. The Wildlife Society 18<sup>th</sup> Annual Conference, Kona, HI and Catalina Island Conservancy Mini-symposium, California State University, Long Beach, CA.
- 2006 Feral cats and wildlife on Santa Catalina Island, California: distribution, disease and their effects on management. Society for Conservation Biology, San Jose, CA.
- 2003 Effects of sterilization on home-range behavior and habitat use of feral cats on Santa Catalina Island, California. Annual Conference for the Western Section of the Wildlife Society, Irvine, CA.

### **Professional Societies**

- The Wildlife Society (National/Western Section/ CA Central Coast)
- California Native Plant Society

# **Exhibit B**

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LOCAL NEWS >

## Daly City Housing Development Plans Squeezing Out Beloved Community Garden



FEBRUARY 15, 2022 / 6:36 PM / CBS SAN FRANCISCO

DALY CITY (KPIX 5) -- Daly City's Serramonte Del Rey neighborhood is about to undergo a major change.

The Jefferson Union High School District is updating outdated facilities and will be replacing them with faculty and staff apartment housing, and will also eventually develop the site into a neighborhood with 6 buildings, including a 14-story building.

"The community meetings that we have had, the people who live right here, are I think, largely in favor of this," said JUHSD Superintendent Toni Presta.

The site is located at 699 Serramonte Boulevard in Daly City.

Watch CBS News

But there's a group of people who are not pleased with the move, as it means a garden that's been in Daly City for around 20 years will have to go.



**BART to implement changes to reduce sexual harassm...  
aboard trains**

"We've been calling it Mystic Garden. This is Daly City's only community garden. It's been here for more than 20 years," said Hibba, an advocate for keeping the garden. "It's a community site, a community space. A green space."

The garden was originally built to be used as an instructional garden for the school district. However, it has since become more of a community garden.

Erick Campbell volunteers to be a caretaker of the garden.

He's holding onto the idea of preserving the green space, and wants to protect the little amount of it that Daly City has.

"They could have easily worked around this and realized this is not just a garden - this is part of nature that is still here," Campbell said.

The school district attempted to work around the garden but it wasn't possible, according to Presta.

"We actually have looked with our architects - we asked, 'how can we build around it, can we keep it a certain way?' We're not able to build the building types and amount of housing that's needed if we do that," Presta said.

The re-developed neighborhood project does include a new community garden, says Presta, with more green space.

"There will be a community garden, probably double the green space that we have now. At least double," she said. "It

may not be exactly the same. It's going to be a garden. A community garden. Really what we're saying is we want to work with the community to put in what they would like."

But the garden advocates don't buy it.

"It's not so much about a new garden, it's environmental," Campbell said.

"They say they're going to double the green space, but why would they even demolish this space if that was true? Look how big this space is. It goes so far. It's huge," Hibba said.

Hibba is concerned taking the garden away will have a negative impact on local youth.

"I would describe the garden, first and foremost as a community space, a green space, just a space that is necessary for mental health - especially for adolescents growing up here," she said. "If you continue to keep taking away the safe spaces for our youth, you're pushing them to the streets."

The superintendent says the redevelopment project will have a positive impact. It will bring a much-needed revenue source for the school district, which will benefit its students and the greater community.

"It's a great project for many reasons. It will help fund our underfunded school district - and - it will create a beautiful neighborhood in Daly City and increase housing for the community," she said.

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## More from CBS News

[SUSD superintendent to host series of town hall meetings](#)



[Fort Lauderdale police pursuit of "felony vehicle" ends in crash, suspect in custody](#)



[Harmar House on Freeport Road catches fire](#)



[Fatal crash expected to close part of Route 422 westbound for hours](#)



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In: [Daly City](#)

# **Exhibit C**





# Help Save Daly City's Only Community Garden

Started

July 3, 2021

Petition to

Mayor, City of Daly City Juslyn Manalo and [10 others](#)

**4,504**

Signatures

**5,000**

Next Goal

Support now

[Sign this petition](#)

## Why this petition matters





Started by [Debbie Santiago](#)

When my family moved to Daly City in 2004 my son discovered a beautiful community garden within walking distance of our home. Gardening with friends and neighbors helped teach my son to respect and share earth's bounty.

My mother is from the Washoe Tribe near Lake Tahoe; together we hold small ceremonies in the garden and sing traditional Wašiw songs to honor Mother Earth and all her beauty. The garden has given my family a sense of peace and harmony.

Over the past two decades gardeners have nurtured the land and Mother Earth has responded by providing a second chance for hummingbirds, hawks, bees, frogs, butterflies and deer that drink from seasonal wetlands. Everything you see and touch in the garden is living and sacred. Please help me save it.

### **Here's the Problem: High School District [Trustees](#) plan to bulldoze Daly City's only community garden**

Jefferson Union High School District (JUHSD) plans to bulldoze a 20+ year old community garden located at 699 Serramonte Blvd in Daly City and replace it with [three 14-story market-rate apartment buildings](#). JUHSD's proposed Serramonte Del Rey development includes numerous buildings and retail stores. The project would fund construction of a new board of trustees administrative building slated for Westmoor Park. As planned, three 14-story towers will obstruct coastal ridgeline views in addition to destroying Daly City's only community garden. The current site for the garden is ideal because the ridgeline above the garden protects a fruit orchard, vegetable plots and native plants from coastal fog and wind.

JUHSD and their business partners have not agreed to modify the development to spare the garden and they have not offered an alternative site for a community garden. The land where the project is located once belonged to the Ramaytush Ohlone, the original peoples of the San Francisco Peninsula; they lived by hunting, fishing, and gathering. Both the garden and the parkland serve as valuable community resources and greenspace.

### **School District's Heavy-Handed Tactics Targeting Gardeners**

District trustees who support demolishing the garden directed staff to implement an authoritarian culture of intimidation and fear. In 2020, as the Covid pandemic spiked JUHSD began ramping up harassment. School district tactics included verbally berating gardeners by telling them to stay away, erecting an 8' cyclone fence with a padlocked gate, installing a

video surveillance system near the gate, installing a loudspeaker, cutting off water from all garden spigots and removing redwood trees. Additionally, gardeners were required to pay for fingerprints and an FBI background check to access the garden by appointment. Staff said they were concerned about crime however when asked if the District had reported any incidents to police administrators said no crime was reported. Toni Presta, Superintendent of JUHSD has not refunded the public's money for fingerprints and background checks.

## History of Ancestral and Cultural Genocide

In 1769, Spanish colonizers arrived in Northern California and constructed missions to Christianize my ancestors and take our land. Between the years 1769 and 1834, the number of Native Californians dropped from 300,000 to 250,000. After California entered into the Union in 1850, the state government perpetrated massacres against the Ohlone people. Many of the leaders of these massacres were rewarded with positions in state and federal government. These massacres have been described as genocide. During the 1940's through the 1960's the state disenrolled eight-hundred tribes including the Ohlone to gain control of their land. Native Californians who were relocated during this era faced culture shock and discrimination. Today, many of us are [leading the effort](#) for cultural and historical recognition of our tribe.

## Privatization of Public Resources

Bulldozing Daly City's only community garden and killing trees to develop **market-rate** housing on public land that once belonged to the Ramaytush Ohlone is unacceptable. The community garden is Daly City's only public food producing garden and it includes over 100 fruit trees protected by a coastal bluff, 27 redwood trees and an impressive collection of native plants, hundreds of trees and a seasonal wetland.

The garden has a history of providing community space for Indigenous families, Latinx families and families of Color to grow food and raise chickens. Gardeners forage for plants of significance to the medicine and diet of the Ramaytush Ohlone and Indigenous elders hold multi-generational seasonal ceremonies within the garden on approximately 2-acres of public land.

This garden is especially important because it's the only community garden in Daly City; greenspace and parkland is extremely limited and underfunded. In the last few years the Daly City Council defunded Westmoor Park which they leased from JUHSD. The park lease was terminated and now JUHSD plans to build new office buildings on parkland for the elected board of trustees and administrators. Sadly, there is a lack of accountability on the part of locally elected politicians who apparently don't understand that sacrificing a public

garden and park for market rate housing is a bad deal for the community. Shortsighted thinking by the JUHSD Board of Trustees has resulted in harmful policy decisions and an unhealthy preoccupation with empire building that falls outside the District's stated mission, "Excellence Through Equity."

### **From the City of Daly City website:**

- Daly City is the 9th most [densely populated](#) city in the entire country. And, the City experiences one of the highest pollution burdens within the County of San Mateo.
- Overall, Daly City does not have a diverse urban forest and this has much larger implications for long-term resilience. Forests that are not diverse succumb to external shocks quickly, like disease, drought, and storms.

### **Chronic Illness in San Mateo County**

The 2013 San Mateo County Community Health Needs Assessment reported that the prevalence of asthma and diabetes increased significantly between 1998 and 2013. In only 15 years the asthma rate in San Mateo County jumped from 8% to 17.9% and chronic lung disease increased from 4.7% to 7.1%. Poor air quality in Daly City disproportionately impacts children and people of color and county asthma deaths rank above the state average. Diabetes is also on the rise. Between 1998 and 2013 the county diabetes rate more than doubled from 3.9% to 10%. Diabetes disproportionately impacts people of color and low income families.

### **The Sierra Club sent Daly City officials a letter that included the following concerns:**

Land owned by the Jefferson Union High School District currently represents a public use. It includes a well used almost two acre community garden and orchard that improves air quality, increases access to fresh food, improves food security, improves dietary habits through education, increases fruit and vegetable intake, increases physical activity through garden maintenance activities, reduces the risk of obesity and obesity-related diseases, improves mental health, promotes relaxation, provides needed biodiversity, includes hundreds of plant species including native plants, provides wildlife habitat, includes trees and shrubs of different densities and heights giving birds a places of retreat and safety, includes a number of redwood trees and fruit trees, the garden includes a seasonal wetland, reduces erosion from runoff, provides natural flood control, improves water quality and serves as a vital component of effective adaptation and resilience to climate change. Children's toys within the garden point to widespread community use and the

functioning of the garden like a park. For photos of the garden please see the garden's Instagram account [@themysticalgarden](#) and additional [photos](#) are published online.

There is a shortage of community gardens in Daly City unlike surrounding cities including Pacifica and San Francisco. Community gardens function as ecological green space, a gathering place for neighbors, as well as a place for solitude, reflection and study. They also make a positive contribution to the community by reducing food insecurity, providing access to culturally relevant foods, promoting healthier eating through education programs, and providing access to gardening for those who otherwise could not have a garden, such as families with young children, the elderly, recent immigrants, multifamily dwellers, and or the homeless.

The garden was started decades ago as part of a therapeutic school garden project and it continues today as a source of great public benefit and community pride. The garden provides opportunities for active and passive recreation as well as healthy nutrition. This is critically important given concerns about malnutrition and obesity and a disproportionate lack of community gardens in Daly City. Further, given the low proportion of counselors to students in JUHSD, the garden's benefit to student mental health is significant. A shortage of community gardens in Daly City negatively impacts citizens; this hardship became particularly difficult during the COVID-19 pandemic when team sports, gyms and group exercise classes were prohibited by state and local health orders. The need for increased community garden access is particularly relevant in Daly City, given its high percentage of minority families with backgrounds in active tending of gardens, orchards and farms for reasons related to food security and cultural practice.

Community gardens are examples of green infrastructure that are resilient adaptations to climate change. As global warming intensifies food costs will continue to increase and food scarcity will need to be addressed through community gardening. Community gardens can reduce urban heat islands, provide various ecosystem services, and increase storm water retention. From a socioeconomic perspective, these gardens also build trust, facilitate participation, improve responses to natural disasters and food security — all vital components of effective adaptation and resilience to climate change. Unlike rain gardens, bioswales, and green roofs, community gardens respond to stressors like economic, social, and political instability.

Decades of tree removal, often to make way for both front yard and backyard paving, has increased impervious surfaces citywide. Now the highly urbanized population faces a new climate reality dominated by drought, rising temperatures, and limited but more intense storm events.



## Stop Reducing Greenspace in Daly City

Our elected representatives have an obligation to address nature-deficit disorder resulting from a chronic lack of community gardens, green space and parks in Daly City. Nature-deficit disorder contributes to higher rates of physical and emotional illnesses, attention difficulties, depression, substance abuse, a diminished use of the senses and health conditions related to poor diet, lack of physical exercise and acute asthma episodes caused by unhealthy air quality. Research suggests that the nature-deficit weakens ecological literacy and stewardship of the natural world, resulting in apathy in the face of climate change disasters such as wildfires, sea level rise, and extreme heat which Daly City needs to counter.

## Your Support Matters

Please join me in supporting community gardening opportunities in Daly City. By signing this petition you will help save Daly City's only community garden for future generations. The petition will be delivered to Senator Scott Wiener, Assemblymember Phil Ting, City of Daly City Councilmembers, Jefferson Union High School District Trustees and the San Mateo County Board of Supervisors.

Thank you, Debbie

## Community Garden Trees (hundreds of trees)

- 27 Redwoods
- 3 Madrone
- 2 Buckeye
- 4 California Coffee Bean
- 1 Bay Laurel
- 2 California elderberry
- 1 Laurel
- 2 Douglas Fir
- 2 Hinoki Cypress
- 5 Monterey Cypress
- (100) Monterey Pine
- 1 Catalina ironwood (donated by city)
- 5 Willow
- 2 Blue Spruce
- 1 Potted Spruce
- 1 Alpine Source



- 1 Austrian Pine
- 1 Live Oak
- 1 Noble Fir
- 3 Maple (big)
- 2 Japanese Maple
- 1 Walking Stick Tree
- (100+) acacia

### **Community Garden Fruit Orchard** (over 100 fruit trees)

- 3 Cherry
- 2 Plum
- 8 Nectarines
- 22 Apple
- 12 Currants, many varieties
- 5 Avocado
- 4 Pears
- 3 Olive
- 2 Loquat
- 2 Kumquat
- 2 Lemon
- 2 Buddha Hand Citrus Tree
- 1 Mexican Lime
- 1 Meyer Lemon
- 3 Banana Passion Fruit
- 6 Blackberries without thorns
- 1 Lemon Guava
- 1 Pomegranate
- 6 Blueberries Shrubs
- 4 Pineapple
- 1 Fig
- 1 Mandarin Orange
- 2 Mandarin Clementine
- 3 Grape Vines
- 1 Prickly Pear Cactus
- 2 Dragon Fruit Cactus
- 2 Peach

[Report a policy violation](#)

# **Exhibit D**

# **STATE AND FEDERALLY LISTED ENDANGERED AND THREATENED ANIMALS OF CALIFORNIA**

July 2023

State of California  
Natural Resources Agency  
Department of Fish and Wildlife  
Biogeographic Data Branch  
California Natural Diversity Database (CNDDDB)

Recommended Citation:

California Natural Diversity Database (CNDDDB). July 2023. State and Federally Listed Endangered and Threatened Animals of California. California Department of Fish and Wildlife. Sacramento, CA.

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## Overview

This document contains a list of animal taxa found within California or off the coast of the State that have been classified as endangered or threatened by the California Fish and Game Commission (FGC; state listed) or by the U.S. Secretary of the Interior or the U.S. Secretary of Commerce (federally listed). This list also includes taxa that are official candidates for state or federal listing, or have been officially proposed for federal listing, as well as taxa that were once listed but have since been delisted.

## Background

State listing is pursuant to the California Endangered Species Act of 1984 (CESA; California Code of Regulations, Title 14, Chapter 6, §§783.0-787.9; Fish and Game Code Chapter 1.5, §§ 2050-2115.5). The designations “Endangered” and “Rare” were first established in 1970 by the original California Endangered Species Act, and taxa with a state list date of June 27, 1971 were protected under this regulation. In 1984, CESA was amended, at which time the “Rare” designation was changed to “Threatened,” and on January 1, 1985, all animal species previously designated as “Rare” were reclassified as “Threatened.” The official California listing of Endangered and Threatened animals is contained in the California Code of Regulations, [Title 14, §670.5](#).

Federal listing is pursuant to the Federal Endangered Species Act of 1973, as amended (16 USC §§1531-1544; 50 CFR §§17.1-17.108). The federal agencies responsible for listing are the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). Prior federal regulations include the Endangered Species Conservation Act of 1969, and the Endangered Species Preservation Act of 1966, under which all species with a federal list date of March 11, 1967 were listed. The official federal listing of Endangered and Threatened animals is published in the Federal Register, [50 CFR §17.11](#).



## Listing Status Summary Table

Totals include subspecies, Distinct Population Segments, and Ecologically Significant Units when listed separately.

<b>Abbreviation</b>	<b>Designation</b>	<b>Totals</b>
SE	State Listed - Endangered	54
ST	State Listed - Threatened	43
SC	State Candidate for Listing	11
SDR	State Delisted (Recovered)	2
SDE	State Delisted (Extinct)	2
FE	Federally Listed - Endangered	89
FT	Federally Listed - Threatened	46
FPE	Federally Proposed - Endangered	5
FPT	Federally Proposed - Threatened	5
FC	Federal Candidate for Listing	2
FDR	Federally Delisted (Recovered)	14
FDE	Federally Delisted (Extinct)	2
	<b># Animal Taxa State Listed Only</b>	<b>43</b>
	<b># Animal Taxa Federally Listed Only</b>	<b>81</b>
	<b># Animal Taxa State AND Federally Listed</b>	<b>54</b>
	<b>Total # State Listed Taxa (SE, ST)</b>	<b>97</b>
	<b>Total # Federally Listed Taxa (FE, FT)</b>	<b>135</b>
	<b>Total # Listed Animal Taxa</b>	<b>178</b>

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Common and scientific names are shown as they are in current usage, typically based standards used by the [NatureServe Natural Heritage Network](#), unless otherwise noted. If current nomenclature differs from that in state and federal listing documents, the nomenclature at the time of listing is provided in the notes. Synonyms, name changes, and other clarifying points are also noted. Where state and federal listings apply to different ranges, subspecies, or populations, each taxa will be listed separately, and statuses that apply to only a portion of the taxon, or that also encompass other taxa, will be shown in parentheses. Where state and federal listings differ in name, but represent the same biological unit, the common name will be listed using the California state listing; the federal name will be listed in the notes.

The “List Date” for final federal listing is the date the listing became effective. This is typically not the date of publication of the rule in the Federal Register; it is usually about 30 days after publication, but may be longer.

If an animal was previously listed and no longer has any listing status, the entry text is grey. If an animal was previously proposed or a candidate for listing, but the listing was not warranted or was revoked, the record has been removed from the table.

For taxa having more than one status entry, the current status is in bold and underlined. All dates are in the “YYYYMMDD” format.

## Abbreviations

- CCR: California Code of Regulations
- CDFW: California Department of Fish and Wildlife (previously Department of Fish and Game (DFG))
- CESA: California Endangered Species Act
- DPS: Distinct population segment
- ESA: Endangered Species Act (Federal)
- ESU: Evolutionarily significant unit
- FGC: California Fish and Game Commission
- NMFS: National Marine Fisheries Service
- NOAA: National Oceanic and Atmospheric Administration
- USFWS: United States Fish and Wildlife Service

## Additional Resources

- The [California Fish and Game Commission](#) publishes notices relating to changes to Title 14 of the California Code of Regulations
- Title 14 of the California Code of Regulations can be accessed through The [Office of Administrative Law](#)
- The [U.S. Fish and Wildlife Service](#) is responsible for protecting endangered and threatened species, and conserving candidate and at-risk species so that ESA listing is not necessary
- The National Marine Fisheries Service (a.k.a. NOAA Fisheries) [Office of Protected Resources](#) is responsible for protecting marine mammals and endangered and threatened marine life

## Invertebrates

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Gastropoda (snails, slugs, and abalone)	<i>Haliotis cracherodii</i>	black abalone			FE	20090213	Listed by NMFS in 2009 and by USFWS in 2011.
Gastropoda (snails, slugs, and abalone)	<i>Haliotis sorenseni</i>	white abalone			FE	20010628	Listed by NMFS in 2001 and by USFWS in 2005.
Gastropoda (snails, slugs, and abalone)	<i>Helminthoglypta walkeriana</i>	Morro shoulderband			<b>FT</b> FE	20220307 19950117	Downlisted by USFWS to Threatened on 20220307.
Gastropoda (snails, slugs, and abalone)	<i>Monadenia infumata setosa</i>	Trinity bristle snail	ST	19801002			Listed by the State of California as <i>Monadenia setosa</i> .
Crustacea - Anostraca (fairy shrimp)	<i>Branchinecta conservatio</i>	Conservancy fairy shrimp			FE	19940919	
Crustacea - Anostraca (fairy shrimp)	<i>Branchinecta longiantenna</i>	longhorn fairy shrimp			FE	19940919	
Crustacea - Anostraca (fairy shrimp)	<i>Branchinecta lynchi</i>	vernal pool fairy shrimp			FT	19940919	
Crustacea - Anostraca (fairy shrimp)	<i>Branchinecta sandiegonensis</i>	San Diego fairy shrimp			FE	19970203	
Crustacea - Anostraca (fairy shrimp)	<i>Streptocephalus woottoni</i>	Riverside fairy shrimp			FE	19930803	
Crustacea - Notostraca (tadpole shrimp)	<i>Lepidurus packardii</i>	vernal pool tadpole shrimp			FE	19940919	

## State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Crustacea - Decapoda (crayfish and shrimp)	<i>Pacifastacus fortis</i>	Shasta crayfish	<u>SE</u> ST	19880226 19801002	FE	19881031	
Crustacea - Decapoda (crayfish and shrimp)	<i>Syncaris pacifica</i>	California freshwater shrimp	SE	19801002	FE	19881130	
Insecta - Orthoptera (grasshoppers, katydids, and crickets)	<i>Trimerotropis infantilis</i>	Zayante band-winged grasshopper			FE	19970224	
Insecta - Coleoptera (beetles)	<i>Cicindela ohlone</i>	Ohlone tiger beetle			FE	20011003	
Insecta - Coleoptera (beetles)	<i>Desmocerus californicus dimorphus</i>	valley elderberry longhorn beetle			FT	19800915	
Insecta - Coleoptera (beetles)	<i>Dinacoma caseyi</i>	Casey's June beetle			FE	20111024	
Insecta - Coleoptera (beetles)	<i>Elaphrus viridis</i>	Delta green ground beetle			FT	19800915	
Insecta - Coleoptera (beetles)	<i>Polyphylla barbata</i>	Mount Hermon (=barbate) June beetle			FE	19970224	
Insecta - Diptera (flies)	<i>Rhaphiomidas terminatus abdominalis</i>	Delhi Sands flower-loving fly			FE	19930922	

## State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Insecta - Lepidoptera (butterflies and moths)	<i>Apodemia mormo langei</i>	Lange's metalmark butterfly			FE	19760608	
Insecta - Lepidoptera (butterflies and moths)	<i>Callophrys mossii bayensis</i>	San Bruno elfin butterfly			FE	19760608	Synonymous with <i>Incisalia fotis bayensis</i> and <i>Callophrys fotis bayensis</i> .
Insecta - Lepidoptera (butterflies and moths)	<i>Danaus plexippus plexippus</i> pop. 1	monarch - California overwintering population			FC	20201217	
Insecta - Lepidoptera (butterflies and moths)	<i>Euphilotes battoides allyni</i>	El Segundo blue butterfly			FE	19760608	
Insecta - Lepidoptera (butterflies and moths)	<i>Euphilotes enoptes smithi</i>	Smith's blue butterfly			FE	19760608	Synonymous with <i>Philotes enoptes smithi</i> and <i>Shijimiaeoides enoptes smithi</i> .
Insecta - Lepidoptera (butterflies and moths)	<i>Euphydryas editha bayensis</i>	Bay checkerspot butterfly			FT	19871019	
Insecta - Lepidoptera (butterflies and moths)	<i>Euphydryas editha quino</i>	quino checkerspot butterfly			FE	19970116	Synonymous with <i>Euphydryas editha wrighti</i>
Insecta - Lepidoptera (butterflies and moths)	<i>Euproserpinus euterpe</i>	Kern primrose sphinx moth			FT	19800509	



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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Insecta - Lepidoptera (butterflies and moths)	<i>Glaucopsyche lygdamus palosverdesensis</i>	Palos Verdes blue butterfly			FE	19800801	
Insecta - Lepidoptera (butterflies and moths)	<i>Lycaena hermes</i>	Hermes copper butterfly			FT	20220120	
Insecta - Lepidoptera (butterflies and moths)	<i>Icaricia icarioides missionensis</i>	Mission blue butterfly			FE	19760608	
Insecta - Lepidoptera (butterflies and moths)	<i>Plebejus anna lotis</i>	lotis blue butterfly			FE	19760608	Synonymous with <i>Lycaeides argyrognomon lotis</i> .
Insecta - Lepidoptera (butterflies and moths)	<i>Pseudocopaeodes eunus obscurus</i>	Carson wandering skipper			FE	20020807	
Insecta - Lepidoptera (butterflies and moths)	<i>Pyrgus ruralis lagunae</i>	Laguna Mountains skipper			FE	19970116	
Insecta - Lepidoptera (butterflies and moths)	<i>Speyeria callippe callippe</i>	callippe silverspot butterfly			FE	19971205	
Insecta - Lepidoptera (butterflies and moths)	<i>Speyeria zerene behrensii</i>	Behren's silverspot butterfly			FE	19971205	

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Insecta - Lepidoptera (butterflies and moths)	<i>Speyeria zerene hippolyta</i>	Oregon silverspot butterfly			FT	19801015	
Insecta - Lepidoptera (butterflies and moths)	<i>Speyeria zerene myrtleae</i>	Myrtle's silverspot butterfly			FE	19920622	The USFWS and others have not yet determined if the taxonomic expansion by Emmel and Emmel (1998) into <i>S. z. myrtleae</i> and <i>S. z. puntareyes</i> is warranted. <i>Speyeria zerene</i> along the coast of Marin and Sonoma counties are Federally Endangered under the subspecies concept in the 1992 listing.
Insecta - Hymenoptera (ants, bees, and wasps)	<i>Bombus crotchii</i>	Crotch bumble bee	SC	20220930 20190618			Originally advanced to candidacy by the Fish and Game Commission on 20190618. The candidacy determination was challenged in court. Candidacy was temporarily stayed beginning February 2021 following an adverse trial court judgment. The Third District Court of Appeal reversed the trial court judgment. Candidacy was reinstated on 20220930.
Insecta - Hymenoptera (ants, bees, and wasps)	<i>Bombus franklini</i>	Franklin's bumble bee	SC	20220930 20190618	FE	20210923	Originally advanced to candidacy by the Fish and Game Commission on 20190618. The candidacy determination was challenged in court. Candidacy was temporarily stayed beginning February 2021 following an adverse trial court judgment. The Third District Court of Appeal reversed the trial court judgment. Candidacy was reinstated on 20220930.

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Insecta - Hymenoptera (ants, bees, and wasps)	<i>Bombus occidentalis</i>	western bumble bee	SC	20220930 20190618			Originally advanced to candidacy by the Fish and Game Commission on 20190618. The candidacy determination was challenged in court. Candidacy was temporarily stayed beginning February 2021 following an adverse trial court judgment. The Third District Court of Appeal reversed the trial court judgment. Candidacy was reinstated on 20220930.
Insecta - Hymenoptera (ants, bees, and wasps)	<i>Bombus suckleyi</i>	Suckley's cuckoo bumble bee	SC	20220930 20190618			Originally advanced to candidacy by the Fish and Game Commission on 20190618. The candidacy determination was challenged in court. Candidacy was temporarily stayed beginning February 2021 following an adverse trial court judgment. The Third District Court of Appeal reversed the trial court judgment. Candidacy was reinstated on 20220930.

## Fishes

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Acipenseridae (sturgeon)	<i>Acipenser medirostris</i> pop. 1	green sturgeon - southern DPS			FT	20060606	Includes all spawning populations south of the Eel River.
Cyprinidae (minnows and carp)	<i>Gila crassicauda</i>	thicktail chub	<u>SDE</u> SE	19801002 19740110			Extinct
Cyprinidae (minnows and carp)	<i>Gila elegans</i>	bonytail	<u>SE</u> ST	19740110 19710627	FE	19800523	Federal common name: bonytail chub.

## State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Cyprinidae (minnows and carp)	<i>Lavinia exilicauda chi</i>	Clear Lake hitch	ST	20140806			
Cyprinidae (minnows and carp)	<i>Ptychocheilus lucius</i>	Colorado pikeminnow	SE	19710627	FE	19670311	
Cyprinidae (minnows and carp)	<i>Siphateles bicolor mohavensis</i>	Mohave tui chub	SE	19710627	FE	19701013	Listed by the USFWS as <i>Siphateles mohavensis</i> and the State of California as <i>Gila bicolor mohavensis</i> .
Cyprinidae (minnows and carp)	<i>Siphateles bicolor snyderi</i>	Owens tui chub	SE	19740110	FE	19850904	Listed by the State of California and the USFWS as <i>Gila bicolor snyderi</i> .
Catostomidae (suckers)	<i>Catostomus microps</i>	Modoc sucker	<u>SE</u> ST	19801002 19740110	<u>FDR</u> FE	20160107 19850711	Recovered
Catostomidae (suckers)	<i>Catostomus santaanae</i>	Santa Ana sucker			FT	20000512	Populations in the Los Angeles, San Gabriel, and Santa Ana River basins.
Catostomidae (suckers)	<i>Chasmistes brevirostris</i>	shortnose sucker	<u>SE</u> ST	19740110 19710627	FE	19880817	
Catostomidae (suckers)	<i>Deltistes luxatus</i>	Lost River sucker	<u>SE</u> ST	19740110 19710627	FE	19880817	
Catostomidae (suckers)	<i>Xyrauchen texanus</i>	razorback sucker	<u>SE</u> ST	19740110 19710627	FE	19911122	
Osmeridae (smelt)	<i>Hypomesus transpacificus</i>	Delta smelt	<u>SE</u> ST	20100120 19931209	FT	19930405	20161202 USFWS Annual Notification of Findings indicates uplisting to Federally Endangered (original uplisting petition received 20060308) is "warranted-but-precluded," with a Listing Priority Number of 2.
Osmeridae (smelt)	<i>Spirinchus thaleichthys</i>	longfin smelt	ST	20090405	FPE	20221007	Federal Proposed status is only for San Francisco Bay-Delta distinct population segment.

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Osmeridae (smelt)	<i>Thaleichthys pacificus</i>	eulachon			FT	20110413 20100517	The southern DPS of Pacific eulachon was listed as Threatened by NMFS in 2010 and by USFWS in 2011.
Salmonidae (trout and salmon)	<i>Oncorhynchus clarkii henshawi</i>	Lahontan cutthroat trout			<u>FT</u> FE	19750716 19701013	Listed by the USFWS as <i>Salmo clarkii henshawi</i> .
Salmonidae (trout and salmon)	<i>Oncorhynchus clarkii seleniris</i>	Paiute cutthroat trout			<u>FT</u> FE	19750716 19670311	Listed by the USFWS as <i>Salmo clarkii seleniris</i> .
Salmonidae (trout and salmon)	<i>Oncorhynchus kisutch</i> pop. 2	coho salmon - southern Oregon / northern California ESU	ST	20050330	FT	19970506	The Federal listing is for the Southern Oregon-Northern California Coast ESU, and includes populations in coastal streams between Cape Blanco, Oregon and Punta Gorda, California. The Fish and Game Commission determined that coho from Punta Gorda to the Oregon border should be listed as Threatened on 20040225. This determination was finalized by the Office of Administrative Law on 20050330. NMFS completed a comprehensive status review 20050829 reaffirming the status.

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Salmonidae (trout and salmon)	<i>Oncorhynchus kisutch</i> pop. 4	coho salmon - central California coast ESU	SE	20050330	<u>FE</u> FT	20050829 19961130	The Federal listing is for the Central California Coast Coho ESU and includes populations from Punta Gorda south to, and including, the San Lorenzo River as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system. Coho south of San Francisco Bay were state listed in 1995. In February 2004 the Fish and Game Commission determined that coho from San Francisco to Punta Gorda should also be listed as Endangered. This change was finalized by the Office of Administrative Law on 20050330. NMFS completed a comprehensive status review in 2005 reaffirming the status, and uplisting the Central Coast ESU from threatened to endangered. NMFS reaffirmed the FE status again 20140723.
Salmonidae (trout and salmon)	<i>Oncorhynchus mykiss irideus</i> pop. 8	steelhead - central California coast DPS			<u>FT</u> FT	20060206 19971017	Coastal streams from the Russian River (inclusive) to Aptos Creek (inclusive), and the drainages of San Francisco, San Pablo, and Suisun Bays eastward to Chipps Island at the confluence of the Sacramento and San Joaquin Rivers; and tributary streams to Suisun Marsh including Suisun Creek, Green Valley Creek, and an unnamed tributary to Cordelia Slough (commonly referred to as Red Top Creek), exclusive of the Sacramento-San Joaquin River Basin of the California Central Valley. NMFS completed a comprehensive status review 20060206 reaffirming the status.



State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Salmonidae (trout and salmon)	<i>Oncorhynchus mykiss irideus</i> pop. 9	steelhead - south-central California coast DPS			<u>FT</u> FT	20060206 19971017	Coastal basins from the Pajaro River (inclusive) south to, but not including, the Santa Maria River. NMFS completed a comprehensive status review 20060206 reaffirming the status.
Salmonidae (trout and salmon)	<i>Oncorhynchus mykiss irideus</i> pop. 10	steelhead - southern California DPS	SC	20220511	<u>FE</u> FE	20060206 19971017	Coastal basins from the Santa Maria River (inclusive), south to the U.S.-Mexico Border. NMFS completed a comprehensive status review 20060206 reaffirming the status.
Salmonidae (trout and salmon)	<i>Oncorhynchus mykiss irideus</i> pop. 11	steelhead - Central Valley DPS			<u>FT</u> FT	20060206 19980319	The Sacramento and San Joaquin Rivers and their tributaries. NMFS completed a comprehensive status review 20060206 reaffirming the status.
Salmonidae (trout and salmon)	<i>Oncorhynchus mykiss irideus</i> pop. 48	steelhead - northern California DPS summer-run	SE	20220503	<u>FT</u> FT	20060206 20000807	Naturally spawning population of the stream-maturing summer-run ecotype. From Redwood Creek watershed south to and inclusive of Gualala River watershed. Distribution within range more limited. NMFS completed a comprehensive status review 20060206 reaffirming the status.
Salmonidae (trout and salmon)	<i>Oncorhynchus mykiss irideus</i> pop. 49	steelhead - northern California DPS winter-run			<u>FT</u> FT	20060206 20000807	Naturally spawning population of the ocean-maturing winter-run ecotype. From Redwood Creek watershed south to and inclusive of Gualala River watershed. Distribution throughout range. NMFS completed a comprehensive status review 20060206 reaffirming the status.

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Salmonidae (trout and salmon)	<i>Oncorhynchus mykiss whitei</i>	Little Kern golden trout			FT	19780515	Originally listed as <i>Salmo aguabonita whitei</i> . The genus <i>Salmo</i> was reclassified as <i>Oncorhynchus</i> changing the name to <i>Oncorhynchus aguabonita whitei</i> . However, recent studies indicate this is a subspecies of rainbow trout, therefore <i>Oncorhynchus mykiss whitei</i> .
Salmonidae (trout and salmon)	<i>Oncorhynchus tshawytscha</i> pop. 7	chinook salmon - Sacramento River winter-run ESU	SE	19890922	<u>FE</u> FT	19940104 19901130	The federal designation is for the Sacramento River winter-run ESU, and described as winter-run populations in the Sacramento River and its tributaries in California. NMFS completed a comprehensive status review 20050829 reaffirming the status.
Salmonidae (trout and salmon)	<i>Oncorhynchus tshawytscha</i> pop. 11	chinook salmon - Central Valley spring-run ESU	ST	19990205	FT	19990916	The State listing is for “Spring-run chinook salmon ( <i>Oncorhynchus tshawytscha</i> ) of the Sacramento River drainage.” The Federal listing is for the Central Valley spring-run ESU, and includes populations of spring-run Chinook salmon in the Sacramento River and its tributaries including the Feather River. NMFS completed a comprehensive status review 20050829 reaffirming the status.
Salmonidae (trout and salmon)	<i>Oncorhynchus tshawytscha</i> pop. 17	chinook salmon - California coastal ESU			FT	19990916	Rivers and streams south of the Klamath River to the Russian River. NMFS completed a comprehensive status review 20050829 reaffirming the status.
Salmonidae (trout and salmon)	<i>Oncorhynchus tshawytscha</i> pop. 30	chinook salmon - upper Klamath and Trinity Rivers ESU	ST	20220124	FC	20180227	Spring-run Chinook salmon in the Trinity River and the Klamath River upstream of the mouth of the Trinity River.

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Salmonidae (trout and salmon)	<i>Salvelinus confluentus</i>	bull trout	SE	19801002	FT	19991201	Considered to be extirpated in California.
Cyprinodontidae (killifishes)	<i>Cyprinodon macularius</i>	desert pupfish	SE	19801002	FE	19860430	
Cyprinodontidae (killifishes)	<i>Cyprinodon nevadensis calidae</i>	Tecopa pupfish	<u>SDE</u> SE	19870609 19710627	<u>FDE</u> FE	19820216 19701013	Extinct
Cyprinodontidae (killifishes)	<i>Cyprinodon radiosus</i>	Owens pupfish	SE	19710627	FE	19670311	
Cyprinodontidae (killifishes)	<i>Cyprinodon salinus milleri</i>	Cottonball Marsh pupfish	ST	19740110			
Gasterosteidae (sticklebacks)	<i>Gasterosteus aculeatus williamsoni</i>	unarmored threespine stickleback	SE	19710627	FE	19701013	
Cottidae (sculpins)	<i>Cottus asperimus</i>	rough sculpin	ST	19740110			
Gobiidae (gobies)	<i>Eucyclogobius newberryi</i>	tidewater goby			FE	19940307	See Federal Register 79(49):14340-14362, 20140313, for down-listing proposed rule.

## Amphibians

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Ambystomatidae (mole salamanders)	<i>Ambystoma californiense</i>	California tiger salamander	ST	20100819	(FE), (FT)		The State listing applies to the species as a whole throughout its range; federal statuses apply to Distinct Population Segments (see below).
Ambystomatidae (mole salamanders)	<i>Ambystoma californiense</i> pop. 1	California tiger salamander - central California DPS	(ST)		FT	20040903	The 2004 federal Threatened status originally applied to the species throughout its range; subsequent legal action resulted in reclassification of other DPSs to Endangered; the central California DPS remained listed as Threatened.

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Ambystomatidae (mole salamanders)	<i>Ambystoma californiense</i> pop. 2	California tiger salamander - Santa Barbara County DPS	(ST)		FE	20000915	In 2004 the California tiger salamander was federally listed as Threatened statewide. The Santa Barbara County and Sonoma County Distinct Vertebrate Population Segments (DPS), formerly listed as Endangered, were reclassified to Threatened. On 20050819 U.S. District court vacated the down-listing of the Sonoma and Santa Barbara populations from Endangered to Threatened. Therefore, the Sonoma & Santa Barbara populations were once again listed as Endangered.
Ambystomatidae (mole salamanders)	<i>Ambystoma californiense</i> pop. 3	California tiger salamander - Sonoma County DPS	(ST)		FE	20030319	In 2004 the California tiger salamander was federally listed as Threatened statewide. The Santa Barbara County and Sonoma County Distinct Vertebrate Population Segments (DPS), formerly listed as Endangered, were reclassified to Threatened. On 20050819 U.S. District court vacated the down-listing of the Sonoma and Santa Barbara populations from Endangered to Threatened. Therefore, the Sonoma & Santa Barbara populations were once again listed as Endangered.
Ambystomatidae (mole salamanders)	<i>Ambystoma macrodactylum croceum</i>	Santa Cruz long-toed salamander	SE	19710627	FE	19670311	
Plethodontidae (lungless salamanders)	<i>Batrachoseps major aridus</i>	desert slender salamander	SE	19710627	FE	19730604	Listed by the State of California as <i>Batrachoseps aridus</i> and originally listed by the USFWS as <i>B. aridus</i> . USFWS 5-year review refers to <i>B. major aridus</i> .

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Plethodontidae (lungless salamanders)	<i>Batrachoseps simatus</i>	Kern Canyon slender salamander	ST	19710627	FPT	20221018	
Plethodontidae (lungless salamanders)	<i>Batrachoseps relictus</i>	Relictual slender salamander			FPE	20221018	
Plethodontidae (lungless salamanders)	<i>Batrachoseps stebbinsi</i>	Tehachapi slender salamander	ST	19710627			
Plethodontidae (lungless salamanders)	<i>Hydromantes shastae</i>	Shasta salamander	ST	19710627			<i>Hydromantes shastae</i> has been proposed to consist of cryptic genetic structuring that may warrant recognition of additional species named as <i>Hydromantes samweli</i> and <i>Hydromantes wintu</i> (Bingham et al. 2018, Bull. Mus. Comp. Zool. 161(10):403-427). Until formally reviewed by the Fish and Game Commission, all populations in the Shasta salamander complex are legally state threatened.
Plethodontidae (lungless salamanders)	<i>Hydromantes brunus</i>	limestone salamander	ST	19710627			
Plethodontidae (lungless salamanders)	<i>Plethodon asupak</i>	Scott Bar salamander	ST	19710627			As recognized by the FGC, the Scott Bar salamander is currently protected under the CESA as a sub-population of the Siskiyou Mountains salamander ( <i>Plethodon stormi</i> ) (Calif. Regulatory Notice Register, No. 21-Z, p. 916, 20070525).

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Plethodontidae (lungless salamanders)	<i>Plethodon stormi</i>	Siskiyou Mountains salamander	ST	19710627			The common name is spelled incorrectly in Title 14 of the CCR as “Siskiyou mountain salamander.” Was a State Candidate for Delisting on 20050930. No action was taken by the FGC after the CDFW presented a Department report on 20061103; SMS was tabled at the 20070503 FGC meeting, and there was nothing to report regarding the Department’s environmental documents at the 20071011 meeting. Therefore, with respect to Fish & Game Code 2075, it is assumed that this is no longer a candidate for delisting.
Bufonidae (true toads)	<i>Anaxyrus californicus</i>	arroyo toad			FE	19950117	At the time of listing, arroyo toad was known as <i>Bufo microscaphus californicus</i> , a subspecies of southwestern toad. In 2001, it was determined to be its own species, <i>Bufo californicus</i> . Since then, many species in the genus <i>Bufo</i> were changed to the genus <i>Anaxyrus</i> , and now arroyo toad is known as <i>Anaxyrus californicus</i> .
Bufonidae (true toads)	<i>Anaxyrus canorus</i>	Yosemite toad			FT	20140630	
Bufonidae (true toads)	<i>Anaxyrus exsul</i>	black toad	ST	19710627			Listed by the State of California as <i>Bufo exsul</i> .
Ranidae (true frogs)	<i>Rana boylei pop. 2</i>	foothill yellow-legged frog - Feather River DPS	ST	20200320	FPT	20211228	CESA listing status varies by clade; listing of the Northwest/North Coast clade is not warranted.



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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Ranidae (true frogs)	<i>Rana boylei</i> pop. 3	foothill yellow-legged frog - north Sierra DPS	ST	20200320			CESA listing status varies by clade; listing of the Northwest/North Coast clade is not warranted.
Ranidae (true frogs)	<i>Rana boylei</i> pop. 4	foothill yellow-legged frog - central coast DPS	SE	20200320	FPT	20211228	CESA listing status varies by clade; listing of the Northwest/North Coast clade is not warranted.
Ranidae (true frogs)	<i>Rana boylei</i> pop. 5	foothill yellow-legged frog - south Sierra DPS	SE	20200320	FPE	20211228	CESA listing status varies by clade; listing of the Northwest/North Coast clade is not warranted.
Ranidae (true frogs)	<i>Rana boylei</i> pop. 6	foothill yellow-legged frog - south coast DPS	SE	20200320	FPE	20211228	CESA listing status varies by clade; listing of the Northwest/North Coast clade is not warranted.
Ranidae (true frogs)	<i>Rana cascadae</i>	Cascades frog	SC	20171017			Date of FGC vote to advance to candidacy was 20171011.
Ranidae (true frogs)	<i>Rana draytonii</i>	California red-legged frog			FT	19960624	Synonymous with <i>Rana aurora draytonii</i> .
Ranidae (true frogs)	<i>Rana muscosa</i>	southern mountain yellow-legged frog	SE	20130401	(FE)		Though the scientific name <i>Rana muscosa</i> is not disputed, the State uses this common name, whereas the USFWS listing refers to two distinct population segments. This species is also known by the common name Sierra Madre yellow-legged frog (Vredenburg et al. 2007).
Ranidae (true frogs)	<i>Rana muscosa</i>	mountain yellow-legged frog [Southern California DPS]	(SE)		FE	20020801	San Gabriel, San Jacinto, and San Bernardino Mountains only.

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Ranidae (true frogs)	<i>Rana muscosa</i>	mountain yellow-legged frog [Northern California DPS]	(SE)		FE	20140630	North of the Tehachapi Mountains from the Monarch Divide to portions of the Kern River drainage.
Ranidae (true frogs)	<i>Rana pretiosa</i>	Oregon spotted frog			FT	20140929	
Ranidae (true frogs)	<i>Rana sierrae</i>	Sierra Nevada yellow-legged frog	ST	20130401	FE	20140630	

## Reptiles

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Cheloniidae (sea turtles)	<i>Caretta caretta</i>	loggerhead sea turtle [North Pacific DPS]			<u>FE</u> FT	20111024 19780728	The 1978 listing was for the worldwide range of the species. The 20111024 final rule is for the North Pacific DPS (north of the equator & south of 60 degrees north latitude).
Cheloniidae (sea turtles)	<i>Chelonia mydas</i>	green turtle			<u>FT</u> FT	20160506 19780728	Also known as green sea turtle. Originally listed as Federally Threatened in 1978. In 2016, Distinct Population Segments were detailed and the East Pacific DPS was confirmed as Federally Threatened.
Cheloniidae (sea turtles)	<i>Lepidochelys olivacea</i>	olive (=Pacific) ridley sea turtle			FT	19780728	
Dermochelyidae (leatherback turtles)	<i>Dermochelys coriacea</i>	leatherback sea turtle	SE	20221220	FE	19700603	
Testudinidae (land tortoises)	<i>Gopherus agassizii</i>	desert tortoise	<u>SCE</u> ST	20201019 19890803	FT	19900402	
Gekkonidae (geckos)	<i>Coleonyx switaki</i>	barefoot banded gecko	ST	19801002			Alternate common names: Switak's banded gecko, barefoot gecko.

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Crotaphytidae (collared and leopard lizards)	<i>Gambelia sila</i>	blunt-nosed leopard lizard	SE	19710627	FE	19670311	Synonymous with <i>Gambelia silus</i> . Originally listed under the ESA as <i>Crotaphytus wislizenii silus</i> .
Phrynosomatidae (spiny lizards)	<i>Uma inornata</i>	Coachella Valley fringe-toed lizard	SE	19801002	FT	19801027	
Xantusiidae (night lizards)	<i>Xantusia riversiana</i>	island night lizard			<u>FDR</u> FT	20140501 19770912	Recovered
Anniellidae (legless lizards)	<i>Anniella alexanderae</i>	Temblor legless lizard	SC	20220701	-		
Boidae (boas)	<i>Charina umbratica</i>	southern rubber boa	ST	19710627			Synonymous with <i>Charina bottae umbratica</i> .
Colubridae (egg-laying snakes)	<i>Masticophis lateralis euryxanthus</i>	Alameda whipsnake	ST	19710627	FT	19971205	Synonymous with <i>Coluber lateralis euryxanthus</i> .
Natricidae (live-bearing snakes)	<i>Thamnophis gigas</i>	giant gartersnake	ST	19710627	FT	19931119	Listed by State of California as <i>Thamnophis couchi gigas</i> .
Natricidae (live-bearing snakes)	<i>Thamnophis sirtalis tetrataenia</i>	San Francisco gartersnake	SE	19710627	FE	19670311	

**Birds**

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Anatidae (ducks, geese, and swans)	<i>Branta hutchinsii leucopareia</i>	cackling (=Aleutian Canada) goose			<u>FDR</u> FT FE	20010320 19910111 19670311	Recovered. At time of federal listing, known as <i>Branta canadensis leucopareia</i> .
Phasianidae (grouse and ptarmigan)	<i>Centrocercus urophasianus</i>	greater sage-grouse	SC	20230619	-		

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Diomedeidae (albatrosses)	<i>Phoebastria albatrus</i>	short-tailed albatross			<u>FE</u> FE	20000830 19700603	Synonymous with <i>Diomedea albatrus</i> . First appeared on the 19700603 list of Endangered foreign species, but was not noted to occur in the United States. It was left off the 19701013 list of Endangered native species. This was an oversight that wasn't corrected until the USFWS specifically listed it on 20000830.
Pelecaniidae (pelicans)	<i>Pelecanus occidentalis californicus</i>	California brown pelican	<u>SDR</u> SE	20090603 19710627	<u>FDR</u> FE	20091217 19700603	Recovered. Federal nomenclature: Brown pelican ( <i>Pelecanus occidentalis</i> ).
Cathartidae (New World vultures)	<i>Gymnogyps californianus</i>	California condor	SE	19710627	FE	19670311	
Accipitridae (hawks, kites, harriers, and eagles)	<i>Buteo swainsoni</i>	Swainson's hawk	ST	19830417			
Accipitridae (hawks, kites, harriers, and eagles)	<i>Haliaeetus leucocephalus</i>	bald eagle	<u>SE</u> (rev) SE	19801002 19710627	<u>FDR</u> FT FE (rev) FE	20070808 19950811 19780316 19670311	The Post-delisting Monitoring Plan will monitor the status of the bald eagle over a 20 year period with sampling events held once every 5 years.
Falconidae (falcons)	<i>Falco peregrinus anatum</i>	American peregrine falcon	<u>SDR</u> SE	20091104 19710627	<u>FDR</u> FE	19990825 19700603	Recovered
Falconidae (falcons)	<i>Falco peregrinus tundrius</i>	Arctic peregrine falcon			<u>FDR</u> FT FE	19941005 19840419 19700603	Recovered
Rallidae (rails, coots, and gallinules)	<i>Laterallus jamaicensis coturniculus</i>	California black rail	ST	19710627			

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Rallidae (rails, coots, and gallinules)	<i>Rallus obsoletus levipes</i>	light-footed Ridgway's rail	SE	19710627	FE	19701013	Formerly light-footed clapper rail, <i>Rallus longirostris levipes</i>
Rallidae (rails, coots, and gallinules)	<i>Rallus obsoletus obsoletus</i>	California Ridgway's rail	SE	19710627	FE	19701013	Formerly California clapper rail, <i>Rallus longirostris obsoletus</i>
Rallidae (rails, coots, and gallinules)	<i>Rallus obsoletus yumanensis</i>	Yuma Ridgway's rail	<b>ST</b> SE	19780222 19710627	FE	19670311	Formerly Yuma clapper rail, <i>Rallus longirostris yumanensis</i>
Gruidae (cranes)	<i>Grus canadensis tabida</i>	greater sandhill crane	ST	19830417			
Charadriidae (plovers and relatives)	<i>Charadrius nivosus nivosus</i>	western snowy plover			FT	19930405	Federal status applies only to the Pacific coastal population.
Laridae (gulls and terns)	<i>Sternula antillarum browni</i>	California least tern	SE	19710627	FE	19700603	Listed by the USFWS as <i>Sterna albifrons browni</i> and the State of California as <i>Sterna antillarum browni</i> .
Alcidae (auklets, puffins, and relatives)	<i>Brachyramphus marmoratus</i>	marbled murrelet	SE	19920312	FT	19920928	
Alcidae (auklets, puffins, and relatives)	<i>Synthliboramphus scrippsi</i>	Scripps's murrelet	ST	20041222			At the time of listing, this species was known as the Xantus's Murrelet ( <i>Synthliboramphus hypoleucus</i> , with California breeding populations ascribed to <i>Synthliboramphus hypoleucus subsp. scrippsi</i> ).
Alcidae (auklets, puffins, and relatives)	<i>Synthliboramphus hypoleucus</i>	Guadalupe murrelet	ST	20041222			At the time of listing, this species was known as the Xantus's Murrelet ( <i>Synthliboramphus hypoleucus</i> , with breeding populations from Baja California ascribed to <i>Synthliboramphus hypoleucus subsp. hypoleucus</i> ).

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Cuculidae (cuckoos and relatives)	<i>Coccyzus americanus occidentalis</i>	western yellow-billed cuckoo	SE ST	19880326 19710627	FT	20141103	Federal listing is for the Western DPS of <i>Coccyzus americanus</i> .
Strigidae (owls)	<i>Micrathene whitneyi</i>	elf owl	SE	19801002			
Strigidae (owls)	<i>Strix nebulosa</i>	great gray owl	SE	19801002			
Strigidae (owls)	<i>Strix occidentalis caurina</i>	northern spotted owl	ST	20190318	FT	19900723	
Strigidae (owls)	<i>Strix occidentalis occidentalis</i>	California spotted owl - coastal-southern California DPS			FPE	20230223	
Strigidae (owls)	<i>Strix occidentalis occidentalis</i>	California spotted owl - Sierra Nevada DPS			FPT	20230223	
Picidae (woodpeckers)	<i>Colaptes chrysoides</i>	gilded flicker	SE	19880317			Listed by the State of California as <i>Colaptes auratus chrysoides</i> , gilded northern flicker.
Picidae (woodpeckers)	<i>Melanerpes uropygialis</i>	Gila woodpecker	SE	19880317			
Tyrannidae (tyrant flycatchers)	<i>Empidonax traillii</i>	willow flycatcher	SE	19910102			State listing includes all subspecies.
Tyrannidae (tyrant flycatchers)	<i>Empidonax traillii extimus</i>	southwestern willow flycatcher	(SE)		FE	19950329	
Laniidae (shrikes)	<i>Lanius ludovicianus mearnsi</i>	San Clemente loggerhead shrike			FE	19770912	
Vireonidae (vireos)	<i>Vireo bellii arizonae</i>	Arizona Bell's vireo	SE	19880317			

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Vireonidae (vireos)	<i>Vireo bellii pusillus</i>	least Bell's vireo	SE	19801002	FE	19860602	
Hirundinidae (swallows)	<i>Riparia riparia</i>	bank swallow	ST	19890611			
Poliopitilidae (gnatcatchers)	<i>Poliopitila californica californica</i>	coastal California gnatcatcher			FT	19930325	
Emberizidae (sparrows, buntings, warblers, and relatives)	<i>Artemisiospiza belli clementeae</i>	San Clemente sage sparrow			<u>FDR</u> FT	20230224 19770912	Federal nomenclature at time of listing: <i>Amphispiza belli clementeae</i> .
Emberizidae (sparrows, buntings, warblers, and relatives)	<i>Melospiza melodia graminea</i>	Santa Barbara song sparrow			<u>FDE</u> FE	19831012 19730604	Extinct. This status refers specifically to the Santa Barbara song sparrow, which was later reclassified as a subspecies (Channel Islands song sparrow) with the same scientific name, but which also combined two additional groups formerly classified as their own subspecies.
Emberizidae (sparrows, buntings, warblers, and relatives)	<i>Melospiza crissalis eremophilus</i>	Inyo California towhee	SE	19801002	<u>FT</u>	19870902	Listed by the State of California as <i>Pipilo crissalis eremophilus</i> and the USFWS as <i>Pipilo fuscus eremophilus</i> .
Emberizidae (sparrows, buntings, warblers, and relatives)	<i>Passerculus sandwichensis beldingi</i>	Belding's savannah sparrow	SE	19740110			Listed by the State of California as <i>Passerculus sandwichensis beldingi</i>
Icteridae (blackbirds)	<i>Agelaius tricolor</i>	tricolored blackbird	ST	20190318			



## Mammals

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Soricidae (shrews)	<i>Sorex ornatus relictus</i>	Buena Vista Lake ornate shrew			FE	20020405	
Phyllostomidae (leaf-nosed bats)	<i>Leptonycteris yerbabuena</i>	lesser long-nosed bat			<u>FDR</u> FE	20180518 19881031	Recovered. Originally listed by USFWS as <i>Leptonycteris sanborni</i> .
Leporidae (rabbits and hares)	<i>Sylvilagus bachmani riparius</i>	riparian brush rabbit	SE	19940529	FE	20000324	
Aplodontidae (mountain beavers)	<i>Aplodontia rufa nigra</i>	Point Arena mountain beaver			FE	19911212	
Sciuridae (squirrels and relatives)	<i>Ammospermophilus nelsoni</i>	Nelson's (=San Joaquin) antelope squirrel	ST	19801002			
Sciuridae (squirrels and relatives)	<i>Xerospermophilus mohavensis</i>	Mohave ground squirrel	ST	19710627			Listed by the State of California as <i>Spermophilus mohavensis</i> .
Heteromyidae (kangaroo rats, pocket mice, and kangaroo mice)	<i>Dipodomys heermanni morroensis</i>	Morro Bay kangaroo rat	SE	19710627	FE	19701013	
Heteromyidae (kangaroo rats, pocket mice, and kangaroo mice)	<i>Dipodomys ingens</i>	giant kangaroo rat	SE	19801002	FE	19870105	
Heteromyidae (kangaroo rats, pocket mice, and kangaroo mice)	<i>Dipodomys merriami parvus</i>	San Bernardino kangaroo rat	SC	20190813	FE	19980924	Federal nomenclature: San Bernardino Merriam's kangaroo rat.

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Heteromyidae (kangaroo rats, pocket mice, and kangaroo mice)	<i>Dipodomys nitratoides exilis</i>	Fresno kangaroo rat	<u>SE</u> ST	19801002 19710627	FE	19850301	
Heteromyidae (kangaroo rats, pocket mice, and kangaroo mice)	<i>Dipodomys nitratoides nitratoides</i>	Tipton kangaroo rat	SE	19890611	FE	19880808	
Heteromyidae (kangaroo rats, pocket mice, and kangaroo mice)	<i>Dipodomys stephensi</i>	Stephens' kangaroo rat	ST	19710627	<u>FT</u> FE	20220321 19881031	
Heteromyidae (kangaroo rats, pocket mice, and kangaroo mice)	<i>Perognathus longimembris pacificus</i>	Pacific pocket mouse			FE	19940926	
Cricetidae (New World mice, rats, and voles)	<i>Microtus californicus scirpensis</i>	Amargosa vole	SE	19801002	FE	19841217	
Cricetidae (New World mice, rats, and voles)	<i>Neotoma fuscipes riparia</i>	Riparian (=San Joaquin Valley) woodrat			FE	20000324	
Cricetidae (New World mice, rats, and voles)	<i>Reithrodontomys raviventris</i>	salt-marsh harvest mouse	SE	19710627	FE	19701013	

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Canidae (foxes, wolves, and coyotes)	<i>Canis lupus</i>	gray wolf	SE	20170101	<u>FE</u>	19780410	USFWS had delisted <i>Canis lupus</i> on 20210104, but a court ruling on 20220210 reinstated the Endangered status for all gray wolves in the lower 48 states, except for Minnesota where they are Threatened.
Canidae (foxes, wolves, and coyotes)	<i>Urocyon littoralis</i>	island fox	ST	19710627	(FT)		State listing includes all 6 subspecies on all 6 islands. Federal listing is for only 4 subspecies on 4 islands.
Canidae (foxes, wolves, and coyotes)	<i>Urocyon littoralis catalinae</i>	Santa Catalina Island Fox	(ST)		<u>FT</u> FE	20160912 20040405	
Canidae (foxes, wolves, and coyotes)	<i>Urocyon littoralis littoralis</i>	San Miguel Island Fox	(ST)		<u>FDR</u> FE	20160912 20040405	
Canidae (foxes, wolves, and coyotes)	<i>Urocyon littoralis santacruzae</i>	Santa Cruz Island Fox	(ST)		<u>FDR</u> FE	20160912 20040405	
Canidae (foxes, wolves, and coyotes)	<i>Urocyon littoralis santarosae</i>	Santa Rosa Island Fox	(ST)		<u>FDR</u> FE	20160912 20040405	
Canidae (foxes, wolves, and coyotes)	<i>Vulpes macrotis mutica</i>	San Joaquin kit fox	ST	19710627	FE	19670311	
Canidae (foxes, wolves, and coyotes)	<i>Vulpes vulpes necator</i> pop. 1	Sierra Nevada red fox - southern Cascades DPS	ST	19801002			
Canidae (foxes, wolves, and coyotes)	<i>Vulpes vulpes necator</i> pop. 2	Sierra Nevada red fox - Sierra Nevada DPS	ST	19801002	FE	20210902	

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Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Mustelidae (weasels and relatives)	<i>Enhydra lutris nereis</i>	southern sea otter			FT	19770211	
Mustelidae (weasels and relatives)	<i>Gulo gulo</i>	wolverine	ST	19710627	FPT	20221123	Listed by the State of California as <i>Gulo gulo</i> . The distinct population segment of the North American wolverine ( <i>Gulo gulo luscus</i> ) occurring in the contiguous U.S. was proposed for listing on 20130204 and was withdrawn on 20201013. The court remanded the withdrawal, and the USFWS re-issued a proposal for listing on 20221123.
Mustelidae (weasels and relatives)	<i>Martes caurina humboldtensis</i>	Humboldt marten	SE	20190318	FT	20201109	USFWS listed <i>Martes caurina</i> coastal DPS on 20201109, which includes coastal populations in Oregon and northern coastal California. USFWS noted that recent genetic analyses indicated that the DPS likely represent a subspecies, <i>M. c. humboldtensis</i> .

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Mustelidae (weasels and relatives)	<i>Pekania pennanti</i> pop. 2	Fisher - southern Sierra Nevada ESU	ST	20190318	FE	20200615	California listing is under <i>Martes pennanti</i> and common name Pacific fisher, whereas the USFWS refers to <i>Pekania pennanti</i> and common name fisher. Previous USFWS candidacy referred to the West Coast DPS in California, Oregon, and Washington. On 20190318, the California Fish and Game Commission officially listed the southern Sierra ESU (defined as south of the Merced River) as State Threatened; the Southern Sierra Nevada DPS was listed as Federally Endangered 20200615.
Felidae (cats and relatives)	<i>Puma concolor</i>	mountain lion (Southern California/Central Coast ESU)	SC	20200421			Not currently tracked by the CNDDDB.
Otariidae (sea lions and fur seals)	<i>Arctocephalus townsendi</i>	Guadalupe fur seal	ST	19710627	<b>FT</b> FE	19860115 19670311	Not currently tracked by the CNDDDB.

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Otariidae (sea lions and fur seals)	<i>Eumetopias jubatus</i>	Steller sea lion [Eastern DPS]			<u>FDR</u> FT	20131204 19970604	Recovered. Delisted by NMFS. On 19901204, the Steller sea lion was listed as federally Threatened throughout its entire range. In 1997, NMFS reclassified Steller sea lions into two distinct population segments: the Western DPS (west of 144 degrees longitude) was listed as Endangered; the Eastern DPS (east of 144 degrees longitude) was listed as Threatened, and subsequently delisted in 2013.
Antilocapridae (pronghorn)	<i>Antilocapra americana sonoriensis</i>	Sonoran pronghorn			FE	19670311	
Bovidae (sheep and relatives)	<i>Ovis canadensis nelsoni</i> pop. 2	Peninsular bighorn sheep DPS	ST	19710627	FE	19980318	Listed by the State of California as <i>Ovis canadensis cremnobates</i> . The subspecies <i>O.c. cremnobates</i> has been synonymized with <i>O.c. nelsoni</i> . The desert bighorn sheep in the Peninsular Ranges, the Peninsular bighorn sheep, is now considered to be a Distinct Population Segment of <i>O.c. nelsoni</i> .
Bovidae (sheep and relatives)	<i>Ovis canadensis sierrae</i>	Sierra Nevada bighorn sheep	<u>SE</u> ST	19990827 19710627	FE	20000103	Listed by the State of California as California bighorn sheep ( <i>Ovis canadensis californiana</i> ).
Cetacea (whales and dolphins)	<i>Balaenoptera borealis</i>	sei whale			FE	19700603	Not currently tracked by the CNDDDB.

State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Cetacea (whales and dolphins)	<i>Balaenoptera musculus</i>	blue whale			FE	19700603	Not currently tracked by the CNDDDB.
Cetacea (whales and dolphins)	<i>Balaenoptera physalus</i>	fin whale			FE	19700603	Not currently tracked by the CNDDDB.
Cetacea (whales and dolphins)	<i>Eubalaena japonica</i>	North Pacific right whale			<u>FE</u> FE	20080407 19700603	Originally listed as part of the northern right whale ( <i>Eubalaena glacialis</i> ) species concept under the federal ESA. Taxonomy and nomenclature were updated and clarified in the Federal Register Vol. 68, No. 69, 20030410. In 2006, NMFS completed a status review of right whales in the N. Pacific and N. Atlantic Oceans and in 2008, reclassified the previously Endangered northern right whale ( <i>Eubalaena</i> spp.) as two separate Endangered species: North Pacific right whale ( <i>E. japonica</i> ) and North Atlantic right whale ( <i>E. glacialis</i> ). Not currently tracked by the CNDDDB.
Cetacea (whales and dolphins)	<i>Eschrichtius robustus</i>	gray whale [Eastern North Pacific DPS]			<u>FDR</u> FE	19940616 19700603	Recovered. NMFS delisted the California population (Eastern North Pacific DPS), while keeping the Western North Pacific DPS as Endangered.



State and Federally Listed Endangered and Threatened Animals of California – July 2023

Taxa Subgroup	Taxon	Common Name	State Status	State List Date	Federal Status	Federal List Date	Notes
Cetacea (whales and dolphins)	<i>Megaptera novaeangliae</i>	humpback whale [Central America DPS]			<u>FE</u> FE	20161011 19700603	Also known as Hump-backed whale. 2016 ruling by NMFS established 14 Distinct Population Segments, and revised listing status by DPS. Both the Mexico DPS and Central America DPS feed and travel off the coast of California. Not currently tracked by the CNDDDB.
Cetacea (whales and dolphins)	<i>Megaptera novaeangliae</i>	humpback whale [Mexico DPS]			<u>FT</u> FE	20161011 19700603	Also known as Hump-backed whale. 2016 ruling by NMFS established 14 Distinct Population Segments, and revised listing status by DPS. Both the Mexico DPS and Central America DPS feed and travel off the coast of California. Not currently tracked by the CNDDDB.
Cetacea (whales and dolphins)	<i>Orcinus orca</i>	killer whale [Southern Resident DPS]			FE	20070404 20060216	The Southern Resident DPS of killer whale was listed as Endangered by NMFS on 20060216 and by USFWS on 20070404. Not currently tracked by the CNDDDB.
Cetacea (whales and dolphins)	<i>Physeter macrocephalus</i>	sperm whale			FE	19700603	Federal nomenclature at time of listing: <i>Physeter catodon</i> . Not currently tracked by the CNDDDB.

# **Exhibit E**



# Racial Disparities Among Extremely Low-Income Renters

Apr 15, 2019

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Black, Native American, and Hispanic households are more likely than white households to be extremely low-income renters - with incomes at or below the poverty level or 30% of their area median income – for whom there is a dire shortage of affordable and available homes; nationally there are just 37 rental homes for every 100 extremely low-income renter households. Twenty percent of black households, 18% of American Indian or Alaska Native (AIAN) households, and 16% of Hispanic households are extremely low-income renters. Six percent of white non-Hispanic households are extremely low-income renters.

This racial disparity is the result of higher homeownership rates and higher incomes among white households. Decades of racial discrimination in real estate, lending practices, and federal housing policy have made homeownership difficult to obtain for minorities (Rice & Swesnik, 2012). While overt discrimination was outlawed by the Fair Housing Act, today's credit scoring system and lending practices continue as barriers to minority homeownership (Rice & Swesnik, 2012; Bartlett, Morse, Stanton, & Wallace, 2018).

Racial disparities in income are the result of historical and current discrimination, and differences in educational attainment, wages, and employment rates, among other factors. Blacks continue to have lower rates of upward mobility than whites (Chetty, Hendren, Jones, and Porter, 2018). In 2016, the median black and Hispanic worker earned 65% and 63% of the median white worker, respectively. The lowest-income black and Hispanic workers earned 54% and 66% of the lowest-income white workers, respectively (Kochhar & Cilluffo, 2018).

Racial disparities also exist among renters alone. Thirty-eight percent of AIAN renter households, 35% of black renter households, and 28% of Hispanic renter households have

extremely low incomes, compared to 22% of white non-Hispanic renter households.

Regardless of race, the majority of extremely low-income renters are severely housing cost-burdened: 71.5% of Hispanic, 70.9% of non-Hispanic black, and 69.6% of non-Hispanic white extremely low-income renters. Sixty-three percent of AIAN extremely low-income renters are severely housing cost-burdened, but poor housing conditions like low quality and overcrowding are also significant concerns in tribal areas (Pindus et al., 2017).

White renters are more likely than non-Hispanic black, Hispanic, and AIAN renters to have household incomes greater than 80% of AMI. At the same time, white renters (1.1%) with these higher incomes are more likely to be severely housing cost-burdened than Hispanic renters (0.6%), non-Hispanic black renters (0.3%) and AIAN renters (0.1%) with similar incomes. As a result, the majority (73%) of the 88,000 severely housing cost-burdened middle-income renters and 78% of severely cost-burdened above-median income renters are white. In comparison, the racial distribution is more diverse among severely cost-burdened extremely low-income renters: 43% are white, 26% are black, and 21% are Hispanic.

Excerpted (with minor modifications for context) from NLIHC's *The Gap: A Shortage of Affordable Homes 2019* report, available at: <https://reports.nlihc.org/gap>  
(<https://reports.nlihc.org/gap>)

# **Exhibit F**

Tess Thorman,  
Daniel Payares-Montoya,  
and Joseph Herrera

# Income Inequality in California

## Income inequality is a major concern in California.

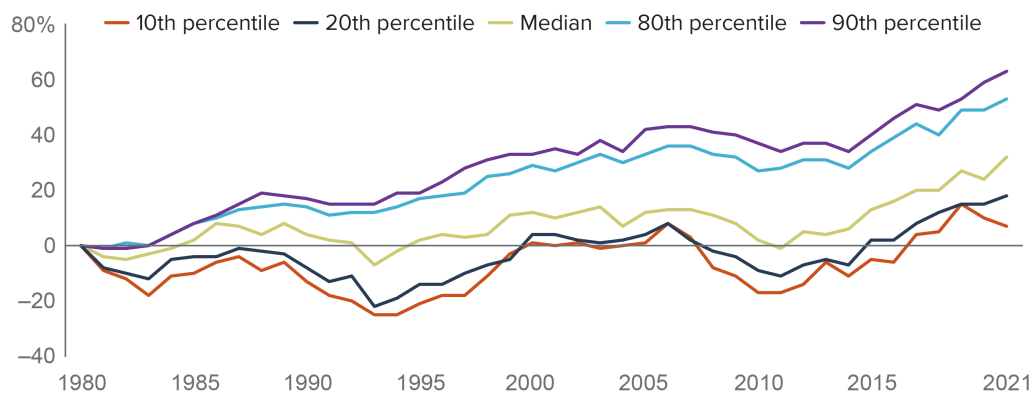
- ▶ The gap between high- and low-income families in California is among the largest in the nation—exceeding all but three other states in 2021 (the latest data available). Families at the top of the income distribution earned 11 times more than families at the bottom (\$291,000 vs. \$26,000 for the 90th and 10th percentiles, respectively). In 1980, families at the top earned 7 times more than those at the bottom, and the current gap reflects 63% income growth for the 90th percentile, and 7% growth for the 10th percentile over four decades.
- ▶ California's income distribution reflects high rates of poverty. Income is frequently not enough to meet basic needs (on average [a family of four requires about \\$37,000](#)). Families in the bottom quarter of the income distribution are at risk of poverty absent major safety net programs.
- ▶ Wealth is more unevenly distributed than income. In California, 20% of all net worth is concentrated in the 30 wealthiest zip codes, home to just 2% of Californians.
- ▶ Californians are concerned. According to the PPIC Statewide Survey, 71% believe that the gap between rich and poor is increasing; a similar share think the government should do more to reduce that gap.

## The COVID-19 pandemic widened income inequality.

- ▶ Income inequality was shrinking in the years leading up to the pandemic, due to notable gains for the lowest-income families. Incomes for families at the 10th percentile increased by 23% between 2016 and 2019, compared to 5% for families at the 90th percentile.
- ▶ Between 2019 and 2021, top incomes grew consistently, by 6% for the 90th percentile. Middle incomes (50th percentile) faltered in 2020 but rebounded in 2021. Low incomes (10th percentile) fell 7%.
- ▶ These estimates describe pre-tax income and include a [conservative estimate](#) of unemployment (UI) benefits, without which low incomes would have been lower by at least 12% in 2020, and 5% in 2021. They also take a conservative approach with inflation, which may impact lower- and higher-income families differently and exacerbate inequality. For instance, from 2017–20, those in the bottom 20% spent 69% of all pre-tax income on food and transportation (including [gasoline](#))—areas where [prices have risen most](#)—while those in the top 20% spent 14% of their income on those same categories.

## Top incomes have grown more quickly and more consistently over the long term

Change in family incomes since 1980



Source: Authors' analysis of IPUMS CPS-ASEC data.

Notes: Chart shows percent change in family income before taxes, which includes wages and earnings, income earned from businesses, farms and/or investments, retirement account withdrawals, social security, cash welfare, unemployment insurance, and other sources. Family income does not include stimulus payments or resources from in-kind safety net benefits. Family income is adjusted for inflation and stated in 2021 dollars; to make families comparable, income is normalized to reflect the equivalent for a family of four. The time series is adjusted to account for ASEC survey changes in 2015 and 2019; entropy weights are used in 2018–2020.

## Rising income inequality is driven by a job market that favors highly educated workers.

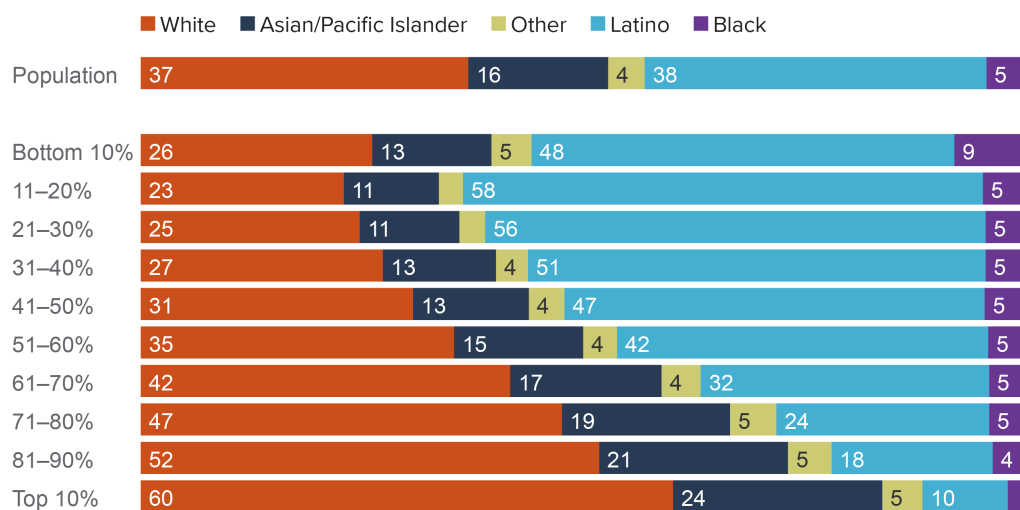
- ▶ Shifts in technology and international trade have played key roles in reshaping jobs, creating advantages for college-degree holders. Among families in which any member holds a four-year degree or higher, median income has increased by 34% since 1980. Median income did not increase for families where no member holds a four-year degree.
- ▶ Families with college graduates earn \$2.24 for every \$1 that families without college graduates earn, as of 2021.

## Black and Latino families are overrepresented at lower income levels.

- ▶ Black and Latino families make up 12% of those with incomes above the 90th percentile, while comprising 44% of all families in California. The opposite is true at lower levels of the income distribution, where Black and Latino families comprise 56% of families at or below the 10th percentile.
- ▶ For every \$1 that white families earn, Black families earn \$0.60 and Latino families earn \$0.52. Many factors drive these trends, ranging from disparities in education, local job opportunities, and incarceration, to discrimination in the labor market.

## White and Asian families make up an outsize share of the highest incomes in California

Percent of group by income range



Source: Authors' analysis of IPUMS ACS data (2021).

Notes: Chart shows income before taxes and transfers, which includes income from earnings, business, investments, retirement, social security, and other sources. Families are categorized based on the race/ethnicity of the head of household.

## Income inequality would be greater without taxes or safety net programs.

- ▶ Major tax and safety net programs reduce inequality between top and bottom incomes by 52%, according to the [fall 2021 California Poverty Measure](#). Gains occur from taxing high-income families and through providing cash and safety net benefits to low-income families—like Earned Income Tax Credits, advance payments on the Child Tax Credit, and food assistance. Stimulus checks further supplemented family income in 2021, reducing both income inequality and poverty.
- ▶ These programs also reduce racial income inequality, shrinking the gap in median income by about 30% for Black and Latino families compared to white families.

Supported with funding from the Blue Shield of California Foundation and the James Irvine Foundation.

Sources: American Community Survey ([IPUMS USA](#)); Bureau of Labor Statistics, [California: Quintiles of income before taxes](#) and [Consumer Expenditure Survey \(2017–2020\)](#); Current Population Survey ASEC ([IPUMS-CPS](#)); Legislative Analyst's Office, [California's Geography of Wealth](#) (2019).

Note: Dollar values adjusted to pertain to a family of four in 2021 dollars.



# **Exhibit G**

# U.S. DEPARTMENT OF THE TREASURY

## Racial Differences in Economic Security: The Racial Wealth Gap

September 15, 2022

*By: Assistant Secretary for Economic Policy Benjamin Harris and Economist Sydney Schreiner  
Wertz*

This summer the Treasury Department initiated a blog series focusing on economic issues surrounding racial equity. This post is the second blog entry in this series, focusing on the racial wealth gap as a key component to assessing economic security. Indeed, racial differences in household wealth are some of the most visible and impactful manifestations of racial inequality in the United States. Unfortunately, as we describe below, racial wealth gaps continue to persist—threatening the economic security of impacted families and weakening the economy as a whole.

### **THE IMPORTANCE OF WEALTH FOR ECONOMIC SECURITY**

Wealth is defined as the total financial value of what an individual or household owns (assets) minus all debts (liabilities). Assets include the value of a home and other physical assets, retirement savings, other financial investments, cash, and money in the bank. Liabilities include home mortgages, auto loans, credit card debt, student debt, and other types of debt and money owed. Wealth is distinct from income received from working or investments. Households can turn income into wealth by saving or investing.

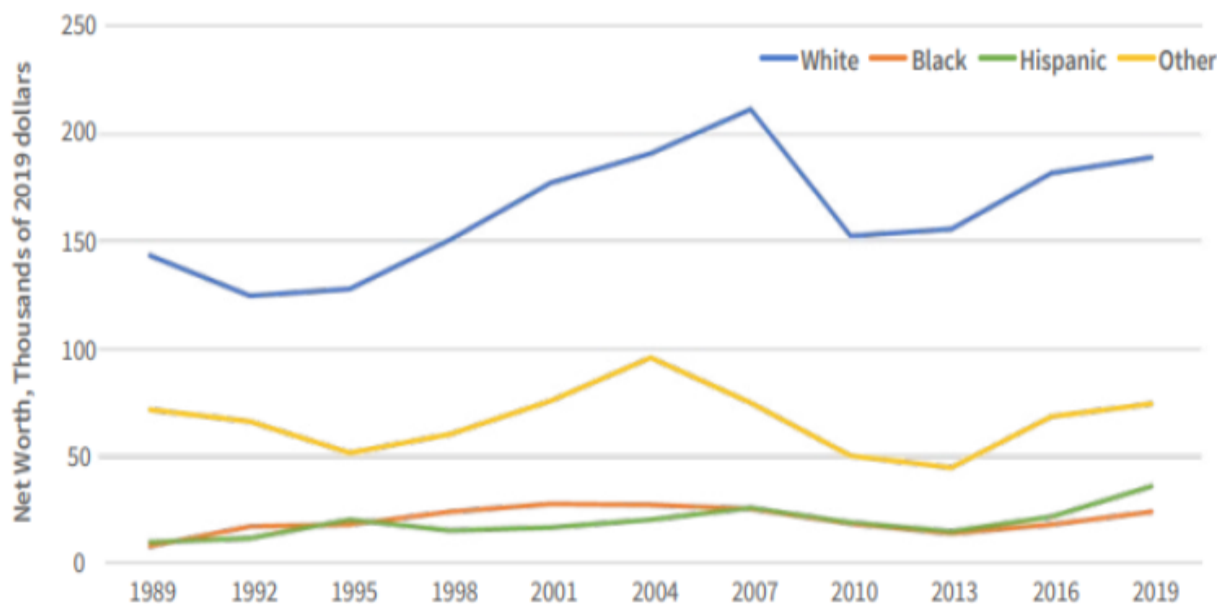
Wealth is essential for economic security because it can be used for consumption, which is directly connected to wellbeing. Wealth is also a resource households can draw from in times of economic hardship, enabling them to smooth consumption over time despite temporary income loss or instability. Moreover, wealth is necessary for individual economic mobility and growth of the economy as a whole. Wealth gives households the ability to pursue an education, take employment or investment risks, move to new neighborhoods, buy a home, and start a business. The ability to take these risks and be resilient to economic shocks has positive spillovers to the entire economy.

Research indicates that there are long-lasting advantages of wealth accumulation for families. For example, there is a strong correlation between the wealth of parents and their children,[1] in part because intergenerational wealth transfers make up a substantial share of total wealth.[2] Empirical evidence also shows that gains in household wealth increase the probability that children enroll in[3] and graduate from college,[4] which increases their lifetime earnings from employment.[5] These findings call attention to the generational benefits of wealth accumulation and the harms that come from its absence: family wealth boosts future wealth potential, and low-wealth families struggle to progress without it.

Furthermore, the benefits of wealth extend beyond economic security to health and psychological well-being. Negative wealth shocks have been shown to significantly reduce physical and mental health and survival rates among elderly adults, with psychological stress stemming from wealth loss as a key mechanism.[6] Wealth may also affect health through access to the high-quality healthcare it affords.

## **RACIAL WEALTH GAPS TODAY AND OVER TIME**

The fundamental importance of wealth for economic security and general wellbeing makes the large disparities in wealth by race a serious concern for the economic health of families and the U.S. economy as a whole. Using data from the Survey of Consumer Finances (SCF), researchers at the Federal Reserve Bank of St. Louis find that the median white family had \$184,000 in wealth in 2019 compared to just \$38,000 and \$23,000 for the median Hispanic and Black families, respectively (see Figure 1). Moreover, their analysis shows that the median wealth gap between white and Black families has hardly changed over the last 20 years. Meanwhile, the gap between white and Hispanic families has improved slightly, but it remains large.[7]

**Figure 1. Racial Wealth Gaps Over Time**

Notes: Figure shows median family net worth by race. The “other” category contains Asian, Native Hawaiian or Pacific Islander, American Indian or Alaska Native, and multi-race households.

Source: Federal Reserve Survey of Consumer Finances, 2019

Several key contributors to the racial wealth gap are racial differences in home equity, financial assets, and income, all of which are necessary for economic security in their own right and because they facilitate the accumulation of wealth over time. In addition to differences in asset values and composition, differences in the amount and type of debt held by households contribute to racial disparities in economic security. In particular, the number of households with zero or negative net worth—debts that equal or exceed the value of assets—is large and varies by race and ethnicity. In 2016, nearly 20% of Black families had zero or negative net worth compared to 9% of white, 13% of Hispanic, and 14% of other race families.<sup>[8]</sup>

Moreover, while the typical white household has more mortgage, vehicle, and credit card debt (which, in the first two cases, is due in part to the higher-valued collateral underlying the loan), the value of student loan debt was 30% higher for the typical Black household than

for the typical white household in 2019.[9] This disproportionate burden of student loan debt suggests the important role educational debt relief can play in addressing the racial wealth gap.

Concerningly, research indicates that, under current conditions, the racial wealth gap will continue to widen. Economists Ellora Derenoncourt, Chi Hyun Kim, Moritz Kuhn, and Moritz Schularick write in their recent paper on the evolution of the Black-white wealth gap, “In the absence of policy interventions or other forces leading to improvements in the relative wealth-accumulating conditions of Black Americans, wealth convergence is not only a distant scenario, but an impossible one.”[10] This research highlights the importance of structural solutions in reducing racial disparities in economic security. These solutions may include policies that seek to reduce discrimination and bias in the housing and labor markets, to better support households in times of financial distress, and to decrease gaps in access to retirement accounts or liquid assets. As Derenoncourt and her coauthors note, more research is needed to better understand what combinations of policies are most effective at reducing racial disparities in economic security.

Research on this and other important questions related to the wealth gap requires better data on wealth and the differences in economic outcomes by race and ethnicity. Wealth is inherently difficult to measure, and race has become more challenging to measure over time as Americans are increasingly likely to self-identify as belonging to more than one race. In conjunction with more research, more high-quality, publicly available data are needed to help craft well-informed policy solutions aimed at reducing these persistent disparities.

## **ADDRESSING RACIAL DIFFERENCES IN WEALTH WILL BENEFIT ALL AMERICANS**

The racial gaps in economic security in the United States are stark and have been exacerbated by policies that hinder people of color from building wealth. Moreover, inequitable policies and practices that prevent wealth-building by some groups have been shown to negatively impact economic security for all.

More unequal societies are less likely to invest in public goods that enhance productivity, including education, infrastructure, public transportation, and technology.[11] Policies that address racial wealth disparities, therefore, have the potential to benefit all Americans not only by spurring economic growth but also through public investments that benefit

everyone.

As the United States becomes more racially and ethnically diverse, the persistence of racial wealth disparities has the potential to do increasing harm to all Americans. When a significant share of the population is unable to fully participate in the economy, private consumption and investment suffers, stifling GDP growth.<sup>[12]</sup> The basic economic premise that returns to investment exhibit diminishing returns suggests that the largest gains to our economic potential as a nation come from addressing disparities that hinder the ability of the least advantaged families to invest in their future.

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[1] Charles, Kerwin Kofi, and Erik Hurst. 2003. “The Correlation of Wealth Across Generations.” *Journal of Political Economy* 111 (6): 1155–1182.

[2] Feiveson, Laura and John Sabelhaus. 2018. “How Does Intergenerational Wealth Transmission Affect Wealth Concentration?” *FEDS Notes*. Washington: Board of Governors of the Federal Reserve System, June 1, 2018. <https://www.federalreserve.gov/econres/notes/feds-notes/how-does-intergenerational-wealth-transmission-affect-wealth-concentration-20180601.html#fig6>

[3] Lovenheim, Michael F. 2011. “The Effect of Liquid Housing Wealth on College Enrollment.” *Journal of Labor Economics* 29 (4): 741–771.

[4] Johnson, Rucker C. 2020. “The Impact of Parental Wealth on College Degree Attainment: Evidence from the Housing Boom and Bust.” *AEA Papers and Proceedings* 110: 405–410.

[5] Card, David. 1999. “The Causal Effect of Education on Earnings.” In *The Handbook of Labor Economics*, vol. 3A, edited by Orley C. Ashenfelter and David Card, 1801–1863. Amsterdam: Elsevier.

[6] Schwandt, Hannes. 2018. “Wealth Shocks and Health Outcomes: Evidence from Stock Market Fluctuations.” *American Economic Journal: Applied Economics* 10 (4): 349–377.

[7] Our discussion focuses on differences between white, Black, and Hispanic households because the Survey of Consumer Finances, the primary data source used to analyze wealth, does not provide disaggregated data on Asian, Native Hawaiian or Pacific Islander, and American Indian or Alaska Native households. Statistics based on the “other race” category, which comprises households belonging to all of these groups, will mask the large variation in wealth across these groups and within the Asian racial category.

[8] Dettling, Lisa J., Joanne W. Hsu, Lindsay Jacobs, Kevin B. Moore, and Jeffrey P. Thompson. 2017. “Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances.” *FEDS Notes*. Washington: Board of

Governors of the Federal Reserve System, September 27, 2017. <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.html>.

[9] Hasan, Tashfia, Katherine Lucas McKay, and Joanna Smith-Ramani. 2022. "Disparities in Debt: Why Debt Is A Driver In The Racial Wealth Gap." The Aspen Institute Financial Security Program, February 2022. [https://www.aspeninstitute.org/wp-content/uploads/2022/02/FINAL-ASP-FSW\\_Disparities-in-Debt\\_020722-3.pdf](https://www.aspeninstitute.org/wp-content/uploads/2022/02/FINAL-ASP-FSW_Disparities-in-Debt_020722-3.pdf) .

[10] Derenoncourt, Ellora, Chi Hyun Kim, Moritz Kuhn, and Moritz Schularick. 2022. "Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860-2020." NBER Working Paper 30101.

[11] Stiglitz, Joseph. 2016. "Inequality and Economic Growth." In *Rethinking Capitalism: Economics and Policy for Sustainable and Inclusive Growth*, edited by Michael Jacobs and Mariana Mazzucato, 134–155. Oxford: Wiley Blackwell.

[12] Buckman, Shelby R., Laura Y. Choi, Mary C. Daly, and Lily M. Seitelman. 2021. "The Economic Gains from Equity." Federal Reserve Bank of San Francisco Working Paper 2021-11. <https://doi.org/10.24148/wp2021-11>.



# **Exhibit H**

Posted April 8, 2019 at 8:00 am by **Pedro da Costa**

# Housing discrimination underpins the staggering wealth gap between blacks and whites



Wealth is a crucially important measure of economic health—it allows families to transfer income earned in the past to meet spending demands in the future, such as by building up savings to finance a child’s college education.

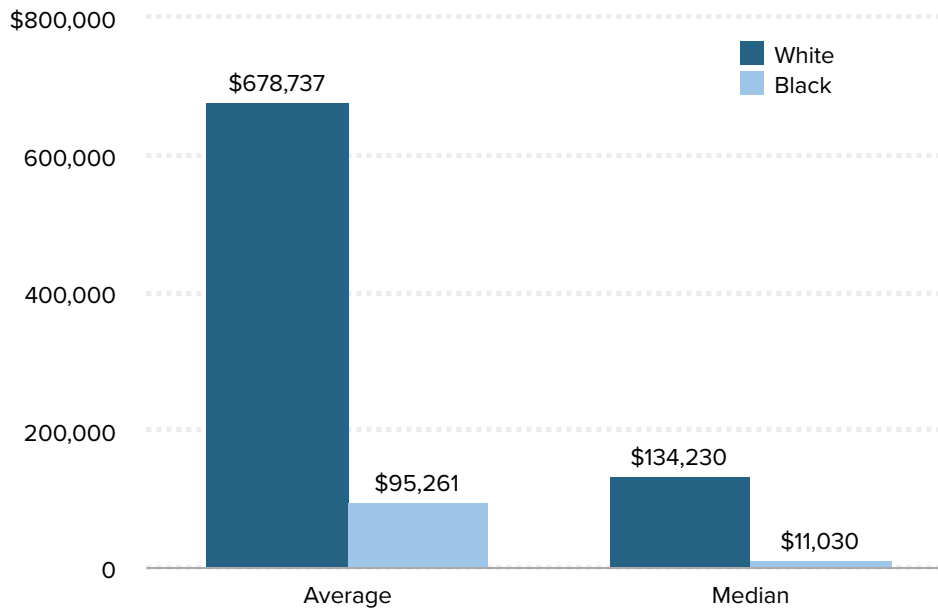
That’s why it’s so alarming to see that, today still, the median white American family has **twelve times** the wealth that their black counterparts have. And that only begins to tell the story of how deeply racism has defined American economic history.

Enter EPI Distinguished Fellow Richard Rothstein’s widely praised book, “**The Color of Law**,” which delves into the very tangible but underappreciated root of the problem: systemic, legalized housing discrimination over a period of three decades—starting in the 1940s—prevented black families from having a piece of the American Dream of homeownership.

Over the years, this disparity was compounded by not only ongoing discrimination but also the legacy of prior practices.

FIGURE A

### Median and average wealth, by race



Source: Survey of Consumer Finance Combined Extract Data, 2013.

“This enormous difference in (wealth) is almost entirely attributable to federal housing policy implemented through the 20th century,” says Rothstein as the narrator in animated film about his book, entitled **“Segregated by Design.”**

Director Mark Lopez uses innovative visual techniques to walk the viewer through Rothstein’s story, and the results are moving and compelling.

“African American families that were prohibited from buying homes in the suburbs in the 1940s and 50s, and even into the 1960s, by the Federal Housing Administration gained none of the equity appreciation that whites gained,” Rothstein says in the short film.

The discrimination happened on several levels—and often culminated in violence against black families trying to move into neighborhoods that had been effectively designated as white by government policy. Sometimes these designations took place quite literally as maps were divided up along racial lines with different colors on the maps. Black neighborhoods were painted red—hence the term “redlining”—which only became illegal after the Fair Housing Act of 1968.

In addition, “state sponsored violence was a means, along with many others, at which all levels of government maintained segregation.”

Rothstein acknowledges that the problem runs so deep that it can never be completely untangled, but also argues that partial reversal are possible and can be encouraged by sound economic and housing policies. It starts with knowing how it happened.

“If we understand the accurate history—that racially segregated patterns in every metropolitan area like St. Louis were created by *de jure* segregation—racially explicit policy on the part of federal, state, and local governments designed to segregate metropolitan areas, then we can understand we have an unconstitutional residential landscape,” Rothstein says.

“And if it’s unconstitutional, then we have an obligation to remedy it,” he adds. “We must build a national political consensus leading to legislation, a challenging but not impossible task, to develop policies that promote an integrated society.”

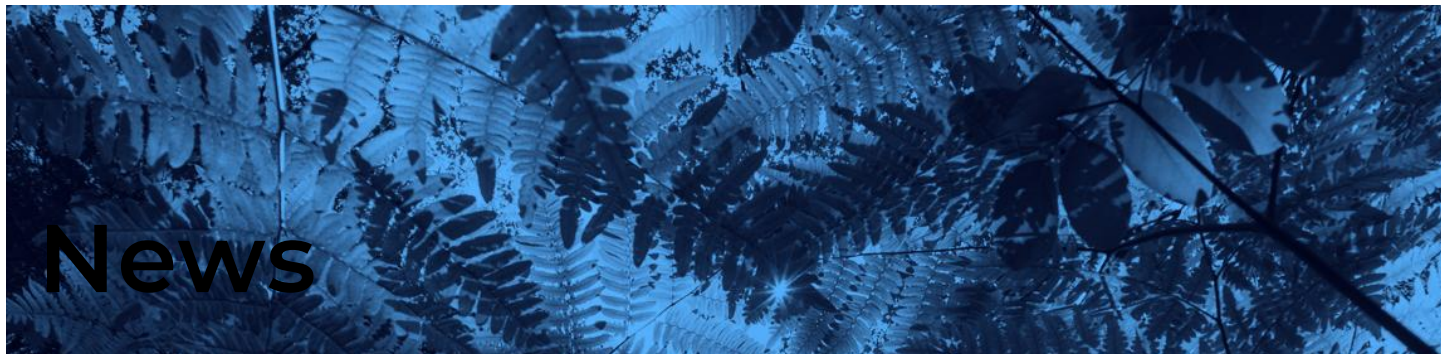
Until then, the legacy of racist housing practices will remain a fact of life in most American cities.

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# **Exhibit I**

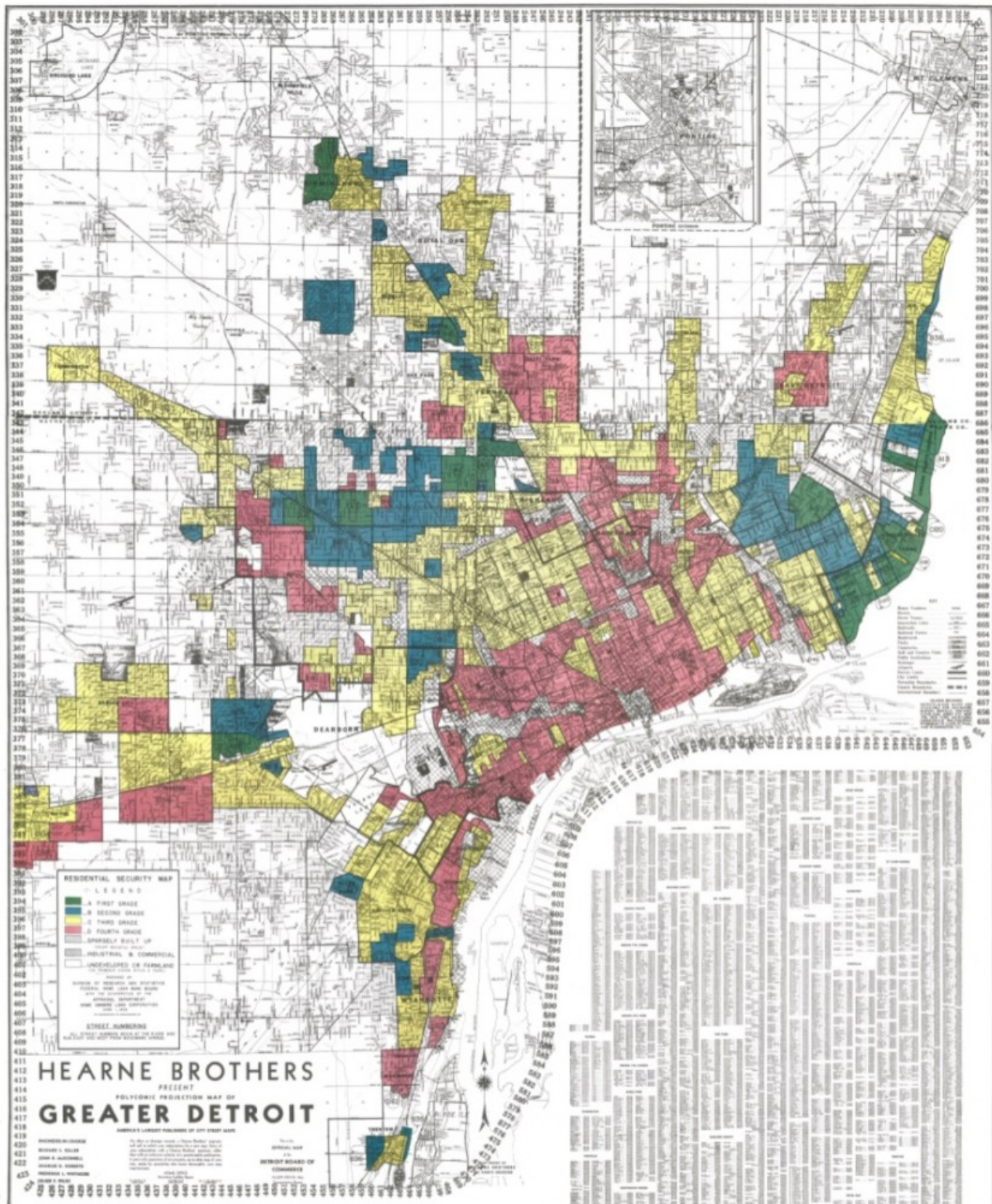


In this section

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# Redlining and Environmental Racism





1930s map of Detroit, Michigan, which graded land based on race. The “least desirable” neighborhoods were color-coded as red. Map courtesy of “Mapping Inequality” and the National Archives and Records Administration.

By Danielle Vermeer (MS '22) | August 16, 2021



Homeownership has been a core value and aspiration for many American households over the last half century. However, beneath this ideal, there is a legacy of racist housing policies that left low-income individuals and people of color disproportionately exposed to the impacts of [environmental burdens](#). These inequities can be traced back to the Great Depression when the U.S. was faced with a national housing shortage. During that time, the [New Deal](#) created projects to help stabilize the economy. Part of this process included [segregating](#) marginalized communities into urban housing projects so that White families could move into new suburban developments.

Segregation of housing stock became known as “redlining” and continues to reinforce unjust living conditions for minority residents nationwide. Understanding the history of housing policies illustrates why many cities still discriminate. In the 1930s, the federal government created maps that [color-coded](#) metropolitan areas based on the “safest” locations to insure mortgages. Minority neighborhoods were marked by the color red to indicate they were risky for investment based on racial biases. This practice resulted in privileged White families being favored for housing opportunities at the expense of minority homeowners who were denied loans.

Capital deprivation from marginalized communities contributes to a significant wealth gap between redlined and non-redlined regions. While affluence became concentrated in predominantly White areas, racialized ones were overlooked. Neighborhoods marked as high-risk for investment over eight decades ago are [74% low-to-moderate income and 64% minority](#) today. The historical lack of resources, investment, and development resulted in poor infrastructure that increases vulnerability to environmental hazards, such as the urban heat island effect.

Redlining [preyed](#) on marginalized communities for new manufacturing facilities, warehouses, and highways—all of which are impervious

surfaces that absorb heat. A [study](#) on 108 U.S. urban places showed that land surface temperatures are about 36 degrees Fahrenheit warmer in past redlined neighborhoods. The dangerous heat levels we see today can be [linked](#) to a combination of heat-trapping infrastructure, inadequate government investment in canopy cover, and minimal access to green spaces that cool down the city.

Exposure to extreme heat and other climate hazards have negative effects on human health. For example, prolonged high temperatures can lead to [heart and lung](#) complications that may be deadly or severely impact quality of life. [Research](#) has shown that these challenges are felt stronger in formerly redlined locations where heat is exacerbated and there is often less access to air conditioning and healthcare. People living in neighborhoods shaped by redlining can have shorter lifespans up to [30 years less](#) than other nearby areas in the same city.

We can see evidence of inequitable hazards distribution in Michigan. One student team at the University of Michigan School for Environment and Sustainability (SEAS) created a map of [environmental injustice hotspots](#) throughout the state. The study revealed census tracts in Detroit, Grand Rapids, Flint, Saginaw, Lansing, and Kalamazoo as key places of concern. Such regions have the largest concentrations of minority and low-income residents vulnerable to burdens. According to the study, people in hotspots are more likely to encounter health risks like cancer from living near hazardous waste facilities, heavily trafficked highways, and [Superfund](#) sites.


It is no coincidence that census tracts identified in the SEAS project overlap with [previously redlined](#) areas in Michigan—these are environmental injustices. Findings from the student-team's research recommend development of similar screening tools to help other states pinpoint neighborhoods strongly affected by environmental burdens. They say these tools can be used to advocate for policy that supports


communities most impacted and protects them from hazards.

Policy creation should prioritize the voices of marginalized residents and frontline communities who were left out of decisions in the past. Coping with environmental challenges moving forward will require an understanding that not everyone is privileged with the same capacity to adapt. Our ability to sustain a just and safe world is dependent upon how we can avoid the mistakes of the past. Recognizing racist roots, calling out environmental injustices, and ensuring marginalized voices are heard is one small step towards a better future.

*Consider exploring the history of your own city using a digital humanities tool. [Mapping Inequality](#) is an interactive site that houses records of redlining practices dating back to the 1930s. You can use this tool for exploring records and maps that show the footprint of redlining on racial inequities throughout the nation today.*



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# **Exhibit J**

March 9, 2022

# More air pollution present in areas with historical redlining

**UW News staff**

**POSTED UNDER: POPULATION HEALTH, PUBLIC HEALTH, RESEARCH, SCIENCE, UW NEWS BLOG**

Despite dramatic improvements in air quality over the past 50 years, people of color at every income level in the United States are exposed to higher-than-average levels of air pollution. While this disparity has been widely studied, the links between today's air pollution disparities and historic patterns of racially segregated planning are still being uncovered.

Now a new study from a team of researchers at UC Berkeley and the University of Washington has found that housing discrimination practices dating from the 1930s still drive air pollution disparities in hundreds of American cities today. In this study — the first to do a national-level analysis of modern urban air pollution and historical redlining — the team examined more than 200 cities and found a strong correlation between present-day air pollution levels and historical patterns of redlining.

The researchers published their findings March 9 in Environmental Science & Technology Letters.

“Racism from the 1930s, and racist actions by people who are no longer alive, are still influencing inequality in air pollution exposure today,” said co-author Julian Marshall, a UW professor of civil and environmental engineering. “The problems underlying environmental inequality by race are larger than any one city or political administration. We need solutions that match the scale of the problem.”

The term “redlining” describes a widespread federally backed discriminatory mortgage appraisal practice in the 1930s. This process color-coded city areas red if they included high concentrations of Black, Asian, immigrant or working-class residents, deeming these areas hazardous and excessively



Researchers at the UW and UC Berkeley have found that housing discrimination practices dating from the 1930s still drive air pollution disparities in hundreds of American cities today. *Sarah McQuate/University of Washington*

risky for investment. Redlining blocked access to favorable lending and other services. Historically redlined areas have been cumulatively affected by a low prevalence of home ownership, uneven economic development, displacement of residents, community disintegration and lack of access to education and economic opportunities.

**A redlining map of Seattle. Click on a neighborhood or a grade for more details. Credit: *Mapping Inequality***

The researchers compared year-2010 levels of two regulated air pollutants — nitrogen dioxide (NO<sub>2</sub>; a short-lived gas emitted by traffic, industry and other sources), and fine particulate matter (PM<sub>2.5</sub>; longer-lived, tiny particles found in dust, soot, smoke and other emissions or formed in the atmosphere) — to redlining maps in 202 U.S. cities.

In these cities, redlined areas consistently had higher levels of pollution today than areas that received favorable treatment. In fact, air pollution disparities associated with redlining status were even larger than those associated with race and ethnicity.

The study highlights the “distinct inequities that affect people in all neighborhoods, regardless of redlining grade,” said lead author [Haley Lane](#), a doctoral student in civil and environmental engineering at UC Berkeley. “It also emphasized the importance of identifying and improving conditions in those neighborhoods which have been systematically isolated from financial investment through practices like redlining while being subjected to increased environmental exposures for decades.”

The long-lasting implications of historical segregation on present-day disparities are striking, according to the researchers.

The team also found racial disparities within redlined neighborhoods, suggesting that housing discrimination is one of many factors propelling environmental racism. In other words, white people who happen to live in redlined neighborhoods still have lower air pollution exposure than people of color in the same community. That trend held across non-redlined and redlined neighborhoods alike, the researchers said.

“This study underscores how the past is still very much present when it comes to air pollution disparities,” said senior author [Joshua Apte](#), assistant professor in the Department of Civil & Environmental Engineering and the School of Public Health at UC Berkeley. “Redlining is a good predictor of air pollution disparities but it’s only one of the things that drive the racial and ethnic disparities in air pollution. It’s not the only source of disparity that we need to be worried about.”

The research goes “a long way toward highlighting the lasting consequences of structural racism on community health,” said co-author [Rachel Morello-Frosch](#), a professor of Public Health and Environmental Science, Policy and Management at UC Berkeley and co-author of the study. “These results can point the way toward targeted approaches for regulating emission sources and reducing

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See a related story in [The Washington Post](#).

exposures, as well as longer-term strategies to address discriminatory land-use decision-making that adversely impacts communities of color.”

This publication was developed as part of the Center for Air, Climate, and Energy Solutions ([CACES](#)), which is funded by the U.S. Environmental Protection Agency (R835873).

For more information, contact Marshall at [jdmarsh@uw.edu](mailto:jdmarsh@uw.edu) and Apte at [jsapte@berkeley.edu](mailto:jsapte@berkeley.edu).

Adapted from [a release](#) from UC Berkeley.

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Tagged with: [College of Engineering](#), [Department of Civil & Environmental Engineering](#), [Julian Marshall](#), [population health](#)



# **Exhibit K**

# NOTES

## In the Backyard of Segregated Neighborhoods: An Environmental Justice Case Study of Louisiana

JULIA MIZUTANI\*

### ABSTRACT

*America's history of Jim Crow segregation, redlining, and exclusionary zoning in combination with its present-day zoning laws and siting processes have created toxic communities in predominately black and poor neighborhoods. Existing policies and laws that are meant to remedy such disparities all have flaws which render them too weak to repair the damage already done or to prevent injustice from continuing. The disproportionate effects of environmental hazards and natural disasters on segregated communities are seen not only in Louisiana but also around the country, such as in Houston after Hurricane Harvey landed in August 2017. Given that climate change will likely disproportionately harm poor communities of color as natural disasters increase in frequency and intensity, the need for environmental justice laws to be created and strengthened in the very near future is critical. The connection between historical segregation and present-day zoning and siting processes that harm communities of color should be used to inform advocates and lawmakers of the need to make the environmental justice landscape more equitable.*

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\* Georgetown Law, J.D. expected 2019; SUNY Geneseo, B.A. 2016. © 2019, Julia Mizutani.

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## INTRODUCTION

The distribution of landfills, incinerators, power plants, toxic waste, and air pollution is highly correlated with the geographic distribution of minorities, especially poor minorities.<sup>1</sup> When taking out the factor of income, race is the single most significant indicator of where toxic waste or pollutant sites are located.<sup>2</sup> This means that, rather than finding hazardous waste in areas where it is most likely to be safely deposited and least likely to cause harm to health, toxic waste is most likely to be found in poor and black neighborhoods. Research that has sought to disentangle the causal sequence of siting toxic pollutants in black

1. D.R. Wernette & L.A. Nieves, *Breathing Polluted Air*, 18 EPA J. 16, 16–17 (1992); Robert D. Bullard, *Overcoming Racism in Environmental Decisionmaking*, 36 ENV’T 11 (1994) (citing Robert D. Bullard, *Environmental Racism*, ENVTL. PROTECTION 25–26 (1991)); Leslie A. Nieves, Argonne Nat’l Lab., *Not in Whose Backyard? Minority Population Concentrations & Noxious Facility Sites*, Paper Presented at the Annual Meeting of the Am. Assoc. for the Advancement of Sci. (Feb. 9, 1992).

2. Michel Gelobter, *Toward a Model of Environmental Discrimination*, in RACE AND THE INCIDENT OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE 64 (Bunyan Bryant & Paul Mohai eds., 1992).

communities has found little evidence of “minority move-in,” suggesting that facilities are sited in previously and already established poor communities of color.<sup>3</sup> Thus, toxicity follows poor, segregated communities, not the other way around. The terms “environmental racism” and “environmental injustice” are used to describe this phenomenon—the intentional and unintentional disproportionate siting and effects of environmental hazards on communities of color—while the “environmental justice” movement seeks to rectify the harms created by racism.<sup>4</sup>

This Note posits that the legacy of redlining and exclusionary zoning, as well as more current methods of determining environmental assessments, have led governments and local siting boards to place a disproportionate number of environmental hazards in segregated neighborhoods.<sup>5</sup> First, the Note will provide a broad overview of the historical and modern-day connection between segregation and environmental injustice by examining zoning and land use laws, court cases, the site selection process, and unequal Environmental Protection Agency (“EPA”) enforcement of pertinent environmental regulations. Second, the Note will use an analysis of Louisiana’s historical to present-day housing policies as a case study to show the relationship between segregation and environmental injustice in the development of “Cancer Alley” and the flood management system in New Orleans, which led to disastrous outcomes following Hurricane Katrina. Third, the Note will demonstrate that existing policies and laws that are meant to remedy such disparities are rarely utilized or successful because the government has not consistently implemented President Clinton’s environmental justice executive order, and anti-discriminatory statutes require proof of discriminatory intent or causation, which are difficult for affected communities to show. Fourth, the Note will provide recommendations for strengthening laws and programs related to environmental justice.

## I. OVERVIEW: SEGREGATED COMMUNITIES AND ENVIRONMENTAL JUSTICE

Segregation has both a historical and present-day relationship to the placement of environmental hazards—such as landfills, incinerators, petro-chemical plants, and coal-fired power plant—in predominately black and poor communities. Exclusionary zoning and land use laws often lead these hazards to be placed in segregated black communities because of the fear that such hazards will diminish property values in white communities.<sup>6</sup> Environmental assessments and siting

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3. Robin Saha & Paul Mohai, *Historical Context and Hazardous Waste Facility Siting: Understanding Temporal Patterns in Michigan*, 52 SOCIAL PROBLEMS 618, 625–40 (2005).

4. Rachel D. Godsil, *Remedying Environmental Racism*, 90 MICH. L. REV. 394, 395 (1991) (noting that “environmental racism” was coined in 1987 by Reverend Benjamin Chavis Jr.); UNITED CHURCH OF CHRIST, COMM’N FOR RACIAL JUST., TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON THE RACIAL AND SOCIOECONOMIC CHARACTERISTICS OF COMMUNITIES SURROUNDING HAZARDOUS WASTE SITES 13 (1987) (coining the term “environmental justice”).

5. Bullard, *supra* note 1, at 10.

6. *Id.* at 13.

boards also cause environmental hazards to be placed in vulnerable communities because placing hazards in these areas is often less costly and more politically preferable given that underserved communities have less political power. In fact, government funded studies have at times justified the targeting of poor communities of color for polluting sites. California was once advised by a consulting firm that “ideally . . . officials and companies should look for lower socioeconomic neighborhoods that are also in a heavy industrial area with little, if any, commercial activity.”<sup>7</sup> Local planning boards and zoning laws have both contributed to the environmental injustices that black communities face due to segregation, and the gap in enforcement by the EPA between black and white communities further aggravates the disparities between these neighborhoods.

#### A. THE CONNECTION BETWEEN ZONING AND TOXIC COMMUNITIES

Zoning began as a tool to improve blighted neighborhoods but was transformed into a tool to protect property values by excluding populations described as undesirable.<sup>8</sup> One of the earliest examples of exclusionary zoning tactics was San Francisco’s prohibition against certain types of laundry businesses, which was designed to keep Chinese immigrants, who were disproportionately involved in the laundry industry, from entering white neighborhoods.<sup>9</sup> The San Francisco ordinance is an example of how local decisions regarding land use can appear neutral on their face, yet still disproportionately impact certain racial groups, whether intentionally or unintentionally.

Today, zoning and land use laws are important for environmental justice because they affect siting decisions concerning locally undesirable land uses such as toxic waste sites, incinerators, and power plants. State zoning acts are often modeled on the Standard State Zoning Enabling Act of 1922, which grants states the power to regulate land use for the “health, safety, morals, or the general welfare of the community,” and includes regulating and restricting “density of population and the location and use of buildings, structures and land of trade, industry, residence or other purposes.”<sup>10</sup> Unfortunately, state and local zoning laws modeled after this language often lead to restrictions on industrial use in residential neighborhoods in order to protect the health of wealthier, whiter communities, to the detriment of poorer, black communities.<sup>11</sup> In many cases, decisions placing

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7. CERRELL ASSOCS., INC., POLITICAL DIFFICULTIES FACING WASTE TO ENERGY CONVERSION PLANT SITING 13 (1984), available at <https://www.ejnet.org/ej/cerrell.pdf>.

8. Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, in ZONING AND THE AMERICAN DREAM: PROMISES STILL TO KEEP 101, 105 (Charles M. Haar & Jerold S. Kayden eds., 1989).

9. *Yick Wo v. Hopkins*, 118 U.S. 365 (1886).

10. U.S. DEP’T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT, UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS 4–5 (1926).

11. NAT’L ACAD. OF PUB. ADMIN., ADDRESSING COMMUNITY CONCERNS: HOW ENVIRONMENTAL JUSTICE RELATES TO LAND USE PLANNING AND ZONING 26 (2003), available at <https://www.epa.gov/sites/production/files/2015-02/documents/napa-land-use-zoning-63003.pdf>.

industrial and other hazardous land in low-income and black communities are made in compliance with local zoning ordinances.<sup>12</sup>

The issue of local officials exercising zoning power to the detriment of black residents was highlighted in a 2003 panel report by the National Academy of Public Administrators (“NAPA”) titled, “Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning.”<sup>13</sup> The report stated that significant evidence showed that people of color and low-income residents were likely to live close to polluting industries because of unequal distribution of environmental exposures in areas zoned for lower-income and historically segregated communities. Further, local zoning decisions regularly “created these disparities and . . . local decision-makers were often fully aware of the likely outcomes.”<sup>14</sup> Thus, the report found that federal and state policies created and reinforced local decisions that limited housing for black residents to areas where hazardous and polluting industries were located, and then continued to place more such industries in those areas.<sup>15</sup>

### 1. *Euclid* and Expulsive Zoning

The Supreme Court first approved of the use of local police power over land use in *Haddacheck v. Sebastian* in 1915.<sup>16</sup> Local police powers for zoning were affirmed in what is now known as the landmark case, *Village of Euclid v. Ambler Realty Corp.*, in 1926.<sup>17</sup> The repercussions of *Euclid* were broad, as the general principle of exercising police power to separate “incompatible uses” to protect residential environments from industrialization was upheld.<sup>18</sup> Justice Sutherland noted that a “nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.”<sup>19</sup> The implications of the decision were significant because many municipalities figuratively deemed black neighborhoods to be barnyards, polluting industries to be pigs, and white residential neighborhoods to be parlors.<sup>20</sup> *Euclid* thus provided a legal basis for local municipalities to disproportionately place polluting facilities in black neighborhoods, while keeping such facilities out of white neighborhoods.

Professor Yale Rabin, of the Massachusetts Institute of Technology, has called this phenomenon “expulsive zoning.”<sup>21</sup> Black residents who were not automatically

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12. *Id.* at 28–29.

13. *Id.* at 26.

14. *Id.* at 25.

15. *Id.* at 27.

16. 239 U.S. 394 (1915).

17. 272 U.S. 365 (1926).

18. Wayne Batchis, *Enabling Urban Sprawl: Revisiting the Supreme Court’s Seminal Zoning Decision Euclid v. Ambler in the 21st Century*, 17 VA. J. SOC. POL’Y & L. 373, 380–81 (2010).

19. *Euclid*, 272 U.S. at 388.

20. Batchis, *supra* note 18, at 395–96 (2010).

21. Rabin, *supra* note 8, at 101.

displaced by racially restrictive covenants and zoning laws eventually found their neighborhoods filled with landfills, incinerators, factories, and power plants. Meanwhile, “white neighborhoods were consistently protected from intrusive traffic, noise, and pollution generated by such nonresidential uses.”<sup>22</sup> Even in jurisdictions without codified zoning variances, such as Houston, local government authorities placed eight of ten solid waste facilities in black communities from 1920 to 1970, even though the black population of Houston was only a quarter of the city’s population.<sup>23</sup> A national report published by the United Church of Christ’s Commission for Racial Justice showed that race was the most significant factor nationwide in determining where a hazardous waste facility would be sited.<sup>24</sup> The report also found that black residents were heavily over-represented in areas with the largest number of uncontrolled hazardous waste sites.<sup>25</sup>

## 2. Exemplary Cases that Challenge Local Zoning Ordinances

A brief analysis of past cases shows that, at least under current law, lower federal courts have largely chosen to not proceed toward the goal of eradicating America’s racially segregated society and have not interpreted civil rights laws in ways which have eliminated environmental injustice. The first lawsuit to charge environmental discrimination in the placement of a waste facility, *Bean v. Southwestern Waste Management Corp.*, was filed in 1979.<sup>26</sup> “The case involved residents of Houston’s Northwood Manor, a suburban, middle-class neighborhood of homeowners, and Browning-Ferris Industries, a private disposal company based in Houston.”<sup>27</sup> Northwood Manor was a subdivision of detached, single-family homes, which typically would have made it an unlikely candidate for a municipal landfill, except for the fact that the neighborhood was more than 82% black.<sup>28</sup> The Northwood Manor residents sought the revocation of the land use permit granted to Browning-Ferris to build the waste facility. However, the relevant local statute only permitted revocation of a land use permit for reasons pertaining to health, or air or water pollution, and the department reviewing the permit would not examine allegations of race discrimination.<sup>29</sup> The district court stated that the plaintiffs did not establish a substantial likelihood of proving that the local permitting authority’s decision to grant the permit was motivated by

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22. NAT’L ACAD. OF PUB. ADMIN., *supra* note 11, at 28 (internal quotation marks and citation omitted).

23. Robert D. Bullard, *Building Just, Safe, and Healthy Communities*, 12 TUL. ENVTL. L.J. 373, 394–95 (1999).

24. UNITED CHURCH OF CHRIST, *supra* note 4, at 13.

25. *Id.* at 14.

26. 482 F. Supp. 673, 675 (S.D. Tex. 1979).

27. Bullard, *supra* note 1, at 40.

28. *Id.*

29. *Bean*, 482 F. Supp. at 675.



purposeful racial discrimination, and thus the court denied the preliminary injunction.<sup>30</sup>

Similarly, in *East Bibb Twiggs Neighborhood Association v. Macon Bibb Planning & Zoning Commission*, a permit was granted for a sanitary landfill to be placed in a majority black neighborhood.<sup>31</sup> Neighborhood residents filed a complaint that stated that their procedural and substantive due process rights were denied because the decision was not debated publicly in their community. Additionally, the permit did not relate to the public health, safety, morality, or general welfare of the community, as required under the 1922 model zoning law, which the community had adopted.<sup>32</sup> The district court and the Eleventh Circuit held that for the residents to demonstrate that their rights under the equal protection clause of the Fourteenth Amendment had been violated, the residents had to prove, in line with *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, that the actions resulted in a disproportionate racial impact *and* that the Commission had acted with a discriminatory intent or purpose.<sup>33</sup> Because of the high evidentiary bar, the Eleventh Circuit held that the residents failed to present sufficient evidence to demonstrate that the permit decision was made with discriminatory intent or that the Commission had engaged in a pattern of discriminatory conduct.<sup>34</sup> The residents were therefore left without redress because of the immense difficulty in proving both that the planning commission's decision was motivated by discriminatory intent and that the placement of the landfill had a disproportionately negative environmental impact based on race.

Thus, present-day communities of color disproportionately impacted by environmental hazards are left without remedy, short of explicit proof showing that local powers intended to discriminate when approving a permit or zoning ordinance.

### 3. Summarizing the Influence of Zoning on Environmental Discrimination

Local officials have used zoning laws supposedly meant to protect the health, safety, morals, or general welfare of the community to the detriment of black neighborhoods by restricting industries from existing in white neighborhoods and thus relegating toxic industries to segregated communities. These communities have limited modes of redress under existing civil rights laws because the evidentiary bar for proving discriminatory intent is too high. Furthermore, after these toxic industries are placed in segregated black neighborhoods due to

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30. *Id.* at 681.

31. 896 F.2d 1264 (11th Cir. 1989).

32. *Id.* at 1265.

33. 429 U.S. 252, 265 (1977) (holding that a zoning ordinance which had the outcome of barring people of color and low-income families from residing in a neighborhood was constitutional because there was no proof that a "discriminatory purpose was a motivating factor in the Village's decision").

34. *E. Bibb Twiggs*, 896 F.2d at 1267.

NIMBYism<sup>35</sup> in the site selection process, the EPA takes much longer to respond to their needs in comparison to white neighborhoods.

B. SITE SELECTION, NIMBYISM, AND DIFFERENTIAL ENFORCEMENT BY THE EPA: HOW HAZARDS CONTINUE TO BE DISPROPORTIONATELY PLACED IN VULNERABLE COMMUNITIES

Although most environmental regulations are an overall positive force in society that reign in pollution and toxicity, often, more stringent environmental regulations drive noxious facilities and local site selection boards to follow the path of least resistance.<sup>36</sup> The path of least resistance usually leads away from wealthier, whiter communities and towards poorer neighborhoods of color. Additionally, the EPA enforces federal environmental regulations unequally, typically cleaning up black communities at a much slower rate than white communities. As discussed below, each of these factors has further exacerbated environmental injustice.

1. NIMBYism and “The Path of Least Resistance” in Local Site Selection Processes

The site selection process in many localities often fails to prevent discriminatory siting. Most site selection processes go to a board that may be comprised of local experts, of those who have been elected by the locality, or sometimes of board members chosen by the governor.<sup>37</sup> These boards are restrained by land use laws that may already confine industrial sites to predominately black neighborhoods, and even if states preempt local land use statutes to allow sites to be placed in a wealthier neighborhood, boards can be prone to fall to NIMBYism.<sup>38</sup> NIMBY stands for “Not In My Back Yard,” and it is a phenomenon where communities with economic and political power will use their advantages to block a toxic site selection planned for their neighborhood, thus relegating the site to a less wealthy and well-connected neighborhood. Robert Bullard, a legal expert in environmental justice, asserts that politicians and industrialists respond to the NIMBY phenomenon using the “PIBBY” principle: “Place in Black’s Back Yard.”<sup>39</sup> Because of the power of NIMBYism, noxious sites are often designated for communities of color so that industry can avoid any siting delays and expenses that might occur if the site was slated for a predominately white, middle class, residential neighborhood.<sup>40</sup>

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35. See *infra* Part I.B.1.

36. Bullard, *supra* note 1, at 14.

37. Godsil, *supra* note 4, at 404.

38. *Id.* at 403–05.

39. Robert D. Bullard, *Environmental Blackmail in Minority Communities*, in REFLECTING ON NATURE: READINGS IN ENVIRONMENTAL PHILOSOPHY 132, 139 (Lori Gruen & Dale Jamieson eds., 1994).

40. See Godsil, *supra* note 4, at 405.

It should be noted that all states that use siting boards have preemption clauses in their documents that allow them to override opposition to a siting decision by residents of a whiter, wealthier neighborhood.<sup>41</sup> However, in the end, private developers often still choose the sites regardless of the board's final decision because they have a cost incentive to choose sites with lower land values, which are typically the neighborhoods of economically disadvantaged communities of color because of the history of segregation.<sup>42</sup> Thus, even when a local planning board may be willing to allow a toxic site to be placed in a wealthier neighborhood, developers of the site often choose to build in communities of color due to economic incentives created by the legacy of discrimination.

## 2. The EPA's Unequal Enforcement Based on Race

Compounding the problematic siting patterns of hazardous waste and polluting facilities in predominately black and communities of color is the issue of uneven enforcement of federal environmental laws by the EPA. A special investigation by the National Law Journal in 1992 found that "the federal government, in its cleanup of hazardous sites and its pursuit of polluters, favors white communities over minority communities under environmental laws meant to provide equal protection for all citizens."<sup>43</sup> Specifically, the investigation found that penalties for violations of environmental regulations committed in white communities were 46% higher than for violations in minority communities for all federal environmental laws protecting citizens from air, water, and waste pollution. Even more egregious, the investigation found that penalties under hazardous waste laws were 500% higher in white communities.<sup>44</sup> It also found that abandoned hazardous waste sites under the Comprehensive Environmental Response, Compensation, and Liability Act in minority communities took 20% more time to be placed on the National Priorities List than sites in white communities, and thus, EPA action on those cleanups began one to four years later in minority communities than in white ones.<sup>45</sup> When cleanup was finally ordered, the EPA ordered permanent treatment cleanup in white communities 22% more often than in minority communities. In minority communities, the EPA was more likely to order containment of the hazardous site instead, which is a less effective and drastic remedial measure.<sup>46</sup>

This nationwide phenomenon can be seen in examples such as Louisiana, where post-Katrina clean-up efforts largely happened in predominately white and

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41. *See id.* at 404.

42. *Id.* at 405.

43. Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law, A Special Investigation*, 15 NAT'L L.J. 1, 1 (1992).

44. *Id.* at 2.

45. *Id.* The Comprehensive Environmental Response Compensation and Liability Act, better known as CERCLA or Superfund, provides a federal "superfund" to clean up hazardous waste sites. *Id.*

46. *Id.*

affluent neighborhoods, while the government mainly ignored black and poor neighborhoods for over a decade.<sup>47</sup> The segregation that facilitated the national trends emphasized in this section are demonstrated in the following Part using Louisiana's "Cancer Alley"<sup>48</sup> and the effect Katrina left on New Orleans as case studies. Louisiana is perhaps an extreme example of the direct relationship between the marginalization of black communities dating back to slavery and how environmental hazards are geographically allocated, but it is an appropriate case because of its clear legacy.

## II. SEGREGATION AND ENVIRONMENTAL HAZARD CONNECTIONS IN LOUISIANA: A CASE STUDY

Both the Louisiana constitution and state-planning legislation give local governments the power to adopt regulations for land use, zoning, and historic preservation; however, they do not mandate or give incentives for localities to plan or zone.<sup>49</sup> There is no statewide plan for Louisiana and no statewide role in approving or enforcing local plans.<sup>50</sup> If a locality does adopt regulations, it must plan in accordance with the Standard State Zoning Enabling Act of 1922 and plan to promote health, safety, and general welfare, which, as mentioned earlier, local officials often used to the detriment of black communities.

As a result, much of Louisiana developed locally, and much of the zoning, planning, or structure of the parishes (Louisiana's equivalent of counties) can be directly tied to slavery and Jim Crow. For example, many industrial lots where refineries and chemical plants were built are still called "plantations."<sup>51</sup> Bulk goods come from factories that are shipped to New Orleans from the Angelina and Goldmine Plantations, which are located along Cancer Alley.<sup>52</sup> Both the history of slavery in what is now Cancer Alley and the use of redlining in New Orleans have led to environmental injustices in Louisiana that are distinctly tied to segregation.

### A. CANCER ALLEY

Cancer Alley is the eighty-five mile stretch along the Mississippi River between Baton Rouge and New Orleans where approximately 25% of the

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47. See generally RACE, PLACE AND ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA: STRUGGLES TO RECLAIM, REBUILD, AND REVITALIZE NEW ORLEANS AND THE GULF COAST 19 (Robert D. Bullard & Beverly Wright eds., 2009) (describing racial disparities in the response to Hurricane Katrina).

48. See *infra* Part II.A.

49. Lauren Land, *Brief History of Planning and Zoning in Louisiana*, LA SEA GRANT (Jan. 10, 2013), <http://www.laseagrant.org/wp-content/uploads/Lafourch-Brief-History-Planning-Zoning-La.pdf>.

50. *Id.*; see also LA. STAT. ANN. §§ 38:101–30.54 (2018).

51. See Darwin Bond Graham, *The New Orleans That Race Built: Racism, Disaster, and Urban Spatial Relationships*, in SEEKING HIGHER GROUND: THE HURRICANE KATRINA CRISIS, RACE, AND PUBLIC POLICY READER 23 (Manning Marable & Kristen Clarke eds., 2008).

52. *Id.*

country's petrochemical production takes place. The refineries and factories operating there pollute so heavily that the exposure of humans to toxicity in the area created its namesake.<sup>53</sup> Cancer Alley is 40% black and nearly eighty census tracts in the corridor are comprised of at least 90% black residents.<sup>54</sup> The communities closest to the plants along the Mississippi are predominantly composed of black families. These neighborhoods also have lower levels of education and a higher ratio of families living below the poverty line.<sup>55</sup> Black-dominant areas bear a cumulative risk to cancer of 16% more than in white-dominant areas,<sup>56</sup> and low-income census tracts bear a 12% greater risk to cancer from air toxins.<sup>57</sup> Spatial analyses show that the gradient effect of being both a majority-minority and a socioeconomically disadvantaged community magnifies the disparity for the most highly concentrated black areas.<sup>58</sup>

Much of Cancer Alley is rural and made of unincorporated towns, meaning that these communities do not have local governance over their affairs.<sup>59</sup> Thus, the parish they are located in has jurisdiction and can establish rules of governance in the town.<sup>60</sup> Most unincorporated communities were created when slavery ended and groups of free black people, called "companies," were able to buy strips of land at the edges of plantations.<sup>61</sup> The descendants of the original companies remained on the land and continued to subdivide the parcels, resulting in a series of small black communities living on small strips of land.<sup>62</sup> The plantations directly adjacent to these black communities have either continued to be farming and sugar cane plantations or were sold to industries dependent on river access to ship goods, chemicals, and petroleum products.<sup>63</sup>

Unincorporated communities that were historically communities of freed slaves suffer an acute vulnerability to noxious facility siting because they do not have the power to govern themselves.<sup>64</sup> For example, Wallace, Louisiana—a small, unincorporated, black community in Cancer Alley—was rezoned from residential to industrial use by the mostly white officials of St. John the Baptist

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53. See Wesley James, Chunrong Jia, & Satish Kedia, *Uneven Magnitude of Disparities in Cancer Risks from Air Toxics*, 9 INT'L. J. ENVTL. RES. & PUB. HEALTH 4365, 4366 (2012).

54. *Id.* (internal citation omitted).

55. *Id.* (internal citation omitted).

56. *Id.* at 4373.

57. *Id.* at 4371.

58. *Id.* at 4365.

59. DARRYL MALEK-WILEY, *COMMUNITY IMPACTS OF POLLUTION IN LOUISIANA* 60 (2013), available at [https://www.academia.edu/9697592/Community\\_Impacts\\_of\\_Pollution\\_in\\_Louisiana\\_27\\_June\\_2013](https://www.academia.edu/9697592/Community_Impacts_of_Pollution_in_Louisiana_27_June_2013).

60. NAT'L ACAD. OF PUB. ADMIN., *supra* note 11, at 202.

61. *Id.* at 192.

62. *Id.*

63. *Id.*

64. Robert D. Bullard, *Unequal Environmental Protection: Incorporation Environmental Justice in Decisionmaking*, in *WORST THINGS FIRST? THE DEBATE OVER RISK-BASED NATIONAL ENVIRONMENTAL PRIORITIES* 237, 255 (Adam M. Finkel & Dominic Golding eds., 1994).

Parish to allow for the construction of a Formosa Plastics Corporation plant.<sup>65</sup>

A quarter of the chemicals and a large portion of the transportation fuel that the United States consumes is processed in over seventy-five of the industrial zones and 130 industries located on historical plantations along Cancer Alley.<sup>66</sup> After generations of living alongside these historical plantations, many of the unincorporated communities founded by freed slaves were bought out by Dow Chemical after numerous lawsuits were brought due to dangerous explosions at the nearby oil and chemical facilities.<sup>67</sup> Five miles south of a hazardous Dow plant, another community founded by freed slaves was bought out by the Georgia Gulf Corporation, which paid the costs for fifty families to be moved away from its vinyl chloride plant.<sup>68</sup> While it is better that these families are relocated further away from toxic industries than to continue living in a hazardous location, these facilities should not have been sited in their community to begin with, nor should public health decisions come at the expense of destroying their community.

Similar to Cancer Alley, the history of segregation in New Orleans due to redlining has led to black communities being displaced by environmental hazards.

#### B. REDLINING IN NEW ORLEANS

Although some residential segregation existed before the Civil War because of restricted access to public facilities, New Orleans was noted as a city with low segregation during the antebellum period.<sup>69</sup> Residential segregation fully emerged during the height of Jim Crow and during the early twentieth century Progressive Era, when engineering began to transform the urban South. In New Orleans, segregation was not only caused by the practice of redlining but also by the re-engineering of urban public works that unequally distributed new sewage and drainage systems.<sup>70</sup>

##### 1. New Orleans' History of Environmental Injustice

New Orleans was built on land shaped by the sweeping meandering of the Mississippi River, where floods used to regularly deliver large amounts of

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65. *Id.*

66. Keith Schneider, *Chemical Plants Buy Up Neighbors for Safety Zone*, N.Y. TIMES (Nov. 28, 1990), <https://www.nytimes.com/1990/11/28/us/chemical-plants-buy-up-neighbors-for-safety-zone.html>.

67. *Id.*

68. *Id.*

69. Daphne Spain, *Race Relations and Residential Segregation in New Orleans: Two Centuries of Paradox*, 441 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 82, 86 (1979).

70. See generally Craig E. Colton, *Basin Street Blues: Drainage and Environmental Equity in New Orleans, 1890-1930*, 28 J. HIST. GEOGRAPHY 237 (2002) (describing how Progressive Era public works projects were intended to improve drainage conditions, but instead ended up contributing to segregation).

sediment on to the flood plain, creating well-drained ground.<sup>71</sup> Once the city was developed and levees constructed, sediment was no longer carried ashore to create higher ground, and the city had to construct drainage systems.<sup>72</sup> Largely below sea level, New Orleans created a racial geography brought by white folk building and buying on higher ground.<sup>73</sup> By 1850, European immigrants had displaced most of the black population towards the poorly drained sectors of the city, and once drainage and sewage improvements began, they served the business elite and placed emerging black neighborhoods last on the list of drainage projects.<sup>74</sup> While officials celebrated the dramatic decrease in malaria deaths attributed to the elimination of swamp conditions that bred mosquitos, the death rate among the black population remained much higher than for whites for both malaria and typhoid.<sup>75</sup>

After the Civil War, New Orleans' black population grew, and many were relegated to living in swamps where the river would periodically overflow and wash their homes away because that was the only available and affordable place to live.<sup>76</sup> The invention of the screw pump during the Progressive Era further contributed to the racial geography of New Orleans by making it possible to drain and eliminate flooding outside of Central City and into newly drained areas near the lake, where developers were building new white-only subdivisions.<sup>77</sup> This made it easier for whites to escape to areas farther from the central part of the city, thus creating more segregation.

During the Jim Crow era, newly drained territory in the northern part of New Orleans, near the lakeside, contained neighborhoods which were almost exclusively white.<sup>78</sup> This was due to an ordinance passed by the New Orleans City Council in 1924 which withheld building permits for black folk in white neighborhoods and prohibited black people from renting or buying a home in a white neighborhood.<sup>79</sup> Although the ordinance was overturned by the Supreme Court in 1927,<sup>80</sup> racially restrictive covenants and deeds drafted by private parties mimicked the original ordinance to impose segregation nonetheless.<sup>81</sup> Because these deeds and covenants were drafted by private parties, rather than the government,

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71. H.W. Gilmore, *The Old New Orleans and the New: A Case for Ecology*, 9 AM. SOC. REV. 385, 385 (1944).

72. *Id.* at 392.

73. See RACE, PLACE AND ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA, *supra* note 47, at 19–23 (describing the history and racial geography of New Orleans before Hurricane Katrina).

74. Colton, *supra* note 70, at 242, 244–45.

75. *Id.* at 245–46 (internal citation omitted).

76. *Cf. id.* at 246 (describing the expansion of the black population into low-lying wards).

77. *Id.* at 251 (stating that the pumps have been identified as agents of racism, although segregation was a product of the prejudicial real estate system that created white-only subdivisions) (internal citation omitted).

78. *Id.* at 251–52.

79. *Id.*

80. *Id.* at 251.

81. *Id.*



they were not prohibited by the Court's decision.<sup>82</sup> Developers stipulated that no houses valued at less than \$3,000 could go into the new neighborhoods, and specified that "no lots are to be sold to negroes or colored people."<sup>83</sup> The common narrative that plagued many of America's cities in the twentieth century, consisting of redlining and racially restrictive residential suburbs accompanied by white flight, affected New Orleans just as it did much of the country.<sup>84</sup>

The creation and maintenance of segregation in New Orleans later became the backdrop of the story of Hurricane Katrina's disproportionate harm on black communities in the city. Prior to Hurricane Katrina, patterns of racial segregation in New Orleans created a city that boasted the second-highest level of poverty concentration in the nation.<sup>85</sup> New Orleans was a city where low-income white residents had greater access to middle class neighborhoods, while low-income black residents were overwhelmingly concentrated in high poverty neighborhoods.<sup>86</sup> Post-Katrina New Orleans now exemplifies the exclusionary dynamic and fundamental failure of U.S. housing policy at the federal, state, and local levels to prevent racial segregation.<sup>87</sup>

## 2. Hurricane Katrina's Predictable Effects on Segregated Neighborhoods

In many ways, the disproportionate impact that Hurricane Katrina had on non-white neighborhoods was previewed by the flooding of the Ninth Ward during

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82. *Id.*

83. *Id.* (internal citation omitted).

84. See Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

From the 1930s through the 1960s, black people across the country were largely cut out of the legitimate home-mortgage market through means both legal and extralegal. Chicago whites employed every measure, from "restrictive covenants" to bombings, to keep their neighborhoods segregated. Their efforts were buttressed by the federal government. In 1934, Congress created the Federal Housing Administration . . . The FHA had adopted a system of maps that rated neighborhoods according to their perceived stability. On the maps, green areas, rated "A," indicated "in demand" neighborhoods that, as one appraiser put it, lacked "a single foreigner or Negro." These neighborhoods were considered excellent prospects for insurance. Neighborhoods where black people lived were rated "D" and were usually considered ineligible for FHA backing. They were colored in red. Neither the percentage of black people living there nor their social class mattered. Black people were viewed as a contagion. Redlining went beyond FHA-backed loans and spread to the entire mortgage industry, which was already rife with racism, excluding black people from most legitimate means of obtaining a mortgage . . . [When black people moved into white neighborhoods,] white homeowners simply fled the neighborhood. The traditional terminology, *white flight*, implies a kind of natural expression of preference. In fact, white flight was a triumph of social engineering, orchestrated by the shared racist presumptions of America's public and private sectors. For should any nonracist white families decide that integration might not be so bad as a matter of principle or practicality, they still had to contend with the hard facts of American housing policy. . . . Redlining destroyed the possibility of investment wherever black people lived.

*Id.*

85. Stacy E. Seicshnaydre, *Article: How Government Housing Perpetuates Racial Segregation: Lessons from Post-Katrina New Orleans*, 60 CATH. U.L. REV. 661, 662 (2011).

86. *Id.*

87. See *id.* at 663.

Hurricane Betsy decades earlier. The Ninth Ward in New Orleans began as a neighborhood of white-ethnic immigrants and working-class black families because of its cheap properties.<sup>88</sup> However, after schools in the Lower Ninth Ward were integrated, many of the remaining white residents fled the city into white neighborhoods on higher ground, turning the area into a segregated black and poor community.<sup>89</sup> By the time Hurricane Betsy flooded the city in several feet of water in 1965, the Ninth Ward was virtually all black except for the southern section near the edge of the French Quarter, which, not coincidentally, is on higher ground and separated from the rest of the ward.<sup>90</sup> Hurricane Betsy exposed the harm created by racial segregation as the differential impact that the storm had on New Orleans's black population made a lasting impression. However, Hurricane Betsy served as little incentive for future investments, making it a preview of what Hurricane Katrina was to bring.<sup>91</sup>

Forty years later, Hurricane Katrina became one of the worst environmental disasters in American history, not only for the devastation the hurricane brought, but also for the tons of lethal and toxic chemicals released into the water.<sup>92</sup> Which neighborhoods were cleaned up and which ones were left contaminated or targeted as new sites to dump storm debris and waste from flooded homes is telling of which communities America values. The Wall Street Journal reported U.S. Congressman Richard Baker from Baton Rouge telling lobbyists about the demise of public housing: “[W]e finally cleaned up public housing in New Orleans. We couldn't do it, but God did.”<sup>93</sup> Public housing options have been significantly reduced since Hurricane Katrina,<sup>94</sup> and the city has either ignored predominately black neighborhoods that were historically segregated or used them as dump sites.

East New Orleans is a majority black part of the city where black families could buy property during the Jim Crow era, making it a mostly black, middle-class neighborhood.<sup>95</sup> After Hurricane Katrina, the city opened up the Old Gentilly Landfill in East New Orleans to dump construction and demolition waste from the storm, and within four months it expanded to over 100 feet high.<sup>96</sup> Four

88. See Graham, *supra* note 51, at 6.

89. *Id.* at 19.

90. Darwin BondGraham, *The New Orleans that Race Built: Racism, Disaster, and Urban Spatial Relationships*, 9 SOULS 4, 7 (2007) (referencing CRAIG E. COLTEN, AN UNNATURAL METROPOLIS: WRESTING NEW ORLEANS FROM NATURE 24 (2005)).

91. See Graham, *supra* note 51, at 24.

92. See RACE, PLACE AND ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA, *supra* note 47, at 25.

93. Charles Babington, *Some GOP Legislators Hit Jarring Notes in Addressing Katrina*, WASH. POST (Sept. 10, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090901930.html?noredirect=on>.

94. See Della Hasselle, *In New Orleans, Public Housing Crunch Forces Thousands into Limbo*, AL JAZEERA (July 30, 2015, 5:30 AM), <http://america.aljazeera.com/articles/2015/7/30/new-orleans.html>.

95. RACE, PLACE AND ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA, *supra* note 47, at 26.

96. *Id.*

days after lawyers filed a lawsuit to block further dumping, the entire landfill caught fire.<sup>97</sup> In 2006, the Army Corps of Engineers and the Louisiana Department of Environmental Quality issued permits to allow another landfill to operate in East New Orleans.<sup>98</sup> Much of the waste after Hurricane Katrina was mixed with potential toxic contamination, and experts from the EPA said it would be fortunate if even 30% of the hazardous waste was removed from the waste stream before it was dumped into the landfills.<sup>99</sup> Yet, neither of these landfills have a liner to prevent contamination to soil or water.<sup>100</sup>

After eight years, in 2015, the city, the former operators of the landfill, and the individuals and businesses who owned land adjacent to the landfill settled for eight million dollars, and as part of the settlement, the city agreed to buy the properties of those who lived adjacent to the landfill for just one dollar per square foot.<sup>101</sup> This meant that for a one thousand square foot home, only one thousand dollars would be given to the owner, hardly a reasonable price for someone forced to give up his or her home after facing daily exposure to toxic substances for years. After exposing black neighborhoods to waste and potential toxicity for years, the city settled to displace the community.

Nearly 400,000 people were displaced from New Orleans after Hurricane Katrina, and a 2008 study found that only 53% of black households were able to stay or return to the city following the storm, while 81% of white households were able to.<sup>102</sup> The Lower Ninth Ward saw about 10% of its population return, and even middle class and upper class black communities in East New Orleans only had 60% of their residents return. Meanwhile, white neighborhoods in New Orleans have not only returned, but also have grown. The Garden District is 107% of its pre-Katrina population and the French Quarter is 103%.<sup>103</sup> The lower return rates for New Orleans's black population was likely caused by the racial disparity in rebuilding efforts in New Orleans, such as the lack of levee protection and pollution abatement in black neighborhoods, which are described in the following section.

### 3. Housing and Gentrification Post-Katrina

Recovery after Hurricane Katrina was largely focused on affluent white communities, while at the same time, black communities in New Orleans were

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97. *Id.*

98. *Id.*

99. *See id.* at 27.

100. *Id.*

101. Mark Schleifstein, *New Orleans, Old Gently Landfill Operators Agree to \$8 Million Settlement with Landfill Property Owners*, NOLA.COM (last updated Feb. 24, 2015), [https://www.nola.com/politics/index.ssf/2015/01/new\\_orleans\\_old\\_gently\\_landf.html](https://www.nola.com/politics/index.ssf/2015/01/new_orleans_old_gently_landf.html).

102. *See RACE, PLACE AND ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA*, *supra* note 47, at 30.

103. *Id.* at 31 (internal citation omitted).

neglected. Hurricane Katrina drove up housing prices because only a limited supply of housing survived the storm, while demand for both new and old units remained high.<sup>104</sup> Under federal programs, only 43% of affordable apartments will be rebuilt, even as rents increased 45% and housing discrimination became even more commonplace as scarcity increased.<sup>105</sup> The Greater New Orleans Fair Housing Action Center found discrimination in nearly six out of ten transactions.<sup>106</sup>

Reports of flood maps produced by the Army Corps of Engineers show that while 220 miles of levees and floodwalls need to be replaced or strengthened, no increase in levee protection is shown in East New Orleans or the Ninth Ward, and mostly black parts of New Orleans are still left vulnerable to future flooding.<sup>107</sup> These disparities in flood safety could lead insurers and investors to “redline” once again and lean towards not supporting the rebuilding efforts in vulnerable black areas. Unless intentional efforts are made to integrate and protect minority communities from environmental destruction, history will repeat itself when the next hurricane lands.

### III. THE WEAKNESSES OF EXISTING ENVIRONMENTAL JUSTICE POLICIES AND LAWS

Although some advocates for fair housing and environmental justice remain optimistic that successful disparate impact claims may be made under existing legal frameworks, most acknowledge the immense roadblocks litigants face, and a number also acknowledge the weaknesses in case law, legislative history, and the scope of the statutes and orders. Executive Order 12898, Title VI of the Civil Rights Act, and the Fair Housing Act are all legal tools that have the potential to remedy environmental injustices. However, all have flaws which render them too weak to repair the damage already done or prevent injustice from continuing.

#### A. ENVIRONMENTAL JUSTICE EXECUTIVE ORDER

Federal legal requirements relating to environmental justice (“EJ”) in regional planning and transportation and agency action derive from Executive Order 12898 (the “EJ Executive Order” or “EO 12898”), issued by President Bill Clinton in 1994.<sup>108</sup> The EJ Executive Order requires federal executive agencies and the entities to which they extend financial support or project approval to

104. *Id.*

105. *Id.* at 30–31.

106. GREATER NEW ORLEANS FAIR HOUSING ACTION CTR., STRATEGIES TO AFFIRMATIVELY FURTHER FAIR HOUSING: PROPOSALS FOR THE CITY OF NEW ORLEANS COMPREHENSIVE ZONING ORDINANCE (CZO) AND BEYOND 19 (2011), available from <http://www.gnofairhousing.org/2011/04/27/gnofhac-and-lawyers-committee-for-civil-rights-releases-handbook-on-zoning-and-fair-housing-to-assist-in-development-of-comprehensive-zoning-ordinance/>.

107. See RACE, PLACE AND ENVIRONMENTAL JUSTICE AFTER HURRICANE KATRINA, *supra* note 47 at 38; REILLY MORSE, ENVIRONMENTAL JUSTICE THROUGH THE EYE OF HURRICANE KATRINA 23 (2008), available from [https://inequality.stanford.edu/sites/default/files/media/\\_media/pdf/key\\_issues/Environment\\_policy.pdf](https://inequality.stanford.edu/sites/default/files/media/_media/pdf/key_issues/Environment_policy.pdf) (stating that post-Katrina flood control efforts left out many black communities).

108. Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

“identif[y] and address[] disproportionately high and adverse human health or environmental effects of [their] programs, policies, and activities on minority populations.”<sup>109</sup> It also mandates that federally-funded “programs, policies, and activities” must “not have the effect of excluding persons . . . from participation in, denying persons . . . the benefits of, or subjecting persons . . . to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.”<sup>110</sup> Not to be confused with Title VI of the Civil Rights Act, the EJ Executive Order is a directive from the President which federal departments have implemented through their own orders, and Title VI is one of the tools used by agencies to implement the directive.

While, at first, civil rights and environmental activists were excited about the executive order, “[a]fter the initial flurry of activity subsequent to EO 12898, environmental justice issues largely lost their place on the federal government’s policy agenda.”<sup>111</sup> Because the EJ Executive Order calls upon federal agencies, most notably the EPA and their subsequent programs, to analyze and enforce their own environmental justice mandates, implementation has varied across presidential administrations. Within a couple of years after EO 12898 was issued, environmental justice waned in importance in the second half of the Clinton Administration, and waned further during the Bush Administration. Although the Bush EPA did not rescind Clinton’s executive order outright, as was feared, it did retreat from its principles and enforcement.<sup>112</sup> Bush’s EPA Administrator issued a memorandum in 2001 to agency leadership that emphasized that environmental justice was not about addressing disproportionate risks for poor and minority groups. Subsequently, the Office of Environmental Justice at the EPA directed agency management to recognize that “the environmental justice program is not an affirmative action program or a set-aside program designed specifically to address the concerns of minority communities and/or low-income communities. To the contrary, environmental justice belongs to all Americans.”<sup>113</sup> The meaning of environmental justice was challenged and changed so much by the Bush EPA that “the EPA’s own Inspector General accused the agency of undermining the spirit and purpose of EO 12898.”<sup>114</sup>

Further, the EPA’s own enforcement of EO 12898 has often been lacking. An analysis that examined EPA programs, policies, and procedures over the past two decades found that the EPA has regularly failed to aid black and poor

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109. *Id.* at 7630.

110. *Id.* at 7630–31.

111. David M. Konisky, *Environmental Justice Delayed: Failed Promises, Hope for the Future*, 58 ENV’T MAG. 4, 12 (2016).

112. *Id.*

113. OFFICE OF THE INSPECTOR GEN., U.S. ENVTL. PROT. AGENCY, REPORT NO. 2004-P-00007, EPA NEEDS TO CONSISTENTLY IMPLEMENT THE INTENT OF THE EXECUTIVE ORDER ON ENVIRONMENTAL JUSTICE 10 (2004).

114. Konisky, *supra* note 111, at 12.

communities with the same commitment as white communities.<sup>115</sup> The EPA has not written pollution control permits in a way that considered impacts on minority communities, has rarely considered the unequal impacts of pollution on different communities when it sets pollution standards, has only recently incorporated environmental justice concerns into its economic analysis of proposed rules, and has been ineffective in broadening public participation in the permitting process in low-income and communities of color.<sup>116</sup> The EPA has also failed to target any regulatory enforcement to pollution sources specifically located in communities of color and has not required that states implement federal laws that do so.<sup>117</sup>

The prioritization of environmental justice policies wax and wane within and across administrations, making it a particularly challenging policy effort with no legislative basis.<sup>118</sup> Without a legislative basis, there are also no citizen suit provisions as there are for other EPA regulations of air and water, making it especially difficult for communities of color to hold the EPA and other agencies accountable.<sup>119</sup>

#### B. TITLE VI ENFORCEMENT

Title VI of the Civil Rights Act of 1964 (“Title VI”) prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funds or other federal financial assistance.<sup>120</sup> This prohibition applies to intentional discrimination as well as to procedures, criteria, or methods of administration that appear neutral but have a discriminatory effect on individuals.<sup>121</sup>

EJ communities turn to Title VI as a means to address racial discrimination in the permitting and siting of facilities that release hazardous pollutants and cause environmental health risks.<sup>122</sup> EJ communities have utilized Title VI in two major ways: by directly suing recipients of federal funds in federal and state courts under Title VI, and by filing Title VI administrative complaints with the EPA and other agencies.<sup>123</sup> Unfortunately, thus far, both avenues have yielded limited success in the courts and at the agency level.

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115. *Id.* at 10.

116. *Id.*

117. See David M. Konisky & Christopher Reenock, *Evaluating Fairness in Environmental Regulatory Enforcement*, in *FAILED PROMISES: EVALUATING THE FEDERAL GOVERNMENT’S RESPONSE TO ENVIRONMENTAL JUSTICE* 173–203 (David M. Konisky ed., 2015).

118. Konisky, *supra* note 111, at 12.

119. *Id.*

120. Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000d (2018).

121. U.S. COMM’N ON CIV. RIGHTS, ENVIRONMENTAL JUSTICE: EXAMINING THE ENVIRONMENTAL PROTECTION AGENCY’S COMPLIANCE AND ENFORCEMENT OF TITLE VI AND EXECUTIVE ORDER 12898 10 (2016), available at [https://www.usccr.gov/pubs/2016/Statutory\\_Enforcement\\_Report2016.pdf](https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf).

122. *Id.* at 1.

123. *Id.* at 10.



## 1. The Need to Prove Discriminatory Intent Prevents Plaintiffs from Bringing Title VI Complaints in Court

To bring a Title VI complaint to court rather than through an administrative complaint process, communities must allege that the operators of the program receiving federal funds had discriminatory intent, a high evidentiary bar. In *Guardians Association v. Civil Service Commission*,<sup>124</sup> the Supreme Court found that Section 601 of Title VI requires proof of intentional discrimination, and in *Alexander v. Sandoval*,<sup>125</sup> the Court held that Section 602 regulations prohibiting disparate impact do not create a private right of action. As a result of *Guardians* and *Sandoval*, EJ communities have moved away from bringing Title VI claims in courts because proving intentional discrimination is rarely possible and have focused instead on filing administrative complaints with federal agencies where the evidentiary bar is “disparate impact.”<sup>126</sup>

## 2. The “Effects Test” Used in Administrative Complaints Places a High Burden on Plaintiffs

Administrative complaints also bring their own challenges, however. Title VI administrative complaints are only available as a legal avenue for disparate impact complaints against federal fund recipients.<sup>127</sup> The two elements necessary to include in a complaint are a description of the discriminatory acts alleged, and evidence that the discriminator receives federal funds, such as a government program under the Department of Housing and Urban Development (“HUD”).<sup>128</sup>

The EPA Office of Civil Rights is charged with processing Title VI complaints and has a 20-day deadline to accept or dismiss a complaint, and a 180-day regulatory deadline for completing investigations of complaints accepted.<sup>129</sup> Yet, out of 247 complaints received by 2011, only 6% of requests were accepted or denied within the deadline.<sup>130</sup> Additionally, the EPA’s backlog of Title VI complaints that remained unanswered in 2011 stretched back to 2001, despite the EPA’s 180-day regulatory deadline.<sup>131</sup>

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124. 463 U.S. 582 (1983).

125. 532 U.S. 275, 293 (2001).

126. U.S. COMM’N ON CIV. RIGHTS, *supra* note 121, at 10.

127. *Id.*

128. Luke W. Cole, *Civil Rights, Environmental Justice and the EPA: The Brief History of Administrative Complaints Under Title VI of the Civil Rights Act of 1964*, 9 J. ENVTL. L. & LITIG. 309, 315–16 (1994).

129. *Environmental Justice and Title VI of the Civil Rights Act: A Critical Crossroads*, AM. BAR ASS’N (Oct. 23, 2012), [https://www.americanbar.org/publications/trends/2011\\_12/march\\_april/environmental\\_justice\\_title\\_vi\\_civil\\_rights\\_act/](https://www.americanbar.org/publications/trends/2011_12/march_april/environmental_justice_title_vi_civil_rights_act/).

130. DELOITTE CONSULTING LLP, EVALUATION OF THE EPA OFFICE OF CIVIL RIGHTS, ENVIRONMENTAL PROTECTION AGENCY, ORDER No. EP10H002058 (Mar. 21, 2011); *see id.*

131. DELOITTE, *supra* note 130; *see* AM. BAR ASS’N, *supra* note 129.



In addition, getting the EPA to accept and investigate Title VI complaints is merely the first step. Although EJ groups began to pressure the EPA to make more effective use of its Title VI regulations in the 1990s, the EPA only decided one administrative Title VI complaint on the merits before the year 2000—with an outcome adverse to the complainants.<sup>132</sup>

The EPA's investigative process when pursuing complaints alleging disparate impacts from the issuance of a permit by a federal fund recipient includes six steps:<sup>133</sup> 1) assessing the applicability of Title VI regulations; 2) determining the appropriate scope of the investigation; 3) evaluating the actual impacts; 4) determining whether the impact was adverse; 5) characterizing the demographic of the affected population; and 6) deciding whether the adverse disparate impact is sufficiently significant.<sup>134</sup> Each of these six steps requires data showing causality, the severity of the impact, and demographic information which may not be significant enough for the EPA to believe there is an adverse disparate impact.<sup>135</sup>

The EPA uses the “effects test” to determine disparate impact.<sup>136</sup> The “effects test” used in Title VI cases is the same as the disparate impact test used in Title VII cases, and thus, an analysis of the pitfalls of Title VI cases regarding environmental justice is instructive for plaintiffs litigating under both statutes.<sup>137</sup> Charles Abernathy analyzed the failure of the effects test for discrimination under Title VI and found that

during the twenty-seven years of the study period, only twelve cases reached the federal appellate courts and were decided, even arguably, by applying the effects test. Of those twelve, only two involved plaintiffs' claims in a context where specific federal regulations predetermined certain discriminatory effects to be per se illegal. Plaintiffs won both cases. Of the remaining ten cases, none of which involved particularized regulations, and all therefore required pure judicial application of an effects test—and plaintiffs lost every case. . . . Only two judges in the entire twenty-seven-year life of the effects test ever voted to

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132. Tseming Yang, *The Form and Substance of Environmental Justice: The Challenge of Title VI of the Civil Rights Act of 1964 for Environmental Regulation*, 29 B.C. ENVTL. AFF. L. REV. 143, 164 (2002); see also Letter from Ann E. Goode, Dir., U.S. E.P.A., Office of Civil Rights, to Father Phil Schmitter, Co-Dir., Sister Joanne Chiaverini, Co-Dir., St. Francis Prayer Ctr., and Russell J. Harding, Dir., Michigan Dep't of Env'tl. Quality, re: E.P.A. File No. 5R-98-R5 (Select Steel Complaint) (Oct. 30, 1998), available at [https://www.eenews.net/assets/2017/05/09/document\\_gw\\_03.pdf](https://www.eenews.net/assets/2017/05/09/document_gw_03.pdf).

133. See Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650, 39,66770 (June 27, 2000).

134. *Id.*

135. *Id.*

136. Michael Mattheisen, *Applying the Disparate Impact Rule of Law to Environmental Permitting Under Title VI of the Civil Rights Act of 1964*, 24 WM. & MARY ENVTL. L. & POL'Y REV. 1, 9–11 (2000).

137. *Id.*

enforce it based on their own normative judgment, unassisted by explicit administrative guidelines.<sup>138</sup>

Lower appellate courts developed Title VI's effects test by echoing the Supreme Court's three-step formulation for Title VII disparate impact cases, which uses a balancing approach that considers the countervailing interest of the defendant's "substantial legitimate justification" and alternative practices that might have a less disparate effect.<sup>139</sup> The development of a balancing approach to the effects test eventually undermined Title VI because appellate courts were reluctant to decide for plaintiffs after balancing a neutral policy's impact on minorities against the importance of the policy.<sup>140</sup> Similarly, although the EPA might find an adverse disparate impact in a case, the discriminatory action may be permissible if it is reasonably necessary to meet a goal that is legitimate and important to the institutional mission of the federally funded program.<sup>141</sup> A legitimate goal can include economic interests, such as a new power plant, that admittedly harms segregated communities, but may have direct economic benefits.

For example, in *New York City Environmental Justice Alliance v. Giuliani*, the plaintiffs sought to restrain the city from selling or bulldozing any of 1,100 city-owned parcels, comprising approximately 600 community gardens, on the grounds that any such sale or changed use of the city-owned parcels would have a disproportionately adverse impact on the city's black, Asian American, and Hispanic residents, in violation of regulations promulgated by the EPA to implement Title VI of the Civil Rights Act.<sup>142</sup> The court held that, while it was not disputed that plaintiffs would suffer irreparable harm from the loss of the lots, plaintiffs failed to show a likelihood of prevailing on their claim of disparate impact because plaintiffs' use of open space as the criteria for determining disparate impact did not meaningfully measure the impact of defendants' actions on minority communities compared with the impact of those actions on non-minority communities.<sup>143</sup> Additionally, the court held that the plaintiffs did not dispute the city's "substantial legitimate justification" that the plots would be used for urban renewal.<sup>144</sup> Plaintiffs also failed to demonstrate a less discriminatory option.<sup>145</sup> The case thus provides a great illustration of how difficult it is for plaintiffs to overcome the balancing test at the core of the effects test used in Title VI litigation.

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138. Charles F. Abernathy, *Legal Realism and the Failure of the "Effects" Test for Discrimination*, 94 GEO. L.J. 267, 274 (2006).

139. *Id.* at 286.

140. *Id.*

141. Yang, *supra* note 132, at 168.

142. 214 F.3d 65, 67 (2d Cir. 2000).

143. *Id.* at 72.

144. *Id.*

145. *Id.*

### 3. Even When Disparate Impact Is Shown, the EPA Often Settles Unilaterally and Before Favorable Decisions Are Published

Even when the EPA conducts a timely and successful investigation and actually finds disparate impact, oftentimes, the EPA will announce a settlement agreement that was reached without attorney or community engagement.<sup>146</sup> For example, in *Angelita C. v. California Department of Pesticide Regulation*, the EPA completed its investigation in 2011 of a Title VI complaint filed in 1994.<sup>147</sup> For the first time in history, the EPA found that the evidence demonstrated a prima facie violation of Title VI, not just disparate impact.<sup>148</sup> Although the evidence proved that California's implementation of pesticide registrations discriminated against Latinx children because it failed to take into consideration health impacts on children attending schools close by, the settlement was reached without consulting the complainants or community.<sup>149</sup> Although the settlement agreement stated that air monitors would be installed, because the community affected was left out of the conversation, the EPA did not include a substantive remedy for the decade long discrimination in the agreement.<sup>150</sup>

#### C. FAIR HOUSING ACT

Another possible piece of legislation that EJ communities can use to combat the disproportionate siting of hazardous and environmental disasters in their backyard is the Fair Housing Act. Title VIII of the Civil Rights Act of 1968—popularly known as the Fair Housing Act (“FHA”)—prohibits discrimination concerning the sale, rental, advertising and financing of housing based on race, religion, national origin, and sex.<sup>151</sup> The FHA is enforced by the Department of Justice (“DOJ”), the states, local fair housing agencies, and private lawsuits in courts.<sup>152</sup>

For much of the beginning of its fifty-year history, the FHA was generously construed by the courts.<sup>153</sup> Over time, however, the modern federal judiciary has limited the power of this anti-discrimination law through holdings that narrow its scope.<sup>154</sup> Although discriminatory intent is not a technical requirement for a successful FHA claim, in practice, few plaintiffs are successful without a showing of

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146. *See id.*

147. AM. BAR ASS'N, *supra* note 129 (internal citation omitted).

148. *Id.*

149. *Id.*

150. *Id.*

151. Fair Housing Act, 42 U.S.C. § 3604 (2015).

152. *The Fair Housing Act*, U.S. DEP'T OF JUSTICE (last updated Dec. 21, 2017), <https://www.justice.gov/crt/fair-housing-act-1>.

153. Benjamin Schepis, *Making the Fair Housing Act More Fair: Permitting Section 3604(B) to Provide Relief for Post-Occupancy Discrimination in the Provision of Municipal Services—A Historical View*, 41 U. TOL. L. REV. 411 (2010).

154. *Id.*

both disparate impact and discriminatory intent.<sup>155</sup> In 2015, the Supreme Court's adoption of a "disparate impact" test for FHA cases led to some optimism in the environmental justice community because discriminatory intent is extremely difficult to prove; yet a brief analysis of past cases, legislative history, and a comparison of the failure of the effects test used in Title VI cases, show that lower federal courts have largely not chosen to proceed toward the goal of eradicating America's racially segregated society, and have not chosen to eliminate environmental injustice through the FHA.<sup>156</sup>

### 1. Discriminatory Intent as a De Facto Requirement for Successful FHA Claims

Under the FHA, discrimination does not have to be intentional, but must have a "disparate impact," similar to Title VI, meaning that a neutral policy that has unjustified disproportionate impacts on one of the protected groups can violate the law.<sup>157</sup> The first successful model for proving discrimination regarding municipal services was the 1971 case, *Hawkins v. Town of Shaw*, where black citizens in Mississippi successfully established a prima facie case of discrimination by presenting statistical differences in street paving, lighting, sewage, water, and fire hydrants because of geographic segregation, leading to a pattern of discrimination.<sup>158</sup>

This statistical approach became a model for plaintiffs in subsequent municipal-service equalization cases, such as the more recent case of *Kennedy v. City of Zanesville* in 2008.<sup>159</sup> In *City of Zanesville*, residents of Coal Run, Ohio showed statistical discrepancies in access to the municipal water supply, with reports that noted that black or mixed-race homes had no service while white homes in the same geographic vicinity did.<sup>160</sup> Coal Run residents thus fulfilled the same factors required for a finding of discriminatory intent, in addition to disparate impact.<sup>161</sup> Similarly, in 2009, EJ advocates successfully brought a claim in New Orleans post-Katrina under the Fair Housing Act. In *Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*,<sup>162</sup> St. Bernard Parish was found to have violated the Fair Housing Act by enacting an ordinance that placed a moratorium on the construction of all multi-family housing. The ordinance had a disparate racial

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155. Kerri Thompson, *Fair Housing's Trap Door: Fixing the Broken Disparate Impact Doctrine under the Fair Housing Act*, 25 J. AFFORDABLE HOUSING 435, 440–42 (2017).

156. See Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 135 S. Ct. 2507 (2015).

157. See Thompson, *supra* note 155, at 437.

158. 437 F.2d 1286 (5th Cir. 1971).

159. 505 F. Supp. 2d 456 (S.D. Ohio 2007).

160. John Izak Monger, *Thirsting for Equal Protection: The Legal Implications of Municipal Water Access in Kennedy v. City of Zanesville and the Need for Federal Oversight of Governments Practicing Unlawful Race Discrimination*, 59 CATH. U.L. REV. 587, 609 (2010).

161. *Id.* at 591–93.

162. 641 F. Supp. 2d 563, 577 (E.D. La. 2009).

impact on black residents, but evidence indicated that the parish had also acted with discriminatory intent.<sup>163</sup>

These cases illustrate that although a showing of discriminatory intent is not technically necessary for plaintiffs to succeed in an FHA claim, in practice, claims are rarely successful without a showing of discriminatory intent. Where discriminatory intent cannot be shown, succeeding solely on a disparate impact theory poses significant challenges.

## 2. The FHA Has Proven Disappointing to EJ Advocates in Post-Katrina New Orleans

In places such as New Orleans, advocates hoped to use Title VIII in post-Katrina reconstruction, in the hopes of marrying the resale and re-letting of housing opportunities with an environmentally just cleanup.<sup>164</sup> Although courts had already interpreted Title VIII and Section 3604(b) in a way that suggested a limited environmental justice regime, Louisiana believed that the facts in post-Katrina New Orleans were distinct in very material ways from the more traditional nuisance cases in which the statute had often arisen before, and hoped to advance the doctrine in a positive direction.<sup>165</sup> However, many cases brought forth under the FHA in New Orleans were settled between the city, HUD, and the DOJ, and thus, did not lay down precedent that can be emulated. For example, the Old Gentilly Landfill located in East New Orleans, mentioned earlier, was one of the cases settled by the EPA. In addition to a very small monetary amount settled later on for the residents adjacent to the landfill, the first lawsuit related to Gentilly resulted in a settlement agreement between the plaintiff (the Louisiana Environmental Action Network, "LEAN") and the EPA that limited waste intake to 19,000 cubic yards per day at the site.<sup>166</sup> While this settlement successfully limited potentially toxic waste from entering a historically segregated neighborhood, it cannot be used as precedent for future environmental justice cases.

The Fair Housing Act, like the other environmental justice policies previously mentioned, is insufficient for communities who need recompense for discriminatory siting decisions. New policies or changes to existing laws need to be made if environmental hazards are to be distributed in a way which does not disproportionately burden black communities.

## IV. RECOMMENDATIONS

In many areas of the country, the history of segregation has facilitated environmental racism, both directly and indirectly. In light of the correlation between

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163. *See id.*

164. Benjamin Rajotte, *Environmental Justice in New Orleans: A New Lease on Life for Title VIII?*, 21 TUL. ENVTL. L.J. 51, 81 (2007).

165. *Id.*

166. *Sierra Club v. EPA*, No. 96-0527 (E.D. La. Apr. 1, 2002) (order granting consent decree).

historic segregation and environmental injustice, harms caused by the mechanisms of segregation, such as zoning and planning, should be reformed. Further, when environmental injustices do occur, affected communities should not be required to prove discriminatory intent by the wrongdoer, whether an action is challenged in a judicial or administrative setting. The legacy of segregation on environmental injustice is so long and powerful that it is almost impossible for affected communities to prove intentional discrimination today, thus causing many environmental injustices to go unpunished under current standards of review. Advocates must recognize the role that segregation has played in environmental injustice and must create tools that do not require proof of discriminatory intent.

Based on the weaknesses found in current laws, this Note makes a few recommendations to strengthen existing policies. To ensure that predominately black communities do not suffer disparate harms of repeated placement of toxic facilities nearby, (1) land use power that is held mostly by local officials should be handed directly to the impacted communities, even down to the neighborhood level if necessary; (2) local planning statutes should be updated to reflect environmental justice goals; (3) in cases using Title VI and the FHA, the burden of proof should be shifted to the agencies and development companies to prove that their programs are not disproportionately harming minorities; and (4) there should be a private right of action for communities with disparate impact cases under Title VI.

The environmental justice problems associated with local officials holding land use power to the detriment of black residents was highlighted in a 2003 panel report by the National Academy of Public Administrators (“NAPA”).<sup>167</sup> NAPA recommended that immediate steps be taken by mayors, county executives, and governors, as well as local and state legislative bodies, to mobilize land use planning and zoning power to improve citizen participation in decisions with environmental and health impacts.<sup>168</sup> Citizen participation by those most affected by siting decisions must not only be improved, but also should be mandated. Land use and zoning power should be equitable, and the process must be one that includes an analysis of the disparate impacts a siting decision might have on a minority or poor community.

Additionally, the American Planning Association surveyed state and local laws on land use and planning in 1999 and determined that twenty-four states still used the Standard State Zoning Enabling Act of 1922, which, as previously mentioned, often leads to segregated outcomes. The Association suggested that state planning statutes should be reformed to include ongoing problems of housing affordability, lack of housing diversity, exposure to natural hazards, and an obligation to promote social equity in “the expansion of opportunities for betterment, creating

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167. NAT'L ACAD. OF PUB. ADMIN., *supra* note 11.

168. *Id.* at 22.

more choices for those who have few . . . in the face of economic and spatial separation.”<sup>169</sup> States and local governments must update planning statutes to ensure equity in toxic waste and hazardous siting decisions, as well as to combat the segregation that allows such outcomes to occur. Locally, officials should be forced to use their land use planning and zoning authority to address environmental justice concerns in the community and do so by having to provide underrepresented communities with a large role in creating comprehensive land use plans.<sup>170</sup>

For cases involving Title VI and the FHA, Robert Bullard suggests that the burden of proof be shifted to polluters and developers who harm communities of color disproportionately or do not give equal protection to overburdened classes because, as it stands, redress often occurs only after minority communities prove that permitting or zoning decisions were discriminatory or have disparately impacted them.<sup>171</sup> Instead, the burden of proof should be shifted first to the entities applying for permits for landfills, incinerators, chemical plants, and refineries to prove that their operations will not disproportionately affect low-income and communities of color.<sup>172</sup>

In addition, there is currently no private right of action for Title VI disparate impact cases, and thus, there is only a private right of action for discriminatory intent cases, which are much more difficult to prove in court.<sup>173</sup> Title VI cases that show disparate impact can only be brought administratively through the EPA or other agencies, which have stringent regulatory deadlines for completing investigations, and where the great majority of requests to investigate are not accepted within the deadline. When disparate impact complaints are accepted, settlements with the EPA are often reached without community engagement as well. Instead, new legislation should create a citizen suit provision and private right of action in disparate impact cases, regulatory deadlines for investigation should be lengthened to longer than 180 days, the EPA or the DOJ should be given the strength and resources necessary to investigate, and settlements reached by federal agencies should be required to include input from the communities involved in the case.

Unless there are mandatory procedures to ensure that communities disproportionately harmed by hazardous facilities have a mode of redress, segregated black neighborhoods will continue to be environmentally toxic communities. At all steps of the permitting process and in all aspects of their operations, from siting to polluting to dumping waste, hazardous industries must be forced to consider and rectify their contribution to environmental injustices.

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169. *Id.* at 39.

170. *Id.* at 42–44.

171. Bullard, *supra* note 1, at 39.

172. *Id.*

173. *See Alexander v. Sandoval*, 532 U.S. 275 (2001).



## CONCLUSION

Jim Crow segregation, as well as present-day zoning laws and siting processes, have created toxic communities in predominately black and poor neighborhoods. The disproportionate effects of environmental hazards and natural disasters on segregated communities are not only seen in Louisiana but around the country, as seen more recently in Houston after Hurricane Harvey landed in August 2017. In a city where Jim Crow once reigned, whiter and wealthier neighborhoods in Houston had flood safeguards, such as dikes and berms, and lacked hazards, such as chemical plants and oil refineries.<sup>174</sup> In contrast, in neighborhoods on the east side, where nearly 90% of the population is Hispanic and less flood protection exists, the water rose over nine feet high and industrial facilities and toxic waste sites were damaged, raising fears of contamination.<sup>175</sup>

Given that climate change likely will harm poor communities of color disproportionately as natural disasters increase in frequency and intensity, it is crucial for environmental justice laws to be created, changed, and strengthened.<sup>176</sup> The connection between historical segregation and present-day zoning and siting processes that harm communities of color should be used to inform advocates and lawmakers of the need to make the environmental justice landscape more equitable. Although the scope of this Note does not cover the potential use of environmental justice work to create community-based reparations, further research should be done to understand how reparations should be allocated in communities where segregation has led to unequal, toxic outcomes.<sup>177</sup>

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174. Alexander C. Kaufman, *Houston Flooding Always Hits Poor, Non-White Neighborhoods Hardest*, HUFFINGTON POST (Aug. 29, 2017, 3:17 PM), [https://www.huffingtonpost.com/entry/houston-harvey-environmental-justice\\_us\\_59a41c90e4b06d67e3390993](https://www.huffingtonpost.com/entry/houston-harvey-environmental-justice_us_59a41c90e4b06d67e3390993).

175. See Troy Griggs et al., *More Than 40 Sites Released Hazardous Pollutants Because of Hurricane Harvey*, N.Y. TIMES (Sept. 8, 2017), <https://www.nytimes.com/interactive/2017/09/08/us/houston-hurricane-harvey-hazardous-chemicals.html>.

176. See generally Maria Eugenia Ibarran et al., *Climate Change and Natural Disasters: Macroeconomic Performance and Distributional Impacts*, 11 ENV'T, DEV. & SUSTAINABILITY 3 (2007).

177. See Catherine Millas Kaiman, *Environmental Justice and Community-Based Reparations*, 39 SEATTLE U. L. REV. 1327, 1358–72 (2016).



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September 7, 2023

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Via email: [ecd@cossart-dalylaw.com](mailto:ecd@cossart-dalylaw.com)

Subject: Daly City Serramonte Del Rey Campus Redevelopment DEIR  
Biological Resource Issues

Dear Ms. Cossart-Daly, Esq.;

Per your request the Biological Resources section of the Draft Environmental Impact Report (DEIR) was reviewed by Althouse and Meade, Inc. (A&M) Principal Biologist David Magney and Senior Biologist Darcee Guttilla.

David Magney is a California Certified Consulting Botanist (#0001), ISA Certified Arborist (#WE-4746), approved biological consultant for Santa Barbara, Ventura, Los Angeles, and San Luis Obispo Counties, and has served as an Expert Witness for the U.S. Department of Justice on an EPA wetlands violation case in Santa Barbara County. He has extensive knowledge and experience with the biological resources of California and the Bay Area. Mr. Magney also serves as the Rare Plant Program Manager for the California Native Plant Society (CNPS). He is also researching the flora of Ventura County and has authored several publications on biological resources. Mr. Magney is the chair of the California Board of Certification<sup>1</sup>, serving in that capacity since its inception in 2015. His resume is attached to establish his expertise and experience in biological resource issues.

Darcee Guttilla is a Certified Wildlife Biologist® with 28 years of experience as a field biologist in California. Ms. Guttilla possesses the expertise and qualifications to expertly evaluate the quality and completeness of biological resource assessment reports. She holds a M.S. in Biology from California State University, Fullerton and a B.S. in Zoology from the University of California, Santa Barbara, demonstrating her strong educational foundation in the biological sciences. Ms. Guttilla's experience includes obtaining recovery permits from USFWS to conduct activities with federally threatened and endangered species such as the California tiger salamander and California red-legged frog. She has worked as an authorized biologist on multiple projects involving these protected species across several California counties. Ms. Guttilla has demonstrated

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<sup>1</sup> California Board of Certification for botanists: <https://www.cnps.org/education/botanist-certification/board>

application of ecological principles for the sound management of rare and sensitive species and habitats. With her extensive experience conducting field surveys of various taxa, managing habitats, and implementing protocols to avoid and minimize impacts to sensitive species, Ms. Guttilla has the expertise to evaluate the thoroughness and scientific rigor of biological assessments to ensure complete disclosure of potential project impacts and effectiveness of proposed mitigation measures. Ms. Guttilla's combination of educational background, regulatory experience, and applied skills make her exceptionally qualified to review and critique biological resource reports.

A&M generally finds the assessment of biological resources inadequate in fully characterizing the conditions of the biological resources of the project site and failing to properly identify sensitive resources that should either be avoided or mitigated to a less-than-significant level. Details of our review are provided below.

Policy LU-18 Development activities shall not be allowed to significantly disrupt the natural or urban environment and all reasonable measures shall be taken to identify and prevent or mitigate potentially significant effects.

**DEIR Page 59, Sensitive Natural Communities**, states that there are “No riparian, native grassland, valley oak woodland, or other sensitive natural communities are present within the project site” but claims that the “Demonstration Garden” is of planted species therefore does not qualify as a sensitive natural community. However, it is stated that there are “two separate stands of native arroyo willow” onsite. The DEIR claims that the site has been significantly disturbed in the past and that the biologists did not find a natural stream that these Arroyo Willow thickets do not meet the definition of a sensitive natural community.



Photo 1. Blue Butterfly from the community garden site.

This conclusion as at least two flaws in logic. First, because the project biologists did not find a natural water source does not mean that one is not present. If fact, natural seepage is documented by the Daly City Community Garden Alliance as present, with standing and flowing water from the adjacent slopes to the west that ponds onsite as a result of a clogged drainage system.

The fact that Arroyo Willow thickets have become established onsite clearly indicates that surface and shallow groundwater is present in sufficient quantities to support hydrophytic plants. Furthermore, the presence of an unmaintained drainage system is also evidence of a need to convey surface water, presumably at least in part from the seeps found onsite.

Second, all wetland habitats, including willow wetlands, in California are considered sensitive habitats because they have been reduced in area by over 90% and because they provide habitat for a wide variety of native species of wildlife.

### Special Status Plants

Seasonally timed botanical surveys are found to be insufficient with site visitations occurring only in January, April, and June 2021. The bloom period for perennial herb, Water Star Grass (*Heteranthera dubia*) is July-August. This species is found in wetland and riparian communities, which are known to occur onsite.

There is also no mention of visitation to botanical reference sites for sensitive plant species listed in CNDDDB and CNPS rare plant inventory to determine if they would be in bloom during January, April, and June site visits to proposed project site. These are important resources that the project biologist needs to examine to determine which special-status species have potential to occur on the project site.

**TABLE 1. VASCULAR PLANTS IDENTIFIED FROM COMMUNITY GARDEN PHOTOGRAPHS (1/9/23)**

Scientific Name	Common Name
<i>Aesculus californica</i> – 2	California Buckeye
<i>Arbutus menziesii</i> – 3	Pacific Madrone
<i>Carex</i> sp.	a Sedge
<i>Ceanothus griseous</i>	Carmel Ceanothus
<i>Cyperus eragrostis</i>	Tall Flatsedge
<i>Frangula californica</i> – 4	Coffeeberry
<i>Hedera canariensis</i>	Canary Ivy
<i>Hesperocyparis macrocarpa</i> - 5	Monterey Cypress
<i>Heteromeles arbutifolia</i>	Toyon
<i>Juncus</i> sp.	a Rush species
<i>Malacothamnus</i> sp.	a Bushmallow sp.
<i>Oenothera elata</i>	Tall Evening Primrose
<i>Quercus agrifolia</i>	Coast Live Oak
<i>Pinus radiata</i> – 100+	Monterey Pine
<i>Pseudotsuga menziesii</i> – 2	Douglas-fir

Scientific Name	Common Name
<i>Ribes</i> sp.	a Currant
<i>Salix lasiolepis</i>	Arroyo Willow
<i>Salvia spathacea</i>	Hummingbird Sage
<i>Sequoia sempervirens</i> - 27	Coast Redwood
<i>Umbellularia californica</i> – 1	California Bay
<i>Verbena lasiostachys</i>	Western Vervain

A thorough floristic survey needs to be conducted of the project site, indicating which plants were planted versus naturally occurring, not just assuming all plants were planted.

### Wetland Habitats

Wetland habitats are documented as present onsite. While the recent Supreme Court decision about Clean Water Act jurisdiction may have eliminated U.S. Army Corps of Engineers (Corps) jurisdiction on the wetlands onsite, wetland habitat is still present and represents a sensitive habitat that provides numerous functions (Brinson 1993<sup>2</sup>, Brinson et al. 1995<sup>3</sup>) and would be considered significant. These functions can be measured by using a Hydrogeomorphic Assessment Methods (HGM) model that allows for an objective and holistic approach to measuring wetland functionality (Hruby 1999<sup>4</sup>). A regional HGM model for riverine wetlands was developed for the California central coast (Lee et al. 1996<sup>5</sup>) and could be applicable here.

Impacts to wetland habitats need to either be avoided or fully mitigated. A permit from the California Department of Fish and Wildlife (CDFW) pursuant to Section 1600 et seq. will be required for any alteration of the wetland habitats onsite.

### Special-status Wildlife

The DEIR on Page 62 states that no special-status wildlife species were observed onsite. It further states that the Western Bumble Bee (*Bombus occidentalis occidentalis*) has no protection status; however, the California Fish and Game Commission elevated its status, and the status of three other bumble bee species to be candidates as Endangered under the California Endangered Species Act since 2019. Suitable habitat for Western Bumble Bee does occur onsite (shrublands, chaparral, gardens, and urban parks) and is known from northern Mexico to central British Columbia. The

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<sup>2</sup> Brinson, M.M. 1993. A Hydrogeomorphic Classification for Wetlands. (Technical Report WRP-DE-4.) Engineer Waterways Experiment Station, U. S. Army Corps of Engineers, Vicksburg, Mississippi.

<sup>3</sup> Brinson, M.M., F.R. Hauer, L.C. Lee, W.L. Nutter, R.D. Rheinhardt, R.D. Smith, and D. Whigham. 1995. Guidebook for Application of Hydrogeomorphic Assessments to Riverine Wetlands. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, Mississippi.

<sup>4</sup> Hruby, Thomas. 1999. Assessments of Wetland Functions: What They Are and What They Are Not. *Environmental Management* 23:1(75-85).

<sup>5</sup> Lee, L.C., M.C. Rains, J.A. Mason, and W.J. Kleindl. 1996. Draft Guidebook to Functional Assessments in 3<sup>rd</sup> and 4<sup>th</sup> Order Riverine Waters/Wetlands of the Central California Coast. April. The National Wetland Science Training Cooperative, Seattle, Washington. Prepared for U.S. Environmental Protection Agency, Region IX, San Francisco, California.

DEIR’s statement that “range of the western bumble bee, which is not a protected species under federal or state law but is being closely monitored due to declines in numbers and distribution over the past two decades, does not encompass the project site” is inaccurate. Suitable habitat for the Western Bumble Bee is indeed present. For example, A&M biologists just found Crotch Bumble Bee (*Bombus crotchii*), a species also given candidate status under the California Endangered Species Act, on a site in the upper Salinas River Valley that no one considered suitable for it. Field surveys need to be conducted specifically for bumble bees to determine if they are present or not.

Mission Blue Butterfly is known from approximately 1 mile from the project site as reported in the CNDDDB. Daly City Community Garden Alliance members have reported seeing hundreds of Mission Blue Butterfly individuals onsite and its host plant, *Lupinus albifrons*, occurs onsite. Protocol level surveys for the Mission Blue Butterfly should be conducted before any conclusive statements can be made about its potential presence onsite and how impacts to it can be avoided.

California red-legged frog (*Rana draytonii*; CRLF) has a 2019 CNDDDB record within two miles of proposed project site. U.S. Fish and Wildlife Service Revised Guidance on Site Assessment and Field Surveys for the California red-legged frog (2005) does not require a site assessment if not within 1-mile of known location; however, the proposed project site is within the current range of California red-legged frog (<https://www.fws.gov/species/california-red-legged-frog-rana-draytonii>), within the Colma Creek watershed (<https://www.flowstobay.org/data-resources/maps/watershed-map/>), and less than one mile to from Colma Creek (which runs parallel with State Highway 82). This should warrant, at minimum, targeted nocturnal eyeshine surveys when water is present and nocturnal eyeshine surveys during rain events when CRLF move over upland habitat. The above USFWS guidance (2005 [file:///C:/Users/darceeg/Downloads/CRF-Survey-Guidance%20Aug2005\\_FINAL%20\(1\).pdf](file:///C:/Users/darceeg/Downloads/CRF-Survey-Guidance%20Aug2005_FINAL%20(1).pdf)) also provides optimal periods for detection of all life stages of CRLF.

A species list provided by community garden volunteers identified numerous species of wildlife. This is followed by a list of native terrestrial mollusks (snails and slugs) that are known to occur form San Mateo County, some of which could occur onsite. Some of these are endemic to the region and quite rare, and should be surveyed for and assessed for project-related impacts.

Table 2 is an example of what should have been provided in Environmental Collaborative’s report. Besides direct observations made during the seasonal field surveys, other sources of evidence should be accessed, such as from individuals using the project site and from records posted on Calflora and iNaturalist websites.

**TABLE 2. SPECIES LIST REPORTED FROM THE COMMUNITY GARDEN VOLUNTEERS ONSITE (8/27/23)**

Scientific Name	Common Name	Special Status	Habitat Type
<b>Invertebrates – 7 Species</b>			
<i>Apis mellifera</i>	European Honey Bee	None	Hollow trees, man-made wooden hives; colonies located near flowering plants, such as meadows, woods, agricultural areas and gardens.

Scientific Name	Common Name	Special Status	Habitat Type
<i>Danaus plexippus</i> pop1.	Monarch - California overwintering population	ESA Candidate	Forested groves, nectaring plants and milkweed
<i>Icaricia icarioides missionensis</i>	Mission Blue Butterfly	Endangered	Coastal grassland habitat, Silver Bush Lupine ( <i>Lupinus albifrons</i> ) and Summer Lupine ( <i>Lupinus formosus</i> ) are host plants.
<i>Papilio glaucus</i>	Tiger Swallowtail	None	Riparian corridors near rivers, lakes and streams, woodland gardens, parks, canyons, and roadside meadows.
<i>Speyeria idalia</i>	Regal Fritillary	None	Tall-grass prairie, open sites, damp meadows, marshes, wet fields, and mountain pastures.
<i>Vanessa atalanta</i>	Red Admiral Butterfly		Violets for larval feeding, nectar plants, tall grass, scattered shrubs, leaf litter
<b>Amphibians - 1 Species</b>			
Class Amphibia	Frogs and tadpoles (species not specified)		Forest, woodland, chaparral, grassland, pastures, desert streams and oases, underground caves, and urban areas.
<b>Reptiles – 3 Species</b>			
<i>Elgaria multicarinata multicarinata</i>	California Alligator Lizard	None	Open grassland, woodland, chaparral
<i>Sceloporus occidentalis bocourtii</i>	Coast Range Fence Lizard	None	Wide range; variety of habitats
<i>Thamnophis sirtalis tetrataenia</i> or <i>Thamnophis elegans terrestris</i>	Unknown spp. of Gartersnake (Ranger overlap for San Francisco gartersnake and Coast Gartersnake)	SFGS- Federally Endangered/ State Endangered Coast GS- None	SFGS requires aquatic fresh water and upland habitats. Aquatic habitats include ponds, creeks, marshes, canals and other water sources, which they use for foraging and basking during the day. Grasslands, woodlands, and coniferous forests, from sea level up to 3,962 m.
<b>Birds – 3 Species</b>			
<i>Buteo jamaicensis</i>	Red-tailed Hawk	None	Open, semi-open country
<i>Corvus corax</i>	Common Raven	None	Riparian, chaparral, and woodlands. Variety of habitats



Scientific Name	Common Name	Special Status	Habitat Type
<i>Haliaeetus leucocephalus</i>	Bald Eagle	State Endangered Federally Protected	Forested areas near water
<b>Mammals – 5 Species</b>			
<i>Canis latrans</i>	Coyote	None	Open woodlands, brushy areas, suburban and urban , and agricultural areas, wide ranging.
<i>Mephitis mephitis</i>	Striped Skunk	None	Open woodlands, brushy areas, wide ranging.
<i>Microtus californicus</i>	California Vole	None	Mixed woods, brush, semi-open country
<i>Procyon lotor</i>	Raccoon	None	Grassland meadows, wooded areas near water, suburbs, cities, and parks
<i>Puma concolor</i>	Mountain Lion	CDFW Species of Special Concern	Streams, lakes, rock cliffs, dens in trees

**TABLE 3. TERRESTRIAL SNAILS KNOWN FROM SAN MATEO COUNTY**

Scientific Name	Common Name	Special Status	Habitat Type
<b>Invertebrates – 22 Species</b>			
<i>Ariolimax [columbianus] californicus</i>	California Banana Slug	None; G2-Imperiled	California endemic. Known only from Sonoma, San Mateo, and Santa Clara Counties.
<i>Ariolimax columbianus stramineus</i>	South Coast Banana Slug	None	California coast endemic. Known only from San Mateo, Santa Clara, Monterey, San Luis Obispo, Santa Barbara, and Ventura Counties.
<i>Mediappendis [Catinella] rehderi</i>	Chrome Ambersnail	None; G3-Vulnerable	Widespread in California. Known from Mono, Lassen, Shasta, Mendocino, Lake, Sonoma, Marin,- San Francisco, San Mateo, Contra Costa, Alameda, San Joaquin, Santa Cruz, Santa Clara, San Benito, Tulare, Inyo, San Luis Obispo, Kern, Santa Barbara, Ventura, Los Angeles, San Bernardino, and San Diego Counties. Also in Washington, Idaho, Montana, and Wyoming.

Scientific Name	Common Name	Special Status	Habitat Type
<i>Mediappendix</i> [ <i>Catinella</i> ] <i>vermeta</i>	Ambersnail	None; G5-Secure	Widespread in California. Known from Siskiyou, Mono, Trinity, Lake, Nevada, Sonoma, San Francisco, San Mateo, Contra Costa, Alameda, Calaveras, Fresno, Tulare, San Luis Obispo, Kern, Ventura, Los Angeles, Riverside, and San Diego Counties.
<i>Deroceras leave</i>		None; G5-Secure	Widespread but disjunct California distribution. Known from Shasta, Lake, Nevada, Placer, Marin, Alameda, San Francisco, San Mateo, Santa Cruz, San Bernardino, and San Diego Counties.
<i>Haplotrema minimum</i>	California Lancetooth	None; G1-Critically Imperiled	California coast endemic. Known from Humboldt, Mendocino, Sonoma, Napa, Marin, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, Santa Clara, Monterey, and San Luis Obispo Counties.
<i>Hawaiiia minuscula</i>	Minute Gem Snail	None; G5-Secure	Known from Napa, Alameda, San Mateo, Santa Clara, Monterey, Los Angeles, San Bernardino, Riverside, and San Diego Counties.
<i>Helminthoglypta arrosa arrosa</i>	Bronze Shoulderband Snail	None; G2-Imperiled	Bay Area endemic. Known only from Marin, Sonoma, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, and Santa Clara Counties.
<i>Helminthoglypta exarata</i>	San Lorenzo Shoulderband Snail	None; G2-Imperiled	California endemic. Known only from San Mateo, Santa Cruz, Santa Clara, and San Benito Counties.
<i>Helminthoglypta nickliniana nickliniana</i>	Coast Range Shoulderband Snail	None; G3-Vulnerable	California central coast endemic. Known from Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Santa Clara, and Monterey Counties.
<i>Helminthoglypta sequoicola sequoicola</i>	Redwood Shoulderband Snail	None; G2-Imperiled	California endemic. Known only from San Mateo, Santa Cruz, and San Benito Counties.
<i>Hesperarion hemphilli</i>	Hemphill Westernslug	None; G2-Imperiled	California endemic. Known from San Mateo, Alameda, Monterey, San Benito, San Luis Obispo, Santa Barbara, Los Angeles, and Orange Counties.

Scientific Name	Common Name	Special Status	Habitat Type
<i>Hesperarion niger</i>	Black Westernslug	None; G2-Imperiled	California endemic. Known from Humboldt, Trinity, Shasta, Glenn, Colusa, Sonoma, Napa, Marin, Contra Costa, Alameda, Calaveras, San Mateo, Santa Cruz, Monterey, Tulare, San Luis Obispo, and Kern Counties.
<i>Vertigo</i> [ <i>Nearctula</i> ] <i>rowellii rowellii</i>	Threaded Vertigo	None; G4-Apparently Secure	California endemic restricted to Sonoma, San Francisco, San Mateo, Alameda, Santa Cruz, Monterey, and Santa Barbara Counties.
<i>Nearctula</i> sp. nov. p	Undescribed Vertigo	None: ?	An undescribed species occurring along the California coast. Known from Del Norte, Humboldt, Trinity, Mendocino, Sonoma, Marin, Alameda, San Francisco, San Mateo, Santa Clara, Monterey, and San Benito Counties.
<i>Paralaoma servilis</i>	Pinhead Spot	None; G5-Secure	Widespread in California. Known from Del Norte, Humboldt, Tehama, Butte, Plumas, Yuba, Mendocino, Sonoma, Napa, Marin, Contra Costa, Alameda, San Joaquin, Calaveras, Tuolumne, San Francisco, San Mateo, Santa Cruz, Santa Clara, Monterey, San Benito, Stanislaus, Tulare, San Luis Obispo, Kern, Santa Barbara, Los Angeles, San Bernardino, Orange, and San Diego Counties.
<i>Prophysaon andersoni</i>	Reticulate Taildropper	None; G5-Secure	Northern California distribution. Known from Del Norte, Humboldt, Trinity, Siskiyou, Mendocino, Lake, Sonoma, Marin, Sacramento, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, and Santa Clara Counties.
<i>Punctum californicum</i>	Ribbed- Spot Snail	None; G5-Secure	Widespread in California. Known from Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Mendocino, Plumas, Nevada, Placer, El Dorado, Amador, Marin, San Francisco, San Mateo, Alameda, Calaveras, Tuolumne, Madera, Mono, Monterey, San Benito, Fresno, Tulare, Inyo, San Bernardino, Ventura, Los Angeles, Riverside, and San Diego Counties.

Scientific Name	Common Name	Special Status	Habitat Type
<i>Striatura pugetensis</i>	Northwest Striate Snail	None; G5-Secure	Widespread on West Coast. Occurs in all coastal counties except Los Angeles, as well as several Sierra Nevada counties and San Bernardino and Riverside Counties.
<i>Trilobopsis loricata</i>	Scaly Chaparral Snail	None; G2-Imperiled	California endemic. Known only from Humboldt, Tehama, Sacramento, Marin, Contra Costa, Alameda, San Francisco, San Mateo, Santa Cruz, and Monterey Counties.
<i>Vespericola armiger</i>	Santa Cruz Hesperian	None; G1-Critically Imperiled	California endemic. Known only from San Mateo, Santa Cruz, Santa Clara, and Monterey Counties.
<i>Vespericola pilosus</i>	Brushfield Hesperian	None; G2-Imperiled	California narrow endemic. Known only from San Francisco, San Mateo, and Santa Cruz Counties.

## Nesting Birds

**BRA page 6, paragraph 2** states, *‘No evidence of any bird nesting was observed during the field reconnaissance surveys; however, nesting bird surveys are not described in methods section, yet page 15 of BRA Discussion 1) Less than Significant Impact with Mitigation Incorporated, states, ‘There was no evidence of any bird nesting on the site during the field reconnaissance survey conducted in January 2021.’ Yet in the same paragraph, the author references bird nesting season as February 1 to August 31. This suggests that the biologist did not perform seasonally appropriate nesting bird surveys. It should be clear that not noticing nesting activity is not equivalent to seasonally-timed multiple negative targeted nesting bird surveys. Nesting birds are often intentionally inconspicuous to avoid nest depredation, so it could very easily be the case that nests would not be encountered if targeted surveys were not performed.*

Photos provided in the BRA and by Community Garden volunteers demonstrate this remnant parcel of green space supports a diverse array of nesting habitat with varied vegetation strata to support cavity-, ground-, shrub-, and canopy-nesting birds. The importance of this open space to native wildlife is critical even if habitat composition is not pristine native or sensitive habitat. Open spaces landlocked by urban sprawl are important to conserving native species.

**BRA page 6** states, *‘The intensity of human activity on the developed portion of the site limits the likelihood of any bird nesting, although there remains a remote potential for nests in the limited landscaping and existing structures. Although no evidence of active nests was observed during the field reconnaissance surveys, new nests of more bird species could be established in the future in advance of project construction. Preconstruction surveys are typically performed in advance of vegetation removal or building demolition where occupation by nesting birds is considered possible.’*

These assumptions are flawed for the following reasons:

- 1) different bird species have varying tolerances to human activity;

- 2) birds are known to nest in human-occupied urban and suburban areas, on homes, porches and yards, and in active construction sites.
- 3) 14 days is too large of a time span for nesting preconstruction surveys as birds, namely house finches, can build a complete nest and lay an egg in one day.
- 4) Birds build nests on active construction sites so monitoring for nesting birds is necessary if construction overlaps with nesting season to dissuade or prevent nests from being built and if active nests are encountered, they must be properly buffered and protected until chicks successfully fledge.
- 5) A mechanism must be in place that contractors are held accountable for violations for Migratory Bird Treaty Act and Fish & Game Code violations. Include provisions for punishments for violations of these regulations.

### DEIR Mitigation Measures page 65

#### **Mitigation Measure Bio-1.1 is inadequate at protecting nesting birds and bats.**

MM BIO-1.1 states,

- *If construction is initiated during the non-breeding season (September 1 to January 31), then vegetation removal, building demolition and other construction may proceed with no restrictions.*

Nesting birds are protected if they are nesting, which includes activities in selecting and building a nest. Some birds like hummingbirds and owls begin nesting in January, and some birds have double clutches or failed and re-nest attempts that extend nesting past the typical nesting season window. Neither of these scenarios would preclude protection of nesting birds. Therefore, any time birds are actively nesting, even during construction activities, the nesting birds shall be protected. The statement “without restrictions” should be struck out of measure.

The language in this mitigation measure does not adequately protect bats. In addition to text about birds, address that this measure could impact bats, refer to MM BIO-1.2 for more information.

- *If initial building demolition, vegetation removal, and construction is proposed during the nesting season (February 1 to August 31), a focused survey for nesting raptors and other native birds shall be conducted by a qualified biologist within 14 days prior to the onset of construction in order to determine whether any active nests are present on the site and surrounding area within 250 feet of proposed construction. The survey shall be reconducted any time construction has been delayed or curtailed for more than 14 days during the nesting season.*

As stated above, 14 days is too long of a lag time between survey date and construction initiation. If the contractor needs an advance window to mobilize for construction initiation, it is recommended to perform a minimum of nesting bird surveys every other day until construction is initiated.

- *If no active nests are identified during the construction survey period, then building demolition, vegetation removal, and other construction may proceed with no restrictions.*

The text “without restrictions” should be struck out of measure. As stated above, birds build nests in and around active construction sites. Replacement text should include “A full-time qualified biological monitor is recommended to ensure nesting birds are dissuaded or prevented from building nests in the active construction zone, and active nests that become established are

protected. This includes nests built in remaining habitat that may be impacted by construction activities. A qualified biologist shall determine the appropriately sized nest buffer to protect birds based on nest location, visual barriers, and birds' tolerance to human and construction activity. The biologist has the authority to stop work if construction activities are believed to cause distress to nesting birds until an alternative can be found. Alternatives may include installation of visual blinds and/or reduced access to designated areas of the construction site until chicks fledge.

#### DEIR Mitigation Measure BIO 1.2 page 66

#### **Adequate measures shall be taken to avoid roosting by special-status bat species because of tree removal and building demolition, specifically:**

- *'To the extent feasible, any tree removal or trimming that is deemed necessary by a certified arborist to maintain tree health shall be conducted outside of the bat maternity season (i.e. generally avoiding tree removal or trimming April through October).'*

**Additional text recommended:** Prior to removal of any trees greater than 20-inches DBH, a qualified biologist shall inspect trees deemed for removal and surrounding trees for cavities and sloughing bark, guano and urine staining, conduct acoustic surveys (>10 days winter and  $\geq 3$  days summer), and emergence surveys and prepare and submit a report of findings to CDFW and Daly City Natural Resources Manager. If bats are found in tree cavities, the biologist shall coordinate with CDFW preparation and implementation of a CDFW-approved bat exclusion plan that includes a sufficient number of appropriately sized and placed supplemental bat housing/bat boxes to accommodate the number of displaced bats.

- *'Building demolition shall, to the extent feasible, be conducted outside of the bat maternity season (i.e. generally avoiding demolition April through October).'*

**Alternate text recommended:** Building demolition shall, to the extent feasible, be conducted outside of the bat maternity season (i.e. generally avoiding demolition April through October). To avoid impacts to bats roosting in tight spaces, siding, crawl spaces, and attics of buildings, a qualified biologist shall conduct preconstruction bat emergence surveys and inspect entire building interior (including crawl spaces/ attics/chimney) and exterior for bat sign (e.g. guano, insect carapaces) prior to building demolition. The biologist shall prepare and submit a report of findings to CDFW and Daly City Natural Resources Manager. If bats are found in buildings, the biologist shall coordinate with CDFW preparation and implementation of a CDFW-approved bat exclusion plan that includes a sufficient number of appropriately sized and placed supplemental bat housing/bat boxes to accommodate the number of displaced bats.

- *'If tree removal, trimming, or building demolition occurs within bat maternity season (i.e. generally April through October), a pre-construction bat roost assessment shall be conducted by a qualified biologist at least 14 days and no more than 30 days prior to tree removal or building demolition to determine if bats roosts are present that may be impacted by project activities.'*

Comment: a more conservative survey window may be required to adequately perform all three preconstruction surveys trees/building inspection, emergence survey, and acoustic surveys. Caltrans has extensive bat mitigation measures that can be adapted for this project. (<https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/caltrans-bat-mitigation-guide-all1y.pdf>)

**DEIR Page 68 Impact BIO-4** *The project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (Less than Significant Impact)*

We counter that wildlife corridor function of open space/green belts in urban settings becomes significantly more important as natural habitats are reduced to disparate islands across the landscape. Keeping only mature trees on edge of property reduces cover for wildlife, making them vulnerable to predation, increased risk of collisions with vehicles, and pets. Increased infrastructure and resulting lighting and associated noise interferes with bat foraging activity and nocturnal wildlife. It reduces breeding and foraging habitat.

**DEIR Page 68 Impact BIO-6:** *The project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. (No Impact)*

While the community garden does not have any habitat conservation plan or natural community conservation plan, or other local plan, the garden has been in place for decades and portions of it have provided important habitat for wildlife in an urban environment. Preserving this small part of the project site would retain the important biological resources currently using this area but would not adversely impact the goals of the redevelopment of the larger site.

**DEIR Page Cumulative Impacts Impact BIO-C:** *'The project would not result in a cumulatively considerable contribution to a cumulatively significant biological resources impact. (Less than Significant Cumulative Impact with Mitigation Incorporated)'*

We disagree with this assessment. In addition to habitat loss from Parcel F and surrounding area, and a significant reduction in habitat quality for remaining habitat, there is the added impact of significant increase in light pollution extending several stories into the skyline, with all of the added noise, vehicles, light pollution, air pollution, and congestion associated with 1,457 new residences and 32,00 SF of commercial/retail space to an already impacted, populous area. The pen space and landscape plan proposes to provide an ecologically sterile, grass park which is a poor choice for water conservation in the face of rising temperatures and drought. Landscaping with native, local drought tolerant species would be a vast improvement.

### **Environmental Collaborate Biological Resources Assessment**

A Environmental Collaborative biologist conducted reconnaissance level surveys of the project site on 14 January, 5 April, and 16 June 2021. The April and June field surveys were focused on the willow and meadow habitats. It does not appear that seasonal surveys for plants or wildlife were conducted to detect all potential plant or wildlife species that could occur onsite.

The BRA lacks any lists of plants or wildlife observed onsite. Only a few species are mentioned in the text, which is insufficient. Botanical surveys should be floristic in nature to ensure that all plants that are considered sensitive (statewide or locally) are detected. The reviewer has no means to determine if the field surveys were sufficient since there are no lists of what was observed.



### **Cultural and Social Significance of Open Space**

From a cultural and social perspective, this open space supports a vital community garden that adds intrinsic cultural and educational value as a gathering place for the local community and provides a means to grow produce, connect with nature, and each other.

### **Conclusion**

Based on our assessment of the methods and conclusions presented in the DEIR and supporting documents, the assessment of impacts on biological resources at the project site are inadequate and failed to follow specific methods and to identify potentially significant adverse impacts to those resources.

Appropriate seasonal field surveys must be conducted before conclusions about the presence or absence of sensitive resources can be made. The project site does contain sensitive resources, such as wetland habitats, which should either be protected or mitigated, preferably onsite.

An alternative could be to just avoid areas with wetlands and wildlife habitat, which would avoid many if not all potentially significant impacts to those resources.

Please contact us if you have any questions or require further information.

Respectfully,



David L. Magney, Principal Biologist  
Certified California Consulting Botanist #0001  
ISA Certified Arborist #WE-7674



Darcee Guttilla, Senior Biologist  
Certified Wildlife Biologist



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## **David L. Magney, Principal Biologist**

**Certified Consulting Botanist #0001,  
ISA Certified Arborist #WE-7974A**

### **Overview**

David L. Magney, Principal Biologist, is a botanist/biologist and physical geographer with a thorough knowledge of the flora of California. He has over 30 years of field experience in biological studies throughout the west. Mr. Magney has worked on and managed a large variety of projects throughout the West, primarily in California. These include biological resource inventories, vegetation mapping and classification, wetland delineations and restoration, rare plant surveys and ecological studies, tree assessments, fisheries habitat assessment and mitigation design, fisheries monitoring, small mammal trapping and surveys, biological impact analysis and mitigation, and construction and mitigation monitoring. He has managed and worked on a variety of projects, including energy, residential, commercial, flood control, and landfill projects. Mr. Magney has also worked on off-highway vehicles trail siting, mining, electrical, transmission/pipeline, communication corridor, transportation, restoration, and dam developments. He came to Althouse and Meade after nearly 7 years managing the California Native Plant Society Rare Plant Program and running David Magney Environmental Consulting since 1997. Prior to that he managed the Natural Resources Division at Fugro West, 6 years with Jones & Stokes Associates, and 3 years with Dames & Moore.

Mr. Magney earned a BA in Geography and Environmental Studies (emphasis in botany) in 1985 from the University of California, Santa Barbara. He also holds an A.S. in Landscape Horticulture and Certificate of Completion in Natural Resources (1975) from Ventura College, Ventura, California. He is a Certified Consulting Botanist (#0001) and an ISA Certified Arborist (WE-7674A). He is an expert in wetland sciences including applying the Corps of Engineers Hydrogeomorphic Assessment Methods (HGM), and CEQA and NEPA for biology. Mr. Magney has taught courses or given presentations on plant family identification, wetland/riparian plant identification, wetland impacts and mitigation, HGM, CEQA, Clean Water Act permitting, water quality, and wetland delineation methodology. Mr. Magney has authored two floras in California and presented numerous papers on vegetation and water quality. He served on the Environmental Review Board for Los Angeles County Regional Planning, City of Ojai's Tree Committee, and on the Ventura County Planning Division's Interagency Biology Committee and the Locally Important Species Committee. Mr. Magney currently is the chairman of the Board of Certification overseeing the certification of botanists in California.

### **Education**

B.A. Environmental Studies and Geography (emphasis is botany, cartography, and remote sensing), University of California at Santa Barbara, 1985.

A.S. Landscape Horticulture and Certificate of Completion in Natural Resources, Ventura College, 1975.

## Permits

- Certified Arborist: International Society of Arboriculture (certification #WE-7674A)
- Certified Consulting Botanist #0001, California Native Plant Society, Board of Certification Approved Biologist: Los Angeles County Regional Planning Department, Sensitive Ecological Areas
- Approved Biologist: Ventura County Planning Division
- Approved Biologist: Santa Barbara County Planning Department
- Approved Arborist: City of Oxnard
- Expert Witness, Botanist: U.S. Department of Justice
- California Dept. of Fish and Game Scientific Collecting Permit #801066-05

## Professional Work Experience

### Principal Biologist

May 2023 – present

*Althouse and Meade, Inc. Paso Robles, CA*

Expert consulting biologist, botanist, and arborist.

### Owner & Operator

July 1997 – present

*David Magney Environmental Consulting, California*

Own and operate environmental consultancy focusing on biological resources.

### Special Projects Program Manager

February 2021 – May 2023

*California Native Plant Society, Sacramento, CA*

Lead the effort to identify locally rare plants, generally at the county level, and to promote the research and development of local floras, within California. Oversaw the Rare Plant Treasure Hunt and California Rare Plant Rescue projects, and train botanists on CEQA, mitigation and monitoring, and plant identification, as well as lead the California Botanist Certification program. Projects include the Utom River Conservation Fund that focuses on conserving the biological and cultural resources of the Santa Clara River watershed in Ventura and Los Angeles Counties, and work on the Ventura Marsh Milkvetch.

### Rare Plant Program Manager

June 2016 – February 2021

*California Native Plant Society, Sacramento, California*

### Manager, Natural Resources Group

February 1995 – April 1997

*Fugro West, Inc., Ventura, California*

Managed the biological and cultural resources staff and oversaw projects involving these disciplines for all California offices, based in the Ventura office. Hired and managed key biology and archaeology staff at various Fugro West offices.

## Training

- Improving Wetland Restoration Success: Riverine/Riparian Wetland Restoration Webinar, Assoc. of State Wetland Managers, 9 June 2015
- Hydrogeomorphic Assessment of Wetland Function training course: National Wetland Science Training Cooperative, 1996.
- Hydrogeomorphic Approach to Assessment of Functions of Waters of the U.S., Including Wetlands, in the Santa Margarita Watershed. National Wetland Science Training Cooperative, 1997.
- Wetland Delineation, Federal Wetland Policy: Wetland Training Institute, 1989, 1991.
- Desert Tortoise Handling and Surveying: trained by Desert Tortoise Council (John Weir), 1988. Hazardous Waste Health and Safety Monitoring Training: Dames & Moore, 1987.
- ArcView 3 (GIS) training: Geo InSight International, 1998.
- ArcGIS 10.4 (GIS) trainings: beginning and intermediate, ESRI 2017
- Vegetation Rapid Assessment Classification: California Native Plant Society, 2003.
- Successful CEQA Compliance 2005: Ron Bass, for Ventura County Resource Management Agency, 16 June 2005. CEQA = California Environmental Quality Act.
- California Red-legged Frog Survey Methods: Vince Semonsen 2005.
- The Wildlife Society San Joaquin Valley Chapter workshop: Habitat Conservation Planning, 1992.
- American Association for the Advancement of Science symposium: Vernal Pools, 1989. Professional Soil Scientists of California workshop: Field Identification of Hydric Soils, 1989. SPOT Image Corporation: Satellite Imagery and GIS training course, 1995.
- Jones & Stokes Associates workshops: Project Management Seminars, 1990-92, Hydric Soils, 1991, 1992; Clean Water Act Regulations Concerning Wetlands (1989), and CEQA Requirements and Document Preparation, 1993, 1990, 1989; WordPerfect, Lotus 1-2-3 and Allways, Microsoft Word, Excel, ArcView, and GRASS software programs.
- Project Management Training: Dames & Moore seminar, 1988. California Agricultural Pest Control Adviser's License, 1975-77 (expired).

## Publications

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- Magney, David L., Jordan Collins, and Adam Hoeft. 2023. Botanical Resources of the Utom (Santa Clara) River Watershed. 8 February 2023. (PN 60-6013-1.) California Native Plant Society, Sacramento, California. Prepared for the Utom River Conservation Fund, Santa Monica, California. Published on <https://venturaflora.com/files/vcflora.htm>
- Magney, David L. in ed. Vascular Flora of Ventura County, California. To be submitted to *Madroño*.
- Magney, David L. in ed. A Comparison of Swedish and American Wetland Protection Laws.
- Magney, D.L., J. Broberg, J. Logan, and V. Peters. 2015. A Preliminary Draft Regional Guidebook for Applying the Hydrogeomorphic Approach to Assessing Wetland Functions of Playa Depressional Wetlands in the Mojave Desert. (PN 12-0004.) David Magney Environmental Consulting, Ojai, California. Prepared for U.S. Army Corps of Engineers, Los Angeles, California. Prepared on behalf of Richard and Laurie Lyons, Ojai, California.
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- Magney, David L. 2011. Vascular Plants of the Palos Verdes Peninsula, Los Angeles County, California. 20 July 2011. David Magney Environmental Consulting, Ojai, California.
- Magney, David L. 2010. Flora of Kings County, California. 6 December 2010. David Magney Environmental Consulting, Ojai, California. <http://magney.org/files/research.htm>
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David Magney Environmental Consulting, Ojai, California.  
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- Magney, David L. 2006. Vascular Plants of South Ormond Beach, Oxnard, Ventura County, California. California Native Plant Society, Channel Islands Chapter, Ojai, California. Published on  
<http://www.cnpsci.org/html/PlantInfo/SouthOrmondBeachPlants.pdf>.
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- Magney, David L., and K.G. Niessen. 2005. Oak Tree Data Assessment Solutions Using GIS. 9 May 2005. David Magney Environmental Consulting, Ojai, California. Presented to ESRI ArcView User's Group, Ventura College, California.
- Magney, David L. 2005. Atlas of California Native Terrestrial Snails in Ventura County. 16 March 2005. David Magney Environmental Consulting, Ojai, California. Prepared for County of Ventura, Resource Management Agency, Planning Division. Ventura, California.
- Magney, David L. 2004. Checklist of Ventura County Rare Plants. 15 June 2004. California Native Plant Society, Channel Islands Chapter, Ojai, California. Updated periodically.
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- Tupen, Gaylene, and David Magney. 1996. San Antonio Creek Habitat Characterization Study. Poster presented at the American Fisheries Society Southern Steelhead Symposium, Ventura, California, March.
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- Clark, George M., and David L. Magney. 1994. Vascular Plants of Bear Valley, Walker Ridge, and Surrounding Areas, Colusa and Lake Counties, California. *Four Seasons* 9(4):25-32.
- Magney, David L., and Kenneth M. Bogdan. 1993. What are ARNIs? *National Wetlands Newsletter* 15(3):4-5, May/June.
- Magney, David L. 1993. Focus On Vernal Pools. *National Wetlands Newsletter* 15(3):6, May/June.
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- Magney, David L. 1988. Analysis of water quality of an intermittent stream, Santa Barbara County, California. (Presented as a poster at the California Riparian Systems Conference), Davis, California, September.
- Magney, David L. 1987. Distribution and Two New Populations of *Boschniakia strobilacea* (Orobanchaceae). *Madroño* 34(4):379-380.
- Olson, T., and David L. Magney. 1987. Distribution of Sensitive Plant and Wildlife Species Along Transmission Line Corridors in Southwestern San Joaquin Valley, California. In *Endangered and Sensitive Species of the San Joaquin Valley, California*, (proceedings of a conference) Contribution 36, December 10-11, California State College, Bakersfield.



Ferren, Wayne, and David Magney. 1986. Wetland Vegetation of the Proposed Mandalay Beach State Park. Campbell & Campbell Associates, Santa Monica, California.

Magney, David L. 1986. A Flora of Dry Lakes Ridge, Ventura County, California. (Herbarium Publication No. 5.) University of California, Santa Barbara.

## **Professional Memberships**

- Association of State Wetland Scientists Botanical Society of America California Botanical Society
- California Lichen Society, Conservation Committee
- California Native Plant Society (President 1991-1994; Chairman of Chapter Council 2011-2014; Board Member 2002-2007, VP Conservation 1996; VP Legislation 1995; Channel Islands Chapter President 2004-2013, Redbud Chapter Conservation Committee Chairman 2010-2016), Fellow, Botanist Certification Program Committee & Board of Certification Chairman (2014-)
- Channel Islands Regional Geographic Information Systems (CIRGIS), incorporator and charter board member
- International Society for Arboriculture (ISA), Western Chapter ISA, 2006-present
- Northern California Botanists
- Society of Wetland Scientists
- Southern California Academy of Sciences
- Southern California Botanists



**Darcee Guttilla, M.S.,**  
**Certified Wildlife Biologist®**  
**Senior Biologist**

## Overview

Ms. Guttilla has 26 years of field experience working in California. She possesses an M.S. in Biology from California State University, Fullerton, and a B.S. in Zoology from the University of California, Santa Barbara. Ms. Guttilla has a 10(a)(1)(A) permit (TE37607D-0) to conduct activities with respect to California red-legged frog (*Rana draytonii*; CRLF) and California tiger salamander (*Ambystoma californiense*; CTS). She is a CDFW and USFWS CTS/CRLF authorized biologist for California Flats Solar Project, and USFWS authorized CRLF biologist for San Luis Ranch Development and Pennington Creek fish ladder removal project in San Luis Obispo County, and Narlon Bridge replacement, Vandenberg Air Force Base, Santa Barbara County. Ms. Guttilla maintains her CDFW plant voucher collecting permit. Darcee has a strong foundation in principles of ecology, conservation-based land management, and study design. She has extensive experience with construction monitoring, amphibian surveys, pitfall trap arrays, dip-netting and seining, identification of birds by sight/sound, nest surveys, live-trapping/handling mammals, radio telemetry, track plates, camera traps, spotlight surveys, burrow excavation, habitat restoration, chemical/mechanical control of noxious weeds, vegetation identification and habitat mapping, and use of ATVs/4WD vehicles. She is skilled in preparation of regulatory permits and technical reports.

## Certifications

- Certified Wildlife Biologist ®, The Wildlife Society 2022

## Permits

- 10(a)(1)(A) permit (TE37607D-0) for California red-legged frog and California tiger salamander United States Fish and Wildlife Service
- California Department of Fish and Wildlife Authorization to Collect Voucher Specimens of State-listed Endangered, Threatened, and Rare Plants Permit No. 2081(a)-20-076-V
- California Department of Fish and Wildlife Scientific Collecting Permit # SC-001074.

## Education

M.S. Biology. California State University, Fullerton, CA, May 2007

Thesis Title: Effects of sterilization on movement, home range behavior and habitat use of feral cats on Santa Catalina Island, CA

B.S. Zoology. University of California, Santa Barbara, CA, June 1995

## **Trainings and Workshops**

- 2020 8-Hour HAZWOPER refresher Certification, May
- 2019 California Native Plant Society Mitigation Measures & Monitoring workshop, October
- 2018 Association of Environmental Professionals CEQA Essentials Workshop, November
- 2018 California Native Plant Society San Luis Obispo County Flora, April
- 2017 California Native Plant Society CEQA Impact Assessment, October
- 2015 Western pond turtle workshop, October
- 2015 CPR/First Aid, March
- 2014 Amphibians of the San Francisco Bay Area, November
- 2013 California red-legged frog workshop, May
- 2013 Transforming Stakeholder Conflict at the Human-Animal Interface, March
- 2011 Wildlife-Human Conflict Resolution, November
- 2011 Remote Camera Techniques, April
- 2009 40-hour HAZWOPER Certification, December
- 2009 ATV Rider Course, July
- 2008 Euthanasia Technician, October
- 2008 Program Distance, October

## **Professional Work Experience**

### **Senior Biologist**

July 2016 – present

*Althouse and Meade, Inc., Paso Robles, CA*

Duties include project management, proposal preparation, aquatic and wildlife field surveys, writing and preparation of biological documents and regulatory permits, habitat assessments, construction monitoring for environmental compliance, and manage biological data. Write botanical, biological, constraints, mitigation, protocol, and wetland delineation reports.

### **Staff Biologist II**

April 2014 - March 2016

*Condor Country Consulting, Inc., Martinez, CA*

Project Manager for Department of Defense Remedial Investigations and Military Munitions Response Programs at Concord Naval Weapons Station, Military Ocean Terminal Concord, Mare Island, Vallejo, and Camp Parks Reserve Forces Training Area, Dublin, CA. Supervisor: Sean Dexter, President/CEO.

Provided biological oversight and training, and technical advice with regard to interpretation and implementation of the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), CA Endangered Species Act, and USFWS Programmatic Biological Opinions to technical staff (8 ppl) and non-technical staff and clients (>200 ppl).

Implemented preconstruction surveys and monitoring programs for federally and state listed species and species of concern: CTS, CRLF, western pond turtle, salt marsh harvest mouse, Ridgway's rail, California black rail, California least tern, western burrowing owl, golden eagle, delta smelt, steelhead, soft bird's-beak, Congdon's tarplant, delta tule pea, Suisun marsh aster, and Mason's Lilaeopsis).

Implemented database management QA/QC methods for data entry. Maintained records for CNDDDB, 10(a)(1)(A) permits, agencies, and clients. Acquired and maintained spatial data updates in ArcGIS. Directed/supported business development activities including proposal preparation, work plans, budgets, and after-action reports.

**Senior Biologist**

March 2011 - March 2014

*CB&I, Concord, CA*

Senior technical (biological) lead for Military Munitions Response Program, Vandenberg Air Force Base, CA. Supervisor, Dan Baden, Northern California Manager, Applied Science and Engineering. Proposal preparation, budget planning, strategic planning, and after-action reports.

Supervised natural and cultural resources personnel. Provided technical training and supervision for field labor personnel (40-100 ppl).

Provided training and technical advice with regard to interpretation and implementation of the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), CA Endangered Species Act, and USFWS Biological Opinions.

Implemented monitoring program for species of conservation concern: El Segundo blue butterfly, California red-legged frog, vernal pool fairy shrimp, Western snowy plover, California least tern, and Gaviota tarplant, dune thistle, beach layia, and Gambel's watercress. Additional species consulted on: California tiger salamander and California burrowing owl.

**Avian Biologist**

May - June 2010 (contract work)

*Point Blue Conservation Science, Vandenberg Air Force Base, Lompoc, CA*

Performed variable circular plot point counts for passerines in riparian corridors. Duties included identification of birds by sight and sound, and web-based data management. Performed site reconnaissance and trail maintenance. Proficient at navigation/GPS, and ArcGIS. Ability to work independently in remote areas and complete contracts on time and under budget.

**Biological Technician**

December 2009 - March 2011

*NorthWind Group, Lompoc, CA*

Performed biological monitoring for federally threatened and endangered species for Military Munitions Response Program, Vandenberg Air Force Base, CA.

Trained personnel in identification of species of concern and ensured compliance with environmental protection plan and USFWS Biological Opinion for El Segundo blue butterfly, California red-legged frog, vernal pool fairy shrimp, Western snowy plover, California least tern, Gaviota tarplant, dune thistle, beach layia, and Gambel's watercress.

**Ecologist**

January 2009 - June 2010

*Native Range, Inc. Ventura, CA*

Island conservation and habitat restoration programs on Santa Cruz Island, CA. Project supervisor for invasive plant eradication program. Database management (MS Access and ArcGIS), vegetation mapping, and chemical and manual treatment of noxious weed species.

Trained and supervised field crew in remote locations under long-term living conditions. Collected population and survival rate estimates for federally endangered Island fox and Island spotted skunk, which included trapping, handling, and microchipping animals. Maintained disease management program which included vaccination and blood collection and archival. Collected fox scat for additional research conducted on Island fox diet analysis. Monitored for nonnative vertebrates at anchorages. Extensive experience utilizing helicopters for vegetation surveys.

**Adjunct Instructor**

August - December 2008

*Golden West College, Huntington Beach, CA*

Instructor for undergraduate level biology course (Bio 100, 4 units). Developed course syllabus for survey course emphasizing basic concepts of cell biology, animal and plant physiology, genetics and evolution, and plant, animal and human ecology. Prepared and conducted PowerPoint lectures and laboratory/field sessions, and graded written assignments and tests.

**Wildlife Biologist and Research Coordinator**

May 2005 - January 2009

*Catalina Island Conservancy, Avalon, CA*

Coordinated island research needs and collected and interpreted ecological data pertinent to informing land management practices on Santa Catalina Island, CA. Managed conservation research program.

Issued and managed research permits, coordinated logistics, training, and volunteers for researchers. Participated in multidisciplinary research projects. Tracked and edited technical reports and publications. Maintained research database and tracked research efforts/needs. Developed and managed Pets and Wildlife (P.A.W.) Program which focused on human-wildlife conflict, emergency response to injured wildlife, public outreach, serving as liaison for animal control issues and participating in the City of Avalon's animal control task force, advising animal-related civil code for the City.

Coordinated, trained and supervised staff and volunteers in data collection protocols and methodology for wildlife surveys. Implemented variable circular plot point counts and point-intercept vegetation transects for land birds in riparian, oak woodland, grassland, chaparral, and coastal sage scrub habitats. Conducted mark-recapture live-trapping for federally endangered Island fox, collected blood/fecal samples, administered vaccinations, and provided veterinary assistance. Conducted search and recovery for injured/dead radio-collared animals, conducted aerial radio telemetry surveys, and provided care and maintenance of captive island fox population.

Initiated feral cat management program. Collaborated with regulatory agencies and stakeholders to assess status of feral population, controlled the population on Conservancy property, and promoted responsible pet ownership. Maintained database, tracking capture events, health and disease, habitat use, and population estimates.

Conducted mule deer spotlight transect surveys for population trends and habitat use. Analyzed data with Program Distance and ArcGIS. Performed annual marine mammal visual transect surveys via boat. Employed pitfall arrays (animals were identified, measured, weighed, aged, sexed, and marked) in coastal sage scrub, chaparral, California grassland, riparian, and oak woodland habitats. Conducted walking-transect surveys for California mountain kingsnakes.

Performed invertebrate surveys using pitfall arrays, leaf litter collection, sifting, aspirator, beat sheets, bait, insect nets, and yellow pan traps in oak woodland, riparian, grassland, coastal sage scrub, chaparral and coastal dune, and intertidal habitats.

Collaborated on watershed prioritization land management plan in which historical and current data on wildlife, endemic plants, noxious weeds, and land use were converted into geospatial format; employed presence-absence modeling for data sets; watersheds were then ranked and prioritized on their ecological importance.

Conducted rare plant surveys using historical data of previously known populations. Delivered numerous nature programs for island residents and visitors. Provided program and research briefings to management, board of directors, and stakeholders for various programs.

Worked with camps and cove operators to assess feral cat/Island fox populations on their property, and implemented best management practices to minimize presence of cats and reduce threats to foxes. Collaborated in production of field guides and nature center exhibit content. Constructed 10 ft. deer enclosure fences to quantify effects of mule deer on post-fire vegetation recovery.

**Wildlife Technician**

June 2002 – June 2004

*Bald Eagle Reintroduction Program, Institute for Wildlife Studies, Avalon, CA*

Assisted in feeding, training and care of captive disabled bald eagle utilized for conservation outreach.

**Principal Investigator**

May 2002 – May 2005

*California State University, Fullerton, CA*

Investigated the spatial organization, health, and diet of feral cats on Santa Catalina Island, CA as part of master's thesis. Advisor: Dr. Paul Stapp, Department of Biological Science, California State University, Fullerton.

Developed and implemented study design and budget to assess, home range behavior, habitat use, health, disease, diet, and population size of feral cats. Authored successful \$50,000 grant to support research. Produced peer-reviewed publications, thesis, and technical reports.

Recruited, trained, and supervised staff and volunteers (20 ppl). Live-trapped feral cats and endangered Santa Catalina Island fox, performing physical exams, euthanasia, disease and diet (scat/gut) analysis, radio telemetry; implemented track plates, and spotlight surveys.

Conducted analyses on abundance, home range, home range overlap, habitat use, disease prevalence, and diet composition using Microsoft Access, Program Distance 5.0, Location of a Signal (LOAS), Arcview 3.2 with Animal Movement and Spatial Analyst extensions, and SAS. Developed and managed relational and geospatial databases.

Performed public outreach, presented research both locally and at professional conferences, produced peer-reviewed journal articles, master's thesis, developed website content and

developed partnerships with island stakeholders. Developed education outreach literature for island residents and visitors.

**Coordinator of Volunteers**

March 1998 - April 2002

*Catalina Island Conservancy, Avalon, CA*

Managed a volunteer base of over 1,500 individuals, approximately 12,000 hours annually. Coordinated travel and project logistics, planned budgets for Volunteer Vacations program. Recruited, interviewed, placed, trained, supervised, and evaluated volunteers.

Supported restoration efforts for 80 acres of decommissioned hayfields within riparian, coastal sage scrub, grassland, and oak woodland habitats. Program involved employing chemical and mechanical control of noxious weeds, collecting native seed, creating grassland seed production trials, seeding, plant propagation, outplanting, waddling, constructing herbivore enclosure fences, coordinating staff/volunteers, and establishing a long-term monitoring program.

Wildlife and vegetation monitoring, invasive weed control, fence enclosure construction, erosion control, native plant propagation, and habitat restoration. Coordinated and provided educational lectures for volunteer groups. Developed web page layout, brochures, recruitment flyers, outreach materials and quarterly newsletters.

**Custodian**

July 1997 – January 1998

*L.A. County Department of Parks and Recreation, Catalina Island Interpretive Center, Avalon, CA*

Developed and instructed environmental education activities for grades K-6. Maintained native plant garden. Greeted guests and led interpretive hikes.

**Wildlife Technician**

January - June 1997

*Integrated Hardwood Range Management Program, UC Berkeley Cooperative Extension, U.S. Army Camp Roberts, CA*

Conducted wildlife surveys investigating the effects of prescribed burns in oak woodlands. Conducted winter and spring passerine surveys in oak woodlands using point counts and transects. Conducted mark-recapture surveys of small mammals. Surveyed herpetofauna with cover boards

**Field Assistant**

October - December 1996

*San Marino Environmental Associates, Gaviota, CA*

Monitored sensitive riparian corridor, translocated tidewater gobies and California red-legged frogs out of construction zone, and installed temporary exclusion fencing to keep species out of construction site.

**Field Assistant**

November - December 1995; October 1996 - January 1997

*Greeneridge Sciences, Santa Barbara, CA*

Monitored the presence of marine mammals during seismic profiling of the sea floor in the Santa Barbara Channel. Identified species and vocalizations, recorded animals' response to seismic surveys, conducted radio communication with operations crew, and transcribed data.



**Biological Technician Internship**

July - October 1996; May 2000

*U.S. Fish & Wildlife Service, California Condor Recovery Program, Ventura, CA*

Monitored free-flying population of condors in Los Padres National Forest, collected and distributed supplemental diet for the condors, aided in construction and maintenance of chick rearing facility, monitored and cared for juvenile condors.

Assisted monitoring mist nets for MAPS (monitoring avian productivity and survivorship) station at Hopper Mountain NWR. Maintained public relations with local ranchers, land owners and nature enthusiasts.

**Research Assistant**

April - July 1996

*University of California, Santa Barbara, Vandenberg Air Force Base, Lompoc, CA*

Assisted Ph.D. research on brown-headed cowbirds' impacts on wetland passerines. Identified birds by sight and song. Conducted point counts, behavior surveys, nest searches, banding, and radio tracking. Set up and maintained cowbird decoy traps.

**Field Assistant**

March 1996

*University of California, Davis, Santa Cruz and Santa Rosa Islands, CA*

Surveyed for hanta virus in deer mouse populations.

**Research Assistant**

January 1995 - March 1996

*University of California, Santa Barbara, CA*

Graduate research involving chemosensory response and infrasonic vocalizations of Asian elephants at the Santa Barbara Zoo, CA. Recorded behavior and vocalizations with video, hydrophone, and DAT recorder. Analyzed vocalizations with a specialized DOS program.

**Research Assistant**

Winter 1994

*University of California, Santa Barbara, CA*

Surveyed Belding Savannah Sparrows at Carpenteria Salt Marsh Reserve using mist-net and banding techniques.

**Publications**

Guttilla, D. and P. Stapp. 2010. Effects of sterilization on movements of feral cats at the wildland-urban interface. *Journal of Mammalogy* 91(2):482–489.

Guttilla, D. 2007. Wildlife of Santa Catalina Island: Introduction to familiar species. In K. Anderson and C. de la Rosa, editors. *A pocket naturalist guide*. Waterford Press, Inc. Phoenix, Arizona.

Guttilla, D. 2007. Birds of Santa Catalina Island: Introduction to familiar species. In K. Anderson and C. de la Rosa, editors. *A pocket naturalist guide*. Waterford Press, Inc. Phoenix, Arizona.

Guttilla, D. A. 2007. Effects of sterilization on movement, home range behavior and habitat use of feral cats on Santa Catalina Island, California. Thesis, California State University, Fullerton, California.

Stapp, P. and D. A. Guttilla. 2006. Population density and habitat use of mule deer (*Odocoileus hemionus*) on Santa Catalina Island, California. *South Western Naturalist* 51: 572-578.

### **Oral Presentations**

- 2011 Ecological impacts and management of feral cats on the California Channel Islands. The Wildlife Society Western Section Annual Meeting, Riverside, CA. February 10, 2011.
- 2008 Pets And Wildlife (P.A.W.) Program on Santa Catalina Island, California. Catalina Conservancy mini-symposium, Cabrillo Marine Aquarium, San Pedro, CA. November 15, 2008.
- 2007 Management of non-native ungulates on Catalina Island, California. Integrated Hardwood Range Management Program working group, Avalon, CA. May 9, 2007.
- 2007 Issues surrounding free-roaming/feral cats on Santa Catalina Island, California. Avalon Animal Control Task Force, Avalon, CA. April 2, 2007.
- 2006 Feral cat ecology and conservation challenges on Santa Catalina Island, California. Society for Range Management's fall meeting, Avalon, CA. November 2, 2006.
- 2005 Effects of sterilization on spatial organization of feral cats on Santa Catalina Island, California. American Society of Mammalogists, Springfield, MO.
- 2004 Ecology of feral cat populations on Santa Catalina Island, California (oral presentation). Graduate Women in Science Sigma Chapter, Fullerton, CA.
- 2003 Effects of sterilization on home-range behavior and habitat utilization of feral (*Felis catus*) cats on Santa Catalina Island, California. Sixth California Islands Symposium, Ventura, CA.

### **Poster Presentations**

- 2011 Relative Habitat use and diet of feral cats on Santa Catalina Island, California. The Wildlife Society 18<sup>th</sup> Annual Conference, Kona, HI and Catalina Island Conservancy Mini-symposium, California State University, Long Beach, CA.
- 2006 Feral cats and wildlife on Santa Catalina Island, California: distribution, disease and their effects on management. Society for Conservation Biology, San Jose, CA.
- 2003 Effects of sterilization on home-range behavior and habitat use of feral cats on Santa Catalina Island, California. Annual Conference for the Western Section of the Wildlife Society, Irvine, CA.

### **Professional Societies**

- The Wildlife Society (National/Western Section/ CA Central Coast)
- California Native Plant Society



**Pacifica Social Justice - PO Box 501 - Pacifica CA 94044**  
**email [pacificasocialjustice@gmail.com](mailto:pacificasocialjustice@gmail.com)**

Michael Van Lonkhuysen  
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Daly City, CA 94015  
(via email: [mvanlonkhuysen@dalycity.org](mailto:mvanlonkhuysen@dalycity.org))

September 7, 2023

**SUBJECT: COMMENTS ON SERRAMONTE DEL REY CAMPUS REDEVELOPMENT  
PROJECT DRAFT ENVIRONMENTAL IMPACT REPORT (SCH# 2023060571)**

Dear Mr. Van Lonkhuysen:

Pacifica Social Justice (PSJ) is submitting the following comments regarding the Serramonte Del Rey Project Draft EIR (DEIR). These comments are a supplement to the comments submitted on behalf of PSJ by Grassetti Environmental Consulting (attached) which address many issues regarding the content of the DEIR.

PSJ believes that the project DEIR is deficient in addressing many required items and also does not address adverse impacts that PSJ and other community members have raised in public meetings and in written communications to Daly City and the Jefferson Unified High School District (JUHSD). Pacifica is particularly impacted by this project because the two High Schools in Pacifica are part of the JUHSD, and it is JUHSD land which is proposed to be converted to this private use.

The project proposed by JUHSD involves land previously used as a public high school, and which currently houses community recreational programs, a head start program, and a community garden. The property is part of the unceded ancestral homeland of the Ramaytush Ohlone peoples.

Although the DEIR claims to address the 22-acre project site, divided into five remaining parcels (B-F) the only specific development plan provided is for the 4.3 acre Parcel B. Parcel A contains 122 units of newly constructed workforce housing, of which 12 are considered below market rate. Although the DEIR and attachments include environmental modelling that purports to address various phases of the project as well as when the project is occupied, no specifics are provided that can be used to evaluate the impacts and mitigation measures mentioned in the DEIR. Several specific features of this site must be taken into account in the development of each parcel and may affect the results of any modelling.

PSJ has asked for development plans for Parcels C-F and the basis for modelling impacts of construction and use and was told the information is not available, and the only option was to raise the questions in the context of comments on the DEIR. So we hereby renew our request for the

development plans for Parcels C-F. We do not believe that Daly City is acting with due diligence in considering approval of an EIR that does not contain relevant information about the development and use of the site.

Grassetti Environmental Consulting has addressed many issues not addressed in the DEIR, including the existing wetlands at the community garden site, and the impact destruction of the garden will have on biological diversity, and sensitive species. The following are additional specific comments on the DEIR.

### **A. Section 3.11 Land Use and Planning**

Section 3.11.2.1 states:

*“The proposed project would comply with the City’s Inclusionary Housing Ordinance (Chapter 17.47 of the City’s Municipal Code), which requires 10 percent of rental units to be low-income units. According to the Ordinance, a lack of new affordable units will have a substantial negative impact on the environment because: (1) housing will have to be built elsewhere, far from employment centers and therefore commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution; and (2) City businesses will find it more difficult to attract and retain the workers they need. Affordable housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers. The proposed project would construct housing within the City of Daly City and it aligns with the City’s Inclusionary Housing Ordinance in providing at least 10 percent affordable housing”*

#### **Non-Compliance with Daly City Inclusionary Housing Ordinance (Municipal Code Chapter 17.47)**

The DEIR correctly identifies the importance of compliance with the Inclusionary Housing Ordinance in reducing environmental impacts of the project, such as increased noise and air pollution due to increased traffic and transit demand. However, it incorrectly states that the project as described complies with that ordinance. The project as described violates the ordinance in four important ways:

1. Inclusionary Housing Units must be provided at an Affordable Rent to households whose annual income does not exceed Low Income (17.47.070), however the plan includes middle income as well as low-income units in the 10 percent of planned units indicated as “affordable.”
2. Inclusionary Housing Units must be built at the same time as other units, and for phased projects, must be proportionately built at the same time (17.47.090), however no inclusionary units are planned for Parcel B, which is the only Parcel to be developed in the next two years, and the only parcel for which a specific Plan is proposed.
3. Inclusionary Housing Units must be “dispersed” throughout the residential development (17.47.100), however, no inclusionary units are proposed for Parcel B, and according to the

“Precise Plan” on the JUHSD website, 100 of the 111 of the required affordable units are to be located in the Parcel C building.

Parcel	Estimated Year of Occupancy	Proposed Market Rate Units	Affordable Units (including Faculty and Staff)	BMR Units (including Faculty and Staff)	Total Residential Units on Parcel(s)	Plan Area Max. Total	BMR as Percent of Total Provided
A	2022	0	110	12	122	122	10%
B	2025	201(*)	0	0	201	323	4%
C	2027	0	0	100	100	423	26%
D	2027	240	0	0	240	663	17%
E	2030	547	14(**)	11	572	1,235	10%
F	2030						

Table from Daly City Interoffice Memorandum dated October 5, 2021, “Serramonte Del Rey Redevelopment/Affordable Housing,” attached

- Inclusionary Housing Units must have “the same amenities as the Market-Rate Units, including the same access to and enjoyment of common open space and facilities in the Residential Development” (17.47.100), however the DEIR description of Parcel B includes “Open space serving the *residents of the building* would include both the ground floor terrace and the roof terrace, up to 20 private balconies for individual units, and an approximately 20,300 square-foot courtyard located on the roof of the parking deck of the mixed-use building which includes amenities such as a hot tub, fire pit, lounge furniture, and an outdoor kitchen.” [emphasis added]. No similar representation is made for the building in Parcel C, which will be predominantly below market rate.

**Non-Compliance with the California Education Code and Government Code**

This project proposed by the JUHSD would convert this public resource into private use. The JUHSD has not shown, despite repeated requests, how it has complied with requirements of the California Education Code, Section 176459, referring to Government Code Section 54220 to first offer surplus lands resulting from school closure for the purpose of low-income housing and for park and recreational purposes, nor has it shown how it was made available to specified park and recreation departments (Education Code Section 17459).

This is antithetical to the stated legislative purpose,

*GC 54220(a) The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose.*

*(b) The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes...*

In summary, the project as only partially described in the DEIR creates a negative impact on land use policy, by not providing significant low-income housing in this major development. This will have a negative environmental impact by forcing people to live further from work and social services, therefore increasing commute times, traffic, vehicle miles per day, air pollution and noise. It will also have a negative impact on communities of northern San Mateo County by limiting diversity in housing.

## **B. Section 3.14 Population and Housing**

### **Non-Compliance with Residential Housing Needs Allocation and Daly City Housing Element**

As discussed in the attached letter from Grasseti Environmental Consulting, the DEIR does not address the proposed project compliance with the Residential Housing Needs Allocation. The DEIR states that the Daly City 2023-2031 RHNA “includes 1,336 very low income units, 769 low income units, 762 moderate income units, and 1,971 above moderate income units...” The 1235 proposed units addressed in the DEIR would constitute more than 25 percent of the 4838 units addressed in Daly City’s RHNA, but would provide only 6 percent of the affordable units required. This creates an unrealistic pressure on other proposed housing projects in Daly City to provide housing for lower income residents, and is likely to make Daly City non-compliant with the RHNA.

The DEIR does not consider the impact of the loss of the community garden on the community and the environment in the area. Daly City is the largest city in San Mateo County, and is the 9<sup>th</sup> most densely populated city in the country. According to the Daly City City Manager, “Daly City is truly an impervious, concrete jungle. The urban canopy is estimated to **cover less than 5% of the land area**. Vegetation that does exist is largely introduced ornamentals and invasive species.”

<https://www.dalycity.org/319/Project-Green-Space#:~:text=As%20the%20largest%20city%20in,introduced%20ornamentals%20and%20invasive%20species.>)

The proposed project is located between two freeways and adjacent to major streets. The community garden provides a rare break in this neighborhood. The DEIR does not adequately address the loss of this community resource. The lawns and plantings mentioned in the DEIR are not equivalent to the established trees of the garden and the ecosystem that currently exists.

The “defensive architecture” recently constructed at the garden by the JUHSD, including fencing, removal of benches, and locking the gates for most hours, and security patrols, have already diminished the community use of the space. The assessment regarding the environmental impact of turning this beloved community garden into a dump for removed construction materials for most of the decade of construction, should be based on the value that the garden has provided over its decades of existence, and on the resource it can be, if not buried under tons of removed concrete and other construction debris.

### **Section 7.0 Alternatives**

CEQA requires the DEIR to evaluate alternatives to the proposed plan that may lessen significant impacts. The DEIR analyzes only the proposed project, and provides only a “no build” alternative. The DEIR does not analyze other alternatives, including alternatives that have been addressed by the affected community, which would include maintaining the existing community garden, conformance with Daly City’s Housing Element/RHNA and the Daly City Inclusionary Housing Ordinance, maintenance of existing community resources including recreational facilities and trees, changes to planned density, and improved community access.

Another alternative proposed by community members and not discussed in the DEIR is return of this “surplus” public land to the Raymatush Ohlone, who are the historic and rightful owners of the land.

Sincerely,



D. Gold  
Pacifica Social Justice



Attach:

Grassetti Environmental Consulting Letter to Michael Van Lonkhuisen, dated August 21, 2023  
Daly City Inter-office Memorandum from Affordable Housing Committee, dated October 5, 2021

## DALY CITY INTER-OFFICE MEMORANDUM

DATE: October 5, 2021

TO: Affordable Housing Committee  
Mayor Juslyn C. Manalo  
Councilmember Glenn Sylvester

FROM: Tatum Mothershead, Director of Economic and Community Development  
Betsy ZoBell, Housing and Community Development Supervisor  
Lenelle Suliguin, Housing Coordinator

SUBJECT: Serramonte Del Rey Redevelopment/Affordable Housing

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Staff is seeking comments and direction from the Affordable Housing Committee on the proposed affordable housing elements of the Serramonte Del Rey redevelopment proposed by the Jefferson Union High School District.

### **Background**

The JUHSD Precise Plan envisions a multi-phased project that will result in approximately 1,235 rental residential units. In April, and in anticipation of a development agreement stipulating the terms of the development, the Jefferson Union High School District proposed discussion points for a potential Development Agreement relating to the Precise Plan for the 22 - acre Serramonte Del Rey former high school site (See Attachment A to this report). In addition to a description of project phasing, parking ratios and the schedule for planning entitlements the discussion points for a potential Development Agreement describe how the project will provide affordable housing and meet the terms of the City's Inclusionary Housing Ordinance.

The City's Inclusionary Housing Ordinance requires that 10% of the units built in a residential project be designated as Inclusionary Units and made available to lower income households with incomes at or below 80 Percent of the area median. For the JUHSD Precise Plan this would be 124 affordable units..

Additionally, the Ordinance requires that the units shall be provided concurrently with the market rate units and be geographically disbursed in the Project. For a phased development, each phase would be required to include ten percent affordable units.

The provision of affordable housing described in the discussion points for a Potential Development Agreement has implications for the overall Serramonte Del Rey redevelopment site plan. If it is determined that affordable housing arrangements described in the discussion points for a Potential Development Agreement are infeasible or unacceptable to the City, an

overall revision of the proposed Precise Plan will be needed in order for the project to meet the requirements of the City’s Inclusionary Housing Ordinance.

### **JUHSD Affordable Housing Proposal For Serramonte Del Rey**

The discussion points for a Potential Development Agreement for the Serramonte Del Rey campus envision a total of 123 affordable units to be developed pursuant to the City’s Inclusionary Housing Ordinance at build out. Twelve of these units will be provided within the District staff housing complex currently under construction on Parcel A and are subject to the terms of the Affordable Housing Agreement executed in October 2020. The affordable units provided on Parcel A and memorialized in the Affordable Housing Agreement fully comply with the City’s Inclusionary Housing Ordinance.

The majority of the Serramonte Del Rey affordable units (100) would be provided on Parcel C and would be constructed after construction of 313 market rate units on Parcels A and B and prior to occupancy of units proposed for Parcels D, E or F. The affordable units on Parcel C would be provided as a stand-alone affordable housing development.

The remaining 11 affordable units would be provided on Parcels E and/or F. The discussion points for a potential Development Agreement indicate that a Certificate of Occupancy for the 100 affordable units on Parcel C would be issued prior to occupancy of any other units at Parcels D, E and F.

### **Discussion**

#### **Inconsistencies with Inclusionary Housing Ordinance**

The affordable housing proposed by JUHSD for the Serramonte Del Rey site is not strictly consistent with the terms of the City’s Inclusionary Housing Ordinance in two ways:

1. The City’s Inclusionary Housing Ordinance requires that affordable units are phased in at the same time as the market rate units. Subsequent to the development of housing for District staff on Parcel A, the JUHSD proposal envisions completion of 201 market rate<sup>1</sup> units on Parcel B before any affordable housing units for the general public are developed. The result of this phasing is that the 20 inclusionary units required from the 200 units developed on Parcel B, would be delayed for an estimated two years until the 100 affordable units on Parcel C are constructed.
2. The City’s Inclusionary Housing Ordinance requires that affordable units are physically distributed equally throughout a development. In the JUHSD proposal, the majority of the affordable units would be concentrated on one of six parcels.

#### **Other Considerations**

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<sup>1</sup> The District’s Discussion Points reference the possibility that the 201 units within Parcel B may be developed as Moderate Income housing. A decision about this will be made later in the development process.

- Affordable Housing Finance - As general rule, affordable housing developments of the sort envisioned for Parcel C require significant local jurisdiction subsidy in order to be financially feasible, typically a minimum of \$50,000 per unit. Since the affordable units are required under the City's Inclusionary Housing Ordinance, it is not anticipated that the City would provide any forms of financial subsidy to the project. JUHSD and/or the developer selected to build the affordable units would be responsible for raising the necessary subsidy financing to complete the affordable housing development. The City may wish to emphasize this point in the development agreement.
- Selection of Affordable Housing Developer - The JUHSD has not selected a developer for the 100 affordable units on Parcel C. The City may wish, as a condition of the Development Agreement, to set basic criteria for the selection of the Parcel C developer as well as confirmation of the proposed project's overall development feasibility.
- Project Phasing - The phasing of units described in the discussion points for a potential Development Agreement does not specifically limit construction of Parcels D, E and/or F until the affordable units within Parcel C have a Certificate of Occupancy. The City may wish to impose stronger restrictions and conditions on the construction of Parcels D, E and or F relative to the development of affordable units on Parcel C. As drafted, the discussion points for a potential Development Agreement could permit construction of units on Parcels D, E and F before construction and occupancy of the affordable units on Parcel C are completed and/or occupied. Rather than linking *occupancy* of units within Parcels D, E and/or F to the Certificate of Occupancy for Parcel C, the City might want to link *issuance of building permit* for these latter phases to the Parcel C Certificate of Occupancy.
- Income Target Clarification - The discussion points to potential Development Agreement make reference to certain units affordable housing at moderate income, an income target not referenced in the City's Inclusionary Housing Ordinance for rental housing. The purpose of this income target needs clarification.
- Obligations and In Lieu Fee - It is not clear from the discussion points to a potential Development Agreement what will happen to the affordable housing obligation created by Parcel B development in the event the 100 percent affordable development envisioned for Parcel C does not go forward. Staff recommends the Development Agreement include language to ensure Parcel B affordable obligations are met regardless of the Parcel C development status. One option would be to require the developer to post a bond that would result in payment of the estimated \$9 million alternative in lieu fee associated with Parcel B in the event the 100 affordable are not built by a specified date.

### **Recommendation**

When we meet on October 18 staff seeks the Committee's comments and direction on the proposed phasing and physical distribution of affordable units proposed plan for providing affordable units within the Serramonte Del Rey redevelopment project.

JUHSD SERRAMONTE DEL REY  
DEVELOPMENT AGREEMENT DISCUSSION POINTS  
APRIL 21, 2021

**ATTACHMENT A**

Term

The Term of the Development Agreement (DA) shall be the latter of either:

1. 15 years from the date of the Approvals of the Precise Plan by the City Council of the City of Daly City ("City"), or
2. Upon the issuance of a Certificate of Occupancy by the City if a permit application has been submitted to the Planning Department for review and approval by the Design Review Committee (DRC) prior to 15 years from the date of the Approvals of the Precise Plan by the City Council of the City of Daly City.

This timeline may be extended due to exceptional and unanticipated circumstances that Jefferson Union High School District ("JUHSD") in collaboration with the City reasonably determines a materially negative impact to the Applicant's ability to develop the Project as contemplated in the DA, including, but not limited to, unfavorable market conditions, acts of God (such as pandemics or natural disasters), acts of war or civil unrest, labor stoppages, or boycotts or other limits on the availability of necessary building supplies, or upon mutual consent by both Parties to the Development Agreement.

Development Phasing

The Project is anticipated to be built in three phases:

**Phase 1: Parcels A and B.**

Phase 1 includes Overlook Park and Entry Plaza

**Phase 2: Parcels C (Affordable Housing Parcel) and D.**

The Certificate of Occupancy for Parcel C shall be issued concurrent with, or prior to, the issuance of the Certificate of Occupancy for Parcel D.

Phase 2 includes the Head Start Program relocation.

JUHSD, or its designated representative, shall coordinate in a reasonable manner with Head Start and make good faith efforts to work towards the start of operations of the Head Start Program at Parcel C concurrent with move-in of residential tenants at Parcel C. The City and JUHSD acknowledge and agree that their intent is that Head Start would occupy space in Parcel C as a tenant of the Affordable Housing developer, but that this is dependent on Head Start being able to secure funding to pay for such a move into Parcel C space. The City and JUHSD will collaborate to assist the Head Start program in applying for and receiving funding to pay for costs related to occupying space on Parcel C. Permits and certificates of occupancy for Parcels C and D shall not be dependent upon start-up of the Head Start Program at Parcel C.

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APRIL 21, 2021

**ATTACHMENT A**

**Phase 3: Parcels E and F.**

Phase 3 includes Central Green.

Phasing of the development may vary from the scenario noted above, but will comply with the criteria for the timing of the affordable housing outlined in Exhibit A.

Parks & Open Space Requirement

Projects submitted for DRC review and approval shall meet Daly City's current Open Space requirement by providing a minimum of 150 square feet of open space per dwelling unit. The requirement for open space is to be met parcel by parcel through any combination of the following:

1. Open space on-site, to include private balconies serving individual units, common area open space (such as the common area podium level courtyard, common area roof and deck terraces, applicable open space at grade), and
2. Allocation of open space that may be off-site from the specific parcel seeking approval, including the areas designated by easement that includes Overlook Park, Central Green, and the Recreation Trail at parcels B, C and D.

The Recreation Trail, Overlook Park, and Central Green will be counted towards satisfaction of the Open Space requirements for individual parcels as designated by the JUHSD. The allotted Open Space will be assigned to a specific parcel at the time the parcel is submitted for review and approval by the DRC.

The Open Space at the Retail Plaza at Entry Drive is allocated exclusively to Parcel B.

Land that does not meet the City's gradient criteria for usable space (e.g., excessive slopes at the Hillside Area) will not be counted toward satisfaction of Open Space requirements for any parcel.

Affordable Housing

The Affordable Housing Plan (Exhibit A, attached and incorporated by reference) establishes the requirements for the Project's Inclusionary Housing component. Exhibit A includes a detailed description of the phasing of the Project's Affordable Housing and the Plan's consistency with the intent of the City's Inclusionary Housing Ordinance.

Parking

Parking Ratios for Parcels B through F:

- The proposed parking ratio for the Project's market rate housing is at least 1.5 spaces per dwelling unit. By way of example, the Applicant will provide 302

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residential parking spaces for the 201 dwelling units that are proposed in the Project for Parcel B. The breakdown of units at Parcel B is as follows: 10.4% studio/junior one-bedroom units, 37.3% one-bedroom units, 43.3% two-bedroom units, and 9.0% three-bedroom units.

- At Parcel C, the parking ratio for the affordable housing to be provided pursuant to the Precise Plan and the Development Agreement is at least 1.0 parking space per dwelling unit. The affordable housing developer to be selected by JUHSD to develop Parcel C may choose to increase the parking ratio up to 1.5 spaces/unit, or reduce the parking ratio to 0.75 spaces/unit, with the final determination regarding the parking ratio to be included in the documents submitted to the City for the DRC review and approval for Parcel C.
- The parking ratio for retail to be at least 4.0 spaces per 1,000 square feet of rentable retail space.

The above-described parking ratios are based on current conditions and assumptions. The City and JUHSD acknowledge that future parking demand will be in considerable flux over the lifetime of this DA and may increase or decrease significantly. Therefore, JUHSD, or its designees, may request future adjustments to the applicable parking ratios to reflect parking trends and professional recommendations at the time of the individual parcel application and the City shall give reasonable consideration to such requests.

JUHSD, or its designees, may request a parking ratio up to 1.7 spaces per unit on any parcel without requiring additional studies.

If JUHSD requests a reduction in the parking ratios noted above, or to increase the parking ratio above 1.7 spaces per residential unit, the City may require a parking demand study be performed by a traffic engineering firm acceptable to the City that demonstrates the revised parking ratio will be appropriate to accommodate the parking demand to be generated by the Applicant.

When calculating the overall parking supply, the analysis for the residential parking may include parking provided on-street within the Plan Area, if recommended by a traffic engineering firm acceptable to the City and agreed to by City staff.

Parking for pick-up and drop-off for the Head Start Program at Parcel C may be accommodated by on-street parking marked by appropriate signage, with such signage reserving parking spaces for this use during the appropriate hours. Likewise, parking for Head Start Program staff may be accommodated with reserved on-street parking designated by appropriate signage.

Overflow parking for Parcel A may be accommodated within the Plan Area with surface parking, on-street parking, or within future parking podiums or structures on Parcels B through F. Alternatively, to the extent that JUHSD demonstrates that overflow parking is not needed for Parcel A, it will be eliminated as a requirement in the future.



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Parking stall and drive aisle dimensions for each buildable parcel may comply with either approach 1 or 2 below, or a combination of both approaches:

1. The then-current City standards for off-street parking (including the ratio of standard spaces to compact spaces) at the time of the Applicant's submittal for DRC review and approval, and/or
2. A "Uni-stall" standard size parking space which is based upon a stall dimension of 8' – 6" x 18' – 0", unless constrained by a wall on one or both sides, in which case the minimum stall width will be 9' – 0" minimum. The drive aisle shall maintain a minimum of 24' clear.

Residential parking may be accommodated in mechanical puzzle lifts.

No more than 10% of the parking spaces required for residential use may be tandem, and tandem spaces may only be assigned to users of the same dwelling unit. Tandem units may be designed as either front to rear spaces or mechanical lift spaces (stackers).

#### Unit Count

The Project may not exceed the total dwelling unit count of 1,235 units. Except as specifically set forth herein, JUHSD and selected developers will allocate the units across the parcels. The number of units within any parcel shall not exceed the limits outlined in the Precise Plan Guidelines on a parcel-by-parcel basis.

#### Fees

JUHSD will be charged administrative fees related to matters such as permit reviews, processing, and issuance at the then-current rate as development applications are submitted. The rates for water, sewer, parks, and other similar development impact fees that are currently assessed on development projects by the City will not increase over the term of the DA. No new fees not imposed by the City at the time that the DA is entered into will be assessed on any development within the scope of this DA for the term of the DA.

Fair Share Fees paid by JUHSD based on a pro rata commitment for utilities and streets will be based on the number of units that are built per parcel and shall be paid at the time of issuance of building permit, Certificate of Occupancy, or at such other time that is customary for the City, on a building-by-building basis.

#### Offsite Costs, Timing and Responsibilities

The City will serve as the liaison and the responsible party for designing and delivering offsite improvements, including traffic signalization, and water and sewer service capacity to the site. JUHSD will contribute a fair share to these costs as each parcel is built out, the payment for which to occur at the time of issuance of building permit or the Certificate of Occupancy of the units on a per unit basis of the overall unit count of the Project.

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Offsite Work at Serramonte Blvd. will be undertaken upon demolition of the existing H.S building and the construction of Parcel C, pending review of the TIA. Work required for Parcel A is underway and will be completed with the current construction at the site.

Subdivision Map Act Issues

The City and JUHSD agree that the tentative map submitted to the City for approval shall include each of the buildable Parcels A through F in the Precise Plan Area Update, as described herein, and shall reflect the maximum total number of residential units that may be developed in the Precise Plan Area and such subdivision map shall remain valid and fully vested during the full term of the DA. Subsequent to approval of the tentative map for the Precise Plan Area Update, and pursuant to Section 66456 of the Government Code and applicable provisions of the City's municipal code, JUHSD shall cause final subdivision maps to be prepared from time to time as the parcels in the Precise Plan Area are developed.

The City and JUHSD agree that, subject to the minimum and maximum residential unit counts for each parcel, as set forth in the Precise Plan, and the requirements set forth in this DA related to the development of below market rate ("BMR") and affordable units, JUHSD shall have discretion to determine the number of residential units to be developed on each parcel, provided that the maximum number of units authorized to be developed pursuant to the Precise Plan shall not be exceeded.

Timing of City Review and Approvals Process

When an Application for Planning Approvals on a parcel-by-parcel basis is required to be reviewed by the DRC, the application submitted will be reviewed by City staff and go to the DRC within four months of Initial Submittal, along with the staff's recommendations and conditions of approval.

A Planning Submittal will be considered complete and ready for review by the DRC if the checklist that is included in the Precise Plan documentation is completed in its entirety and addresses all items enumerated—both as guidelines and as requirements to be met by the Applicant.

Given the first of its kind nature of this undertaking by the District, having a clear and specific timeframe that the development community can rely upon is necessary to attract development interest—thereby benefiting both the District and the City to the greatest extent.

This four-month timeline is based upon one month for staff review upon receipt of planning application, one month of revisions as needed by the Applicant, one month for a second review by staff, one month for the staff report and scheduling of hearing with the DRC.

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DEVELOPMENT AGREEMENT DISCUSSION POINTS  
**EXHIBIT A – PHASING FOR INCLUSIONARY HOUSING**  
APRIL 21, 2021

This **Exhibit A** to the Development Agreement describes how the phasing of the Project's Affordable Housing Plan ("AHP") meets the intent of the City's Inclusionary Housing Ordinance requirements for the 1,113 units of housing--the maximum allowable total number of units on Parcels B through F.

**The proposed phasing approach for development of affordable housing on these parcels is designed to accomplish the following:**

- Provide the necessary financial flexibility in the timing of the development of affordable housing for JUHSD to provide the overall proposed program of affordable housing, below market rate ("BMR") housing, and faculty and staff housing, in addition to the market rate housing.
- Exceed the City's requirements for the number of BMR units, contribute to Daly City's regional share of housing, and implement the goals/objectives of the City's General Plan and housing element.

**Exhibit A addresses the following:**

- The synchronization of development of affordable and BMR units and market rate housing units,
- the distribution of the housing types throughout the Project parcels, and
- ensuring the same access to common amenities throughout the Plan Area and bedroom count of affordable/BMR units as the market rate units.

**The BMR/Affordable Housing component of the Precise Plan does the following:**

1. Exceeds Requirement. The Project, at build-out, will provide more BMR units (@ 70% AMI) than required by the City's Inclusionary Housing Ordinance. With the buildout of the proposed 1,113 dwelling units--representing the maximum number of units that will be developed at Parcels B through F, 111 BMR units (10%) will be provided pursuant to the City's Inclusionary Housing Ordinance at 70% AMI.

The AHP proposes that if the maximum 1,113 dwelling units are built at Parcels B through F, then the obligation for the additional 14 affordable units (@80% AMI) would be provided, bringing the total number of affordable units and BMR Units to 125 over the course of the DA (excluding the units provided at Parcel A)

2. Accelerates development of BMR Units within the City. JUHSD proposes to build 100 BMR Units (@ 70% AMI) at Parcel C as the next component of the Project following the development of Parcel B.
3. Offset of Parcel B Timing. The phasing anticipated per the AHP outlines the requirement that at a minimum, 100 BMR Units will receive their Certificate of Occupancy at Parcel C prior to the occupancy of any other units at Parcels D, E and F. Although this approach postpones the construction of 20 BMR units during the work at Parcel B, this accelerates the

**JUHSD SERRAMONTE DEL REY  
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EXHIBIT A – PHASING FOR INCLUSIONARY HOUSING  
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construction of 100 BMR units anywhere from three to ten years (depending on the ultimate buildout schedule) than if incorporated on a pro-rata basis with each of the parcels.

In 2027, at the completion of the stand-alone affordable housing project at Parcel C, the build-out of the plan at that time will have 26% of the units being BMR (or 17% if Parcel D is completed at the time that Parcel C is completed), not including the additional affordable housing units provided by the Faculty and Staff housing. In the event that the affordable housing development at Parcel C is delayed or not built during the term of this DA, but the market rate units contemplated for Parcel B are built, JUHSD, at its option, will either cause to be built 20 BMR units, or pay an in-lieu fee corresponding to the number of market rate units built on Parcel B at the rates set forth in the City’s then-current Inclusionary Housing Ordinance.

*(Table 1 below reflects the percentage of BMR Units that will be built as a percentage of all the units over the timeframe of the full buildout.)*

Parcel	Estimated Year of Occupancy	Proposed Market Rate Units	Affordable Units (including Faculty and Staff)	BMR Units (including Faculty and Staff)	Total Residential Units on Parcel(s)	Plan Area Max. Total	BMR as Percent of Total Provided
A	2022	0	110	12	122	122	10%
B	2025	201(*)	0	0	201	323	4%
C	2027	0	0	100	100	423	26%
D	2027	240	0	0	240	663	17%
E	2030	547	14(**)	11	572	1,235	10%
F	2030						

(\*) Refer to Item 10  
(\*\*) Refer to Item 11

**Additional Considerations:**

- Geographic Distribution. Residents of affordable/BMR units and market rate units will have equal access to all common amenities and features of the neighborhood, regardless of which parcel the affordable dwelling units are built on. Affordable housing is distributed in the Plan Area, at Parcels A and C, (as well as possibly Parcels E and/or F) consistent with the City goal for affordable housing to be distributed.
- Equivalency. BMR units will provide the same ratio for bedroom count per dwelling unit (or exceed the bedroom count per dwelling unit) as the ratio for the market rate units.
- Initial Parcel C Buildout. JUHSD anticipates building out not less than 100 units of BMR housing in Phase II at Parcel C. The additional 25 affordable units (at 70% AMI and 80% AMI will be built at Parcels E and/or F.

**JUHSD SERRAMONTE DEL REY  
DEVELOPMENT AGREEMENT DISCUSSION POINTS  
EXHIBIT A – PHASING FOR INCLUSIONARY HOUSING  
APRIL 21, 2021**

7. Pro-rata Buildout of BMR and Affordable Housing. If JUHSD ultimately builds fewer overall dwelling units than the maximum number of dwelling units allowed pursuant to the Precise Plan and the Development Agreement, the Applicant will provide BMR and Affordable Units (at 70% AMI and at 80% AMI) consistent with the ratio utilized as though the Plan Area is fully built out. With the phasing as planned, a minimum of 100 BMR Units will be built at Parcel C prior to other market rate housing. Therefore, the District can build out fewer dwelling units on the remaining parcels than the maximum up to that consistent with the Inclusionary Housing Ordinance.
  
8. State Housing Waivers. Per the City’s BMR Ordinance and the intent of the State’s Density Bonus Legislation, an applicant may submit to the City a request for specific incentives, concessions, or variances based on the percentage and income level of affordable units proposed in a development, with the purpose of decreasing the cost of developing affordable housing and increasing the supply of affordable housing. Given the overall number of affordable housing units that are being proposed in the Precise Plan Area, JUHSD is proposing that the phasing of the affordable/BMR housing and the distribution of the affordable/BMR housing be modified from the City’s Inclusionary Ordinance.

The unit mix for the Parcel A that will be owned and operated by JUHSD, or its assignee is 12 units at or below 70% AMI, 49 units at or below 80% AMI (low income) and 61 units at or below 120% AMI (moderate income).

The proposed low and moderate-income units qualify for state density bonus incentives to reduce barriers to affordable housing. Although these units are restricted to faculty and staff of the District, they do qualify for the State’s density bonus and concessions. Consolidating affordable housing to two sites--Parcel A and C (plus Parcels E and/or F rather than concurrent buildout with each market rate housing development utilizes the State’s density bonus legislation.

Table 2		Serramonte Del Rey Plan Area Housing Program				
	% of AMI	Parcels A - F Market Rate Units	Parcel A	Parcels B - F	Total	% of Total
Low Income (BMR per City Ordinance)	Up to 70%	0	12	111	123	10%
Low Income (per State RHNA)	Up to 80%	0	49	14	63	5%
Moderate Income	Up to 120%	0	61	0	61	5%
Market Rate (*)	N/A	988	0	0	988	80%
<b>TOTAL</b>		<b>988</b>	<b>122</b>	<b>125</b>	<b>1235</b>	<b>100%</b>

(\*) Refer to Item 10

(Table 2 above provides an overall breakdown of the Affordable, Workforce, and BMR Housing planned for the entire Serramonte Del Rey Neighborhood by percentage as outlined above.)

JUHSD SERRAMONTE DEL REY  
DEVELOPMENT AGREEMENT DISCUSSION POINTS  
**EXHIBIT A – PHASING FOR INCLUSIONARY HOUSING**  
APRIL 21, 2021

**ATTACHMENT A**

9. RHNA Contribution. The City may apply both the BMR and affordable units that will be provided towards meeting the City's Regional Housing Needs Assessment (RHNA).
10. Moderate Income Units. Rather than build 201 market rate units at Parcel B, at JUHSD's discretion, Parcel B may be financed as an Affordable Housing Parcel at the Moderate Income Level (i.e. at or below 120% AMI). Although this decision will not have been made at the time of the Entitlements and Planning Approvals, a determination will be made by JUHSD based on available capital sources prior to submitting the Project for Building Permit Application.
11. In-lieu Alternative. In lieu of constructing fourteen (14) Affordable Units (at 80% AMI) proposed for Parcels E or F, JUHSD, at its discretion, may contribute to the City's affordable housing Inclusionary In-lieu fund for the development of these units.

**From:** [Magic Garden](#)  
**To:** [Michael Van Lonkhuysen](#)  
**Subject:** [EXTERNAL] Serramonte Del Rey DEIR Petition  
**Date:** Thursday, September 7, 2023 11:09:22 PM  
**Attachments:** [Debbie Santiago Save Daly City's Only Community Garden .pdf](#)  
[Debbie Santiago petition comments jobs 29690731 20230908051300.csv](#)

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CAUTION: EXTERNAL SENDER. Verify before you respond, click links or open attachments. Questions? Contact ISD.

Hello Mike,

Please see 2 attached PDF files that include my petition and a few comments made by some of the 4,542 people who signed it.

Please include all the photos and videos I linked to in the petition as comments on the DEIR, including the **historic photos, recent photos and wetland photos and videos.**

Let me know if you have any questions.

Debbie Santiago  
<https://chnng.it/2dkrfFZwwh>



Petition Started: July 3, 2021

## [Save Daly City's Only Community Garden on Ohlone Land and Territory](#)

**4,558** Petition Signatures

Started by [Debbie Santiago](#)

When my family moved to Daly City in 2004 my son discovered a beautiful community garden within walking distance of our home. Growing fruits and vegetables with friends and neighbors helped teach my son and niece to respect and share earth's bounty.

My mother and I are enrolled members of the [Washoe Tribe of Nevada and California](#). Together we hold small ceremonies in the Daly City Community Garden and sing traditional Wašiw songs to honor Mother Earth and all her beauty. The garden has given my family a sense of peace and harmony.

Over the past two decades gardeners have nurtured the land and Mother Earth has responded by providing a second chance for indigenous plants, hummingbirds, hawks, bees, frogs, Mission Blue Butterflies, California Gartersnakes, and deer that drink from seasonal wetlands. Everything you see and touch in the garden is living and sacred. Please help me save it.



## **Here's the Problem: High School District [Trustees](#) Plan to Bulldoze Daly City's Only Community Garden**

Daly City, the second most populous city in San Mateo County, with a population of 104,901 according to the 2020 census, is home to only one community garden. However, this single food forest is under threat because Jefferson Union High School District (JUHSD) intends to demolish it. This community garden, an urban oasis, and a vital food source for residents for over two decades, is located at 699 Serramonte Blvd in Daly City. Shockingly, the district's plan is to repurpose this sacred space into a dump site for asphalt and construction debris as part of a 15-year phased development project that includes the construction of five apartment buildings, eventually totaling 1,113 rental units. It's important to note that these units will be built on public school district property and leased to a private property management company.

The local Sierra Club chapter, along with various other community organizations including the NAACP, have communicated their concerns to the City, urging them to preserve this invaluable garden space.

### **Spare the Garden: Don't Bulldoze It, Dump on It, Or Build Over It**

The current site for the garden is ideal because the ridgeline above the garden protects a fruit orchard, vegetable plots and native plants from coastal fog and wind. JUHSD and their [business partners](#) have not agreed to modify the development to spare the garden and they have not offered an alternative site for a community garden.

The land where the project is situated holds historical significance as it once belonged to the Ramaytush Ohlone, the original inhabitants of the San Francisco Peninsula, who sustained themselves through hunting, fishing, and gathering. The garden and the surrounding trees not only provide valuable community resources but also contribute to preserving this green space with cultural and historical importance.

### **School District's Heavy-Handed Tactics Targeting Gardeners**

District trustees who support demolishing the garden directed staff to implement an authoritarian culture of intimidation and fear. In 2020, as the Covid pandemic spiked JUHSD began ramping up harassment. School district tactics included verbally berating gardeners by telling them to stay away, erecting an 8' cyclone fence with a padlocked gate, installing a video surveillance system near the gate, installing a loudspeaker, cutting off water from all garden spigots and removing

redwood trees. Additionally, gardeners were required to pay for fingerprints and an FBI background check to access the garden by appointment. Staff said they were concerned about crime however when asked if the school district had reported any incidents to police administrators said no crime was reported. Toni Presta, Superintendent of JUHSD has not refunded the public's money for fingerprints and background checks. Presently, JUHSD has allocated resources to employ security guards tasked with overseeing the garden. Unfortunately, there have been reports of security personnel engaging in drug use, both within the garden and in the adjacent parking area, which concerns gardeners.

### **History of Ancestral and Cultural Genocide**

In 1769, Spanish colonizers arrived in Northern California and constructed missions to Christianize my ancestors and take our land. Between the years 1769 and 1834, the number of Native Californians dropped from 300,000 to 250,000. After California entered into the Union in 1850, the state government perpetrated massacres against the Ohlone people. Many of the leaders of these massacres were rewarded with positions in state and federal government. These massacres have been described as genocide. During the 1940's through the 1960's the state disenrolled eight-hundred tribes including the Ohlone to gain control of their land and territory. Native Californians who were relocated during this era faced culture shock and discrimination. Today, many of us are [leading the effort](#) for cultural and historical recognition of our tribes.

### **Privatization of Public Resources**

Bulldozing Daly City's only community garden and killing trees to develop **market-rate** housing on public land that once belonged to the Ramaytush Ohlone is unacceptable. The community garden is Daly City's only public food producing garden and home to over 100 fruit trees protected by a coastal bluff, 27 redwood trees and an impressive collection of native plants, hundreds of trees, a seasonal wetland and wildlife including the Mission Blue Butterfly and the California Garter Snake.

The garden has a rich history of serving as a communal space for Indigenous families, Latinx families, and families of Color, allowing them to cultivate crops and raise chickens. Gardeners forage for plants that hold significance in the medicine and dietary practices of the Ramaytush Ohlone. Additionally, the garden serves as a site for multi-generational seasonal ceremonies led by Indigenous elders, encompassing approximately 2 acres of public land.

This garden is especially important because it's the only community garden in Daly City, where access to greenspace and parkland is extremely limited and underfunded. In recent years, the Daly

City Council made the regrettable decision to defund Westmoor Park, a space they previously leased from JUHSD. Consequently, the park lease was terminated, and JUHSD is now utilizing the land to construct new office buildings for the elected board of trustees and administrators.

Regrettably, there appears to be a lack of accountability among locally elected officials who may not fully grasp the detrimental consequences of trading a public garden and park for market-rate housing. This shortsighted approach by the JUHSD Board of Trustees has resulted in detrimental policy decisions and an unwarranted focus on expansion that deviates from the District's stated mission of "Excellence Through Equity."

**From the City of Daly City website:**

- Daly City is the 9th most [densely populated](#) city in the entire country. And the City experiences one of the highest pollution burdens within the County of San Mateo.
- Overall, Daly City does not have a diverse urban forest, and this has much larger implications for long-term resilience. Forests that are not diverse succumb to external shocks quickly, like disease, drought, and storms.

**Chronic Illness in San Mateo County**

The 2013 San Mateo County Community Health Needs Assessment reported that the prevalence of asthma and diabetes increased significantly between 1998 and 2013. In only 15 years the asthma rate in San Mateo County jumped from 8% to 17.9% and chronic lung disease increased from 4.7% to 7.1%. Poor air quality in Daly City disproportionately impacts children and people of color and county asthma deaths rank above the state average. Diabetes is also on the rise. Between 1998 and 2013 the county diabetes rate more than doubled from 3.9% to 10%. Diabetes disproportionately impacts people of color and low-income families.

**The Sierra Club sent Daly City officials a letter that included the following concerns:**

Land owned by the Jefferson Union High School District currently represents a public use. It includes a well-used almost two acre community garden and orchard that improves air quality, increases access to fresh food, improves food security, improves dietary habits through education,

increases fruit and vegetable intake, increases physical activity through garden maintenance activities, reduces the risk of obesity and obesity-related diseases, improves mental health, promotes relaxation, provides needed biodiversity, includes hundreds of plant species including native plants, provides wildlife habitat, includes trees and shrubs of different densities and heights giving birds a places of retreat and safety, includes a number of redwood trees and fruit trees, the garden includes a seasonal wetland, reduces erosion from runoff, provides natural flood control, improves water quality and serves as a vital component of effective adaptation and resilience to climate change. Children's toys within the garden point to widespread community use and the functioning of the garden like a park.

There is a shortage of community gardens in Daly City unlike surrounding cities including Pacifica and San Francisco. Community gardens function as ecological green space, a gathering place for neighbors, as well as a place for solitude, reflection, and study. They also make a positive contribution to the community by reducing food insecurity, providing access to culturally relevant foods, promoting healthier eating through education programs, and providing access to gardening for those who otherwise could not have a garden, such as families with young children, the elderly, recent immigrants, multifamily dwellers, and the unhoused.

The garden was initially established many decades ago as a therapeutic school garden project but swiftly transformed into a beloved community garden. Today, it stands as a cherished source of immense public benefit and a point of pride for the community. This garden not only offers opportunities for both active and passive recreation but also promotes healthy nutrition, a crucial aspect given the concerns surrounding malnutrition and obesity, especially considering the limited availability of community gardens in Daly City.

Furthermore, considering the low ratio of counselors to students in JUHSD, the garden plays a significant role in supporting student mental health. The shortage of community gardens in Daly City has had a detrimental impact on its residents, particularly during the COVID-19 pandemic when restrictions on team sports, gyms, and group exercise classes were imposed by state and local health authorities.

The demand for increased access to community gardens is particularly relevant in Daly City, given its significant population of minority families with deep-rooted traditions of actively tending to gardens, orchards, and farms. These practices are tied to food security and cultural traditions, making the presence of community gardens even more critical for the community's well-being.

Community gardens are examples of green infrastructure that are resilient adaptations to climate change. As global warming intensifies food costs will continue to increase and food scarcity will need to be addressed through community gardening. Gardens play a multifaceted role in mitigating climate change impacts by reducing urban heat islands, offering various ecosystem services, and improving stormwater retention.

From a socioeconomic standpoint, community gardens build trust, encourage community participation, improve responses to natural disasters, and bolster food security — all of which are pivotal elements in effectively adapting to and building resilience against the effects of climate change. Notably, unlike other green infrastructure solutions such as rain gardens, bioswales, and green roofs, community gardens are uniquely equipped to respond to a broader spectrum of stressors, encompassing economic, social, and political instabilities in addition to their environmental benefits.

Decades of tree removal, often to make way for both front yard and backyard paving, has increased impervious surfaces citywide. Now the highly urbanized population faces a new climate reality dominated by drought, rising temperatures, and limited but more intense storm events.

### **Stop Reducing Greenspace in Daly City**

It is imperative that our elected representatives fulfill their responsibility to address nature-deficit disorder, a condition stemming from the chronic absence of community gardens, green spaces, and parks in Daly City. Nature-deficit disorder has far-reaching consequences, including elevated rates of physical and emotional illnesses, attention deficits, depression, substance abuse, sensory underutilization, and health issues related to poor dietary habits, insufficient physical activity, and acute asthma episodes triggered by unhealthy air quality. Extensive research indicates that nature-deficit disorder erodes ecological literacy and hinders stewardship of the natural world, fostering apathy in the face of climate change crises such as wildfires, sea level rise, and extreme heat – challenges that Daly City urgently needs to address.

### **Government Sponsored Segregation**

The NAACP San Mateo County Branch reached out to Daily City Councilmembers, expressing significant concerns about JUHSD's endorsement of government-sponsored segregation on public lands. Economic segregation is particularly worrisome, given that only a minimal 10% allocation has been designated for affordable apartments within the project. Additionally, the School District's

strategy of concentrating all 111 affordable/low-income units within a single "poor door" building while distributing 1002 market-rate apartments across four other buildings is inconsistent with the city's Inclusionary Housing Ordinance and is expected to perpetuate low socioeconomic status and racial segregation.

### **Economic Segregation and Racial Segregation are Intertwined**

Economic segregation occurs when individuals or families with lower incomes are confined to certain neighborhoods, or a single building within a multi-building development, due to affordability constraints. This pattern often results in racially homogeneous housing, as people of similar economic backgrounds often share similar racial backgrounds. Consequently, when families are concentrated in poor buildings, it creates racially homogeneous social networks that limit access to educational and employment opportunities. This perpetuates a self-reinforcing cycle that sustains economic disparities, economic segregation, and racially segregated housing.

### **Low Socioeconomic Status**

Socioeconomic status (SES) encompasses not just income but also educational attainment, financial security, and subjective perceptions of social status and social class. SES can encompass quality of life attributes as well as the opportunities and privileges afforded to people within society. The relationship between SES, race and ethnicity is intimately intertwined. Research has shown that in terms of socioeconomic stratification, race and ethnicity often play significant roles in determining a person's SES (U.S. Census Bureau, 2009).

Communities affected by low SES, driven by factors like income-based housing segregation, share common experiences, including limited economic development, substandard health conditions, and fewer educational opportunities. Persistent low SES has been identified as a contributing risk factor that disproportionately affects communities of color residing in income-segregated housing. In contrast, affluent homeowners in predominantly white communities are less likely to experience low SES.

### **Social-Spatial Segregation**

In addition to the project's socioeconomic segregation, there is the problem of social-spatial segregation. Currently, funding has not been allocated to establish a connection between the pedestrian and bike trail and the BMR building, thereby depriving underserved children of a

safe route to and from school. Social-spatial segregation is also apparent by the absence of a rooftop Jacuzzi spa for families in the affordable building, while it is provided to market-rate tenants on Parcel B. The proposed plans raise concerns of income-based discrimination, as emergency generators are exclusively installed in all market-rate buildings, with no provision for the low-income building. Additionally, placing an income segregated daycare center on Parcel C underscores its stigmatization as an income segregated area of the development.

### **Further Information Available Online**

To access more information, please visit the [Daly City Community Garden Alliance](#) website. You can also stay updated on the garden's activities by following their Instagram account [@themysticalgarden](#). [Historic photos](#), [recent photos](#) and [wetland photos and videos](#) are also published online.

### **Your Support Matters**

Join me in supporting community gardening in Daly City. By adding your signature to this petition, you are helping to ensure the preservation of Daly City's only community garden for generations to come. This is a comment on the Serramonte Del Rey Campus Redevelopment Project [Draft Environmental Impact Report](#). This petition, addressing the Draft EIR (APN 091-211-230), is scheduled for delivery by 5:00 pm on Sept 8, 2023, to Daly City Planning Manager [Michael Van Lonkhuysen](#), City of Daly City [Councilmembers](#), and Jefferson Union High School District [Trustees](#).

Thank you, Debbie Santiago

### **Community Garden Trees** (hundreds of trees)

27 Redwoods  
3 Madrone  
2 Buckeye  
4 California Coffee Bean  
1 Bay Laurel  
2 California elderberry  
1 Laurel  
2 Douglas Fir  
2 Hinoki Cypress  
5 Monterey Cypress  
(100) Monterey Pine

1 Catalina ironwood (donated by city)  
5 Willow  
20 Juncus patens (Spreading Rush)  
14 Juncus lescurii (San Francisco Rush)  
2 Blue Spruce  
1 Potted Spruce  
1 Alpine Source  
1 Austrian Pine  
1 Live Oak  
1 Noble Fir  
3 Maple (big)  
2 Japanese Maple  
1 Walking Stick Tree  
1 White oak  
(100+) Acacia

**Community Garden Fruit Orchard** (over 100 fruit trees)

3 Cherry  
2 Plum  
8 Nectarines  
22 Apple  
12 Currants, many varieties  
5 Avocado  
4 Pears  
3 Olive  
2 Loquat  
2 Kumquat  
2 Lemon  
2 Buddha Hand Citrus Tree  
1 Mexican Lime  
1 Meyer Lemon  
3 Banana Passion Fruit  
6 Blackberries without thorns  
1 Lemon Guava  
1 Pomegranate



6 Blueberries Shrubs  
4 Pineapple  
1 Fig  
1 Mandarin Orange  
2 Mandarin Clementine  
3 Grape Vines  
1 Prickly Pear Cactus  
2 Dragon Fruit Cactus  
2 Peach

**Wildlife** (partial list):

- California Garter Snake
- California Vole (rodent)
- Coyote
- Bald Eagle
- Red-Tailed Hawks
- Skunks
- Raccoons
- Ravens
- Woodpeckers
- Hummingbirds
- Lizards (Alligator Lizard and Blue Belly)
- Owls
- Bats
- Frogs
- Mountain Lion (SDR near Skyline Ridge - Seen droppings and track prints)
- Squirrels

**Butterflies:**

- Mission Blue
- Monarchs
- Tiger Swallowtail
- Red Admiral
- Painted Lady
- Regal Fritillary

Name	City	State	Postal Cod	Country	Commented Date	Comment
Mark Hubt	Pacifica	CA	94044	US	8/1/2021	"Cities for it's people ... not for sale!"
Alison Littl	Montara	CA	94037	US	8/1/2021	"I want to protect green spaces for all residents of the Bay Area."
Eddy Holm	South San	CA	94080	US	8/1/2021	"Protect the community garden, stop this greedy land grab by developers. Public land is for the people,not private profit."
m Tsang	San Francis	CA	94122	US	8/1/2021	"I am not against the city doing everything they can to get more housing available .if only the park can be part of the new structure then new residents either office
Sebastian	Pacifica	CA	94044	US	8/1/2021	"Preserving the community I love so much. That's it. Plain and simple."
Liliana Rive	South San	CA	94080	US	8/1/2021	"Stop selling out the city! Our community needs more green space to grow food! Not more high rises to keep pushing people out!"
Erin Perus	San Francis	CA	94110	US	8/1/2021	"This is too much to sacrifice!! There is already a lot of space in this development plan- destroying this garden is avoidable and unnecessary!Daly City needs to embrace
Irie Dimas	Oakland	CA	94605	US	8/1/2021	"WE NEED COMMUNITY GARDENS"
beth clend	San Francis	CA	94112	US	8/1/2021	"Community gardens are a part of healthy communities!"
Dianne Lee	Daly City	CA	94015	US	8/2/2021	"We NEED to save this precious and amazing garden! We need more community gardens, not less!!!!"
Sahar Salel	San Francis	CA	94132	US	8/2/2021	"we only have one!!!!"
Jackelin Int	Daly City	CA	94014	US	8/2/2021	"I'm signing because I believe this community deserves to stay and not get destroyed!"
gretchen tr	Antioch	CA	94509	US	8/2/2021	"I strongly believe that community gardens are vital to community health."
irene andr	Pacifica	CA	94044	US	8/2/2021	"we need more community gardens in daly city! out world can't afford to lose anymore green spaces"
Sarah Adar	San Jose	CA	95125	US	8/2/2021	"Community green space should stay community green space!"
Alicia Lope	Daly City	CA	94015	US	8/3/2021	"I'm signing because public schooling in Daly City had little to no environmental education or access to greenery. Every child deserves to learn hands on in a garden. Ar
Claire Payr	San Francis	CA	94134	US	8/3/2021	"Community gardens are extremely important to me and my family."
Kaxandra C	Daly City	CA	94015	US	8/3/2021	"I love this place and the cats &lt;3"
flora barre	Daly City	CA	94014	US	8/3/2021	"if they take this down just build a bullshit building then they are literally the real life version of those greedy dudes that took down the mother tree in Avatar with the
Maria Phai	Daly City	CA	94015	US	8/3/2021	"Because the garden is an important asset to the city of daly city and it should be saved."
Angie Char	San Francis	CA	94132	US	8/3/2021	"Every place in the world needs a community garden ♡"
Elizabeth F	Pacifica	CA	94044	US	8/3/2021	"community greenspace is as important as housing- hoping acommidations can be made to preserve this green resource"
Chris Lee	San Francis	CA	94122	US	8/3/2021	"Because a city needs its community Garden"
Sylvia A	Sacrament	CA	95818	US	8/3/2021	"As someone who has moved to the area I wouldn't want the only community garden destroyed :("
Debbie Sar	S.F.	CA	94110	US	8/4/2021	"Debbie Santiago This garden should be saved. What was mentioned about fruits and vegetables it's only part of what's in the garden we have herbs and succulent pla
Patrick Rol	San Francis	CA	94080	US	8/4/2021	"I've been gardening at this garden for over 5 years. Kids learn all about gardening and it's something we can't throw away so the school district can rent the land to m.
SAFIYYAH I	Westboro	MA	1581	US	8/4/2021	"I'm signing because communities with no green space are more vulnerable to the mal effects of climate change (like more extreme heat and cold), public health (like l
Claude Car	Argyle	TX		US	8/4/2021	"Bless your community & it's beautiful garden!!&lt;333"
Maxine Bo	San Francis	CA	94102	US	8/4/2021	"flowers r forever"
Abby Gold	Safety Harl	FL	34695	US	8/5/2021	"Gardens matter!"
Angela Mc	san francis	CA	94117	US	8/5/2021	"Community gardens are life."
Jennifer Bz	San Diego	CA	94044	US	8/5/2021	"My husband, Mike Varney, and I did not give money to the DCYHC just so that the Jefferson high school district could turn around and destroy a public garden. This is
Melissa To	Lafayette	CA	94549	US	8/5/2021	"These spaces deserve refuge from development. There is already way to much development in Daly City and absolutely not enough community gardens"
Claire Gen	San Francis	CA	94134	US	8/5/2021	"I was born and raised in Daly City and we need to preserve its open spaces for BIPOC"
Isabella Gc	Daly City	CA	94015	US	8/5/2021	"Daly City needs community spaces!!"
Felicia Boc	Oakland	CA	94608	US	8/5/2021	"We need MORE public green spaces, not less! The existing life on this piece of land is worth more than any building that could go on to of it"
Daniel Nak	San Bruno	CA	94066	US	8/5/2021	"I love Daly City and I love plants."
Giselle Ror	Daly City		94014	US	8/5/2021	"I live in Daly City and it holds a special place for my community."
Sangmi Ch	San Diego	CA	92129	US	8/5/2021	"Stop stealing Indigenous land to build unaffordable housing"
Lisa Carma	Castro Vall	CA	94552	US	8/6/2021	"I'm signing because we need these spaces. Destroying community spaces is violent. Crack down on landlords/corporate apartment owners creating impacted housing
Julian Agu	Daly City	CA	94014	US	8/6/2021	"I want to keep public land as public land!"
Bruce Lew	San Francis	CA	94122	US	8/6/2021	"This proposed housing development doesn't belong here. Not this garden."
isabelle cla	Ventura	CA	93003	US	8/6/2021	"Community gardens are so important for the planet and people."
josah perle	berkeley	CA	94710	US	8/6/2021	"Save public space! Save community space!"
Alma Alvar	Daly City	CA	94014	US	8/6/2021	"I live in Daly City and want to stop this greedy land grab."
Nicole Bea	Magdalenz	NM	87825	US	8/6/2021	"This community garden sounds important on so many levels. Please preserve it for future generations"

Karina Lop San Francisco CA	94116 US	8/6/2021 "Daly City deserves better! Not less!"
Nicholas Tr Oakland CA	94607 US	8/7/2021 "Urban agriculture is a way forward! Think about what communities need!"
Anica Sanc Daly City CA	94015 US	8/7/2021 "we need to keep the little amount of gardens we have left and as a person who lives in Daly City it is not ok to turn it into more apartments."
Lena Thaler	US	8/7/2021 "Gardens give people sovereignty, purpose, community, nourishment (of body and mind) and are an important part of our livelihood. These gardeners and community
Autumn H Los Angeles CA	90037 US	8/7/2021 "WE NEED TO RESPECT THE EARTH THAT IS SO KIND & NURTURING TO ALL LIVING THINGS THAT INHABIT IT!!!!!!!!!!!!!!!!!!!!!!"
Helena Jos Novato CA	94945 US	8/7/2021 "Save the garden. We don't need a concrete jungle we need more plants and food."
Juliet Olmc Santa Cruz CA	95060 US	8/7/2021 "Community gardens are so important for the health of our communities. Preserve them at all costs!"
Deborah Sl Seattle WA	98144 US	8/7/2021 "This little hidden gem is vital to the neighbors that use it, care for it and find a moment of quiet in it. Please preserve this beautiful space, a community space that pro
Zahira Rev Redwood (CA	94061 US	8/8/2021 "I love Daly City"
Karelyn Riv Los Angeles CA	90011 US	8/9/2021 "I signed because I and many others think it's wrong to tear down a 20 year old garden just for some stupid buildings that can be built elsewhere"
Janine Ben Boston MA	2215 US	8/9/2021 "This garden is important to the people and the ecological contributions are needed!"
henry eik Oakland CA	94621 US	8/10/2021 "We need to save this Garden."
teri searcy Redwood (CA	94061 US	8/15/2021 "for people living in urban areas it's often difficult to find fresh produce at a reasonable price. this garden is important for that and other reasons. people over profit!"
Phillip Mac Oxnard CA	93030 US	8/17/2021 "Green space is needed to help slow down climate change, and a community garden is beneficial to any community, especially for communities like Daly City with very
Dolores Pi South San CA	94080 US	8/20/2021 "The city of Daly City needs to find somewhere else for their apartment bldg. Mental health and gardening are more important to the community."
Nick DeRe San Francisco CA	94118 US	8/21/2021 "The bay needs more community gardens!"
Oliver Max San Francisco CA	94109 US	8/22/2021 "I grew up in Daly City and always felt we could do better in the commons and public realm we provide to residents. This development takes away from that."
Paul Totah Pacifica CA	94044 US	8/28/2021 "I'm part of Tree City Pacifica and want to defend the trees and garden."
Irene Chin Daly City CA	94015 US	8/31/2021 "I want the garden to continue. Daly City needs more open spaces. Don't overcrowd with another housing complex, there are way too many of them and not enough
Olga Perez South San CA	94080 US	9/15/2021 "As a daughter of Bracero worker, I know too well the importance & benefits of community gardens & farmer's markets over corporate working conditions & profit pri
Tess Ungei oakland CA	94606 US	9/20/2021 "HI! I'm teaching a class called Urban Farmcraft @ Summit High School right up the hill from the garden! Today is our first day, and we just took a walk down to the gar
Tristan Lev San Mateo CA	94402 US	9/20/2021 "LETS GO"
Matthew L Pacifica CA	94044 US	9/21/2021 "Daly City doesn't have enough nature. Too much concrete. Save the nature."
Emily Bart Chicopee MA	1020 US	9/21/2021 "They should garden"
silvia Ganu daly city CA	94015 US	9/21/2021 "Im signing because is important to my sister in law, and she knows what is best for our city."
Terry Radc San Mateo CA	94404 US	9/22/2021 "Developers are turning our Bay Area cities into overcrowded unhealthy unliveable spaces. They don't and never will live in the areas they're destroying. I can't compr
Tracy Coro concord CA	94521 US	9/23/2021 "Nurture Nature"
David Her Vallejo CA	95137 US	9/25/2021 "Put a MORATORIUM on all building construction in Daly City! The "ninth most crowded city in America", with a "5% canopy of trees", has already exceeded its carryin
Corinna Lo San Francisco	94134 US	9/26/2021 "Community gardens are our urban connection to the earth and teach our youth valuable lessons about nature & the importance of caring for our planet."
Matthew L Pacifica CA	94044 US	10/1/2021 "Daly City is overdeveloped don't make it worse"
Rachel Col Bessemer AL	35023 US	10/10/2021 "Save the garden"
Julia Flores Daly City CA	94014 US	10/24/2021 "this space is a place of healing, culture, growth, and community. it would be an both a social and environmental catastrophe to eliminate it."
Dionne Ste Sf CA	94110 US	11/2/2021 "No more unaffordable housing on public land!!"
Paula Buel Berkeley CA	94702 US	11/3/2021 "I grew up on the peninsula and am saddened to see the disappearance of urban green space and rampant gentrification in the area. Let's preserve this important com
JW Jones Daly City CA	94014 US	11/9/2021 "Save & Keep The Garden Alive! Be Sentient & Respect Sacred Native Lands! Support E. Campbell, the gardener & steward of the Earth. There is no alternative and nev
Chad Mich Oakland CA	94602 US	11/29/2021 "Why the hell would you remove a beneficial thing like a community garden?? Keep it"
Arsenio O Pacifica CA	94044 US	12/2/2021 "Out door spaces for land restoration, agriculture, and nature are important for sustainable development in communities that lack access to community gardens."
Carolyn Cl Pacifica CA	US	12/3/2021 "This garden is important for the community."
Michael H Daly City CA	94015 US	12/3/2021 "Good sovereignty!"
John Zamo South San CA	94080 US	12/3/2021 "It's part of the community"
Jen Smith Philadelph PA	19143 US	12/9/2021 "Green spaces are more important than housing that perpetuates the housing crisis."
Therese St Brisbane CA	94005 US	1/2/2022 "I feel it should stay the way it is ! I always loved seeing it while my girls were attending Shasta High School."
Tina Perry Brisbane CA	94005 US	1/4/2022 "Community gardens ROCK"
Belles Pinn San Francisco CA	94104 US	1/5/2022 "The community deserves food and a garden!"
April Balle Monterey CA	93955 US	1/5/2022 "So many people benefit from this garden"
Autumn Jir Los Angeles	90044 US	1/5/2022 "keep a garden! Fuck those apartments"
amelia teh San Francisco CA	94122 US	1/5/2022 "Kids, families, and neighbors deserve safe, outdoor, spaces where they can interact with nature. Green spaces such as this community garden are one of the best part

Alencia Co. San Francis	CA	94130	US	1/6/2022	"I'm signing this petition to save Daly City garden because it is a critical source of food supply to the local residents. The thought of Having this land be snatched by gre
Melissa ro: San Francis	CA	94112	US	1/8/2022	"Daly City is my home"
Steve Curran		4074	Australia	1/9/2022	"Although I'm currently living in Australia, the Bay Area is my true home. We need to establish more community gardens rather than destroy the few that exist."
Maisie Wo San Francis	CA	94109	US	1/9/2022	"Jefferson Union school district continues to fail it's students and is now failing our community."
Julia Livese	Oakland CA	94605	US	1/10/2022	"With our imminent climate disaster there is no reason at all for new developments in green spaces, especially on stolen unceded Indigenous land."
David Roza			US	1/11/2022	"I live in Daly City and there are too few green spaces already. Don't bulldoze this one."
Matthew C Pacifica	CA	94044	US	1/15/2022	"I am a youth, and think this space can be a great opportunity for other youth to learn about things such as taking care of nature, living sustainably, growing your own "
Tambra Bo	Louisville KY	40203	US	1/15/2022	"A community garden is a valuable asset. It allows citizens to show pride in their community, and adds to boosting sustainability of the city/ town."
Dixie Cout: Sierra Mad	CA	91024	US	1/15/2022	"This is a very important part of Daly City. There is no way you can "mitigate" or "replace" what will be destroyed if the development project is allowed."
Marina NV Toronto		M9N 1J8	Canada	1/15/2022	"Keep green space, public land for the people.Thank you."
Jacob Won Braintree	MA	2184	US	1/17/2022	"I'm signing because of the reasons in the petition."
John J. GoI	San Francis CA	94114	US	1/20/2022	"Because Melissa told me so! Dirt first!"
Mishwa Le	San Francis CA	94124	US	1/20/2022	"Every neighborhood needs a community garden. This is the only garden in Daly City. The whole city should be out there protecting it."
shirley osg	Grass Valle CA	95945	US	1/21/2022	"Some things are simply more important than development and profit!"
Victoria La	San Mateo CA	94403	US	1/24/2022	"Green space is crucial for a higher standard of living. Kids need space where they can learn where food comes from. Market-rate housing doesn't add up when the so
Lynn Li	Hilo HI	96720	US	2/14/2022	"This garden has turned into a homeless encampment. There are two grown adult men who live on the garden grounds or in the school parking (black SUV that never
Julie Mitra	San Francis CA	94132	US	3/7/2022	"It is important to have a nature, trees and plots of land to grow flowers and food. High schoolers use this garden. I woman just started a flower garden dedicated to h
Marcine M West Baby	NY	11704	US	3/10/2022	"What we need are thousands of community gardens, not thousands of acres of state owned agriculture spraying the crops with carcinogenic chemicals."
Lansford N	San Francis CA	94134	US	3/10/2022	"We need community gardens more than ever!"
Gee Browr Beckton		E6	UK	3/24/2022	"Please help me. Please sign and share my petition.<a href="https://www.change.org/InvestmentScams" rel="nofollow">https://www.change.org/InvestmentScams</
Jennifee N Hillsborouç	CA	94910	US	4/12/2022	"Community Gardens are nourishing, healing places. Every community deserves one."
Hanna Doc	Daly City CA	94015	US	4/17/2022	"I'm a high school student in Daly City, and this garden is special to me. I wrote this poem in honor of the community garden: https://speakpoetry.org/2022/04/12/ha
Conlan Rio	San Mateo CA	94404	US	5/15/2022	"Covid has shown us that people can work from home and still be productive.Community gardens and similar initiatives are more needed than market rate housing in i

... or condo can have a park to use ,Everybody sacrifice a little due to the world is ever changing population keeps growing there has to be at least some commonsense to reach a common ground as down to earth grounds park belongs to city and hc

... e a better philosophy and buy this space from the School district and protect it as a park!"

... id every resident deserves the option to grow their own food."

... blue people"

... nts. The community came to trade for the different vegetable, herbs in return they gave planting soil food plant to help the garden thrive and grow. Also a beautiful place to relax or have lunch and visit with the gardener who ever was stopping b  
... ke a 14 story apartment building ... That's not helping the kids... If they can't go outside why be a kid.. learning takes place in alot of places.."  
... ower air quality during a pandemic) and economic injustice."

... s disgraceful."

... instead!"

' members are the best stewards of this land, and the school district should recognize the educational importance of this type of garden."

vides a bit of quiet in a rapidly growing, noisy, hectic modern city."

little green space. Save the Garden!!! Market-rate housing is not the answer, especially in the Bay Area, which has the highest housing prices in the entire country."

of historical significance is preserved in this City, as well as a place to grow and appreciate nature!"

orities placed over human health and well-being. A "community" garden is what brings communities together for a common goal of healthier & sustainable eating that is so needed in our local communities & country. Our Mother Earth is also crying. It's lovely! And we want to support the effort to save the garden. Besides signing the petition (which we did immediately) how can we help?"

ehend how those that serve in our city politics don't or can't envision a healthier environment for future generations. There needs to be more balance between open spaces and over developing. I wish you luck and hope you save this valuable opportunity capacity, and the city's deficit of open space will be the main argument to SAVE THE GARDEN!"

community space! Any housing that goes in must provide a much higher percentage of affordable units below market rate."  
vly housed teachers will also enjoy using this garden!!"

s of the bay area, letting us have city access and connection to our earth. Put the people who already live here first."

edy colonizers and having them destroy everything mother nature has produced for the less fortunate does NOT Sit well with me . SIGN AND SHARE THIS PETITION 🌍🔗🌟 #fordalycity"

fresh food, etc., It's really nice to have a place like this here"

cietal costs are calculated. Few people can afford market rates and there is no price high enough to substitute for a solely needed community garden."

moves) lot during the warmer months. One guy tried to flirt with me, using roses from the very garden, because he knew winter was coming and he knew I lived in the apartment buildings next door and needed somewhere warm during the winter stillborn daughter at this site. She is there several times a week and has found healing in nature."

/a>Scammers from Russia and China have been stealing money from innocent people for years and Iran has been mining coins at a very high rate. Sanctions will not stop Putin as China have the Yuan coin and they can trade with Russia regardless.

nna-docampo-pham/"  
the Bay Area."



hope the city will respect the wish of the users of that park to make some adjustments to fit their needs .( Didn't know Daly City is on top 10 of most crowded city )'

ly! We had to give a the chicken away at the order of Jefferson Union High School, that also provided eggs whoever wanted some. This garden was the first to be called eco-friendly before their was such thing..."

ing for ancestral local community farming to continue & return. Its benefits are priceless to both human health and our Mother Earth!!"

en space!"

ter months. He does this every year to women. This year, he found some old alcoholic to shack with. I don't feel safe around the garden. There are so many signs (and UGLY, penis mushroom paintings) that no one can see the garden anymore.

. This war was planned for many months and I believe China created their own bit coin so that they can get around sanctions. Offshore countries are allowing Russians and Chinese to open accounts knowing full well what they are doing. St Vincer





Just bulldoze that POS piece of land. I've traveled the world and this is the saddest, ugliest, homeless encampment I've ever seen. Frankly, I don't walk my dogs around there anymore. It's a school district, what are 2 grown men doing there?'

it and the Grenadines recently allowed an Oligarch to refuel his mega yacht in their sea waters. The Marshall Islands and Zurich are of great concern as Russian mafia have been laundering money through companies such as Clearjunction.com, Jul







oiter and Binance. Shutting down these scam companies will help to stop the power Russia has whilst invading Ukraine. finvestings.com are a scam c



## NAACP San Mateo Branch 1068

Friday, September 8, 2023

Michael Van Lonkhuysen  
Planning Director  
City of Daly City Council  
333 90<sup>th</sup> St  
Daly City, CA 94015  
[mvanlonkhuysen@dalycity.org](mailto:mvanlonkhuysen@dalycity.org)

**Re: Serramonte Del Rey Campus Redevelopment Draft EIR, APN 091-211-230**

Dear Mr. Van Lonkhuysen,

The NAACP San Mateo Housing Committee has reviewed the Serramonte Del Rey Draft Environmental Impact Report (DEIR) and we provide the following comments:

### **DEIR is Incomplete**

The DEIR Project Description provides a detailed account of an unrelated project, the Jefferson Union High School District Offices Project (Figure 2.2-6), but surprisingly omits any mention of development plans for Parcels C-F within the project site. The [Precise Plan](#) is available on the school district's website however it's not described in the DEIR, which only includes the parcel plan (Figure 2.2-5) and Area B plans from the Precise Plan. The DEIR lacks essential development details, neglecting to provide even the most fundamental aspects of the plan. Specifically, there are no provisions for access improvements, infrastructure enhancements, a comprehensive site layout, or other critical information for areas beyond Parcels A and B.

### **Separate and Unequal Apartment Buildings**

During the Daly City Planning Commission meeting and Daly City Council meetings, JUHSD Trustees introduced the Precise Plan and discussed the project at length on behalf of JUHSD and responded to questions from Planning Commissioners and Councilmembers. The Trustees' presentations left no room for doubt, as they clearly conveyed that all BMR apartment units, excluding those already constructed within a separate teacher housing project, would be consolidated into a single building. However, the Trustees' statements were inconsistent with information provided in the Precise Plan, which states the following on page 14:

*“Diversity of Housing. Affordable and market rate rental housing is mixed-throughout the site. 122 units of affordable housing for JUHSD Faculty and Staff, which includes very-low, low, and moderate-income rental dwelling units, are at the corner of Serramonte Boulevard and Entry Drive. A second affordable housing development is planned along East Drive, at the southeast corner of the Plan Area. **The balance of affordable housing is spread throughout the three other residential development sites.**”*

## **DEIR is Deficient by Omission and the Project is Non-Conforming**

The omission of Areas C-F in the DEIR has created a situation where conflicting information regarding income segregation within the project remains unresolved. Clustering all BMR units within a single building within a multi-building apartment complex is not only inconsistent with Daly City’s [Inclusionary Housing Ordinance 1423](#) but also is non-conforming to AB 491 the ‘Affordable and Market Rate Units’ law signed by Governor Newsom on September 28, 2021. Such concentration of BMR units isolates them and fails to demonstrate a commitment to ‘Affirmatively Furthering Fair Housing’(AFFH).

## **Is the Project Within the Law?**

Economic segregation and the resulting racial segregation within a project on public lands may violate federal, state, local laws, ordinances, codes, and policies.

- Education Code: [ARTICLE 4. Sale or Lease of Real Property \[17455 - 17484\]](#)

## **Government Sponsored Segregation**

Established in 1909, the NAACP has a storied legacy of opposing government-sponsored segregation. Such practices contradict the principles of equality, perpetuate social, and economic disparities, and inflict adverse consequences upon individuals, communities, and society at large. They are universally acknowledged as a violation of human rights and a formidable impediment to the realization of inclusive and equitable societies.

## **Noncompliant with City’s Inclusionary Housing Ordinance**

In 2022, this Committee sent two letters to Daly City Councilmembers expressing our concerns about JUHSD’s plan to impose government-sponsored economic segregation on public lands within the Serramonte Del Rey project. Economic segregation is particularly worrisome, given that only a minimal 10% allocation has been designated for affordable apartments within the project. Additionally, the School District’s strategy of concentrating all 111 affordable/low-income units within a single “poor door” building while distributing 1002 market-rate apartments across four other buildings does not comply with the city’s [Inclusionary Housing Ordinance](#) and can be expected to perpetuate low socioeconomic status and racial segregation.

## **Preserve Public Uses and Keep Public Land Public**

The significant impact of losing public amenities due to the project's transition to a 100% private lease of public land has not been adequately addressed in the DEIR. The project should prioritize the preservation of public uses. Any project on public land should make every effort to maintain, preserve, improve, or offer equivalent like-for-like replacements for existing public uses.

The public uses of the site include the almost 2-acre community garden that's open to the public, the school, and the gymnasium. Residents in affected neighborhoods endure adverse living conditions and encounter obstacles in accessing healthy environments, leading to inferior health outcomes and shorter lifespans. Low-income and Environmental Justice Communities of Concern (EJOC) bear an unequal burden of pollution from industrial and transportation sources, resulting in detrimental health outcomes.

The profound and often unjust health and social consequences resulting from the challenges posed by COVID-19 and climate change have underscored the importance of providing ample outdoor access through parks and community gardens. Preserving public amenities for public use within a project of this scale is imperative. The proposed Serramonte del Rey project converts public land to private use without adequately compensating for the amenities that will be lost.

The City should implement a Growth Management Policy mandating that neighborhood-scale developments such as Serramonte Del Rey provide sufficient public facilities and amenities including parks and community gardens, with the goal of enhancing the overall environmental quality and living standards in Daly City. The project is marketed as a transit-oriented development, yet it fails to contribute to air quality improvements or offer access to equivalent public open space.

- There should be a project alternative with higher density that does not segregate housing and recreational amenities by income, preserves public access, and retains the community garden in its current location as a park. This alternative would align with public goals to promote public uses, improve air quality, enhance public health and safety, and avoid the segregation of lower-income groups.
- The project area, as is typical for Daly City, poses significant challenges for pedestrians and cyclists when it comes to accessibility and transit connectivity. The 15-year phased construction of a pedestrian and bike trail further exacerbates this issue and it should be corrected.

## **Preserving Public Uses Such as Community Gardens and Parks**

JUHSD is the owner of the 22-acre project site, which is a public asset. However, the current project plans privatize recreational amenities that play a crucial role in promoting health and

wellness. This approach could leave low-income residents in unhealthy situations, depriving them of access to essential public spaces. Notably, the site currently houses a nearly two-acre community garden and orchard, which serves multiple vital functions. It improves air quality, increases access to fresh food, bolsters food security, educates residents about healthier dietary habits, promotes physical activity through gardening, reduces the risk of obesity and related health issues, supports mental well-being, offers relaxation, contributes to biodiversity, provides wildlife habitat, features a variety of plant species including native plants, boasts diverse trees and shrubs, including redwoods and fruit trees, and even includes a seasonal creeks and wetland. Furthermore, the garden plays a role in erosion control, natural flood prevention, and water quality improvement. It is also a critical component of climate change adaptation and resilience. The presence of children's toys within the garden underscores its widespread community use, essentially functioning as a park and food forest. Regrettably, if the project proceeds as currently conceived, all these valuable public benefits stand to be lost.

### **Income Segregated Recreational Amenities and Incomplete Trail Access:**

The amenities listed in DEIR section 2.2.2.2 Open Space and Landscaping (Exhibit B) include recreational facilities situated on public land, which should be accessible to all tenants and the public, as noted in the Oct 4, 2021 [JUHS Real Property Advisor Committee Report](#).

- “Open Space” should be accessible to everyone and not restricted to private use.
- Parcel B's recreational amenities encompass a rooftop hot tub, fire pit, and an outdoor kitchen, with the likelihood of a shared restroom facility for tenants utilizing the rooftop recreational amenities. Equivalent recreational facilities are not specified for the other Parcels. How will the public and tenants access the rooftop recreation area? Will they need a code or a key for access? Who will be responsible for providing access?
- Why haven't the recreational amenities on Parcel B, which are categorized as “Open Space and Landscaping,” been located in a way that ensures accessibility for all tenants and the public?
- The project area, as is typical for Daly City, poses significant challenges for pedestrians and cyclists when it comes to accessibility and transit connectivity. The project area, as is typical for Daly City, poses significant challenges for pedestrians and cyclists when it comes to accessibility and transit connectivity. A complete trail must be constructed concurrently with Parcel B development to ensure a safe route is available for all residents, students, and medical office workers traveling from Serramonte to Hickey.

### ***DEIR 2.2.2.2 Open Space and Landscaping (page 16)***

*The proposed Parcel B development project would include three components of open space to be used by the public: 1) approximately 22,300 square-foot public park that would include a large grass area and playground; 2) the first phase of the recreational trail (approximately 6,800 square feet) that would be located in the southeast corner of Parcel B; and 3) open space for public use at the retail plaza (approximately 7,000 square feet) facing the new entry road (see Figure 2.2-10). Open space serving the*

*residents of the building would include both the ground floor terrace and the roof terrace, up to 20 private balconies for individual units, and an approximately 20,300 square-foot courtyard located on the roof of the parking deck of the mixed-use building which includes amenities such as a hot tub, fire pit, lounge furniture, and an outdoor kitchen. The open space reserved for residential use plus the retail open space for public use at Parcel B would exceed the City's requirement for open space of 150 square feet per unit and is consistent with the proposed Precise Plan.*

### **Significant Impact: Lack of Affordable Housing**

It is certain that only a limited number of Daly City residents will be able to afford rents at the new SDR apartment complex. The historical consequences of [redlining](#) have had a generational impact, leading to significantly reduced household equity and making it much more challenging for affected families to afford housing in the Bay Area, as noted in the Daly City 2023-2031 Housing Element.

- 53% of Daly City's households do not meet the 'moderate' level average median income (AMI). However this project is seeking to build 90% of its units for market rate rentals. This will effectively lock-out those coming from historically redlined communities, and keep them from becoming beneficiaries of the Serramonte del Rey housing development.
- The project proposes only **10% of the units as 'low' income BMR units**, the absolute minimum under the City's inclusionary Housing Ordinance (adopted in 2018). Jarringly, 42% of Daly City's RHNA allocation for 2023-2031 is required to be in the 'low' or 'very-low' income housing categories, far beyond what's being proposed. Under this scenario, low income residents will continue to be displaced to far away places while we wait for other projects to pick-up the slack with higher allocations of affordable units. (See Exhibit A)

Limiting the affordable housing component to just 10% while prioritizing market-rate units over a more balanced approach will perpetuate unaddressed historical inequities and sustain the legacy of redlining. Failing to actively address segregation contributes to the [entrenchment of racism](#). With 90% market-rate housing SDR is perpetuating [racial segregation](#) as the prevailing development model in Daly City, in direct contradiction with the principles outlined in Daly City's own Housing Element. To correct historic patterns of segregation the project proponents should be committed to a significantly higher proportion of affordable housing units, going beyond the inclusionary minimum and using the RHNA target as a goal.

#### ***DEIR 3.11.2.1 Project Impacts (page 124)***

*According to the Ordinance, a lack of new affordable units will have a substantial negative impact on the environment because: (1) housing will have to be built elsewhere, far from employment centers and therefore commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution; and (2) City businesses will find it more difficult to attract and retain the workers they need.*

*Affordable housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers.*

### **Significant Impact: Low-Income Tenants Parcel C Denied Access to Emergency Services**

The Head Start program offers affordable childcare services, and it's worth noting that all Below Market Rate (BMR) apartments are situated in Parcel C. Given this, it raises a valid question as to why an emergency generator is not being provided for Parcel C.

#### ***DEIR Emergency Generators (page 142)***

*Emergency generators are proposed to be located on Parcels B, D, E, and F. Generators would be located either in the basement or on the ground floor.*

### **Economic Segregation and Racial Segregation are Intertwined**

Economic segregation occurs when individuals or families with lower incomes are confined to certain neighborhoods, or a single building within a multi-building development, due to affordability constraints. This pattern often results in racially homogeneous housing, as people of similar economic backgrounds often share similar racial backgrounds. Consequently, concentrating lower income families in separate buildings creates racially homogeneous social networks that limit access to educational and employment opportunities. This is a self-perpetuating cycle that sustains economic disparities, economic segregation, and racially segregated housing.

### **Socioeconomic Status**

Socioeconomic status (SES) encompasses not just income but also educational attainment, financial security, and subjective perceptions of social status and social class. SES can encompass quality of life attributes as well as the opportunities and privileges afforded to people within society. The relationship between SES, race, and ethnicity are intertwined. [Research](#) has shown that in terms of socioeconomic stratification, race and ethnicity often play significant roles in determining a person's SES.

Communities affected by low SES, driven by factors like income-based housing segregation, share common experiences, such as limited economic development, substandard health conditions, and fewer educational opportunities. Persistent low SES has been identified as a contributing risk factor that disproportionately affects communities of color residing in income-segregated housing.

## Social-Spatial Segregation

In addition to the project's socioeconomic segregation, there is the problem of social-spatial segregation. Currently, funding has not been allocated to establish a connection between the pedestrian and [bike trail](#) and the BMR building, thereby depriving underserved children of a safe route to and from school. Social-spatial segregation is also apparent by the absence of a rooftop Jacuzzi spa for families in the affordable building, while it is provided to market-rate tenants on Parcel B. The proposed plans raise concerns of income-based discrimination, as emergency generators are exclusively installed in all market-rate buildings, with no provision for the low-income building. Additionally, placing an income segregated daycare center on Parcel C underscores its stigmatization as an income segregated area of the development.

In conclusion, we firmly believe that the residents of Daly City would benefit from a denser project that does not segregate income groups into a separate building. The project should prioritize improving public access and providing more public amenities. Lastly, we advocate for the preservation of the existing community garden.

### **Please include the following documents and videos in their entirety as comments on the DEIR:**

1. Two NAACP letters dated [October 6, 2022](#), and [June 10, 2022](#)
2. [May 2023 - City of Daly City Housing Element 2023-2031](#)
3. [AB 491 Ward](#), CA Poor Door Law approved by Governor Sept 28, 2021
4. [Civil Rights in America: Racial Discrimination in Housing](#) report from the National Parks Service, U.S. Department of the Interior and National Historic Landmark Program
5. Oct 4, 2021, [JUHSD Real Property Advisor Committee Report](#)
6. ['Affirmatively Furthering Fair Housing'](#) - The Fair Housing Act requires HUD and its recipients of federal financial assistance to do more than simply not discriminate; they must take meaningful actions to overcome patterns of segregation and foster inclusive communities.
7. Education Code: [ARTICLE 4. Sale or Lease of Real Property \[17455 - 17484\]](#)
8. [Video](#) of Daly City Council Meeting January 10, 2022
9. American Psychological Association's publication on [Ethnic and Racial Minorities & Socioeconomic Status](#)
10. [How American racism is rooted in residential segregation](#), Berkeley News, by Ivan Natividad
11. [Why Bay Area neighborhoods are still racially segregated](#), Berkeley News, by Ivan Natividad
12. [Redlining's Legacy of Inequality: \\$212,000 Less Home Equity, Low Homeownership Rates For Black Families](#), Redfin News, by Dana Anderson
13. [April 25, 2022 - JUHSD RFP FAQ for BMR Developer: Parcel C](#)
14. Jul 29, 2021, [How Daly City Became One of the Most Densely Populated Cities in the Country](#), KQED, by Amanda Stupi



15. Jun 28, 2020, [Un-forgetting the segregationist history of Palo Alto \(and Daly City, and San Francisco, and...\)](#) by Charles Russo / Palo Alto Online & TheSixFifty.com
16. October 4, 2021, [The Legacy of Redlining in the Bay Area: Explained](#), NBC Bay Area
17. June 9, 2022, [‘The Moms of Magnolia Street’ Documentary](#), NBC Bay Area Investigative Unit

Sincerely,

NAACP San Mateo Branch 1068 | **Housing Committee**  
[naacphousing@gmail.com](mailto:naacphousing@gmail.com)

Copy:

Rev. Lorrie Owens, President, NAACP San Mateo Branch 1068  
[president@naacpsanmateo.org](mailto:president@naacpsanmateo.org)

Exhibit A - City of Daly City Housing Element Slide Presentation

**Regional Housing Need Allocation ("RHNA") –  
City of Daly City 2023 to 2031**

**City of Daly City  
Regional Housing Need Allocation ("RHNA") 2023 to 2031**

	<b>Dwelling Unit Allocation</b>	<b>Percent of Total</b>	<b>Annual Construction Requirement</b>
Very Low	1336	28%	167
Low	769	16%	96
Moderate	762	16%	95
Above Moderate	1971	41%	246
	4838	100%	605

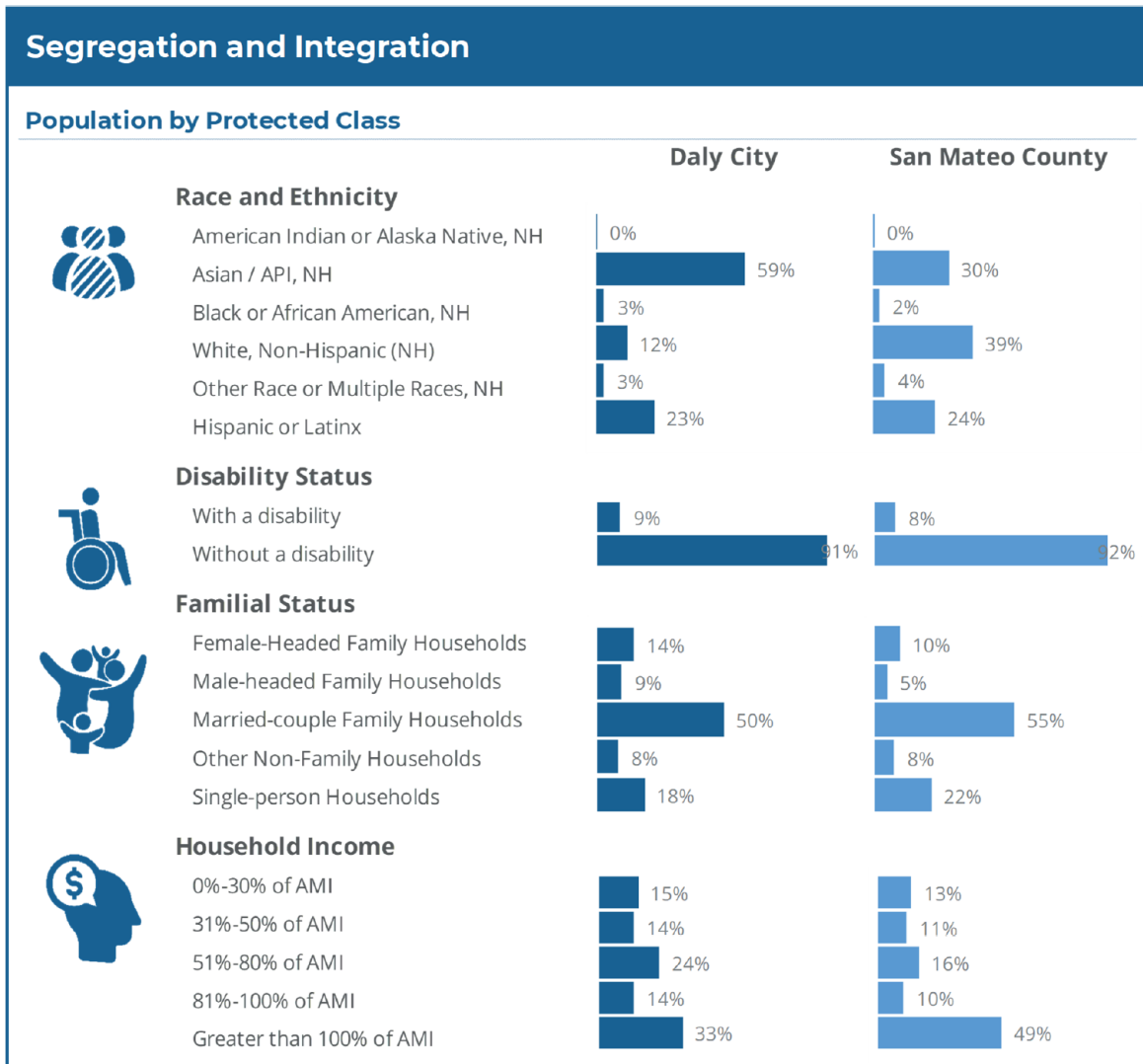
**2.2.2.2 Open Space and Landscaping**

The proposed Parcel B development project would include three components of open space to be used by the public: 1) approximately 22,300 square-foot public park that would include a large grass area and playground; 2) the first phase of the recreational trail (approximately 6,800 square feet) that would be located in the southeast corner of Parcel B; and 3) open space for public use at the retail plaza (approximately 7,000 square feet) facing the new entry road (see Figure 2.2-10). Open space serving the residents of the building would include both the ground floor terrace and the roof terrace, up to 20 private balconies for individual units, and an approximately 20,300 square-foot courtyard located on the roof of the parking deck of the mixed-use building which includes amenities such as a hot tub, fire pit, lounge furniture, and an outdoor kitchen. The open space reserved for residential use plus the retail open space for public use at Parcel B would exceed the City’s requirement for open space of 150 square feet per unit and is consistent with the proposed Precise Plan.

Parcel B currently contains limited landscaping consisting of grasses, shrubs, and trees within the existing surface parking lot and adjacent to the existing education building. Mature trees are located along the perimeter of Parcel B to the north and east. The proposed development would preserve the mature trees along the perimeter of Parcel B and replace the trees that are determined to be in poor condition by a certified arborist. The project proposes to plant 82 new trees throughout the project site.



Figure HE-11: Segregation and Integration by Protected Class



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**From:** Nancy Lacsamana <nlacsamana230@gmail.com>

**Sent:** Friday, September 8, 2023 3:20:31 PM

**To:** Nancy Lacsamana <nlacsamana230@gmail.com>; Michael Van Lonkhuysen <mvanlonkhuysen@dalycity.org>

**Subject:** [EXTERNAL] Serramonte Del Rey Campus Redevelopment Project Environmental Impact Report

**CAUTION: EXTERNAL SENDER.** Verify before you respond, click links or open attachments. Questions? Contact ISD.

Michael Van Lonkhuysen, Planning Manager  
City of Daly City, Planning Division  
333 90th Street  
Daly City, CA 94015  
Via email: [mvanlonkhuysen@dalycity.org](mailto:mvanlonkhuysen@dalycity.org)

September 8, 2023

please confirm email receipt/ thanks in advance

Dear Mr. Van Lonkhuysen,

I am submitting the following comments that the DEIR is deficient in addressing the 3.16 Recreation for the Serramonte Del Rey project as well as the need to address inaccuracies shown in the existing conditions 3.16.1.2.

**Location:**

The Project is bordered by housing on 3 sides and a cemetery on the East side. The DEIR has failed to convey that not only has the current location lost Recreation with the destruction of the garden but also the closure of the Gymnasium. The proposed Precise Plan has not noted the loss in Daly City recreation for tournament and community recreation for hundreds of athletes of various ages.

### **3.16 Recreation**

#### **3.16.1.2 Existing Conditions**

##### Omissions and Inaccuracies

- The full-size-year-round gymnasium is not mentioned.
- Gellert Park access is over 0.8 mile from the project vs 800 feet as stated in the dEIR. The physical location may be 800 feet but there is a steep hillside at the corner of Hickey and Callan. Gellert has a library, baseball fields, community room, tennis park.
- Gellert Park is not a park.
- The Garden is a publicly accessible community garden and is mislabeled as a Demonstration Garden. It provides recognized recreation benefits that are well documented. The issues and value of the Garden has been covered by the following letters from NAACP, Community Garden Alliance, Pacifica Social Justice, Sierra Club and community members.

##### **Gymnasium current ramifications of loss**

The gymnasium was the home to over 500 community members especially children in basketball tournaments, practices, physical and scout activities. I was in this gym as a parent at least 5 times while my son was on a public middle school basketball team and there were over 50 people at each event. Practices have been held during the week and games every weekend.

The Gymnasium was leased out\* to two different large organizations who have a well-known and respected reputation in youth sports and activities.

- CYO ---Catholic Youth Organization that allows public and private school basketball programs.
- Homenetmen --a long established Armenian community group who has for 24 years at this location for basketball and scout programs.

\*Please find attached the following email from Tina confirming the lease to these 2 major organizations. Please print and include into the comments.

Please find attached the following email from Vahan Derounian and the frustration with having been at this location for over 24 years and having to relocate the recreational facility with no assistance or options from the JUHSD. Please print and include into the comments.

It is undeniable that the planned destruction of the gym has impacted basketball programs and access to physical recreation for hundreds of students and it was not included in the DEIR.

##### **Project Recreation need go forward**

***It is very clear that the 3,403 new residents are going to need recreation in the project and the Serramonte Del Rey project will not provide these residents adequate recreation.***

#### **3.16.2.1 Project Impacts**

The Parcel B Development project includes a privately owned, publicly accessible park, a recreational trail, and a public retail plaza, totaling approximately 0.8 acre, which would partially off-set demand on nearby recreational facilities. (Project will pay difference in lieu fees.)

**Overlook Park's location cannot be seen from Serramonte Blvd**

The publicly accessible park or Overlook Park cannot be seen or accessed directly by the public without walking the Recreational Trail. Parcel B side bordering Callan is on a steep hillside bordered with mature trees. From the West view, Parcel B Building at 75 Feet tall and will obstruct any downhill view of the park. There are no shown ADA parking or public parking spots other than for retail. Although this does create open space parkland it is most probably going to be used by the residents of the Parcel B and future building of ParcelC-F and not the public outside of the development.

#### 3.16.2.2 Cumulative Impacts

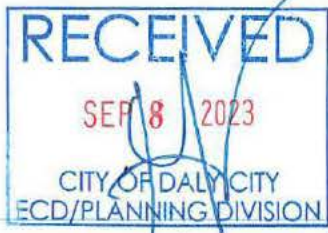
**IMPACT REC-C: The project would not result in a cumulatively considerable contribution to a cumulatively significant recreation impact.**

In Summary, the DEIR does not consider the impact of the loss of the Gymnasium and Garden, and the isolation of the Overlook Park from public view. The DEIR has failed to adequately convey these even more significant negative impacts in Recreation for this project.

Sincerely,

Nancy Lacsamana  
[nlacsamana230@gmail.com](mailto:nlacsamana230@gmail.com)  
230 Humboldt Road  
Brisbane, Ca 94005





Dear Mr Michael vonLankhuyser  
I have been a resident at Serramonte ridge for over 8 years and counting. I am also the care taker of the "Garden" at Serramonte del Rey. I am writing you today express my concern with the 1 and a half acres located at the far end of the Serramonte del Rey campus known as the Garden. My first concern is what is at stake here! This land is not only a green space, but an urban forrest with over 100 native trees including over 25 California Coast redwoods not the aptos blues either. Also Douglas fir, Buckeyes, madrones, live oaks, white oak, California coffee berries, Bay leave, Elderberries monterey pines, catalina ironwoods. according to project Green Space of Daly city this city "DC" has only 127 redwoods in its entirety



if that is the case then that would mean this green space has almost 20% of all the redwood trees in the whole city. How can this be to hire a crew to cut down 100 native trees in a city with less than 5% of a urban canopy just to dump there concrete and dirt on it is completely crazy. Juhsd are a bunch of liars as well Juhsd has been trying to destroy this garden for years now and are for some reason willing to waste millions of our taxpayers money on things like security for the garden over a quarter of a million a year for 24 hour 7 days a week security that just sleeps in their cars and are always rude one was fired for smoking dope at work in their car.



Juhsd has 34 acres of property they have promised a new garden with double the space, but if that were the case why would they even get rid of this one it doesn't make any sense. also before juhsd built their housing for teachers they cut down 120 trees to build they promised to replace 90 of them as of today they have planted 6 cypress and commercial landscaping not one native plant. this greenspace is also the only filter on the whole campus it works as a rain garden filtering all of the rain water mixing with the sludge of the road. juhsd has not reached out to the communities about anything their one in control was fired from a different school district for taking funds how she got this job we don't know but she is not



honest. I have had many teachers from the new housing ~~for~~ Juhsd say they love the garden and that they won't let them have plants in the building so they bring their plants here to plant. why is this so hard for them to get Juhsd to do the right thing, they have wasted so much on the security cameras only to show pictures of coyotes. Juhsd has done nothing but try to make the garden into a bad place how can corruption exist so freely. why should this greenspace be wiped out just because these crooks lied and gave away land that is not private property but public land to the Blynn corps without any feed back from the public. we are not trying to stop their buildings just trying to save this little plot of goodness. erick  
thank you for your time campbell.

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

September 8, 2023

City of Daly City  
333 90th St., Daly City, CA 94015

This letter is being provided as public comment/input in reference to the Draft Environmental Impact Report (DEIR) of the proposed and yet-unapproved Serramonte Del Rey Campus Redevelopment Project. This input is based on my experience as a former Board Trustee of the Jefferson Union High School District and lifelong resident of Daly City. As the sole trustee in opposition to this project, given the multitude of its problems and misdirection from its inception, I speak from a perspective both informed by and grounded in direct involvement with reviewing this project since before its conceptualization, and a critical lens of its impact upon our school district community, public education funding and the larger scope of its engagement of environmental law, housing policy and urban development. An Environmental Impact Report (EIR) should center and elevate the issues relevant to mitigating and eliminating harmful impacts to our environment; this DEIR completely, and intentionally fails to do this. Daly City's current role in navigation of urban development in San Mateo County compels a careful and acutely responsive approach to public policy, particularly with respect to public education, housing and infrastructure, and with a critical engagement of diversity, equity and inclusion in its policymaking. Any EIR under consideration at this level demands a clear professional and legal obligation to provide adequate research for its development, respect and careful attention to detail. It is the purpose of this letter to identify these fundamental and critical areas of need in this project, as well as its implications for future projects of any scale in the City of Daly City, San Mateo County and cities across the Bay Area moving forward.

Accordingly, this project - the largest housing project ever proposed in our city and North San Mateo County, requires due diligence in its evaluation and should not be fast-tracked under the pressure of private interests - which in this case have demonstrated a clear intent to silence the input of local community members, at the expense of one of the lowest-funded public school districts here in the SF Bay Area. Education is a human right, and housing is a human right; our schools are not for sale. I continue to extend my strongest recommendation and advising to public officials and city planning staff that this project, with its many clearly unethical and ambiguously legal and financial issues, be halted and completely redrawn at this point. With that, the public input process for this project and its DEIR should be restarted, with a more transparent, accountable and responsible engagement of public comment and input, and in step with the guidance of local, state and federal public agencies.

As the SF Bay Area begins to reimagine itself at the outset of an endemic stage of a global pandemic, local cities have the responsibility and opportunity to step back and consider the relevant and essential needs of our communities. It is incumbent upon public agencies and the public officials leading the duties of governance to research, reflect and seek consultation from other public institutions, nonprofit agencies and, most importantly, their constituents, the communities that they represent. Every city is different - and Daly City's role in both San Mateo County, as well as the city directly adjacent to San Francisco - requires a departure from the problematic and discriminatory practices and abuses of public policy of the past, glaringly apparent in the development of San Mateo County for generations.

As a new generation of voices, leaders and community here in Daly City and San Mateo County, the test of our leadership will be to see what we are actually willing to do to make a change in how we see our community: is it simply for sale to the highest bidder - or do we value our culture, community and have any vision for our cities that goes beyond what we have seen for years? We should ask ourselves, and each other:

What do we want to see as the future of our city?

What do our students want to see as the future of their schools?

What should our streets look like?

What role can the malls play in public service to our community?

Where are our public murals?

How can we ensure that our public libraries remain open to the public seven days of the week?

How can we open up our brand new, outdoor school athletic fields and theaters to the public for community use in an accessible, organized and responsible way?

How can we build on the strength of our community's cultural diversity and provide spaces to celebrate that throughout the year?

How can we finally begin to acknowledge and honor our Native, Indigenous community here on Ramaytush Ohlone Land in a respectful, substantive and meaningful way?

What is our city and county doing to promote and protect our environment, and in response to climate change?

What will our city look like if we never answer these questions?

What can our city be if we start to actually listen to the voices of our youth, elders, families and community, and engage them in a way that sees them the way we want to see our city?

If we are the change that we want to see in our community and world, then we have to accept that this change means that we have to change the way we do business - and public policy. If that begins anywhere in Daly City, it begins in Serramonte.

The [Serramonte Del Rey Development Project Draft EIR](#) is littered with flaws throughout its 200+ page draft report. In an honest assessment of its contents, it is actually more questionable than the previously reviewed [SDR Precise Plan](#). It should have included and made adjustments to this plan, based on the multitude of critical public comment provided on public record at live public meetings of the Daly City City Council and the Jefferson Union High School District. Instead, it appears to be a blueprint pushed by luxury developers with little to no regard

for providing sufficient affordable housing or reasonable community benefits. It is the responsibility - and stated explicitly in our oath as public officials and employees - of our public agencies to act in the public interest, not the private interest. This DEIR falls painfully short of that. The list of infrastructural, environmental and community-based concerns is long and detailed, and has been voiced and cited on public record over the course of years by community member input - including many local high school students and generations of alumni, a [petition of nearly 5,000 community members signing in support to Help Save Daly City's Only Community Garden on Ohlone Land and Territory](#) and several community-based organizations, nonprofit and civil rights agencies, not limited to but including designated representatives of our local Native American / Indigenous community, the Daly City Community Garden Alliance, the Sierra Club Loma Prieta Chapter and the NAACP San Mateo Branch #1068.

An immediate list of concerns that arise from the inception of this development, and continue to remain unaddressed, include:

- Logistics for building 1,235 apartments and creating parking, all on a public school site seem both inappropriate, oversized and completely negligent of the historic and projected environmental impacts facing Daly City and its surrounding area, including: pollution, lack of public green space and open space, extremely limited urban canopy and endangerment of local wildlife and remaining trees protecting the area (Daly City also continues to lack adoption of public policy regarding any substantive Heritage Tree Ordinance or formulated Urban Forest Plan protecting or promoting preservation and positive support of our local environment, as modeled by other cities our size, throughout the Bay Area and state of CA)
- The net green space and open space numbers listed by the DEIR about this development are incorrect and misleading, given the net loss of green/open spaces resulting from the destruction of Westmoor Park, the office park development that this SDR DEIR is predicated, and effectively directly linked to; the projected net green space and open space should be reassessed and redrawn to include provision for those areas and services lost to these projected developments (preservation and promotion of existing Community Garden at SDR, indoor basketball gym and athletic facilities, space for community organizations and sports leagues, local martial arts programs nonprofit agencies, and auditorium/gallery/event center, etc.)
- No justifiable need for additional Retail space in what is in fact the largest concentrated retail complex in the SF/San Mateo County Peninsula (Serramonte)
- Language in Precise Plan/DEIR projecting "to create a neighborhood" in an existing neighborhood is both grossly misleading, and insulting; Daly City's neighborhood is defined largely by its residential housing and population density, including historically low-income multi-unit apartment buildings located directly across the street from SDR, as well as the new JUHSD workforce housing, and the Serramonte Ridge apartment development previously built (and currently losing affordable units) already located at Serramonte Del Rey



- Problematic, discriminatory prioritization of luxury/market-rate apartments and extremely limited affordable housing units - which are also planned to be segregated from the market-rate buildings, in a repeated, blatant attempt to appeal a violation of longstanding civil rights law (also cited by the NAACP)
- The DEIR for the Serramonte Del Rey Development Project is also still in violation of the city's own housing ordinance, which mandates that affordable housing units be included, and not segregated from the market-rate/luxury housing buildings by isolating them in a separate building; this is a violation of federal, state and even local civil rights / housing law and should not be allowed "exception" for any reason, or aggressive lobbying by private industry and real estate lobbyists
- The DEIR and SDR Development Project altogether neglects addressing the housing crisis at its actual needs: affordable housing and addressing homelessness and the needs of unhoused and low-income community enduring a high cost of living in the Bay Area, extremely high rent, possible eviction and ongoing financial hardship in our current economy
- The DEIR is informed by false statements made by JUHSD Board Members on record at live High School District Board meetings, constituting an intentional, concerted effort to misrepresent, isolate, exclude and disregard the contributions of the designated representatives of our local Native / Indigenous community to a public project impacting green space, open space and the environment, the largest of its scale proposed in decades in Daly City and North San Mateo County; no approval of this project's planning has ever been expressed by the Native community involved in any stage of the development the SDR Project and its EIR
- Lack of good faith communication and collaboration reflected in the current DEIR - requested explicitly on public record, at City Council Meetings as a prerequisite of continued consideration of this SDR Development Project through the EIR process - has defined the pattern of the JUHSD's efforts to fast-track this project; this has included attempts to silence and exclude designated local Native / Indigenous leaders, community member input, and inclusion of critical public feedback, as well as active lobbying by JUHSD members of local public agencies and civil rights organizations to stop submitting letters of public input throughout the EIR process

While cities across the state like San Francisco, Oakland, San José and Los Angeles have undertaken initiatives to address the multiple overlapping crises of housing, poverty, unemployment and drugs facing our cities today with more critical and innovative approaches, Daly City and San Mateo County continue to hedge on social and economic measures stuck in the past. That past is more than problematic. It is riddled with both inequity and a lack of imagination or inclusion. Best practices in urban planning, aligned with policy directives at the state and federal level, mandate a justifiable accounting of housing and urban development, underscored by state law, CEQA, and ranging from consideration of environmental and community based impacts to Native Land Rights and Public Land Use law, its community benefits and clearly designated restrictions.

At the core of this SDR DEIR Proposal is a controversial pattern of approval for unaffordable housing development at the expense of public resources, including public schools, recreational and Environmentally protected green spaces. Daly City can do better - we have to - not only for our community, but for our county. There are many other cities facing deep inequities in a lack of affordable housing and cost of living in San Mateo County, and while Daly City is the largest among them - it yet faces the greatest disparities in being able to support our majority immigrant, renter and diverse, low-income community, even when it comes to use of public school funding, public land use and apparently, even publicly-funded housing developments. This project is estimated to take 10-15 years and continues to fail to address any of these issues with due diligence. There is no justifiable proposal of any separate-but-equal public policy - in education, housing or any aspect of society - and glaring issues like this compel a complete, immediate reassessment and revision of this project. That vision must be based on sound legal and ethical, best practices in policymaking - and should begin its ultimate development with the community.

There is no complete or majority consensus over the highly controversial and incomplete DEIR Proposal for the Serramonte del Rey Development project. Nobody voted on this project - despite its highly controversial and questionable appropriation of public school bond money to kickstart its development. This has yet to adequately address or negotiate the many disputed issues and discrepancies of this EIR process cited over the course of two years by numerous and ongoing public comments made by local residents, youth, public officials, nonprofit and public agencies and community-based organizations, including local Native / Indigenous leaders, high school and college students, alumni, teachers, the Daly City Community Garden Alliance, and our local chapters of the Sierra Club and the NAACP.

Recommendations to specific changes to this DEIR can be found in additional public comment, input and letters submitted by the community noted here, in addition to a serious reconsideration of our city's adherence, commitment and alignment with [federal housing policy and Affirmatively Furthering Fair Housing \(AFFH\)](#), which should be centered as a central, guiding tenet in the formulation of [Daly City's Housing Element](#). Daly City's application of AFFH should be assessed in alignment with the City and County of San Francisco, with which it shares a strong overlap and affinity with respect to demography, geography, and urban development and housing conditions. Disparities highlighted by US Census data, as well as that provided by the County of San Mateo Human Services Agency, are in the City of Daly City's Housing Element as well - but often stop short of a full accounting of the housing issues and solutions being considered - and require stronger transparency, outreach, and engagement of community for public input.

As a city leading San Mateo County with high profile demographic indicators and status across socioeconomic and political considerations, Daly City should be looking to larger city, state and national profiles of best practices and innovative reimagining of housing and urban development. To center our city's Housing Element around housing goals projected by this SDR DEIR will fail to consider the past and present state of our city and effectively provide a critical analysis of our own community's express needs. This would be a failure to learn from the inequity of the devastating legacy of Urban Renewal policy that has led to our current crises demanding housing, social and environmental justice today. Federal policy derived from the



[Green New Deal](#) and local people's proposals have provided a template both for next generation public policy and the public process of civic and community engagement. Public comment is essential to public policy. Our community's voices are vital to ensuring that governance is indeed diverse, equitable and inclusive - and those voices will continue to redefine what our cities need as we move into another election cycle with so many critical issues facing our country at stake. It is my hope and strong encouragement that we take this opportunity in reviewing the DEIR to engage the real issues at the heart of this development in Serramonte - and Daly City altogether - to reflect, renegotiate and reimagine housing and urban development in our city, county and the state of California forward together.

Nick Occhipinti  
[nocchi.us@gmail.com](mailto:nocchi.us@gmail.com)

As relevant and critical background information and Appendices to this input, also included with this letter of public comment are: a) updated Letter to the City of Daly City, Re: City of Daly City - Public Review Draft Housing Element (RHNA6) b) [Letter to the NAACP San Mateo Branch. Re: Serramonte Del Rey — Residential Segregation of Low-Income Families in Daly City](#), a letter to the NAACP addressing these issues as well, specifically with reference to the Serramonte Del Rey Project, c) [Serramonte Del Rey Expansion Project: Timeline. 2018–2021](#), a brief annotated timeline of the meetings, discussions, information and actions taken regarding Serramonte Del Rey (SDR), the SDR Expansion (“Revitalization”) Project and its development over the past few years and d) [The truth about Serramonte Del Rey and Westmoor Park](#), a public testimony of the background regarding the Serramonte Del Rey Project, including its direct, yet intentionally obscured relationship to the destruction of Westmoor Park, a public park used as the site of another JUHSD-driven project predicated on this proposed, and heavily lobbied development of the SDR Development Project.

Appendix A

***Letter to the City of Daly City, Re: City of Daly City - Public Review Draft Housing Element (RHNA6)***

City of Daly City  
333 90th St., Daly City, CA 94015

Housing need is predicated by financial need. The financial and housing needs in the Bay Area are stark. In the advent of 3 years of a global pandemic, local cities have experienced unprecedented levels of need across access to public health, education, food and housing security. Accordingly, it has been incumbent upon city, county, state and federal agencies to address this crisis with its immediate and root causes. Addressing these crises at a regional level calls on leadership from major cities in every county across the State of California. As the city historically with the largest population, highest population density and most extensive and intensified urban development in San Mateo County, the City of Daly City holds a clear mandate and responsibility to take the lead on these issues.

The state RHNA estimates for Daly City, as with any city across the state, are ambitious at best. Part of that estimation is based on current estimates of housing need based on private housing market-driven, real estate industry data. While demand can be assessed based on interest in any given industry, housing is more than a simple market or industrialized commodity. Housing is a human right. Housing is also a civil right. The legacy of housing discrimination via manipulation and selective exclusion and access to financial assistance based on socioeconomic and related demographic indicators sadly continues to this day, both in public and private sector institutions. This is well-documented, including via ongoing legal action calling attention to discriminatory lending practices being leveraged against prospective homeowners by major US banks.

These discriminatory practices in our housing sector have a direct impact on public discourse and public policy regarding housing and urban development. Daly City's assessment of its housing priorities based on the overinflated estimates of the RHNA provided fail to account for this, in addition to the range of Affirmatively Furthering Fair Housing directives applied more equitably and with more robust public comment and civic engagement by other major cities across the state, including SF, Oakland, San José and throughout Southern California. I have included a letter to the NAACP addressing these issues as well, specifically with reference to the Serramonte Del Rey Project.

Appendix B

***Letter to the NAACP San Mateo Branch, Re: Serramonte Del Rey — Residential Segregation of Low-Income Families in Daly City***

July 2, 2022

Dear NAACP San Mateo Branch Housing Committee:

This letter is in support of the NAACP San Mateo Branch 1068 letter to the City of Daly City, Re: Serramonte Del Rey—Residential Segregation of Low-Income Families in Daly City. As a lifelong Daly City resident, high school teacher and Trustee with the Jefferson Union High School District (JUHSD), I not only disagree wholeheartedly with Trustee Kalimah Salahuddin’s assessment of affordable housing policy in our city, I am compelled to point out the glaring inconsistencies and contradictions of the argument presented in her response letter to the NAACP - especially in consideration of the fact that a clear understanding of segregation and discrimination should be grounded in an unambiguous interpretation of what that means in the field of public education, the foundation that civil rights law has established through landmark legislation with precedents set by *Brown v. Board of Education* and Civil Rights Movement throughout the 20th century to today.

There is no room for “separate but equal” doctrine and practice in our classrooms, schools or public facilities in any capacity. We are all familiar with the consequences - intended and otherwise unintended - of urban renewal and “revitalization” programs administered by public housing agencies that both indirectly and directly led to the [segregation of communities](#), redlining and the disparities in generational wealth and educational and career opportunities that result from social stratification. Desegregation, in just about as many ways, begins with the work of local governance with our cities and school districts. This project aims to defy both of these mandates in its development, and sadly, without any clear plan or intent to provide community input or benefits. I say this as a fellow public official who serves on the same high school district school board as Trustee Salahuddin, having seen her and fellow trustees push the district to consistently fast-track the Serramonte Del Rey development for nearly 2 years, without good faith collaboration with community, adequate public input or regard for best practices in sustainable urban development. It should be highlighted that this is a proposed development on public land, and on an existing, active district school site - with a project kick-started using public bond money. Financing private developments on public land is already highly questionable and subject to a range of state and federal laws; doubling down on segregation of any proposed housing enterprise by a public agency is absolutely unacceptable.

The proposed housing development is an [existing flashpoint of controversy in Daly City](#) and the surrounding area of North San Mateo County for several reasons, and has met critical [opposition from the community](#), including students, parents, school district teachers, staff, prominent environmental groups, [local Native, Indigenous community leaders](#) and public officials on a range of issues for over a year. Despite the fact that Daly City already faces several underlying issues surrounding a desperate need for affordable housing inclusive of low-income community and lack of any local rent stabilization measures - and a minimal minimum wage here in the inner Bay Area - this project aims to explicitly prioritize the needs of wealthy housing developers with luxury, market-rate housing that plans for 90% of a 1000+ unit, 10-15 year development in the largest, most ethnically diverse, majority immigrant-based, low-income city in San Mateo County. Daly City also has a [well-documented history of housing discrimination and redlining](#), a development that has been exacerbated by the realities of the housing bubble, lack of tenant and renter protections and larger impact of [gentrification across the Bay Area](#) - that has forced the ongoing displacement of a generation of people and entire families throughout the city and neighboring areas in recent decades, including during the current pandemic.

Housing solutions need to begin with our most vulnerable residents, including those who are increasingly experiencing [homelessness](#), possible eviction and rising rents that have never been adequately addressed or mitigated by real estate industry or local public officials in San Mateo County. None of these are addressed by this development, which plans not only to maximize public land for profit, it is in fact requesting the City of Daly City to violate its own [Inclusionary Housing Ordinance](#) in order to approve the plan and move forward with segregating affordable housing and delaying its development until a later phase, years after separate, luxury housing has been started on site. It does not surpass the city's BMR requirement; it is explicitly requesting to ignore it. It should be noted at this point that Trustee Salahuddin, during the inception of this project, recently joined the Board of Directors of the Housing Leadership Council (HLC) of San Mateo County, which has endorsed a number of public and private housing projects across the county. This project, however, of those [listed online by the HLC](#), is dually the largest current proposed project in San Mateo County, with 1000+ units, and is on track to rank with the lowest in terms of affordable housing and community benefits, defaulting at the legal minimum 10% allocation of the total units. There is nothing equitable or defensible about sidestepping inclusionary housing laws. These laws have been adopted at every major city in the State of California, and currently range at requiring by law a minimum of 15-25% affordable housing inclusion among cities, with the Association of Bay Area Governments recommending [upwards of 25%](#) in current and future projects in current RHNA estimates.

There is no equity in pushing high-rise, luxury apartment buildings in a community that has persistently faced housing discrimination for generations, and is now being gentrified, with proposed segregated housing on the same site. Why the HLC and other housing organizations would openly lobby for better public housing developments in other cities across the county and less affordable housing and more corporate-friendly deals on school land in our diverse, low-income community here in Daly City - the closest city to San Francisco - is not only highly questionable, it's insulting. The Serramonte area has historically been home to families living in

low-income apartments with rising rents, local malls with low-wage retail and sales jobs and a glaring lack of equitable, sustainable public infrastructure. Gentrification has undeniably embodied modern resegregation, pronouncing existing racial disparities in access to fair housing, health care, employment, education and public resources in cities across the nation. Gentrifying the area with luxury housing that excludes our community and any tangible benefits is not an answer to our needs. We cannot gentrify our way out of gentrification.

The arguments presented by Trustee Salahuddin on behalf of the project are misleading at best, and at worst, amount to an appeal for justifying segregation of publicly funded housing development. By juxtaposing the positive aspects of having one separate 100% affordable housing building with the regressive impacts of several high rise buildings with 0% - and nearly 1000 market rate units - she poses an argument with a central contradiction as its premise: that the overall housing development project she is pushing does not do more for People of Color in our community; in fact, it prioritizes corporate interests that, in detail, she emphasizes will promise to do far less. It does not simply provide “more roofs over heads for those most affected by our housing shortage”; it delays development of affordable housing for years and segregates those housing options, even when they are built. She deliberately misses the point; it’s not just that we build housing, but how we build it, and who we build it for. It is not only disappointing to hear the perpetuation of talking points employed by the real estate lobby in lieu of an argument on behalf of the public interest - which is our express duty as public officials on a high school district school board - it is disturbing to see a public official dismiss the [legacy and ongoing impact of housing discrimination](#) in favor of corporate, private developers who have historically, irresponsibly and intentionally perpetuated this development in the name of profit for decades.

Federal law prohibiting segregation and barriers in access to public services also explicitly protects our students receiving services in Special Education from policies enabling discrimination, as outlined by [Brown v. Board of Education](#), the [Individuals with Disabilities Education Act](#) and the [Americans with Disabilities Act](#). The tenets of providing Fair and Appropriate Public Education, Least Restrictive Environment and current implementation of Inclusion of all of our students across classroom settings in our schools all stem from the foundation set by civil rights legislation central to public policy across education, housing and the range of public services we know today - and they serve to advance integration. This is something that every public school board official should embrace in every aspect of their understanding and handling of public policy. Her letter and role should not be misconstrued as speaking on behalf of our school board, educators or the district community.

Our role as public officials is to facilitate and elevate civic engagement and conduct our navigation of critical issues in our community in the public interest. Advocacy for private developers looking to cut corners on civil rights protections in public housing has no place in our roles and responsibilities as school board members. I will of course thank the NAACP for continuing to strongly advocate and raise awareness and engagement of these issues in our communities locally and nationally - and will keep them close to heart in my work actively addressing these issues for our students, families and community here with our school district.

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

Best,

Nick Occhipinti

JUHSD Board of Trustees

## Appendix C

### ***Serramonte Del Rey Expansion Project: Timeline, 2018–2021***

This is a brief annotated timeline of the meetings, discussions, information and actions taken regarding Serramonte Del Rey (SDR), the SDR Expansion (“Revitalization”) Project and its development over the past few years. *Please note that the current buildings being finalized in construction at SDR are the Faculty/Staff Housing Project (FSHP), a separate project approved and funded via Bond money in an election by local voters.*

### **Background**

The Serramonte Del Rey school site is the former site of Serramonte High School and current home to the JUHSD District Office, several community-based tenants providing cultural, religious, sports and recreational programs, as well as a preschool, adult school and special education programs. *This Expansion Project at SDR would seek to bulldoze this entire area over the course of roughly 10 years, including two large existing green spaces outside of the current building area. These green spaces and open spaces would never be fully restored or replaced.* These spaces include a community garden (The Garden at SDR) a public park (Westmoor Park) and all of the current SDR District Office and JUHSD school site — in order to clear the land for a luxury apartment complex — a massive project that was never voted on.

The SDR Expansion Project has only officially fielded community input from approximately 15–20 people in a handful of meetings over the past year. The elimination of Westmoor Park, for example, only fielded 1 comment — from a city employee — ultimately receiving 0 comments or public input and ignoring increasing concern from community and residents who have strongly voiced opposition to the project plans, both at Westmoor Park and SDR. These concerns have been raised and echoed by local students, parents, teachers, activists, leaders in our local Indigenous, Native community and environmental nonprofit organizations such as the Sierra Club. None of the critical input has been included in any of the project’s plans; it has instead been fast-tracked to cut corners on environmental regulations whenever possible.

The voices of youth and community organizers have recently outlined how problematic the proposed development is, in addition to suggesting more sustainable, community-based uses for Public Lands designated for educational purposes. As a high school teacher and school Board Trustee with our District, I have raised many of these issues from the outset of the project’s proposal, and have continuously voted against it. Despite this, my fellow Board Trustees have repeatedly lied in asserting that I “voted for this”. I continue to be the only Board Trustee that has either questioned or voted against this project, which has been pushed aggressively by other Board Members and a handful of district staff with deliberately misleading information, most commonly used to distract the public from the fact that they are starting a real estate business on public school property.

The only way to counter lies and misinformation is with factual information; accordingly, this timeline provides links to the JUHSD Board Meetings (via [YouTube](#)) and their official Agendas (with the relevant Items and provided documents). All of this is public information. In addition, a request filed via the California Public Records Act (CPRA) regarding the SDR Expansion Project elicited 1181 pages of information from the District, including emails and related documents not previously shared. Screenshots of the document — which is not currently accessible publicly online — are also included here. The purpose of sharing all of this, of course, is to provide open access to public information and as a point of reference for the public to be able to actively, democratically engage in the decision-making process of public policy. These are the facts; the rest is up to you to decide. And yes, the bottom line for me remains crystal clear: our schools are not for sale.

## 2018

2/6/2018: [14.A.2. Facilities Subcommittee Update](#)

“Next steps include bringing an agreement with Brookwood for the above work to the Board on March 6. Staff will also work with a space planner, Artik, to continue to explore short-term housing options for district office staff. Staff is also considering renting space at the medical office building on district property. Should the current district office be vacated a plan to notify tenants will need to occur by April for lease renewals.”

3/20/2018: [14.B.1. Brookwood Associates](#)

Preliminary presentation; Discussion Item.

Also:

15.A.1. RESOLUTION 2017/18–19: In Honor of the Parkland Shooting Victims and in Support of Greater Measures to Promote School Safety

4/3/2018: [13.B.1.1. Contract with Brookwood Associates for Consulting Services](#)

8/1/2018: [14.A.1. Additional Scope of Work with Brookwood Advisors for Consulting](#)

[Services](#)



Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

11/7/2018\*: [16.B.2. Faculty and Staff Housing Additional Scope of Work for Brookwood](#)

### [Advisors](#)

\*1st Regular JUHSD Board Meeting recorded and posted online to YouTube

## **2019**

3/5/2019: [4.B. Pursuant to Government Code 54956.8: CONFERENCE WITH REAL](#)

[PROPERTY NEGOTIATORS — Serramonte del Rey, 699 Serramonte Blvd., Daly City, CA 94015 — Negotiating Party/Agency: Brookwood Associates](#)

[10. REPORT OUT OF CLOSED SESSION: Minutes: Nothing to report.](#)

6/4/2019: [14.A.3. Approval of Resolution 18/19–27: Authorizing the Execution, Delivery and](#)

[Sale of Certificates of Participation to Finance Predevelopment Costs Relating to District Properties](#)

7/9/2019: [13.A.2. Serramonte Del Rey Additional Scope of Work for Brookwood Advisors](#)

## **2020**

2/6/2020: [5.B.8. Service and Consultant Contract Approvals — HKIT Architects](#)

4/14/2020: [4.B. PURSUANT TO GOVERNMENT CODE 54956.8: CONFERENCE WITH](#)

[REAL PROPERTY NEGOTIATORS — Westmoor High School \(Westmoor Park\), 131 Westmoor Ave., Daly City, CA 94015 — Negotiating Party/Agency: Brookwood Associates](#)

[10. REPORT OUT OF CLOSED SESSION: Minutes: Nothing to report. No action taken.](#)

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

8/18/2020: [15.A.1. Contract with David J. Powers and Associates for California](#)

[Environmental Quality Act \(CEQA\) Consulting Services](#)

[15.A.2. Contract with HKIT Architects for Architectural Services](#)

**2021**

2/2/2021: [13.A.1. Proposal from HKIT Architects to provide Need Analysis and Master](#)

[Planning](#)

2/23/2021: [7. APPROVAL OF AGENDA](#)

**Minutes:**

The Agenda was not initially approved.

Trustee, Nick Occhipinti wanted to make a motion to remove Items 15.A.1 and 15.A.2. Asked if those could be tabled, as he stated there was no information provided prior to the items. He wanted to table it, so Trustees could review the information before making an assessment and agreement.

Trustee Occhipinti motioned, with no second. Motion did not pass.

Trustees commented further regarding these items, as Trustee Occhipinti addressed concerns.

Trustee Occhipinti made a second motion to refer to committee for review, with no second. Second motion did not pass.

Vice President, Andy Lie made a motion to approve the Board Agenda as it is. Kalimah second.

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

Agenda was Board approved.

[15.A.1. Serramonte Del Rey Additional Scope of Work for Brookwood Advisors](#)

Vote:

**Yes Andrew Lie.**

**Yes Carla Ng-Garrett.**

**No Nick Occhipinti.**

**Yes Kalimah Salahuddin.**

**Yes Rosie Tejada.**

[15.A.2. 7-11 Committee Recruitment](#)

Vote:

**Yes Andrew Lie.**

**Yes Carla Ng-Garrett.**

**No Nick Occhipinti.**

**Yes Kalimah Salahuddin.**

**Yes Rosie Tejada.**

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

4/12/2021\*\*: [City of Daly City City Council Regular Meeting \(virtual\) — 04/12/2021](#)

1. Approving the Contract for Serramonte Del Rey Campus Redevelopment EIR

Consultant (YouTube Video clip; Item starts at 33:05)

\*\*DC City Council Meeting

4/24/2021: [6.A.1. LCAP and Budget Work Study Session](#)

[Trustees comment on Serramonte Del Rey project, despite the fact that it is not a part of the current LCAP; AFT 1481 Report targets Trustee N. Occhipinti; Trustees K. Salahuddin and VP A. Lie laugh at the mention of Earth Day; to note, this meeting is posted online out of order on YouTube, nearly 2 months later, due to President Tejada directing Superintendent T. Presta to not publicly post it, until after it was requested several times to be publicly posted, as mandated by law, by Trustee N. Occhipinti]

5/18/2021: [15.B.2. Update and Recommendation for the Serramonte Del Rey Revitalization](#)

[Project](#)

Vote:

**Yes Andrew Lie.**

**Yes Carla Ng-Garrett.**

**No Nick Occhipinti.**

**Yes Kalimah Salahuddin.**

**Yes Rosie Tejada.**

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

6/15/2021: [7.A.1. Update on Design Development for New District Offices and Adult](#)

[Education Building](#)

**Minutes:**

Mrs. Van Raaphorst presented briefly, and passed over to Jeff Evans of HKIT Architects.

Jeff Evans presented briefly, along with other staff members from HKIT.

Board asked questions and commented.

No other direction regarding the development plans of the new building at this time.

Visit our district YouTube Channel for precise details.

6/15/2021: Mitigated Negative Declaration (MND) process begins, re: Westmoor Park; no

official notice is provided to Board Members on the timeframe for community input or process.

District proceeds with Mitigated Negative Declaration, despite direction not being formally approved as an Action Item by Board at the 6/15/2021 Regular Meeting.

7/20/2021: [12.3.1.19. Renewal of Master Agreement with Brookwood Group](#)

Vote:

**Absent Andrew Lie.**

**Yes Carla Ng-Garrett.**

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

**No Nick Occhipinti.**

**Yes Kalimah Salahuddin.**

**Yes Rosie Tejada.**

8/3/2021\*\*: [City of Daly City Planning Commission Regular Meeting](#)

\*\*DC City Planning Commission Meeting

8/17/2021: [15.C.1. Resolution No2021–22/3 adopting the Initial Study/Mitigated Negative](#)

[Declaration, CEQA Findings, Mitigation Measures, and Mitigation Monitoring and Reporting Program for the Jefferson Union High School District Office and Adult Education Project](#)

[15.C.2. Resolution 2021–22/4 Establishing a Real Property Advisory Committee and Appointing Committee Members](#)

[Westmoor Park MND approved, fast-tracked over the summer while the EIR for SDR was still being completed; Votes on both Items not recorded in Minutes: [YouTube Video clip: Item 15.C.1 at 1:26:05–2:00:28](#)]

Vote (same for both Items):

**Yes Andrew Lie.**

**Absent Carla Ng-Garrett.**

**No Nick Occhipinti.**

**Yes Kalimah Salahuddin.**

Re: Serramonte Del Rey Campus Redevelopment Draft EIR - Public Comment

**Yes Rosie Tejada.**

9/27/2021\*\*: [City of Daly City Council Regular Meeting](#)

\*\*DC City Council Meeting

[5-0 vote for a continuance of the item to consider approval of the SDR

Expansion Project Precise Plan, pending community input]

Appendix D

***The truth about Serramonte Del Rey and Westmoor Park***

Nick Occhipinti  
September 26, 2021

By now, you may have heard something about Serramonte Del Rey, saving the Garden or Westmoor Park — that is, if you live, work or stay around the Daly City area. You may have noticed the brand new building popping up at the top of Serramonte Blvd. The first thing that you should know is that the new building under construction is a completely separate project that our community voted for in an election years ago — the Faculty / Staff Housing Project. It is affordable housing for JUHSD employees, which I do support. Most of us need affordable housing in our community; this is the little we can do to help our lower-paid staff pay the rent, save and hopefully live, work and stay with the district community.

I'm a member of the community, former student/alumni, high school teacher and currently a part of our JUHSD school Board of Trustees. I should also note that despite my constant advising and opposition, the rest of the Board of Trustees has been fast-tracking a separate real estate development throughout the pandemic, which is slated to erase a high school site, community garden and public park — all without community input. The good news is, it's not too late to change course!

The current issue at question is this: There is a new, controversial proposal to build luxury apartments which would effectively demolish Westmoor Park as a package deal — this has been called the Serramonte Del Rey Expansion Project. It is as wrong and misdirected as it sounds. The expansion would actually eliminate Serramonte Del Rey altogether, and replace it with 90% luxury, market-rate apartments that our predominantly low-income community of renters cannot afford — a majority of which are people of color and immigrants, and multi-generational households. You read that right. This is a project that seeks to privatize Public Lands by starting up a real estate venture, using school property that currently houses essential educational facilities and programs.

Daly City is not untouched by gentrification; it was built around a [history of housing discrimination and redlining in San Mateo County](#). The tech booms of 2000 and 2010 have caught up with the area, now seeing consistent housing projects popping up across the already packed residential and commercial landscape of the city area. It should be noted that the SDR site is both currently home to Summit Shasta Public School, a public charter high school and of course, was originally home to Serramonte High School, which opened in 1970, yet was shut down due to budget issues in 1981 in the aftermath of Prop 13's devastating impacts on low-income communities and school districts. The District tried generating revenue by leasing away half of the SDR site in 1985, creating the Serramonte Ridge Apartments and the Physicians Medical Center. Serramonte HS was reopened in 1993 only to be [shut down again due to budget issues less than 2 years later in 1995](#), after the newly restructured Oceana High School in Pacifica had been threatened with closure. That means that the land-lease real estate



revenue strategy had failed in less than 10 years — and in an economy less troubled by the disparities and skyrocketing cost of living we're experiencing today. The loss to our district was devastating then, as it still is now. I would know — I was a high school freshman that year, and had a lot of friends at both high schools. The lesson: our schools belong to our students and community first — and our schools are not for sale. We cannot put a price on the future of public education.

Lack of rent stabilization, one of the lowest minimum wages in the SF Bay Area, the recent uptick in hate crimes against the Asian American community and ongoing high-profile and routine incidences of police misconduct and killings targeting primarily the Black and Latinx community— in addition to an unusually high rate of cooperation with ICE by San Mateo County Sheriff's office in defiance of CA Sanctuary State law — have all compounded to create a situation that has left many in the area under pressure and increasingly vulnerable without affordable housing, job security and even food security while living in a city lined with shopping centers, malls and a social and actual climate that generally sets a chill pace of daily living. So the question is: *what do the people of our city need — and what role do our public school districts play in supporting our cities across these issues — particularly in creating equity and affordability in housing, employment and education here in North San Mateo County, given that we are the closest cities in the Bay Area to San Francisco?*

The process around the JUHSD's navigation of this new project has been confusing from the start, because apparently, much of the discussion and decision-making process has been fast-tracked without public input, oversight or approval, also excluding myself, as a member of the school Board. It actually took a California Public Records Act request by a community member to finally disclose information that was withheld from me, as a public official, despite my own repeated requests for transparency for nearly a year. Much of this centers on the actions of Board members and District staff who have tried to bulldoze a community garden that has been a part of Serramonte Del Rey for 20 years.

A [Change.org Petition with over 3000 signatures](#) in roughly a month speaks volumes. A [website promoting the real estate project initiated by District staff with the direction of select Board members](#) is a public relations advertisement for the project, without any public input or community voices — including no mention of [my concerns or public statements in opposition to the project](#) or those of many, including those of youth, community, established environmental agencies, such as the Sierra Club and local Indigenous, Native leaders who have called out serious environmental impacts of the proposed development from the start.

The Garden is an amazing part of our community, located directly adjacent to our District Office. It is one of the last and only cultivated green spaces in Daly City. There are state and federal laws that protect our environment, and land like this. As the world shifts to more sustainable practices in preserving and expanding environmental and cultural resources — especially with respect to Indigenous, Native communities locally and globally — federal leaders have called on local and state public agencies to implement [new policy directives guiding responsible land use planning and urban development](#). This is unceded, Ramaytush Ohlone land, currently governed in the public trust under the direction of a local high school district. It is designated for

educational purposes. What little green space we have left is not ours to simply sell or lease away forever. It is ours to give back, and to help cultivate it to give back as well, for the community.

Daly City ranks as one of the [top 10 densest urban cities in the state and nation](#). Nothing about this development makes sense. We should be paying attention to the climate change we are seeing across our state and world. We should be listening to our community who have been working to sustain our green spaces and environment here locally. We should be listening to our youth fighting for climate justice. We should be listening to our Native, Indigenous community. We should be listening to science.

I am the only Trustee who has questioned this project since its presentation to the public, given the various ethical and procedural issues noted around the project from its start. The rest of the Board of Trustees have simply agreed with each other throughout the process — I should note here that I do not speak for any of them or as a spokesperson of the Board; I can only speak for myself on these issues, and advocate for the community that I have heard raise critical questions as well. Though Board Trustees will assert that the Board has taken action, they cannot assert that I joined this action and voted for this SDR Expansion Project, or that the community has ever had a reasonable opportunity or capacity to provide input on a project of this magnitude.

I did vote for a few things — mostly related to the separate, previous project, for Faculty and Staff Housing — which the Board has often deliberately used as spin to promote the controversial development (for consultants and what was explained as “additional scope” of work related to our District Office facility). What I did vote for was to place bond measures on the ballot during elections for the public to vote on funding improvements to our school facilities — as well as parcel taxes to help fund our teachers and staff, who are among the lowest-paid in the SF Bay Area.

As a former student and teacher in this district and the only member of this Board who works in public education, I know the severity of our funding and facility needs from firsthand experience working here and across local school districts for years. One of the school facilities to be renovated across our high school site upgrades is our District Office and Adult School, among other programs and services which have been a part of Serramonte Del Rey for years, and even decades. The original plan, in 2019, was to renovate the building — at Serramonte Del Rey. This is rarely mentioned, though that was the plan from the start. That’s why we passed bond measures: to rebuild our schools, for our students. That’s what the bond money is designated for; by law, it cannot be used to pay for staff salaries — either directly or indirectly.

That plan for the District Office quickly changed to relocating it to Westmoor Park, which apparently the District has control of (surprisingly, it turns out that the City of Daly City had rented it from the JUHSD for decades, for Parks & Recreation services). In recent years, the city ended its lease with the district, and Westmoor Park was not actively utilized by the school district. The plan to relocate the District Office was then explained as something more

convenient for district programs, which was believable enough. As a Trustee, I still had questions about this, including primarily ensuring that the Park was kept intact as an open space and that the entire plan was environmentally sound — protecting the legacy, heritage trees and green space in our park and community. There is an [environmental review process](#) that mandates community input; this is part of the law, and requires public agencies to follow in good faith, appropriately with due diligence.

While there was no news from the consultants or any official Board reports about any plans for Serramonte Del Rey for over a year, the plan for Westmoor Park was being pushed along as the COVID-19 pandemic outbreak began in early 2020. The preliminary designs presented by the developers aimed to build on the tennis courts and the outer outfield grassy area of the sandlot baseball field. Meanwhile, upstairs from Westmoor Park, Westmoor High School's soccer field was converted into new tennis courts, and new baseball and softball fields were built on the upper field — in addition to a new theater and classrooms being constructed behind the recently renovated swimming pool. I have to note that as nice as all that is, it is not a replacement of Westmoor Park — or its green space, which would be lost if we relocated our District Office there. I should also note that no community input or final approvals were made for this project over the course of this time.

I was assured that the community would have input throughout the process around the park, and that these needs would be attended to; instead, the Board moved to fast-track the process without any community input, and during a summer in the middle of a pandemic. Ultimately, none of my concerns or recommendations were addressed or included. Any motion I made in our meetings to revisit the item more appropriately at a later date was explicitly rejected by every member of the Board, who worked largely outside of public venues, with District staff, to fast-track the project.

I learned too late, as we all have now, that the entire project was basically a bait-and-switch to demolish our current District Office and clear the Public Land at Serramonte Del Rey for a privatization project that would ultimately be a lucrative deal for real estate developers, with marginal revenues for our District. The teachers' union leadership has sadly, aggressively promoted the real estate project in hopes of boosting staff salaries — though no financial data detailing how this would work has ever been publicly presented. I understand the despair of being a low-paid teacher in public education. I do not understand the desperation in selling schools as real estate without a price — or any prior negotiation or public input around that. In addition, the rest of the Board has blocked any public discussion of this financial data — even ballpark estimates. None of it adds up.

What some members of the Board have consistently asserted is that they believe I voted for this project — this assertion is not true, and extremely misleading. The project changed direction several times, without my knowledge. If I had known that these projects were centered on setting up a real estate deal for private developers, I would have protested it publicly from the start. None of that information was ever disclosed, discussed or voted on until earlier this year.

It seems that Board members are claiming that there is a loophole in the vague language of our bond measures that can allow for private developers to build on district school property. If this is true, it is a loophole that I did not catch, because apparently, when it came to their planning behind closed doors, I was intentionally left out of the loop (which I began to suspect over time, and have confirmed with recently disclosed emails I was not privy to; we have the receipts). Even if this is ultimately possible, it is shameful and deceitful to exploit that vague clause and pursue that course in the name of profit. I should note that I still question the assertion that the bond money that our community voted for can be used as a basis for relocating school district facilities to launch a market-rate, luxury real estate development on school property — with little to no community benefits proposed.

In fact, as shocking as it is, according to Board members' comments in recent meetings, this is apparently what they had planned from the beginning — though the bond measure language does not reflect that. To ask the community for bond money for our students just so they could jumpstart a private business on school property sounds relatively illegal to me. Even if it is technically legal, we have to consider the questions that come with the thought of selling or leasing away school district land that we would ostensibly never see used for public education in our community again. Here are some of the questions that I and community members have raised:

*Even if these projects are legally possible and are approved by a majority of the Board, at what cost would school board members even want to consider this path? Why would teachers want to basically give away district land, just for a raise? How can we deem school property as “surplus property” with so little space here in the SF Bay Area, and in one of the most crowded cities in the state of California, right next to San Francisco? What about the educational needs of future generations of students and families in our community? How do luxury apartments help anybody struggling to pay the rent in a city with roughly half of its residents being renters, and earning low incomes, with one of the lowest minimum wages in the Bay Area?*

What little information I did receive prior to Board actions, including votes on items pertaining to consultants to continue doing their work, was included in vague updates included in a non-public internal memo called the Weekly Recap. I later learned that none of these updates reflected the full depth of discussion and actions taken by Board members and District staff with consultants and developers outside of public meetings — directions which I never approved of. On occasion, some updates in the memo amounted to administrative hearsay. I have recently read disclosed email correspondence via the Public Records request that confirms this.

More importantly, I have had to repeatedly ask and ultimately demand that videos of our public meetings discussing these matters be posted to YouTube when other Board members have explicitly directed District staff to not disclose them. This has been a very slippery slope for public officials seeking to hide from public engagement online during the pandemic; Board members have actually expressed publicly that they don't want people to show up to our meetings, particularly with reference to this project. If public officials would rather conduct business in private, they should seriously reconsider their ability, roles, responsibilities and place

in the public arena. Democracy can be complicated, but this is not; the people have a right to know, a right to speak and a right to be heard.

The official plans for the luxury apartment SDR Expansion Project and District Office relocation to Westmoor Park were presented this year, in 2021. I have voted to revisit or reject these items with a No vote every time. As I started increasingly asking questions about these processes at our public Board meetings, I was abruptly shut down, voted down and even censored at meetings. At one point, the Board attempted to hold a vote to prevent the consultants from even answering my questions, live, in the middle of a recorded meeting. When I called attention to the need to consider the environmental impacts of these projects, Board members asserted that parking lots were more important in our community, and at one point, even laughed at the notion of Earth Day in this discussion. Yes, it's all on [YouTube](#). Feel free to check the [timeline for official video clips and documents of public information](#) that outline the process.

At this point, the debate over these projects is not over. You still have a voice and a say in this process — no matter what some may say. We cannot afford to stay the course and risk losing the last of our public lands in the Serramonte and Westmoor areas. Don't believe anyone who says it's a done deal. This is a bad deal — and if we are looking at any deal, it should reflect the tenets of the [Green New Deal](#), which has been readily adopted into current and proposed legislation at the federal level, acting as the basis for our national and statewide plans for recovery through the pandemic, wildfires and various natural disasters directly linked to climate change. As disappointing as it is to see how my colleagues have conducted themselves in public service, their political choices cannot define the voice of our community.

Disappointingly, even local union leadership has echoed the talking points of the real estate lobby in recent months, including presenting threats around election endorsements. Disgraceful as that is, my responsibility remains with the people in our community — primarily our students, the youth, who — along with our Native, Indigenous community and environmental nonprofit organizations — have also spoken out publicly about these projects. It is our job and oath as democratically elected public officials to defend and promote public service with full engagement of our community.

Fast-tracking luxury real estate is a lost cause, a race to the bottom. High-income people do not need more options; that literally helps nobody. At this moment, it is our primary duty to help our community heal and recover first — here in Daly City, the Bay Area, statewide, nationally and globally. We can build something else, something better — but first we have to stop, reflect and reimagine what that is — together. The future is never set. Most of it is up to us to leave to the next generations. We have to trust their voices. When they have a chance to be that change, they are, and it is always for the best. And then, we can truly define what it means to build back better.

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**From:** Sabrina Brennan <sabrina@surfequity.org>  
**Sent:** Friday, September 8, 2023 4:18:02 PM  
**To:** Michael Van Lonkhuisen <mvanlonkhuisen@dalycity.org>  
**Subject:** [EXTERNAL] Mission Blue Butterfly: SDR DEIR Comment

CAUTION: EXTERNAL SENDER. Verify before you respond, click links or open attachments. Questions? Contact ISD.

Hello Michael,

Please see the link below for images of Mission Blue butterflies at the Daly City Community Garden located at the Serramonte Del Rey project site. I have seen Mission Blue butterflies many times, over the years, at the Daly City Community Garden.

Here's a link: <https://link.edgepilot.com/s/62c53fff/HQEcg7UYHkOkYASrBoxXrQ?u=https://chnng.it/RrrVx8CJGZ>

Happy to provide more photos if you need them.

Thanks,  
Sabrina

Sabrina Brennan (she/her)  
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