



March 25, 2022

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

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

Dear Ms. Le,

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

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

Please accept the following scoping comments:

Coyote Creek riparian corridor

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

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

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

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

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

### Bird Safety

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

### Lighting

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

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

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

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

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

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

#### Loss of Trees

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

#### Nesting Birds

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

#### Burrowing owls

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

#### Traffic and air pollution

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

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

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

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

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

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

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

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

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

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

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

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

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

### New Well

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

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

### Hazards

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

### Agriculture

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

### Range of Alternatives

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

We appreciate the opportunity to provide scoping comments,

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

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

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

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