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Emily Foley, Emily.Foley@cityofpaloalto.org
Jodie Gerhardt, Jodie.Gerhardt@cityofpaloalto.org
Planning and Development Services Department
City of Palo Alto

Re: [575 Los Trancos Road Residential Project](#)

Dear Ms. Foley and Ms. Gerhardt,

The Santa Clara Valley Audubon Society (SCVAS) and the Sierra Club Loma Prieta Chapter (SCLPC) are environmental organizations that work to protect natural resources and promote the enjoyment of nature. We appreciate the opportunity to comment on the IS/MND for the 575 Los Trancos Road Residential Project.

Project description

The project site is an undeveloped open space, dominated by oak woodland, riparian woodland, and a meadow of non-native grasses. The proposed project includes the construction of a 7,245-square-foot single family residence, a 734-square-foot attached garage, an 895-square-foot accessory dwelling unit (ADU), a swimming pool, access roads, and amenities in the flat, western portion of a 5.38-acre parcel.

Our concerns

SCVAS and SCLPC only learned of this project after it was recommended for approval by the Planning and Transportation Commission on August 31. After reviewing the IS/MND and the staff report, we conclude that the project has the potential to impose significant, unavoidable and permanent impacts on the environment. In this letter, we provide substantial evidence supporting a fair argument that the project as proposed, will cause significant and unavoidable impacts, especially but not exclusively to biological resources.

Los Trancos Creek is one of the few remaining salmonid streams in the Peninsula and the South Bay. As acknowledged in the Biological Report and the IS/MND, it is designated Critical Habitat for steelhead trout. The creek and its riparian corridor also provide a wildlife connectivity linkage to most of our common and rare wildlife species, including mountain lions. The property is located between important open space areas in Palo Alto (Foothills Park) and Portola Valley (Hawthorns property of Midpeninsula Regional Open Space). Development here has the potential to impact fish and to disrupt movement through a key wildlife riparian ecosystem and wildlife corridor. We maintain that a "fair argument" exists

that the Project will significantly impact the environment (League for Protection of Oakland's Historic Resources v. City of Oakland (1997) 52 Cal. App.4th 896, 904.). A public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project "may have a significant effect on the environment" (Protect Niles v. City of Fremont (2018) 25 Cal.App5th 1129, 1138-1139.). This low threshold for the preparation of an EIR, and a "preference for resolving doubts in favor of environmental review" is met here (Mejia v. City of Los Angeles (2005) 130 Cal.App.4th 322, 332.).

The city has discretion over the project and should require that the project be re-designed at a minimum of 55 feet from the top of the bank of Los Trancos creek (in line with the neighboring home) or a wider setback, ideally 150 feet. If this wider buffer/setback is not feasible, the city must prepare an EIR to fully analyze and mitigate the impacts and to consider alternatives to the proposed size of the project and its location on the parcel. Alternatives for a smaller footprint, or potentially loss of a few trees, are likely to reduce the impacts on the riparian ecosystem of Los Trancos Creek and must be considered. Given California's prolonged drought and regional aridification, a project with no swimming pool should also be considered to allow more space for relocation of the home further from the creek and for saving water.

1. Mapping of the project

The maps that are provided in the IS/MND are not detailed enough for the public to discern the location on the parcel where the development is proposed or how the delineation of 20 feet from top-of-the-bank was determined. Therefore, the public, regulators, and decision makers lack the ability to fully evaluate the project's impacts or to make fully informed decisions.

Please recirculate the CEQA document and provide a map that clearly delineates the project elements, including structures, roads, and amenities, on the property. Please show the 20-foot setback from the top-of-the-bank. Please include Los Trancos Creek and public amenities such as roads and trails, and provide the map as an overlay on a satellite photo of the property. This should help ascertain that the project's slope stability protection area extends to a point "20 feet landward from the top of bank or to a point measured at a ratio of 2:1 (horizontal: vertical) landward from the toe of bank, whichever is greater" (Palo Alto Stream Protection Ordinance).¹

A map of the areas to be excavated (following the recommendations of the Geotechnical Engineering Study) should be provided.

A clear zoning map for this location is needed, to show the designation of this parcel and that of land surrounding it.

2. Biological resources

The Biological resources section of the IS/MND does not adequately describe the species that may be affected by the project. Chapter 14 of the Stanford Community Plan 2018 General Use Permit Biological report provides a better picture of the many species in the San Francisquito/Los Trancos watershed

¹ https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-80331

(Section 3.1.1).² All the species mentioned in this report, and the mitigation measures proposed to reduce impacts, should be considered comprehensively in a CEQA document for this project.

3. Wider riparian buffers are needed

The San Francisco Bay Regional Water Quality Control Board's "Local Government Riparian Buffers in the San Francisco Bay Area" report³ establishes, "The riparian zone is an ecotone, or transition zone, between aquatic and terrestrial habitats. Because riparian zones contain both aquatic and terrestrial plant and animal species they have unusually high species diversity. Riparian zones are also important migratory corridors. A continuous buffer provides migratory and wildlife corridors, which are of particular value in protecting amphibians and waterfowl populations, as well as fish spawning and nursery areas. According to the U.S. Fish and Wildlife Service, California has lost 90 percent or more of its wetlands, which includes riparian communities. This is despite the fact that according to government biologists, riparian communities in the Western states, such as California, provide habitat for up to 80 percent of western wildlife species."

Clearly, riparian ecosystems and buffers are critically important to animal movement, as well as to maintaining water quality in streams. The science is well established and is the reason why agencies regulate construction near streams, and why many agencies impose significant buffers, especially in open space areas. The San Francisco Bay Regional Water Quality Control Board's "Local Government Riparian Buffers in the San Francisco Bay Area" report states, "Riparian zones perform many ecological functions important to enhancing water quality, water quantity, biodiversity, habitat connectivity, and flood capacity. The stream channel itself conveys runoff, supports aquatic plants and animals, provides groundwater recharge, and supplies water to trees and plants that typically thrive in the riparian zone."

The report cites several studies that show the importance of adequate riparian corridor building setbacks. "Buffer Distances Estimates of effective buffer distances for sediment and nutrient filtration vary, but most of the scientific studies suggest distances between 50 and 100 feet for this purpose (Jones & Stokes 2002). Although any buffer distance from the top of the bank is helpful for maintaining channel stability, a minimum 33-foot riparian buffer is required for contributing to a significant reduction in sediment levels." The "buffer distances in the region vary greatly, and it is likely that many were not chosen based upon specific buffer thresholds designed to satisfy water quality considerations. A scientifically based approach can help quantify buffer-induced benefits to water quality, thereby allowing the Board to more easily quantify TMDL reduction amounts when communicating with the region cities." Reducing total maximum daily loads (TMDL) is critical for salmonid bearing streams including Los Trancos Creek. This is why Santa Clara County and the Santa Clara Habitat Agency, based on extensive research, require a buffer of 150 feet from waterways in locations and situations similar to this project siting. The Santa Clara County General Plan Policy R-RC 37 states, "Lands near creeks, streams, and freshwater marshes shall be considered to be in a protected buffer area consisting of...150 feet from the top bank on both sides where the creek or stream is predominantly in its natural state" to protect creeks and

² https://stgenpln.blob.core.windows.net/document/SU_2018GUP_App_Tab14_Biological.pdf

³ https://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/bufferreport1204.pdf

riparian areas from “adverse impacts of adjacent development, including impacts upon habitat, from sedimentation, biochemical, thermal and aesthetic impacts.” To avoid significant unmitigable impacts, Stanford’s Community Plan Policy RC-7, which addresses buffer zones along creeks, contains a cross reference to Santa Clara County General Plan policy R-RC 37.

Palo Alto’s outdated Stream Protection Ordinance requires a minimal setback of 20 feet, which is why the Palo Alto Comprehensive Plan Policy N3.3 Program N3.3.1 seeks to update this ordinance, expressing a desire for a 150-ft buffer in locations west of Foothill Expressway:

Program N3.3.1 Update the Stream Corridor Protection Ordinance to explore 150 feet as the desired stream setback along natural creeks in open space and rural areas west of Foothill Expressway. This 150-foot setback would prohibit the siting of buildings and other structures, impervious surfaces, outdoor activity areas and ornamental landscaped areas within 150 feet of the top of a creek bank. Allow passive or intermittent outdoor activities and pedestrian, equestrian and bicycle pathways along natural creeks where there are adequate setbacks to protect the natural riparian environment. Within the setback area, provide a border of native riparian vegetation at least 30 feet along the creek bank.

The update to the Stream Protection Ordinance should establish: Design recommendations for development or redevelopment of sites within the setback, consistent with basic creek habitat objectives and significant net improvements in the condition of the creek. Conditions under which single-family property and existing development are exempt from the 150-foot setback. Appropriate setbacks and creek conservation measures for undeveloped parcels.

The intent of the Comprehensive Plan is clear. It seeks to create adequate, protective setbacks and design recommendations along creeks west of Foothills Expressway. While a 150-foot setback is cited as appropriate for new development west of Foothill Expressway, the program notes that single-family residential development can be exempt from this larger setback. Although the program states that narrower setbacks can be allowed, it does not state that minimal setbacks of 20 feet is ever appropriate or recommended. We maintain that "can be" is not the same as "shall be" and is not determinative. Instead, "can be" indicates discretion, and a 20-foot setback is inappropriate in this location, and will cause significant, unavoidable and permanent harm to Los Trancos creek and the San Francisquito creek watershed.

Staff proposes that the property is “relatively narrow” (page 6 of the Staff Report, PTC) stating, “the widest part of the house (measured between the creek and the street), the property is approximately 226 ft wide” and “The first 90 feet (approximately) measured from the street property line is dedicated to tree protection. An 150 ft creek setback would render this property undevelopable or result in a need to remove existing mature protected trees.” We do not see 226 feet or even 136 feet (226-90=136) as too narrow to accommodate a home. The City has the discretion and should require a smaller footprint of the development, a change in the design to allow wider setback, or allow the removal of a few trees to safeguard the integrity of the creek’s riparian corridor.

In addition, this property is zoned Streamside Open Space (SOS). Palo Alto's zoning code provides, "This designation is intended to preserve and enhance corridors of riparian vegetation along streams. Hiking, biking and riding trails may be developed in the streamside open space. The corridor will generally vary in width up to 200 feet on either side of the center line of the creek." The Staff Report says, "This designation does not discuss residential use, in the way that the Open Space/Controlled Development (OS/CD designation) designation does. The OS/CD designation allows 1-2 dwelling units per acre."⁴ The SOS designation seems to allow no residential development. The proposed development is not consistent with preserving and enhancing corridors of riparian vegetation along streams as intended by the SOS designation.

Lastly, The Palo Alto Stream Protection ordinance specifies development at, "20 feet landward from the top of bank or to a point measured at a ratio of 2:1 (horizontal: vertical) landward from the toe of bank, whichever is greater". The Geotechnical Engineering Study (Appendix C) states that the house is located "80 feet from Los Trancos creek" and bases its recommendations on that measurement. Is the creek channel or the center line of the creek at a distance of 60 feet away from the top of the bank? If the creek channel is located 60 feet away from the top of the bank, then the setback required by the Palo Alto Stream Protection ordinance is 120 feet.

4. Consultation with NOAA Fisheries and CDFW is needed

4.1. Steelhead and other fish

Los Trancos Creek runs along the project site. Since water is available most of the year, the creek is home to Los Trancos Creek is home to fish such as California roach, Sacramento sucker, threespine stickleback, prickly sculpin and rainbow trout (resident). The creek is designated Critical Habitat for steelhead trout.

"Critical habitat" is defined as the specific areas that are essential to the conservation of a federally listed species, and that may require special management consideration or protection. Critical habitat is determined using the best available scientific information about the physical and biological needs of the species. These needs, which are referred to as "primary constituent elements," include space for individual and population growth and for normal behavior; food, water, light, air, minerals, or other nutritional or physiological needs; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitat that is protected from disturbance or is representative of the historical geographic and ecological distribution of a species.

The IS/MND proposed that a 20-foot creek setback suffices to protect the species from disturbance yet state, "implementation of the proposed project may result in direct or indirect impacts to steelhead at all life stages."

The Biological Assessment states, "The results and conclusions presented herein represent our best professional judgment but do not represent determinations of the NMFS and CDFW as these agencies

⁴ <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2022/ptc-08.31.2022-575-los-trancos.pdf>

have ultimate jurisdiction over the steelhead through administration and enforcement of the FESA and CESA, respectively.”

Palo Alto should require consultation with NMFS and CDFW and ensure that all the requirements for steelhead habitat are not impacted significantly. In addition to direct impacts due to the diminutive buffer of 20 feet, impacts of access roads, parking, and light should be addressed and mitigated. For example, outdoor lighting (especially lighting with correlated color temperature of over 2400 Kelvin), can impact local aquatic insects directly and through the reduction of insects and food availability to the fish.⁵ Components from tire dust can kill salmon fry.⁶

4.2. Mountain Lion

The mountain lion has recently been designated as a state candidate for listing under the threatened and endangered species list.⁷ The Central Coast North population of mountain lions contains the project area. Connectivity is crucial for expanding genetic diversity in this population, and a great amount of effort is invested in restoring movement corridors for this species. Creek corridors are important for migration in this species, especially as migration routes are threatened by development and climate change.⁸ Studies of nocturnal patterns of movement suggest mountain lions tend to avoid areas with human disturbance including residential developments that introduce noise and activities as well as light at night.

4.3. The San Francisco dusky-footed woodrat

This species is endemic to the San Francisco Bay area and is listed as a Species of Special Concern in California. The proposed mitigation – dismantling and translocation of middens – has not been shown to be effective at protecting the woodrats.⁹ There is no evidence that woodrats use dismantled relocated middens and the survival of translocated woodrats is unknown. Please review and propose effective mitigation measures. Please use the mitigations offered in the Stanford Community Plan.

5. The Palo Alto Comprehensive Plan

The project is inconsistent with the Palo Alto Comprehensive Plan. As discussed above, the diminutive setback requirements of the project do not provide sufficient protection to Los Trancos Creek, and, thus, the project is inconsistent with:

- Goal N-3: Conservation of both natural and channelized creeks and riparian areas as open space amenities, natural habitat areas and elements of community design.

⁵ <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1002/2688-8319.12053>

⁶ <https://www.science.org/content/article/common-tire-chemical-implicated-mysterious-deaths-risk-salmon>

⁷ <https://wildlife.ca.gov/Conservation/Mammals/Mountain-Lion#562331240-are-mountains-lions-listed-as-a-threatened-or-endangered-species>

⁸ <https://www.washington.edu/news/2019/02/12/assessing-riverside-corridors-the-escape-routes-for-animals-under-climate-change-in-the-northwest/>

⁹ http://wildlifeprofessional.org/western/tws_abstract_detail.php?abstractID=2424&k=l/a/NHKIFi8qQ

- Policy N-3.4: Recognize that riparian corridors are valued environmental resources whose integrity provides vital habitat for fish, birds, plants and other wildlife, and carefully monitor and preserve these corridors.
- Policy N-3.1: All creeks are valuable resources for natural habitats, connectivity, community design, and flood control, and need different conservation and enhancement strategies. Recognize the different characteristics along creeks in Palo Alto, including natural creek segments in the city's open space and rural areas, primarily west of Foothill Expressway; creek segments in developed areas that retain some natural characteristics; and creek segments that have been channelized. Pursue opportunities to enhance riparian setbacks along urban and rural creeks as properties are improved or redeveloped.

In addition, it is likely to have a significant, unavoidable impact on wildlife movement.

- Policy N-1.5: Preserve and protect the Bay, marshlands, salt ponds, sloughs, creeks, and other natural water or wetland areas as open space, functioning habitats, and elements of a larger, interconnected wildlife corridor, consistent with the Baylands Master Plan, as periodically amended, which is incorporated here by reference
- Policy N-1.6: Preserve and protect the foothills and hillside areas, recognizing their unique value as natural ecosystems and interconnected wildlife corridors.

The project is located in an area that is important to wildlife connectivity between open spaces areas, including Palo Alto's Foothills Park and the Midpeninsula Regional Open Space District Hawthorns Open Space. Los Trancos Creek, its tributaries and its function in the San Francisquito creek watershed, require special attention to wildlife connectivity. The IS/MND does not discuss, analyze or substantiate its finding of no significant impact.

Due to the diminutive setback from Los Trancos Creek, we believe that the introduction of human activity during the day and lighting (including outdoor lighting) at night have the potential to interfere substantially with the movement of every native resident and migratory fish and wildlife species that occur in the region, and potentially impede the use of native fish and bat nursery sites. The 20-foot setback also means that outdoor lighting cannot achieve the ambition of Program N3.3.3: For all creeks, update the Stream Corridor Protection Ordinance to minimize impacts on wildlife by *"Requiring careful design of lighting surrounding natural riparian corridors to maximize the distance between nighttime lighting and riparian corridors and direct lighting away from the riparian corridor."* A wider setback should help achieve this goal.

6. Bird friendly design

Bird populations are declining in North America.¹⁰ While there are multiple drivers to this decline, collision with glass is considered one of the primary causes of migratory bird mortality. In North

¹⁰ <https://www.science.org/content/article/three-billion-north-american-birds-have-vanished-1970-%20surveys-show>

America, it is estimated that hundreds of millions of birds die each year as a result of striking glass walls, doors and windows.¹¹ This is a cumulative, significant impact. Bird collisions with glazed surfaces are especially critical in riparian corridors, and many jurisdictions have regulations in place to reduce and mitigate this hazard within 300-ft of riparian corridors and/or open space.¹²

The American Bird Conservancy (ABC) website is a great resource to learn about the devastating impacts of bird collisions and to find solutions to incorporate into architectural designs. Recently, ABC updated their website with new recommendations for Bird Friendly Building Design¹³ and a clarifying document that establishes what qualifies as Bird Friendly Glass. ABC provides primary elements of bird safe building design. These elements are especially critical near habitat areas such as water bodies and open space.

- Minimize use of glass
- Placing glass behind screening
- Using glass with inherent properties that reduce collisions, such as fritting.

In addition, ABC provides a Products and Solutions Database¹⁴ to evaluate bird safety glazing treatments.

Palo Alto requires bird friendly design for commercial buildings, but not for homes. Bird collisions, however, occur primarily (99%) at homes and low rise buildings.¹⁵ The proposed project is likely to contribute to cumulative impact on birds and should be required to apply bird safety measures.

7. Fire risks

The house is located in a fire-prone area. Most wildfires are caused by human activities.¹⁶ Combined with climate change and housing growth in the wildland-urban interface, fires have become larger and more destructive. We believe that analysis provided in the IS/MND is insufficient, and additional additional analysis and mitigations are needed to ensure that the environment is safe during construction and habitation of the proposed residence.

Insurance Commissioner of California Ricardo Lara's report last year¹⁷ called for policies that would stop construction in hazardous areas. Insurers are dropping policies in wildfire areas¹⁸ shifting the burden to

¹¹ <https://academic.oup.com/condor/article/116/1/8/5153098> and <https://bioone.org/journals/the-condor/volume-116/issue-1/CONDOR-13-090.1/Birdbuilding-collisions-in-the-United-States--Estimates-of-annual/10.1650/CONDOR-13-090.1.full>

¹² <https://www.cupertino.org/our-city/departments/community-development/planning/non-residential-mixed-use-development/bird-safe-and-dark-sky>

¹³ <https://abcbirds.org/glass-collisions/model-ordinance/> and <https://abcbirds.org/glass-collisions/resources/>

¹⁴ <https://abcbirds.org/glass-collisions/products-database/>

¹⁵ https://www.researchgate.net/publication/259562592_Bird-building_collisions_in_the_United_States_Estimates_of_annual_mortality_and_species_vulnerability

¹⁶ <https://www.colorado.edu/asmagazine/2020/09/22/humans-ignite-almost-every-wildfire-threatens-homes>

¹⁷ <http://www.insurance.ca.gov/01-consumers/180-climate-change/upload/Draft-Climate-Insurance-Recommendations.pdf>

¹⁸ <https://www.insurancejournal.com/news/west/2020/12/04/592788.htm>

taxpayers via the state through court orders.¹⁹ New housing built in the path of wildfires increases liability for the state. The City should evaluate the concern that new residences in this area will increase the risk of wildfire in the Palo Alto foothills area.

According to the IS/MND, the nearest Very High Fire Hazard Severity Zone (VHFHSZ) is located approximately 1 mile northwest of the project site near Portola Valley (Cal Fire 2022). This is not a significant distance away from the hazard severity zone given wind driven fires in California²⁰ and in the western United States, where climate change has doubled the amount of land damaged by wildfires between 1985 and 2015.²¹ NASA's report, "The Effects of Climate Change," states, "The potential future effects of global climate change include more frequent wildfires, longer periods of drought in some regions, and an increase in the duration and intensity of tropical storms." Indeed, it is expected that the amount of properties burned in CA will grow according to a study by the First Street Foundation when "about 40% of the state have at least "moderate" risk of burning in a wildfire some time in the next 30 years".²²

Thank you for granting us an extension for commenting, and please do not hesitate to contact us if you have questions.

Respectfully,

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¹⁹ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/california-s-insurer-of-last-resort-faces-fire-coverage-challenges-after-ruling-65646785>

²⁰ <https://firesafemarin.org/prepare-yourself/red-flag-warnings/diablo-winds/>

²¹ <https://climate.nasa.gov/effects/>

²² <https://www.sacbee.com/news/california/fires/article261495002.html>