



August 22, 2022

Cassandra van der Zweep
Environmental Project Manager
City of San Jose, PBCE
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RE: Qume and Commerce Project H21-040, T21-040, and ER21-154

Dear Ms. van der Zweep,

The Santa Clara Valley Audubon Society and the Sierra Club Loma Prieta Chapter are environmental organizations that work to protect natural resources and promote the enjoyment of nature. We appreciate the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Qume and Commerce Project. The Project proposes to demolish existing buildings and construct four new industrial warehouse buildings. Of concern, it also plans to remove 620 trees, including oak trees that provide valuable habitat to birds and insects. Please find our comments below.

Significant loss of trees

1. The Project removes 620 existing trees, including 19 out of the 31 existing native trees and 297 ordinance-size trees, but only replaces them with 339 new trees. The DEIR acknowledges a significant impact (Impact Bio-1, Construction activities associated with the proposed Project would remove on-site trees, reducing pockets of forage and cover for native and/or migrating bird species, which could potentially interfere substantially with the movement of native resident species or movement of a migratory wildlife species). The site-specific and cumulative impact of the loss of habitat for resident and migratory bird species should be recognized as a significant unavoidable impact. The DEIR suggests that Bio-1 Mitigation Measures will reduce the impact to less-than-significant. However, this mitigation applies to the construction phase only, and does not mitigate the overall loss of habitat as the fewer, smaller trees and payment of in-lieu fees do not provide any benefit to the same migratory species in the foreseeable future and perhaps never. Therefore, Bio-1 does not mitigate the impact of "reducing pockets of forage and cover for native and/or migrating bird species, which could potentially interfere substantially with the movement of native resident species or movement of a migratory wildlife species." The impact remains significant, and, unless the Project is modified, it is unmitigable.

2. The majority of the proposed new trees are not California native trees. Native oak trees, such as the Valley Oak, support the most wildlife of all trees in our region.¹ We recommend replacing the proposed Chinkapin Oaks, which are not native to our region, with a native oak species. Not only will a native oak species support more biodiversity, it will also be more adapted to the local climate to ensure better survival. Additionally, we strongly urge the increase in the proportion of oak trees overall in relation to the dominant non-native trees. This will increase the habitat value of the new trees to help mitigate the removal of so many existing trees. Our comments are also supported by Policies MS-21.5² and MS-21.8³ in Envision San Jose 2040, which seek to preserve and increase the planting of native trees.
3. In addition to planting more native trees, we also encourage the landscape design to include more, if not all, native shrubs and other smaller plants. Similar to native trees, native plants support more wildlife than nonnative plants.⁴ Currently, the proposal includes 7 native species, a small proportion compared to the nonnative species. Moreover, one of the proposed species of nonnative shrubs, Heavenly Bamboo, is toxic to birds.⁵ Please replace this with a native species that feeds birds, such as Toyon. Native willows and/or oak trees can also be planted in the proposed bioretention areas.
4. Please ensure all plants are not considered invasive species per the California Invasive Plant Council.⁶ Of the current proposed plants, *Olea Europaea* is considered invasive in the Bay Area.
5. DEIR p. 64 lists the number of native trees as 32, while Table 3.2-1 on the same page lists 31 native trees. Please correct this error.
6. Loss of trees increases the danger from extreme heat.^{7,8} The unequal distribution of cooling infrastructure in Los Angeles and other cities is one of the reasons why the health impacts of worsening heat waves fall disproportionately on the poor communities.
 - a. The City should replace the carbon content of the trees that will be removed. Replacing just the tree count does not mitigate the public health impacts due to extreme heat and

¹ <https://www.nytimes.com/2021/03/31/realestate/oak-trees-why-you-should-plant.html>

² MS-21.5 As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse affect [sic] on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.

³ MS-21.8 For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the selection and planting of new trees to achieve the following goals: • Avoid conflicts with nearby power lines. • Avoid potential conflicts between tree roots and developed areas. • Avoid use of invasive, non-native trees. • Remove existing invasive, non-native trees. • Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species. • Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species

⁴ O’Keeffe, Liv. “Biodiversity is Everyone’s Responsibility.” *Flora*, vol. 1, no. 2, 2018, pp. 10-11, https://www.cnps.org/wp-content/uploads/2018/05/tallamy-article_flora-v1n2.pdf.

⁵ <https://ncbg.unc.edu/2022/05/04/nandina-toxic-to-birds/>

⁶ “The Cal-IPC Inventory – California Invasive Plant Council.” *California Invasive Plant Council*, <https://www.cal-ipc.org/plants/inventory/>.

⁷ <https://www.latimes.com/environment/story/2021-10-07/la-times-investigation-extreme-heat>

⁸ <https://www.nytimes.com/2021/07/02/climate/trees-cities-heat-waves.html>

the need to stop using fossil fuels and sequester carbon to stay under Paris according to IPCC6 WGIII.

- b. The City should find ways to retain more of the trees onsite.
7. The Arborist Report states that the City is requiring 10' wide sidewalks along every road, encompassing the southeast and west property lines (Arborist Report Appendix E p. 7). Large mature Ashes and Red Oaks are located along Qume Drive, directly in the path of the proposed sidewalk (Arborist Report Appendix E Figure 5). Because of their size and age, these require—and deserve—more space for preservation. The City must find a way to narrow the width or shift the sidewalk far enough into the property to save these trees.

This is critically important since data indicates San Jose is losing tree canopy and hence failing to meet General Plan MS-21.2 (Provide appropriate resources to preserve, protect and expand the City's Community Forest) and MS-21.4 (Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it). Reasonable measures to modify the Project design and/or sidewalk locations, and addressing DOT policies with flexibility, could and should save dozens of trees.

- a. To reduce the multiple negative impacts of loss of trees, please consider waivers of any standards that require the removal of ordinance-size trees, and modify the plans to allow preservation of the large mature ashes and red oaks located along Qume Drive, directly in the path of the proposed sidewalk.

Irreplaceable Valley Oak tree

8. The centuries-old Valley Oak is considered "irreplaceable" (DEIR p. 78, Arborist Report Appendix E p. 8). The Arborist Report labels it Valley Oak #572 on page 8 and #542 on page 35. This mistake can be fatal for the irreplaceable oak since tree #572 (an Ash tree) is slated for removal (Arborist Report Appendix E p. 9 and p. 37).
9. As pointed out in the Arborist Report, accidentally damaging a tree of this age can trigger a slow descent into death, since it may not be growing actively enough to repair damage or replace lost foliage. To protect the tree, the Arborist Report provides clear directions, all of which should be incorporated as Mitigation Measures:
 - a. Every detail and change to the Project must be reviewed by a consulting arborist.
 - b. A consulting arborist must be on-site for any ground disturbing activities that occur near/around the tree.
 - c. Chain-link fencing must be installed around the planter area at the limit of grading, and additional fencing should be left on-site in perpetuity to expand the protected area after demolition.
 - d. Pruning of the tree should not be done unless absolutely necessary for hazard reduction, and under the supervision of a consulting arborist.

These mitigations are required to avoid damage and subsequent death of the irreplaceable ancient oak, which would constitute a significant impact.

In addition, weekly in the first month of operations, and yearly thereafter, monitoring during operations hours should be required to ensure that landscaping and operation activities are not damaging to the tree.

BIO-2 Preconstruction Bird Surveys

10. The Bay Area official bird nesting season extends from February 1st through August 31st, inclusively. This is also the date range for which preconstruction bird surveys should be conducted prior to any tree removal, demolition, and construction activities. Erroneously, Mitigation Measure BIO-2 requires preconstruction surveys in the months between August 31st and January 31st. Please correct this on pages 6 and 75 to require surveys between February 1st through August 31st, inclusively.
11. Mitigation Measure BIO-2 states that preconstruction nesting surveys “shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of breeding season (May 1st through August 31st inclusive)” (p. 6 and 75). Preconstruction bird nesting surveys should be conducted no more than 14 days prior to any tree removal, demolition, and construction activities during the entire nesting period. This is because many of the locally common migratory bird species nest late in the season or repeatedly in these months (Mourning Dove, Dark-eyed Junco, Anna’s Hummingbird, House Finch, and others). Furthermore, birds can build a nest, lay eggs, and start raising young within two weeks, and an entire reproductive cycle may start and end within 30 days. If the purpose of the survey is to protect birds, then the survey period should be based on the minimally known nest building period for local species.
12. Any reports submitted by the qualified ornithologist and the arborist prior to tree removal or construction should be made available to the public.

Greenhouse gas (GHG) emissions and solar roofs

13. Under Section 3.4 Greenhouse Gas Emissions (DEIR p. 93), the first paragraph says, “The following discussion is based on the Greenhouse Gas Emissions Assessment and the report is included as Appendix F of this Draft EIR.” However, this assessment is actually Appendix I. The same error is also seen on pages 108 and 110.
14. We support the California Air Resources Board’s Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers (Appendix A p. 25) and encourage the Project to comply with these measures. Two such measures are listed below as examples.
 - a. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
 - b. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2023.
15. City policies and regulations do not seem to address the specific impacts of traffic to and from warehouses which constitute the primary contribution to GHG Emissions. For the Project, the primary emission source will be truck traffic related to the operations of the warehouses.

Compliance with building codes requirements (City and State) do not mitigate this impact. It is unclear how the following will reduce GHG emissions from truck traffic: “At the State and global level, improvements in technology, policy, and social behavior can also influence and reduce operational emissions generated by a project. The state is currently on a pathway to achieving the Renewable Portfolio Standards goal of 33 percent renewables by 2020 and 60 percent renewables by 2030 per SB 100” (page 25). Ambitious statewide measures such as low carbon fuels, cleaner vehicles, cap-and-trade, and other strategies to promote sustainable communities and improved transportation choices also fail to address the Project’s specific emissions from mobile and energy sources (trucks). Relying on City and State policies that are not specifically targeting warehouses and the unique emissions that are associated with their operations is inappropriate and does not mitigate GHG emissions to a less than significant impact.

The Project objectives include, “Seek opportunities through site design, engineering, ‘green’ building strategies, Low Impact Development (LID), and on-going management practices to minimize environmental impacts on the local and regional environment” (DEIR p. 25). While the Project proposes to enroll in the San José Clean Energy (SJCE) TotalGreen program and build solar-ready buildings, the increased energy demand on SJCE from the operation of the Project does not support the Project’s goal of minimizing impacts. Additionally, Project operation will lead to increased toxic diesel emissions and exhaust in the vicinity as well as increased GHGs as mentioned above. None of these support San Jose’s goal to be carbon neutral by 2030 (part of Climate Smart San Jose) or Goal MS-11 (Minimize exposure of people to air pollution and toxic air contaminants such as ozone, carbon monoxide, lead, and particulate matter). The potential impact should be recognized and mitigation should include:

- a. The installation of EV-ready infrastructure to facilitate the eventual transition to electric vehicles as envisioned in the DEIR and ready the Project to implement the mitigations described in comment 14 above.
- b. The installation of solar panels now rather than just being solar ready. With the City of San José's pledge to become carbon neutral by the end of the decade, the Project needs to exceed the base building codes of solar-ready rooftops. The Project claims to meet carbon neutral energy requirements by purchasing electricity from SJCE, but this new demand on SJCE would add to the difficulty for SJCE (and competitors for clean energy contracts) to meet its 100% clean energy goal. The Project should provide a solar roof.
- c. The installation of batteries and geothermal design to reduce demand on the grid during extreme heat occurrences when blackouts are forecasted.⁹

Valley Habitat Plan

16. Impact Bio-6 seems to suggest that the Project is exempt from the requirements of the Valley Conservation Plan. The Project is subject to the Nitrogen Deposition fees for newly generated car/truck trips.

⁹ <https://www.latimes.com/environment/story/2020-01-22/california-needs-clean-energy-after-sundown-geothermal-could-be-the-answer>

Outdoor lighting

17. The evidence that Artificial Light At Night (ALAN) causes pervasive harm to human health, our ecosystems and our planet is overwhelming.¹⁰ Most birds migrate at night and nocturnally migrating birds are attracted to light.¹¹ The National Audubon Society's Lights Out program¹² is a national effort to reduce the attraction of these birds to inhospitable locations. Since the operations of the warehouse are expected to be active 24/7, mitigations to reduce light pollution and harm to migratory birds should be provided. We recommend following the International Dark Sky Association guidelines and policies that focus on Principles for Responsible Outdoor Lighting. Here is a list of mitigation measures:

- a. The correlated color temperature of lighting should not exceed 2400K, and where light with a larger fractional emission of short wavelengths is desired, it should be carefully controlled through stringent application of the other Lighting Principles, such as lower intensity, careful targeting, and reduced operation time.
- b. All lighting fixtures should be fully shielded, and the use of up-lighting should be avoided.
- c. Over-lighting relative to task-related needs should be prevented by maintaining illuminances as close as possible to the minimum levels.
- d. All outdoor lighting fixtures should be capable of accepting 7-pin controls that can enable use of dimmers, timers, motion sensors, and networking. Lighting should be actively controlled through means such as dimmers and motion-sensing switches so as to reduce illuminances or extinguish lighting altogether when the light is not needed.
- e. All glazed surfaces should utilize a bird safety measures product with a threat factor rating of no more than 20, as rated by the American Bird Conservancy.¹³

Please do not hesitate to contact us if you have questions.

Respectfully,

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¹⁰ <https://www.darksky.org/wp-content/uploads/2022/06/IDA-State-of-the-Science-2022-EN.pdf>

¹¹ <https://www.nytimes.com/2021/04/10/us/bird-migration-lights-out.html>

¹² <https://www.audubon.org/conservation/project/lights-out>

¹³ <https://abcbirds.org/glass-collisions/products-database/>