

First Amendment to the Draft SEIR **South Fourth Street Project**

File Nos.: H17-004 & ER20-262

SCH No.: 2022020588

Prepared by



September 2023

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Attachment A: Draft SEIR Comment Letter

SECTION 1.0 INTRODUCTION

This First Amendment, together with the Draft Supplemental Environmental Impact Report (SEIR), constitute the Final SEIR for the South Fourth Street project.

1.1 PURPOSE OF THE FINAL SEIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, the Final SEIR provides objective information regarding the environmental consequences of the proposed project. The Final SEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final SEIR is intended to be used by the City of San José in making decisions regarding the project.

Pursuant to CEQA Guidelines Section 15090(a), prior to approving a project, the Lead Agency shall certify that:

- (1) The Final SEIR has been completed in compliance with CEQA;
- (2) The Final SEIR was presented to the decision-making body of the Lead Agency, and that the decision-making body reviewed and considered the information contained in the Final SEIR prior to approving the project; and
- (3) The Final SEIR reflects the Lead Agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL SEIR

CEQA Guidelines Section 15132 specify that the Final SEIR shall consist of:

- a) The Draft SEIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft SEIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft SEIR;
- d) The Lead Agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the Lead Agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the SEIR. The Final SEIR and all documents referenced in the Final SEIR are available for review on the City's website: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents#ActiveEIRs>.

SECTION 2.0 DRAFT SEIR PUBLIC REVIEW SUMMARY

The Draft SEIR for the South Fourth Street project, dated April 2023, was circulated to affected public agencies and interested parties for a 45-day review period from May 30, 2023 through July 14, 2023. The City undertook the following actions to inform the public of the availability of the Draft SEIR:

- The Notice of Availability (NOA) of Draft SEIR was published on the City's [website](#), in the Mercury News, and with the County of Santa Clara's Clerk Recorder;
- The NOA of the Draft SEIR was mailed to neighboring cities, tribal contacts, organizations, and individual members of the public who had indicated interest in the project or requested notice of projects in the City;
- The NOA was sent to members of the public who signed up for City notices via *Newsflash*;
- The Draft SEIR was submitted to the State Clearinghouse on May 31, 2023, which forwarded the Draft SEIR to various governmental agencies and organizations, (see Section 3.0 for a list of agencies and organizations that received the Draft SEIR); and
- Copies of the Draft SEIR were made available on the City's [website](#).

SECTION 3.0 DRAFT SEIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft SEIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies.

The following agencies received a copy of the Draft SEIR via the State Clearinghouse:

- California Air Resources Board
- California Department of Fish and Wildlife, Bay Delta Region 3
- California Department of Transportation, District 4
- California Native American Heritage Commission
- California Regional Water Quality Control Board, San Francisco Bay Region 2
- Office of Historic Preservation

Copies of the NOA for the Draft SEIR were sent by mail and/or email to the organizations, businesses, and individuals who have requested all City notices.

SECTION 4.0 RESPONSES TO DRAFT SEIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft SEIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from the letter are presented with a response to that specific comment directly following. A copy of the letter received by the City of San José is included in its entirety in Attachment A of this document. Comments received on the Draft SEIR are listed below.

<u>Comment Letter and Commenter</u>	<u>Page of Response</u>
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A. Valley Water (July 6, 2023)	5

REGIONAL AND LOCAL AGENCIES

A. Valley Water (July 6, 2023)

Comment A.1: The Santa Clara Valley Water District (Valley Water) has reviewed the Draft Supplemental Environmental Impact Report (SEIR) and Initial Study (IS) for the South Fourth Street Project located at 439 South Fourth Street in San Jose, received on May 30, 2023.

Based on our review of the IS, we have the following comments:

1. The Regional Water Quality Control Board (RWQCB) Municipal Regional Permit (MRP) was re-issued on May 11, 2022 and becomes effective on July 1, 2023. Discussions in the Draft SEIR should note consistency with the new MRP. If the project qualifies for coverage under the old MRP, the discussion should clearly note that and explain why it is covered under the old MRP.
2. On page 54, it is noted that a site-specific Geotechnical Report will be prepared for the project. In addition to the items noted on page 54, the Geotechnical Report should also discuss recommendations of waterproofing for the subgrade parking structure.

Response A.1: The Municipal Regional Permit Provision C.3 discussion under the regulatory framework section (page 76 of Appendix A of the Draft SEIR) has been revised. Refer to Section 5.0 of this document for the text revision. As mentioned on page 54 of Appendix A of the Draft SEIR, the site-specific Geotechnical Report shall be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999) and reviewed by the City Geologist. No additional text revisions are required.

This comment does not identify new or greater identified environmental impacts under CEQA; therefore, no further response or recirculation of the Draft SEIR is required.

Comment A.2: 3. On page 76 and 77, the discussion under “Water Resources Protection Ordinance and District Well Ordinance” needs to be replaced with the following text:

“Valley Water operates as a flood protection agency for Santa Clara County. Valley Water also provides stream stewardship and is the wholesale water supplier throughout the county, which includes the groundwater recharge program. In accordance with Valley Water’s Water Resources Protection Ordinance, any work within Valley Water’s fee title right of way or easement or work that impacts Valley Water’s facilities requires the issuance of a Valley Water permit. Under Valley Water’s Well Ordinance 90-1, permits are required for any boring, drilling, deepening, refurbishing, or destroying of a water well, cathodic protection well, observation well, monitoring well, exploratory boring (45 feet or deeper), or other deep excavation that intersects with the groundwater aquifers of Santa Clara County.”

4. On page 81, there is a typo under the Dam Failure section. Please correct “Andersen Dam” to “Anderson Dam.”

5. References to “Lexington Dam” should be replaced with “Lenihan Dam.”
6. On page 81, there is a typo under the “Hydromodification” section. “SCVUPPP” should be replaced with “SCVURPPP.”

Response A.2: The commentor provided recommended language under the Water Resources Protection Ordinance and District Well Ordinance heading in the regulatory framework section and minor text edits. The commentor’s recommended language and text edits have been made in Section 5.0 of this First Amendment.

These text changes do not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR.

Comment A.3: 7. Page 80 notes the site is in a flood zone D, an area of undetermined but possible flood hazard that is outside the 100-year floodplain. Since flood hazards are undetermined, you can not say it is outside the 100-year floodplain.

8. According to Valley Water records, there are no wells found within the property boundaries. While Valley Water has records for most wells located in the County, it is always possible that a well exists that is not in Valley Water’s records. If previously unknown wells are found on the subject property during development, they must be properly destroyed under permit from Valley Water or registered with Valley Water and protected from damage. For more information, please call Valley Water’s Well Ordinance Program Hotline at (408) 630-2660.

Response A.3: As mentioned on page 80 of Appendix A of the Draft SEIR, the project site is located within an area with possible, but undetermined flood hazards. It is possible that some areas are outside the 100-year floodplain. Text revisions have been made on page 87 of Appendix A of the Draft SEIR to clarify that the project is located within an undetermined but possible flood hazard (refer to Section 5.0 of this First Amendment).

The commenter confirms that no wells are located within the project boundaries. This comment does not identify new or greater identified environmental impacts under CEQA; therefore, no further response or recirculation of the Draft SEIR is required.

Comment A.4: 9. Valley Water does not have any right of way or facilities at the project site; therefore, in accordance with Valley Water’s Water Resources Protection Ordinance, a Valley water encroachment permit is not required for the proposed improvements.

If you have any questions about the comments, please feel free to contact me. This project has been assigned to Valley Water File 34034.

Response A.4: The commenter confirms that an encroachment permit is not required. This comment did not raise any further environmental issues under CEQA and, therefore, no specific response is required.

SECTION 5.0 DRAFT SEIR TEXT REVISIONS

This section contains revisions to the text of the South Fourth Street Project Draft SEIR dated April 2023. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~.

Appendix A, Section 4.10.1.1,
Page 76

The first paragraph under the Municipal Regional Permit Provision C.3. is **REVISED** as follows:

The San Francisco Bay RWQCB re-issued the Municipal Regional Stormwater NPDES Permit (MRP) in ~~2015~~ May 2022 and it became effective as of July 1, 2022, to regulate stormwater discharges from municipalities and local agencies (co-permittees) in Alameda, Contra Costa, San Mateo, and Santa Clara Counties, and the cities of Fairfield, Suisun City, and Vallejo.¹ Under Provision C.3 of the MRP, new and redevelopment projects that create or replace ~~40,000~~ 5,000 square feet or more of impervious surface area are required to implement site design, source control, and Low Impact Development (LID)-based stormwater treatment controls to treat post-construction stormwater runoff. LID-based treatment controls are intended to maintain or restore the site's natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource (e.g., rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures are properly installed, operated, and maintained.

Appendix A, Section 4.10.1.1,
Pages 76-77

The paragraph under Water Resources Protection Ordinance and District Well Ordinance is **REVISED** as follows:

The Santa Clara Valley Water District (Valley Water) operates as the flood control agency for Santa Clara County. ~~Their~~ Valley Water also provides stream stewardship ~~also includes creek restoration, pollution prevention efforts, and groundwater recharge. Permits for well construction and destruction work, most exploratory boring for groundwater exploration, and projects within Valley Water property or easements are required under Valley Water's Water Resources Protection Ordinance and District Well Ordinance~~ and is the wholesale water supplier throughout the county, which includes the groundwater recharge program. In accordance with Valley Water's Water Resources Protection Ordinance, any work within Valley Water's fee title right of way or easement or work that impacts Valley Water's

¹ ~~MRP Number~~ California Regional Water Quality Control Board San Francisco Region. Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, NPDES Permit No. CAS612008, May 11, 2022.

facilities requires the issuance of a Valley Water permit. Under Valley Water’s Well Ordinance 90-1, permits are required for any boring, drilling, deepening, refurbishing, or destroying of a water well, cathodic protection well, observation well, monitoring well, exploratory boring (45 feet or deeper), or other deep excavation that intersects with the groundwater aquifers of Santa Clara County.

Appendix A, Section 4.10.1.2,
Pages 81

The sentence and footnote under the Dam Failure heading is **REVISED** as follows:

Based on the SCVWD dam failure inundation hazard maps, the project site is located in the ~~Andersen~~ Anderson dam and ~~Lexington~~ Lenihan dam failure inundation hazard zones.^{2,3}

Appendix A, Section 4.10.1.2,
Pages 81

The sentence under the Hydromodification heading is **REVISED** as follows:

Based on the ~~SCVUPPP~~ SCVURPPP watershed map for the City of San José, the project site is exempt from the NPDES hydromodification requirements because it is located in a subwatershed greater than or equal to 65 percent impervious.⁴

Appendix A, Section 4.10.2,
Pages 87

The last paragraph of Checklist Question d is **REVISED** as follows:

As mentioned in *Section 4.10.1.2*, the project site is located in Flood Zone D. Zone D is an area of undetermined but possible flood hazard that is outside the 100-year floodplain. There are no floodplain requirements for Zone D. The project site is also located within the Anderson dam and ~~Lexington~~ Lenihan dam failure inundation zones. The California Division of Safety of Dams (DSOD) inspects dams on an annual basis and Valley Water routinely monitors the 10 dams, including the Anderson and ~~Lexington~~ Lenihan dams. Therefore, the likelihood of flooding from dam failure is low and the project would not release pollutants due to dam inundation. **[Same Impact as Approved Project (Less Than Significant Impact)]**

² Valley Water. ~~Andersen~~ Anderson Dam Flood Inundation Maps. Accessed March 4, 2022.

<https://www.valleywater.org/sites/default/files/Anderson%20Dam%20Inundation%20Maps%202016.pdf>.

³ Valley Water. Inundation Map for the Hypothetical Fair Weather Failure of Both Austrian Dam and Lenihan Dam. Accessed March 4, 2022. <https://fta.valleywater.org/dl/kjag9342I7>.

⁴ Santa Clara Valley Urban Runoff Pollution Prevention Program. “Hydromodification Management Applicability Maps.” Accessed March 4, 2022. https://scvurppp.org/wp-content/uploads/2019/08/San_Jose_HMP_Map.pdf.

Appendix A, Section 4.10.3,
Pages 87

The second paragraph under Non-CEQA Effects is **REVISED** as follows:

General Plan Policy EC-5.1 requires evaluation of flood hazards prior to approval of development within a FEMA designated floodplain. New development shall be reviewed to ensure it is designed to provide protection from flooding with a one percent annual chance of occurrence or the 100-year flood. Based on the FIRM, the project site is located in an area of undetermined but possible flood hazard that is outside the any mapped 100-year floodplain. ~~and, as a result, the project would be required to comply with General Plan Policy 5.1 which ensures that new development is designed to provide protection from the 100-year flood not expose people or structures to significant flood hazards in compliance with City policies.~~ The project site would not be subject to inundation by seiches, tsunamis, or mudflows. The proposed project would not expose people or structures to flood hazards, consistent with General Plan Policy EC-5.1.

Appendix A, Section 4.10.3,
Pages 88

The last paragraph under Non-CEQA Effects is **REVISED** as follows:

The project site is located within the Anderson and ~~Lexington~~ Lenihan dam failure inundation areas. As mentioned previously, the California DSOD inspects the dams on an annual basis. The Downtown Strategy 2040 FEIR concluded that with the regulatory programs currently in place, the possible effects of dam failure would not expose people or structures to a significant risk of loss, injury or death.

Appendix A, Section 5.0,
Page 135

A new reference is **ADDED**:

California Regional Water Quality Control Board San Francisco Region. Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, NPDES Permit No. CAS612008. May 11, 2022.

Appendix A, Section 5.0,
Page 135

The following reference edit is **REVISED**:

Valley Water. ~~Andersen~~ Anderson *Dam Flood Inundation Maps*. Accessed March 4, 2022.
<https://www.valleywater.org/sites/default/files/Anderson%20Dam%20Inundation%20Maps%202016.pdf>.

Mahamood, Reema

From: Matthew Sasaki <MSasaki@valleywater.org>
Sent: Thursday, July 6, 2023 10:42 AM
To: Mahamood, Reema
Subject: CPRU File 34034, File Nos. H17-004 and ER20-262 - South Fourth Street Project

You don't often get email from msasaki@valleywater.org. [Learn why this is important](#)

[External Email]

Hi Reema,

Comment A.1

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Comment A.2

3. On page 76 and 77, the discussion under "Water Resources Protection Ordinance and District Well Ordinance" needs to be replaced with the following text:
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Comment A.44

9. Valley Water does not have any right of way or facilities at the project site; therefore, in accordance with Valley Water's Water Resources Protection Ordinance, a Valley Water encroachment permit is not required for the proposed project.

If you have any questions about the comments, please feel free to contact me. This project has been assigned to Valley Water File 34034.

Thank you,

MATT SASAKI

Pronouns: he/him

Assistant Engineer II

Community Projects Review Unit

msasaki@valleywater.org

Tel. (408) 630-3776

Santa Clara Valley Water District is now known as:



Clean Water • Healthy Environment • Flood Protection

5750 Almaden Expressway, San Jose CA 95118

www.valleywater.org

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