

**RESPONSES TO PUBLIC COMMENTS**  
**to the**  
**INITIAL STUDY/  
MITIGATED NEGATIVE DECLARATION**  
**for**  
**2375 & 2395 South Bascom Avenue**  
**Residential Care Facility for the Elderly**

**File No. CP19-021**



**CITY OF SAN JOSE**  
**CALIFORNIA**

**June 2020**

## TABLE OF CONTENTS

Section 1. Summary of Comments .....	1
Section 2. Responses to Comments .....	3
Section 3. Text Changes to the IS/MND.....	8
Section 4. Conclusion .....	12

## ATTACHMENTS

Attachment A: Consolidated Public Comment Letters

Attachment B: Updated Noise Report, June 24, 2020

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## SECTION 1. SUMMARY OF COMMENTS

The project is an application for a Conditional Use Permit to allow the demolition of four existing commercial buildings and construction of a 83-unit, 93 bed, fully-licensed Residential Care Facility for the Elderly (RCFE), regulated by the State of California. The project proposes to construct a 72,870 square foot building, one to three-stories in height, with one level of below-grade parking on approximately 1.23 gross acres at 2375 and 2395 South Bascom Avenue.

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project to evaluate the environmental effects of the project in accordance with the California Environmental Quality Act (CEQA). The IS/MND was circulated for public review from May 1 to May 21, 2020. The City of San José received four comment letters (emails) during the public review period, as presented in the table below.

List of Comments Received on IS/MND		
Comment	Name	Date Received
A	DeLong, Dana	Various, May 2020
B	Garnetta, Annable	Various, May 2020
C	Valley Water (formerly Santa Clara Valley Water District)	5/20/20
D	Townsend, Brett	5/21/20

This document provides the responses to comments received on the IS/MND that address the contents of the environmental analysis. Numbered responses correspond to the comments in each letter. Copies of each comment letter are attached.

In summary, the comments received on the draft IS/MND did not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. CEQA does not require formal responses to comments on an IS/MND, only that the lead agency consider the comments received [CEQA Guidelines §15074(b)]. Nevertheless, responses to the comments are included in this document to provide a complete environmental record.

This document contains a list of the agencies and persons that submitted comments on the IS/MND and the City's responses to comments received on the IS/MND. The specific comments have been excerpted from the letter and are presented as "Comment" with each response directly following as "Response". Copies of the actual letters and email submitted to the City of San José are attached to this document.

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## SECTION 2. RESPONSES TO COMMENTS

**Comment Letter A:** Dana DeLong

**Comment A-1:** Has the traffic study at Dry Creek and Union been completed? We still have cars traveling at high rate of speed AND trucks going down dry creek. Imagine what traffic is going to be once construction starts. PLEASE ADVISE READING TRAFFIC STUDY.

Did this traffic study include Dry Creek and Union?  
Also who do I contact about getting the chatter strips installed?  
I keep getting the run around from the city.

Also who do I contact about getting the chatter strips installed?

**Response A-1:** The City has adopted a new Transportation Analysis Policy (City Council Policy 5-1) consistent with the California Senate Bill 743 (SB 743) and the City's goals as set forth in the City's Envision San Jose 2040 General Plan. This Policy establishes the threshold for transportation impacts under CEQA and replaces the Policy 5-3. As the project was submitted and scoped after the adoption of the City Council Policy 5-1. Pursuant to this policy, the City evaluated the project's Vehicle Miles Traveled (VMT).

Consistent with this policy, a Transportation Analysis (TA) was completed as part of the IS/MND and is provided in Appendix F of the document. As part of the TA a Local Transportation Analysis is generally required to conduct an intersection operations analysis if the project is expected to add 10 or more vehicle trips per hour per lane to any signalized intersection that is located within a half-mile of the project site and is currently operating at LOS D or worse. The intersection of Dry Creek Road and Union Avenue did not meet the study intersection selection criteria and, thus, did not warrant analysis. The project is not expected to add vehicle or truck trips to the Dry Creek Road/Union Avenue intersection.

Construction traffic is addressed on page 39 of the TA. Typical activities related to the construction of any development could include lane narrowing and/or lane closures, sidewalk and pedestrian crosswalk closures, and bike lane closures. In the event of any type of closure, clear signage (e.g., closure and detour signs) must be provided to ensure vehicles, pedestrians and bicyclists are able to adequately reach their intended destinations safely. Per City standard practice, the project would be required to submit a construction management plan for City approval that addresses the construction schedule, street closures and/or detours, construction staging areas and parking, and the planned truck routes.

Separately, request for traffic calming improvements, such as chatter strips/rumble strips should be done through the Department of Transportation (DOT). The Geometrics Team within DOT will analyze if improvements are feasible and can be installed in the area as requested.

**Comment Letter B:** Annable Garnetta

**Comment B-1:** On reviewing the mitigated negative declaration, as changes to intersection are being required I request that bicycle trippers be also required. Also re noise and traffic mitigation requirements to require on site parking during construction and truck transport of construction materials and supplies be prohibited on Dry Creek during construction and future facility operations? Lastly attached is a picture of one of our resident raptors taken March 31. I have a cellphone video of a pair of raptors mating in my Cedar tree on the West side of Dry Creek Rd. They nest on the East side of Dry Creek.

**Response B-1:** As part of the TA (Appendix F of the IS/MND), the impacts were not found to be of adverse effects due to this project and therefore, no additional mitigation measures or conditions were required. Based on the IS/MND and associated transportation analysis, the project is conditioned to install a crosswalk via a signal modification and new ADA compliant curbs. Bike detection mechanism would be evaluated at the implementation stage of a conditioned signal modification improvement.

Construction noise was evaluated in the IS/MND on pages 122-128. This impact was found to be significant and mitigation measures were identified to minimize noise during construction activities, including implementation of a Construction Noise Logistics Plan.

See Response A-1. All projects within the City of San José are required to have a preconstruction meeting where contractors submit traffic control plans for review and approval by the inspector for the construction period. The contractor will also be required to submit information about designated staging and parking areas during construction periods for review, including truck routes.

The IS/MND addressed nesting raptors on page 55 within the Biological Resources section and consistent with federal, state, and local protocols, the project would be required to implement mitigation measures to conduct preconstruction nesting raptors surveys to minimize and ensure construction does not negatively impact migratory bird species during construction. This comment does not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND.

**Comment B-2:** Regarding bicycle trippers, it is my understanding from past discussions with transportation that SJ's goal is to have bicycle trippers installed through out the City because at most intersections a bicycle will simply not activate the light even if cyclist moves into the traffic lane. If my recollection is correct, the developers plan includes bicycle parking in the underground garage. Tackling the tripper installation with this development is timely and would serve the future staff operating the completed facility as well as SJ transportation goals.

**Response B-1:** Please refer to response B-1. This comment does not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND.

**Comment Letter C: Valley Water (formerly Santa Clara Valley Water District)**

**Comment C-1:** Valley Water has reviewed the Initial Study/Draft Mitigated Negative Declaration (MND) for the 2375 & 2395 South Bascom Avenue Residential Care Facility for the Elderly Project (CP19-021), received on May 1, 2020. Valley Water has the following comments to be taken into consideration when developing the Final MND for this project:

Page 109 Section J (d) Impacts and Mitigation, incorrectly states that the project site is not located within an inundation area for any dams; however, according to the Lexington Dam Inundation Map the project site is located in an area subject to inundation from the James J. Lenihan Dam on Lexington Reservoir. The document should be revised to correctly state the associated inundation area.

**Response C-1:** The IS/MND has been updated to reflect that the project site is located within an inundation area for the James J. Lenihan dam. As described in Section 3 of this document, the project is identified within Cross Section 7 of the Lenihan (Lexington) Dam Flood Inundation Maps (Santa Clara Valley Water District, April 2016, Sheet 4). This map assumes complete failure with a full reservoir. The actual extent and depth of inundation in the event of a failure would depend on the volume of storage in the reservoir at the time of failure. The risks of failure are reduced by several regulatory inspection programs, and risks to people and property in the inundation area are reduced by local hazard mitigation planning. The California Department of Water Resources (DWR), Division of Safety of Dams is responsible for regular inspection of dams in California. DWR and local agencies (e.g., Santa Clara Valley Water District) are responsible for minimizing the risks of dam failure thus avoiding the release of pollutants due to project inundation.

**Comment C-2:** Valley Water records do not show any wells on the project site; however, it is always possible that a well exists that is not in Valley Water records. Abandoned or unused wells can provide a vertical conduit for contaminants to pollute groundwater. To avoid impacts to groundwater quality, any wells found on-site that will not be used must be properly destroyed in accordance with Ordinance 90-1, which requires issuance of a well destruction permit or registered with Valley Water and protected during construction. Property owners or their representatives should call the Wells and Water Measurement Unit at (408) 630-2660 for more information regarding well permits and registration for the destruction of wells.

**Response C-2:** This comment does not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. Therefore, no additional responses are provided for this comment.  
Any wells found on-site will be properly destroyed in accordance with Ordinance 90-1.

**Comment C-3:** There is no Valley Water right of way or facilities at the project site; therefore, in accordance with Valley Water's Water Resources Protection Ordinance, a Valley Water permit is not required for the proposed improvements. We appreciate the opportunity to comment on the Initial Study and draft MND and would also appreciate the opportunity to review any further documents when they become available.

**Response C-3:** The comments do not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or



impacts substantially greater in severity than disclosed in the IS/MND. Therefore, no additional responses are provided for this comment.

**Comment Letter D: Brett Townsend**

**Comment D-1:** I am the owner of 2355 So Bascom Ave next to the proposed project CP19-021. I understand today is the last day for public comment regarding the environmental impact report for this project. At this time I would like to comment on the impact to my property regarding the proposed variance for the Fire Dept. Plan. I feel the plan will have a direct negative impact on my business and property, and would create a considerable risk. We were not made aware of the Fire Plan until recently. As the plan includes direct access through my property, we will need to address this issue in a public hearing. Please notify me regarding the next public hearing to address this issue. I would also request all neighboring property owners be made aware of this proposed variance of this Fire Dept. plan.

**Response D-1:** The project has been reviewed by the San Jose Fire Department and has been conditioned to implement appropriate design to comply with the City's legal requirements for any operating projects. At this time, the applicant has demonstrated a legal easement that allows non-exclusive ingress and egress over 15 feet of the adjacent property owner's parcel providing them with access from Dry Creek to the subject site. If any changes are made as a result of the easement disputes, the project applicant would be required to file for an additional adjustment or amendment to appropriate change design and/or conditions. This comment does not raise any new issues about the project's environmental impacts as designed, or provide information indicating the project would result in any new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. No additional responses are provided for this comment and therefore, no changes or recirculation of the IS/MND are required.

## SECTION 3. TEXT CHANGES TO THE IS/MND

Page Number	Description of Change
Page 109	<p>d) <b>Less Than Significant Impact.</b> The project site is <del>not located in an area subject to significant seiche or tsunami effects. The project site is not located within an inundation area for any dams, based on the map entitled “Dam Failure Inundation Areas” in the General Plan EIR (Association of Bay Area Governments).</del> <u>identified as being within Cross Section 7 of the Lenihan (Lexington) Dam Flood Inundation Maps (Santa Clara Valley Water District, April 2016, Sheet 4). This map assumes complete failure with a full reservoir. The actual extent and depth of inundation in the event of a failure would depend on the volume of storage in the reservoir at the time of failure. The risks of failure are reduced by several regulatory inspection programs, and risks to people and property in the inundation area are reduced by local hazard mitigation planning. The California Department of Water Resources (DWR), Division of Safety of Dams is responsible for regular inspection of dams in California. DWR and local agencies (e.g., Santa Clara Valley Water District) are responsible for minimizing the risks of dam failure.</u></p> <p><u>In addition, the project site is also located outside of the 100-year floodplain, as mapped by FEMA. Therefore, the project would not be subject to significant risk from pollutants related to project inundation.</u></p>
Page 120 CEQA Checklist item 13.a)	Move X to Less Than Significant Impact column
Pages 120-122, discussion of mechanical equipment	<p><b>Explanation</b></p> <p>a) <b>Less Than Significant Impact with Mitigation Incorporated.</b> The noise-related effects associated with the project are described below based on the results of the noise and vibration study in Appendix E.</p> <p><i>Operational Noise Impacts</i></p> <p><u>Mechanical Equipment.</u> <del>Since occupants would reside in the assisted living building during daytime and nighttime hours, which would include sleeping, the proposed project would be treated as a residential land use. The City’s General Plan does not include policies specifically addressing mechanical noise generated by residential land uses. However, the residential mechanical noise should be addressed with respect to the City’s Municipal Code threshold of 55 dBA DNL to minimize disturbance to the existing residences surrounding the project site.</del></p> <p>The proposed project would include mechanical equipment, such as heating, ventilation, and air conditioning systems (HVAC), as well as <u>an</u> emergency generators, pumps, <del>condensers, exhaust fans, etc.</del> <u>HVAC units are typically located on the roof.</u> The site plan shows <u>below-grade ground-level</u> rooms within the parking garage, such as utility closet, electrical room, water heater and pump room, a theater, and a generator room. <u>Details pertaining to the number, type, size, and specific locations of</u></p>

	<p><u>equipment were not available at the time of this study. Noise produced by equipment indoors would not be expected to contribute to ambient noise levels outdoors.</u></p> <p>Noise levels produced by a typical heat pump for a building of this size are approximately 56 dBA at three feet during operation. Assuming up to six pumps would operate simultaneously at any given time, the estimated day-night average noise level at 3 feet would be 70 dBA DNL. It is assumed that all water heaters and pumps for the proposed building would be located in the ground level room. Due to location of the room being away from the residential land uses along the eastern building façade and the shielding provided by the building, noise levels due to heat pumps would be below the City's 55 dBA DNL threshold.</p> <p><u>A schematic roof plan was recently made available that indicated that HVAC systems would be located within a mechanical equipment well and would be well-shielded from nearby residences. However, specifications related to the number, type, size, and locations of HVAC equipment were not available.</u> Noise levels produced by a typical air conditioning condenser are approximately 66 dBA at three feet during operation. These types of units typically cycle on and off continuously during daytime and nighttime hours. Therefore, multiple units clustered in the same general vicinity are usually operating simultaneously at any given time. Assuming up to six units would operate simultaneously, the total average noise level due to air conditioning condensers at a distance of three feet would be 80 dBA DNL. <u>At the nearest residence approximately 75 feet to the west, the calculated noise level produced by the air conditioning condensers would be 47 dBA DNL and 41 dBA Leq. The calculated noise level produced by the air conditioning condensers would be 41 dBA DNL and 35 dBA Leq at the nearest residences to the southwest, which would be approximately 150 feet from the mechanical equipment well. Noise levels due to these equipment would be below the City's 55 dBA DNL threshold and 55 dB Municipal Code noise limit.</u> <del>Assuming these units to be located on the rooftop, with a minimum setback of 10 feet from the edge of the roof, mechanical equipment noise at the nearest residential property plane located 15 feet from the building façade at the southern portion of the site would be 61 dBA DNL (assuming partial shielding from the building façade). If these units were located on the ground level adjacent to the building façade, the mechanical equipment noise would be up to 66 dBA DNL.</del></p> <p>Buildings of this size would typically require emergency generators with a capacity of about 280 kW. Generators of this size typically produce noise levels of 89 dBA at 23 feet if a weather enclosure is included or ranging from 75 to 81 dBA at 23 feet if a Level 1 or Level 2 sound enclosure is included. During emergency situations, the noise produced by the operation of generators would be exempt from City noise restrictions; however, generators are typically tested for a period of two hours every month. During these testing periods, ambient noise levels would temporarily increase and would be required to meet the 55 dBA DNL threshold at nearby residential land uses. Assuming the emergency</p>
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	<p>generator would run continuously during a two-hour period, the average noise level at 23 feet would be 78 dBA DNL, assuming a weather enclosure, or would range from 64 to 70 dBA DNL with a Level 1 or Level 2 sound enclosure.</p> <p>With the location of the generator room being in the northwestern corner of the underground parking structure of the building, the proposed building would provide at least 25 dBA of shielding. Therefore, testing the emergency generator, assuming a capacity of 280 kW or less, would not be expected to exceed the City's 55 dBA DNL threshold at the nearest residential property line.</p> <p>The proposed general operation of the project would not generate noise in excess of standards established in the City's General Plan at the nearby sensitive receptors. <del>However, the operation of mechanical equipment proposed by the project, located on the rooftop or at the ground level adjacent to the building, could potentially exceed the City's Municipal Code threshold of 55 dBA DNL. Implementation of measures as a project condition of approval would ensure noise levels to be below 55 dBA DNL.</del></p> <p><b>Impact NSE-1:</b> <del>Noise from rooftop mechanical equipment could exceed 55 dBA DNL at noise sensitive land uses in the immediate project vicinity, which represents a potentially significant impact.</del></p> <p><b>Mitigation Measures</b></p> <p><del><b>MM NSE-1</b></del> <del><b>Mechanical equipment selection.</b></del> As a project condition of approval, the project applicant shall select and design mechanical equipment to reduce excessive noise levels at the surrounding uses to meet the City's 55 dBA DNL noise level requirement at the nearby noise sensitive land uses. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's Municipal Code noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line of sight between the noise source and the nearest receptors. Other alternate measures may be optimal, such as locating equipment in less noise sensitive areas, such as along the building façades farthest from adjacent neighbors, where feasible.</p>
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## **SECTION 4. CONCLUSION**

The comments received during the public circulation period for the 2375 & 2395 South Bascom Avenue RCFE project's IS/MND did not raise any new environmental issues or provide information signifying that the project would result in additional impacts or impacts of greater severity than described in the circulated IS/MND. Text changes were made to the IS/MND to clarify new information that would result in removal of a mitigation measure that is no longer required. The proposed change identified above would clarify the implementation timing of the required mitigation measure and would not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The new information is not significant and recirculation is not required. In conformance with Section 15074 of the CEQA Guidelines, the MND, technical appendices and reports, together the information contained in this document are intended to serve as documents that will inform the decision-makers and the public of environmental effects of this project.

In conclusion, the IS/MND provides a legally adequate level of environmental review for the project, pursuant to California Public Resources Code §21080(c) and 21081.1(a), and CEQA Guidelines §15070.

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