

# Comment Letter A



Kara Hawkins  
Environmental Project Manager  
Department of Planning, Building and Code Enforcement, City of San Jose  
200 E. Santa Clara Street, 3rd Floor Tower, San Jose, CA 95113  
Attn: [Kara.Hawkins@sanjoseca.gov](mailto:Kara.Hawkins@sanjoseca.gov)

Re: **Almaden Office Project, File No. SP20-005**  
State Clearinghouse # 2019050020 (Almaden Office Project NOP)  
State Clearinghouse # 2003042127 (Almaden Office Project SEIR, Downtown Strategy)

Dear Ms. Hawkins:

The California Native Plant Society, Santa Clara Valley Chapter (CNPS SCV) appreciates the opportunity to provide input on the Supplemental Environmental Impact Report (SEIR) for the Almaden Office Project. CNPS is a non-profit environmental organization, established in 1965, whose mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. The CNPS Santa Clara Valley Chapter has over 1,000 members distributed throughout our chapter area, which encompasses all of Santa Clara County and southern San Mateo County.

The proposed project would take place within a developed urban area within the Downtown Strategy 2040 development zone. The project site is currently in use as a paved parking lot. The proposed project site is located adjacent to the Guadalupe River and riparian corridor zone.

We have serious concerns about the proposed project's significant, unavoidable biological resources impacts that conflict with the Santa Clara Valley Habitat Plan (VHP). The City has requested an exception to the VHP to allow the project to have a zero-foot setback to the Guadalupe River corridor, where a 100-foot setback would be normally required by the VHP.

There is no defensible rationale for the City to request such a significant exception to the VHP, which was approved and adopted after a long and difficult process, and which the City participated in as a Local Partner. Members of our chapter of CNPS and our partner environmental organizations also spent many hours reviewing documents and attending meetings during the long development of the VHP.

We do not support exceptions for projects where there is no appreciable public benefit to overriding significant, unavoidable impacts, and where feasible alternatives are available to reduce the impacts to less than significant. Exceptions to the VHP should be carefully considered so that the gradual erosion of the VHP, which is designed to protect biological resources, does not occur, and further cumulative impacts to our natural heritage are avoided.

Our specific concerns are as follows:

## Impact BIO-2 and Mitigation Measure Discussion

### **The project is in substantial conflict with the Valley Habitat Plan.**

As stated in the document, the project doesn't conform with the requirements of the VHP, and conflicts with the VHP stream setback requirements by proposing a 0-foot, instead of a 100-foot setback. The SEIR admits that there are "no feasible mitigation measures available to reduce this impact except for redesign to increase the setback from the riparian corridor."

### **The proposed project does not follow the City of San Jose's General Plan "Riparian Corridor Protection and Bird-Safe Design Policy 6-3."**

Although it is stated on page 52 that the project would be required to comply with this policy, the SEIR provides no evidence that this is the case, since the project is proposing a zero-foot setback.

### **The proposed project is in conflict with multiple policies from the Envision 2040 General Plan.**

- Policy ER-2.1. Ensure new public and private development adjacent to riparian corridors...consistent with SCVHCP and SJ riparian policy.
- Policy ER-2.2. 100-foot setback standard with limited exceptions where "No significant environmental impacts would occur."
- Policy ER-2.3. Protect riparian corridor from encroachment of lighting ....
- Policy MS-21.8. Avoid conflicts with tree roots.

For the policies listed above from the 2040 General Plan, how does the project comply with any of these? The project is not consistent with the VHP and San Jose Riparian Corridor policy, is asking for a setback exception that would cause significant unavoidable impacts, and the project would not protect the riparian corridor from lighting encroachment. In addition, the project would not avoid conflicts with tree roots (how would avoidance be possible with the garage right up against the river?)

## Impact BIO(C)-1 (Cumulative Impacts), MM BIO-C-1.1, 1.2

### **MM BIO(C)-1.1: A feasible 4-acre off-site riparian restoration site within the county should be identified and acquired before the City considers project approval.**

It is difficult, if not impossible, to find a suitable property in the valley that is available to implement the type of restoration that is suggested. Much of the riparian areas in the county, both along the Guadalupe River and other waterways are controlled by other agencies or private property owners, and often are already designated for mitigation projects. The City has themselves admitted that mitigation sites "might not be feasible."<sup>1</sup> No alternative plan is proposed. For this reason, this mitigation measure is infeasible until property is acquired.

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<sup>1</sup> SEIR, Page 58. Footnote.

If the City waits until after project approval and “prior to the issuance of grading permits” to locate a mitigation site, the chance that project construction and significant unavoidable impacts will occur is nearly guaranteed, since the successful implementation of this measure is highly unlikely. The City should require that this mitigation site is secured before project approval.

**MM BIO(C)-1.2: The SEIR does not include a feasible riparian corridor mitigation plan for this cumulative impact for review and comment by responsible agencies or the public.**

What is provided is an outline of a plan for a project with a 35-foot setback, not the 0-foot setback that is actually proposed. The project requires the applicant to provide a riparian plan yet it does not:

- Adequately describe impacts and mitigation ratios;
- Describe the location of the mitigation site and site conditions (note: no mitigation sites may be available)
- Describe the attributes of a “qualified biologist.”
- Designate or describe any outside permitting agencies for this work.

According to the SEIR, the only person or entity required to provide any feedback and approval of “The Plan” (the Mitigation Plan) is the Director of Planning, Building and Code Enforcement. This plan should be available for review and comment by applicable permitting agencies and the public *before* the project is approved.

No amount of high-quality restoration of the Guadalupe River riparian corridor next to the site will be able to mitigate the permanent encroachment and shading that this project will involve. In their Biological Report (Appendix D to the SEIR), H.T. Harvey spells out multiple biological impacts for which no viable mitigation plan is actually presented for the project they are presenting with a 0-27 foot setback.

**Conflict with the Downtown Strategy 2040**

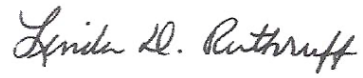
We note that the impact to riparian corridor resources with this proposed project is a “New Cumulative Significant Unavoidable Impact.” This indicates that such an impact was not anticipated in the adopted Downtown Strategy 2040, which this SEIR purportedly tiers from. Approving projects that are in such grave conflict with an approved Program EIR, the Envision 2040 General Plan, and the adopted Santa Clara Valley Habitat Plan is an inadvisable precedent for the City to embark on. The Downtown Strategy 2040 was approved after a lengthy public process, and we oppose the consideration of individual projects tiering from this document that create **new** significant unavoidable impacts.

**Alternatives to the Proposed Project**

We urge the City to reject the approval of the project as currently proposed, as it creates new significant unavoidable impacts to sensitive biological resources, and conflicts with a number of adopted plans and policies. The City should consider approving a feasible alternative to the project. We support Alternative 1, Option 2 as our preferred alternative, which respects the 100-foot setback and the requirements of the Valley Habitat Plan, which was approved to protect biological resources.

Thank you for the opportunity to provide comments on this project. Please feel free to contact us with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Linda D. Ruthruff".

Linda Ruthruff, Conservation Chair  
conservationchair@cnps-scv.org

California Native Plant Society  
Santa Clara Valley Chapter  
3921 E. Bayshore Road, Suite 205  
Palo Alto, CA 94303

# Comment Letter B

**From:** [Luo, Yunsheng@DOT](mailto:Luo.Yunsheng@DOT)  
**To:** [Hawkins, Kara](#)  
**Subject:** Almaden Office Project, SEIR  
**Date:** Monday, August 31, 2020 1:23:34 PM

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[External Email]

Good afternoon Kara,

Hope this email finds you well! I am reaching out regarding the SEIR for the Almaden Office project. We are aware in the SEIR, it mentions that “[the project site is located within the Downtown Growth Area Boundary, for which an Environmental Impact Report \(EIR\), Downtown San Jose Strategy Plan 2040 \(DTS 2040\), has been completed and approved. With adoption of DTS 2040, this project is covered under DTS 2040 and no CEQA transportation analysis is required.](#)” But because this project is very close to SR-280 on/off ramps, with the added trips due to the project, there could be potential traffic impact on the highway system. I looked at the EIR for the DTS 2040. Although the report recognizes the potentially traffic impact on the highway system due to the projects included in the Plan, I didn’t see proposed improvements (maybe I have missed something). May I ask for more information regarding the potential traffic impact on the adjacent highway and any mitigation measure might have been proposed?

Thank you!

Best,

Yunsheng Luo  
Associate Transportation Planner  
Local Development - Intergovernmental Review (LD-IGR)  
Caltrans, District 4  
Cell: 626-673-7057

Please send circulation/review request to [LDIGR-D4@dot.ca.gov](mailto:LDIGR-D4@dot.ca.gov)

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## DEPARTMENT OF TRANSPORTATION

DISTRICT 4  
OFFICE OF TRANSIT AND COMMUNITY PLANNING  
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*Making Conservation  
a California Way of Life.*

September 11, 2020

SCH # 2003042127  
GTS # 04-SCL-2019-00774  
GTS ID: 15784  
Co/Rt/Pm: SCL/280/R2.39

Kara Hawkins, Environmental Project Planner  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113

### **Almaden Office Project – Supplemental Environmental Impact Report (SEIR)**

Dear Kara Hawkins:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Almaden Office Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the July 2020 SEIR.

#### ***Project Understanding***

The proposed project would demolish the existing parking lot and construct up to approximately 1.7 million square feet (s.f.) of office in two 16-story towers, along with 40,000 s.f. of ground floor retail. The total floor area ratio (FAR) of both buildings combined would be 11.1.

This project is located at the northern west corner of Almaden Boulevard/Woz Way in downtown San Jose, in close vicinity to State Route (SR)-87 and I-280. It is located within the Downtown Growth Area Boundary, for which an EIR, *Downtown San Jose Strategy Plan 2040*, has been completed and approved.

#### ***Travel Demand Analysis***

With the enactment of Senate Bill (SB) 743, Caltrans is focusing on transportation infrastructure that supports smart growth and efficient development to ensure alignment with State policies using efficient development patterns, innovative travel demand reduction strategies, multimodal improvements, and VMT as the

primary transportation impact metric. Caltrans commends the lead agency in providing thorough justification to demonstrate how the proposed project meets the screening criteria established in City Council Policy 5-1. Caltrans also commends the lead agency in preparing the Transportation Demand Management (TDM) plan, along with the monitoring and reporting system identified in the plan. The implementation of the proposed project and the TDM plan is in support of meeting state policy goals on transportation, VMT reduction, GHG emissions reduction, and betterment of the environment and human health.

### **Highway Operations**

Caltrans recommends the lead agency to include the freeway segment and queuing analysis in the traffic report to identify any project-level traffic impacts on the State Highway system. The freeway segment analysis should include SR-87 from Woz Way to Park Avenue on both directions to assess any potential operational deficiency. This is consistent with the study limits in the Local Transportation Analysis report. The queuing analysis should include the following ramp terminal intersections:

- South Bound (SB) SR-87 on-ramp from Auzerais Avenue
- North Bound (NB) SR-87 off-ramp to Woz Way
- NB SR-87 on-ramp from Woz Way/Park Avenue
- SB SR-87 off-ramp to Park Avenue/Delmas Avenue

If traffic generated from the project impacts the freeway and ramp operations, the impacts shall be mitigated, or a fair share fee should be considered to allocate for the following two projects identified in the MTC's Regional Transportation Plan 2040:

- SR-87 Express Lane: I-880 to SR-85 (17-07-0082)
- I-280 Express lanes: US-101 to Magdalena (17-07-0084)

### **Hydraulics**

The 100-year flood discharge is contained into the Guadeloupe River. Surface runoff from the project site to be discharged into the Guadeloupe River must be evaluated. Any increased design discharge to the river shall be mitigated to pre-construction levels.

### **Lead Agency**

As the Lead Agency, the City of San Jose is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation

Kara Hawkins, Environmental Project Planner  
September 11, 2020  
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responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Yunsheng Luo at [Yunsheng.Luo@dot.ca.gov](mailto:Yunsheng.Luo@dot.ca.gov). Additionally, for future notifications and requests for review of new projects, please contact [LDIGR-D4@dot.ca.gov](mailto:LDIGR-D4@dot.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Mark Leong  
District Branch Chief  
Local Development - Intergovernmental Review

cc: State Clearinghouse



# Comment Letter D

## County of Santa Clara

Roads and Airports Department  
Planning, Land Development and Survey



101 Skyport Drive  
San Jose, CA 95110-1302  
(408) 573-2460 FAX 441-0276

**September 15, 2020**

**Kara Hawkins,**  
Planner | City of San José  
Planning, Building & Code Enforcement  
San Jose, CA 95113

**SUBJECT: Draft SEIR Public Review: Almaden Office Project (SP20-005)**

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Draft SEIR Public Review: Almaden Office Project (SP20-005), and is submitting the following comments:

1. This proposed project is in the San Jose Downtown Area Plan and is subjected to less stringent impact mitigations. As we have mentioned earlier for projects in this designated area, the County strongly urges the City to do a cumulative analysis to recognize the regional impacts they have and not only consider a single project at a time. Their area of impacts would be much greater than just the protected downtown area where any impacts outside of that would not be recognized for mitigation.
2. Trip Generation – The proposed project assumed a considerable vehicle trip reduction percentage (-57.5%) based on by not providing the required on-site parking and assumed that many trips would not come to the site. The County believes that not providing enough on-site parking does not equate to the same number of project related vehicle trips would not be on the roads, for instance vehicles can be parked off-site and walk to the project site.
3. The County strongly recommend all proposed projects in Downtown Area Plan to develop a TDM Plan and a required monitoring and yearly report, if TDM Plan is not met than there should be some impact fee funds set up towards impact mitigations base on extent of those impacts.
4. The SEIR should identify potential mitigations if there are impacts to County facilities, especially on Almaden Expressway.

If you have any questions or concerns about these comments, please contact me at 408-573-2462 or [ben.aghegnehu@rda.sccgov.org](mailto:ben.aghegnehu@rda.sccgov.org)

Thank you.





## Guadalupe-Coyote Resource Conservation District (GCRCD)

*An independent special district of the State of California*

*Submitted via email to Kara.Hawkins@sanjoseca.gov*

September 21, 2020

Rick Lanman, M.D.  
*President*

Gary Jahns, Ph.D.  
*Vice-President*

Tess Byler  
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Bill Leikam  
*Director*

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City of San Jose  
Department of Planning, Building and Code Enforcement  
Attn: Kara Hawkins, Environmental Project Manager  
200 East Santa Clara Street, 3rd Floor Tower  
San Jose, CA 95113-1905

### **RE: GCRCD Comments on the Draft Supplemental EIR for the Almaden Office Project**

Dear Ms. Hawkins:

The Guadalupe-Coyote Resource Conservation District (GCRCD) appreciates the opportunity to provide comments on the Draft Supplemental EIR for the Almaden Office Project. GCRCD is an independent special district of the State of California dedicated to the conservation of natural resources, and its mission is to provide education and technical assistance to constituents and watershed stakeholders to sustainably manage soil, water and wildlife with the best available science.

We are concerned that the project's footprint and design will cause unnecessary and avoidable impacts to water quality, flood risk, wildlife habitat, and other beneficial uses of the riparian corridor. Additionally, we are concerned that climate change has not been adequately addressed, given anticipated sea level rise and its predicted impacts on flooding in the south Bay Area<sup>1</sup>, and the increased frequency of atmospheric-river storms as an indicator that future flood risks may be beyond what we have experienced historically<sup>2</sup>. However, we would like to focus our comments on the project's apparent inconsistency with the City Council's Policy 6-34, *Riparian Corridor Protection and Bird-Safe Design*.

The City Council's policy calls for consideration for reduced setback only in limited circumstances. It further indicates that "applicants requesting reduction in setbacks may be required to submit a report by a qualified biologist, stream hydrologist and/or other appropriate qualified professional certifying the existence of some or all of the following conditions:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

<sup>1</sup> Statewide Flood Management Planning Program; California's Flood Future: Recommendations for Managing the State's Flood Risk (Final); November 2013, p. 3-17

<sup>2</sup> Dettinger, M.D., 2011. Climate Change, Atmospheric Rivers, and Floods In California – A Multimodel Analysis of Storm Frequency and Magnitude Changes, JAWRA, Vol. 47, No. 3

- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.
- c. The proposed uses are not fundamentally incompatible with riparian habitats (see Chapter 3, Section IB Incompatible Land Uses of the Policy Study).
- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.
- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.”

Although the project clearly meets the policy’s definition of “riparian project” and calls for a very significant reduction in riparian setback, the Revised Biological Resources Report filed by H.T. Harvey & Associates does not appear to meet the intent of the City Council’s policy nor does it certify the existence of any of the specific conditions set forth in the policy in order to justify the exception to the setback requirement. Furthermore, although the report identifies anticipated significant environmental and cumulative impacts from the project, it recommends the developer provide compensatory mitigation for riparian buffer encroachment rather than recommend changes to the project to address identified impacts.

Based on this information, GCRCD requests:

- the consultant for the Revised Biological Resources Report be directed to specifically address each of the five conditions set forth in the policy so the record is clear when the project is presented for approval.
- the City select an alternative project that reduces and/or redesigns the project so that a setback can be included that more closely reflects the City’s minimum setback of 100’ in order to reduce environmental impacts to the riparian corridor.

Thank you again for this opportunity to provide comments. Please feel free to contact me if you have questions or need additional information to clarify our comments.

Sincerely,



Stephanie Moreno  
Executive Director  
smoreno@gcrcd.org



# Comment Letter F

## Board of Directors

### Officers

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*Treasurer*

September 14, 2020

City of San Jose  
Department of Planning, Building and Code Enforcement  
Attn: Kara Hawkins, Environmental Project Manager  
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San Jose, CA 95113-1905

Celeste Angelich  
Mark Baginski  
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Dan Kennedy  
Natasha Marwah  
Charles McCarroll  
Allie Ottoboni  
Brandon Racine  
Carl Salas  
Katia Terentyeva  
Carrick Young

## RE: GRPC Comments on the Draft Supplemental EIR for the Almaden Office Project

The Guadalupe River Park Conservancy (GRPC) submits the following comments on the Draft Supplemental EIR (DSEIR) for the Almaden Office Project at Woz Way and S. Almaden Blvd in downtown San Jose, adjacent to the Guadalupe River Park. There are important values shared by Boston Properties and GRPC on this project site highlighted in the project Draft SEIR and submitted documents, and we look forward to addressing the various details to help us better align with the overall goal to highlight the Guadalupe River Park as a natural resource and to better connect the workers, community, and ecology at one of downtown San Jose's key gateway projects.

## Council of Advisors

Brian Adams  
Jim Alves  
Gloria Duffy  
Jerry Estruth  
Dave Finn  
Susan Fitts  
Vic Giacalone  
Desiree La Maggioro  
Jeff Lawson  
David Pandori  
Doug McLendon  
Kathy Muller  
Bob Rhodes  
Dave Sandretto  
Jim Towery  
Ken Yeager

The letter details the following:

1. Unclear and insufficient information in listed site plans regarding project impacts to trails and aesthetic components of the project;
2. Concern for development within the 35 feet of the riparian corridor;
3. Concern over significant project impacts to birds and support for bird safe designs;
4. Noise impacts to wildlife and adjacent parkland and noise barrier impacts on trail use over the course of construction;
5. Local transportation impacts specific to bike lanes and Guadalupe River Trail interface;
6. Riparian Mitigation Plan recommendations, which should be adjacent or in close proximity to the impacted area;
7. Other priorities related to public life, environmental awareness, and social equity for park accessibility.

## Executive Director

Jason Su

### Unclear and Insufficient Information in Listed Site

Our first comment is related to clarity of the figure in the DSEIR, which lacked sufficient information on the aesthetic components of the project, and its impact on the Guadalupe River Trail. As the project is located in an area sensitive to impacts on biological resources, we ask that the Final SEIR include graphics that can provide an accurate level of detail for the determination of aesthetic impacts and impacts to the trail and riparian corridors, supported with photo simulations and/or architectural renderings. Providing additional detail here would encourage more quality comments from the general public and decision makers to understand the project's impact and help guide the process.

The GRPC supports the development of the project site and appreciates that the architecture does not appear to put it's back to the River. We also agree with the project objectives that promote access to the Guadalupe River. Our priority is to ensure that the connectivity of the existing trail is

not impeded by the project; and from the listed site plan, it is difficult to determine if this is the case. In addition, we support a project objective that would encourage limiting impacts to the riparian corridor habitat, and inclusion of bird safe design features. These objectives are not listed in Section 2.3 yet we highly recommend that they be added to better allow an accurate comparison of project alternatives.

#### **Biological Resource Impacts to the Riparian Corridor – Ecology and Habitat**

GRPC continues to express concern on development within 35 feet of the riparian corridor and encourages the developer to consider Reduced Development Alternative 1 (Option 1). This would reduce the square footage of the project by approximately 68,000 square feet (4 percent of the total area).

We believe that the “moderate quality” of riparian habitat in this segment of the 14-mile river corridor makes it even more necessary to adhere to a 35-foot setback, rather than the proposed 0 to 26 feet. When given the opportunity, we have witnessed the river’s ability to restore its biological resources with mitigation and care. With the project’s Riparian Mitigation Plan and adhering to the 35-foot setback, we believe that this project could support the overall riparian health and be of even greater value to the project and the community. The Option 1 Alternative would also reduce associated construction-related noise and air quality impacts which would benefit the riparian habitat as well as the surrounding neighborhood.

#### **Biological Resource Impacts to the Riparian Corridor – Bird Safety**

GRPC continues to express concern for the significant unavoidable impact this project will have on birds. As mentioned in our comments submitted on the Notice of Preparation for the Almaden Office Project (July 1, 2019 - reattached), we fully support the use of bird safe design as required by the City of San Jose and the American Bird Conservancy. We do believe that if the building could “step back” more from the riparian corridor, impacts to birds could also be reduced, and recommend that bird safe design be a project objective.

#### **Noise Impacts to the Riparian Corridor and Adjacent Parkland**

As project construction is anticipated to extend well beyond 12 months, we need more clear recommendations on how noise impacts will be addressed, particularly as it relates to its impact on riparian wildlife, and for various events hosted in Discovery Meadow. Coordination and a noise mitigation process is needed to ensure that Discovery Meadow remains a flexible and desirable location for events and festivals for our city. Limiting construction noise, particularly in the evening, will not only benefit the nearby residents, but also allow for the local wildlife periods of respite as they migrate to and through the Guadalupe River.

Aesthetic treatments of noise barriers should also be considered. To ensure that the walking and biking experience of the trail and connecting sidewalks is inviting during the construction period, we recommend barrier treatments such as artwork, education posters, timed spotlights, and a Guadalupe River Park map to encourage trail use throughout the construction period.

#### **Local Transportation Impacts**

GRPC is encouraged by the improvements to bike lanes along Woz Way and the intersection of Woz Way and S. Almaden Blvd. GRPC is also very supportive of the direct alignment of the Guadalupe River Trail south across Woz Way towards Palm Ave. We believe that these improvements will make the trail more accessible to local workers and residents and increase bicycle commutes.

Our concerns include potential blind spots for vehicles in egress, bike turn radii and conflicts to pedestrians and street trees, and if pavement changes or awnings over the trail are proposed (Figure 2.2-1). Without more detail on the interface of the Woz Way bike lane, Guadalupe River Trail entry, vehicular ramp, and the adjacent sidewalk, it makes it difficult to determine potential safety, lines of sight, and conflict points.

### **Mitigation Plan Recommendations**

We believe that all planned mitigation for project impacts should be adjacent or in close proximity to the project area. The mitigation priorities in this segment of the Guadalupe River watershed include enhancements to water quality and native trees and vegetation, ongoing maintenance through invasive and plantings management, and regular pollutant reduction and litter removal measures. We propose the 3.6-acre (2:1 area of impacted riparian corridor,) mitigation area consider the following locations:

- Ongoing trails and riparian maintenance (litter reduction, debris removal, invasive species removal) in between Woz Ave and Palm Ave./S. Virginia Street;
- Ongoing trails and riparian maintenance (litter reduction, debris removal, invasive species removal) in between Santa Clara and Julian Streets;
- Riparian enhancement and management of the west bank of the Guadalupe River between San Carlos and Woz Way (across from the project site)
- Trail connectivity improvements along the Guadalupe River Park, east side between Park Ave and San Carlos Street.

In addition to a 2:1 area mitigation of impacted riparian corridor, we recommend that planting, design, and ongoing maintenance of the project area integrates the Guadalupe River, either through complementary plantings, opportunities for people to view/engage with the river, maintenance to remove non-native and invasive species, reduce litter from entering the waterways, and environmental awareness opportunities to connect workers and visitors to the importance and interconnectedness of the Guadalupe River.

We do not believe that providing mitigation on other waterways or within other watersheds mitigates for impacts to the Guadalupe River and its watershed. GRPC would be willing to work with the applicant, the City, regulatory agencies, and Valley Water to provide a better mitigation strategy.

### **Other Priorities**

In addition to addressing the environmental impacts of this project, we submit other comments based on the SEIR and submitted Plan Sets around other GRPC priorities - particularly around **public life, environmental awareness, and social equity for park accessibility.**

#### Public Life & Environmental Awareness

We believe a key measure of the success of how a development benefits the local community is its ability to promote public life at the intersection of development and the River Park. We recommend that the development team factor certain elements into the project that foster public life and inspire environmental awareness, particularly to the thousands of new workers and visitors to the development.

- There are opportunities to extend the experience of the Guadalupe River through the project to Almaden Blvd. This would ensure physical and visual connection from the downtown core to our natural resource. This may be achieved through architectural interventions, planting selection, art, or other treatments to the ground floor experience;
- As the River Park is a public park, and thus, is publicly accessible; we request to ensure that the ground floor of the project area is accessible as well, especially during park hours;
- Where possible, increase the amount of bike parking, bike repair features, and strategically located public seating (particularly when a view of the river is available). The latter ensures that users of all ability-groups and ages have a comfortable experience exploring the Guadalupe River Park;
- Incorporate native plantings and informational signage within the ground floor project boundary to highlight elements of the River Park and local ecology;
- Contribute capital and maintenance capacity improvements to Discovery Meadow that supports increased use from new workers and visitors to the development and enhance the quality of life to the nearby community.

### Social Equity for Park Accessibility

The project will create many benefits to nearby neighborhoods and businesses, and these benefits should also be enjoyed by those currently living and working on our community. We also believe that doing so would provide more benefits to the project, particularly for the food and retail establishments, and the park, through increased connection of diverse neighborhoods.

- Signage directing community members to and through the project and to the Guadalupe River Park or Discovery Meadow should be in multiple languages (minimum Spanish, Vietnamese, and English);
- As part of the project's private security portfolio, we recommend contracting with homeless service case managers, and partnering with the City's park rangers to address the complex conflicts that may occur in this area;
- Consider opening up space to host local nonprofits, neighborhood meetings and events, and storage for local events and river/trail clean ups, to facilitate ongoing community capacity building and park stewardship;
- Consider retail and commercial options that serve both building tenants and the local community, and programs that connect the tenants, neighbors, and River Park.

The Almaden Office Project will be a key development project acting as a gateway to downtown San Jose and the Guadalupe River Park, potentially connecting thousands of new visitors to our natural asset. We believe there is an opportunity to showcase this potentially landmark project as a leading sustainable development standard, highlighting the integration of buildings and ecology. Aiming high for these standards are of particularly importance as our City embarks on this new wave of commercial and high-rise development.

Regards,



Jason Su  
Executive Director

Cc: Raul Peralez  
Patricia Ceja  
Christina Bernardin  
Ru Weerakoon  
Helen Han  
Kelly Kline  
Nicolle Burnham  
Jodi Starbird

Attached: GRPC NOP Letter on Almaden Office (July 1, 2019)



438 Coleman Avenue  
San Jose, CA 95110  
408-298-7657  
guadalupeconservancy.org  
EIN: 77-0166797

# Comment Letter G

September 14, 2020  
Kara Hawkins  
Environmental Project Planner  
City of San Jose

Thank-you for the opportunity to comment on the Supplemental EIR for Boston Properties Almaden Tower project.

## 1. Shade Impacts

The shade impacts of the towers on the adjacent parkland was dismissed as not significant because it was less than 10% of the Guadalupe River Park. The EIR revealed there would be shade all morning and noon throughout the year. The impact on Discovery Meadows and the Children’s Discovery Museum and its “Bill’s Garden” outdoor education amenity were not quantified.

What acreage was used to compute this percentage? Please include a table and itemize.

Many properties near the river are not parkland—private property owners have graciously allowed public access to their properties. A major owner of this acreage is the Santa Clara Valley water district (SCVWD or Valley Water). For example, all of Arena Green East is owned by Valley Water. (Example APN 259-37-057).

Some of the City’s pre-existing street network remains within the open space; it was never vacated and restricts the use of some parcels. Those streets are not parkland; their management and use remains controlled by departments other the PRNS, the manager of parkland. An example is St. Paul Street within Arena Green West.

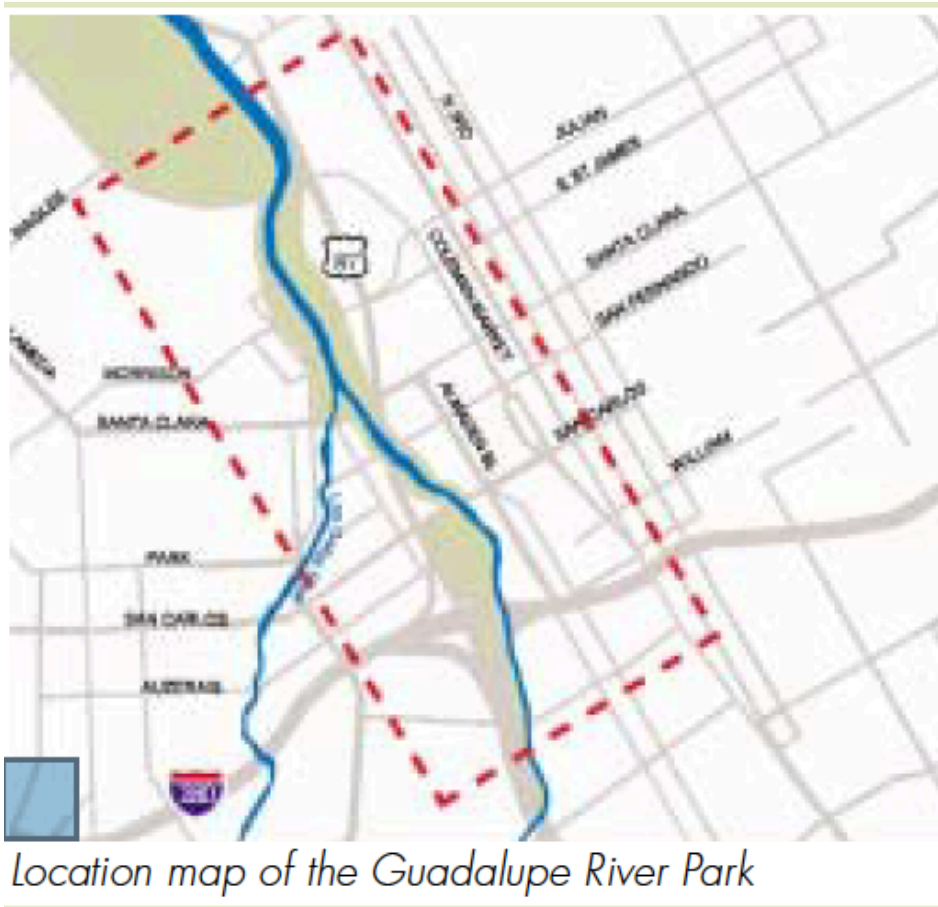
Further, Columbus Park pre-dates the Guadalupe River Park Concept. It is excluded from the 2002 Guadalupe Park Master Plan which cuts off at Taylor Street. It is maintained as a separate element with its own park master plan and gains advantages from this status in its relation with the FAA. It should not be included in any calculation because it is not part of the 2002 Guadalupe River Park Master Plan.

The northern portion of the open space beyond Taylor Street is called “Guadalupe Gardens” is not a park either nor was it included in the 2002 Guadalupe River Park Master Plan. The deeds are held by the airport, it has never been developed, and never dedicated as chartered park land. It is criss-crossed by streets that have never been vacated.

The Guadalupe Gardens land that is south of Taylor Street and north of Coleman Avenue is held primarily by the airport. Each individual parcel has its own story as it was acquired over multiple years with a mixture of airport support funding. From time to time, the airport asks the Guadalupe River Park Conservancy to pay rent for the lands that the GRPC programs and provides care. Although individual amenities have been developed and dedicated, the deeds



for the land belong to the Airport Department and the parcels are not parkland. The roads and airport lands should not be included in the percentage.



2002 Guadalupe River Park Master Plan. Page 13.

2. The shade impacts on turf were not explained. Discovery Meadows is planted with a turf species that allows for high traffic use. It does not thrive in shade.

This allows for activation by public and private partners. In 2019, PRNS reports over 180,000 visitors to downtown came for events at Discovery Meadows. Activation of the parks is considered a key strategy to meet the four goals of Cultural Opportunities of the Envision 2040 General plan. (VN-4.1, 4.2, 4.3, 4.4, 4.5). These land use goals are not discussed in the SEIR.

The Downtown Strategy called out the use of individual parks as critical to the Downtown for programming and activation. Discovery Meadow was considered key to the downtown strategy. The Downtown Strategy discussion revolved around maintaining high quality venues for activation and vibrancy in the Downtown Core.

Please clarify the impact of year-round morning shade from the project on the turf. Please provide specifics of which, if any, other turf species can hold up to high traffic with only

afternoon sun. How will the shading affect the amount of mud in the turf area? How will it change the temperature profile through the year of the venue space? Please clarify how the changes in the environment might make the site less attractive for venue operators.

Please describe alternative mitigation landscaping so that the venue can maintain year-round outdoor programming for cultural events—public and private.

3. The SEIR does not acknowledge this project's shade impact on Bill's Garden of the Children's Discovery Museum. nor does it discuss any mitigation to the destruction of the viability of their program. Bill's Garden was built with private philanthropic money in order to broaden the Discovery Museum's activities into the natural world through outdoor STEM activities. The General Plan includes many policies on diversity, social equity, and education. Environmental policies such as water, recycling, and air quality, and include strategies to use community partners to provide education on these issues. The Children's Discovery Museum—on city-owned parkland—is one such community partner.

Please clarify the impacts of the year-round shade impacts on the living instructional space at Bill's World? What will be the temperature impacts each morning at 9 am when children are expected to arrive for their field trips? How will the environment be modified? Will the garden still grow the instructional materials?

Community members report that Boston Properties has acknowledged this impact and has reached out to the Children's Discovery Museum with mitigation proposals. Why is this not included in this SEIR? If Boston Properties subsequently sells the entitlement or chooses not to provide any compensation, how will the Children's Discovery Museum be compensated for the effective loss of this natural world instructional space due to the shade impacts? For what reason is mitigation not included in the SEIR? Will there be a separate Community Benefits agreement in the final development standards?

4a. Riparian impacts in Park.

The Guadalupe River Park Master Plan 2002 identify objectives for the park. They included:

- The enhancement of the Guadalupe River as both a valuable riparian habitat and a natural resource to be enjoyed by the greater San Jose community and visitors alike
- A balance between human access to the river and maximum protection of the riparian habitat

The year-round shade will impact the riparian habitat. Riparian habitat is acknowledged to be sensitive. The SEIR states that there will be a significant cumulative impact.

How will the shade impact to the park be mitigated? How will the park system be compensated?

#### 4b. Riparian Setbacks.

While Envision 2040 sets a 100 foot setback and San Jose's Riparian policy study allows 30 foot setbacks in Downtown where they existed previously. The Santa Clara Valley Habitat Conservation Plan sets a minimum 35 foot setback. Where is there a provision that allows 0 foot setback? The parking garage will be at the top of bank. Above ground, there will be emergency vehicle access that dead-ends at West San Carlos.

The SEIR claims the 0 ft. setback is appropriate for financial feasibility reasons. What data does the applicant have to provide in order to qualify for 0 foot setbacks? How is this determination made? Can any applicant simply affirm, "I need 0 feet setback to make money." What policy or standard protects the riparian habitat and the community from private actions that thwart the environmental policies of the City? To what extent do overall market conditions figure in the analysis of whether feasibility problems are related to site specific conditions or market conditions? Since this project was given an exemption that will cause significant environment impacts in shade and riparian, please explain how this decision is made.

#### 4c. Riparian setbacks. No feasible alternative.

What alternatives were evaluated? The SEIR does not describe any alternatives. In another part of Downtown, the City ceded a portion of the street to the developer. The City is pursuing a policy of down-sizing and right-sizing its streets. Was the use of a portion of Almaden Road one of the alternatives considered? If not, for what reason?

#### 5. Hydrology. De-watering. Riparian.

The SEIR does not address the risk of dewatering of the Guadalupe River. The project proposes placing a parking garage at the top of bank. The Guadalupe River in this area was historically a series of meandering interconnected streams. As the water table dropped, the meandering streams dropped below the street level. However, water is present. The Hydrology report discusses at great length construction strategies to make the parking garage dry. It does not discuss the risk of dewatering the Guadalupe River.

The Geotechnical Reports states the ground water varied from about 14 to 17 feet during the time of analysis and following seasonal trends. How does this compare to the depth of the channel of the Guadalupe River at this site. And how did the water table level compare to the water level within the channel? This analysis was not conducted.

Citizen scientists have observed there are small areas where water seeps through the side of the bank; it appears to be a spring and not a drain pipe.

Was any attempt made to determine whether water in the upper water table (14 to 17 foot depth) was flowing into the Guadalupe River? If not, for what reason?

Under what conditions does the Guadalupe River come at risk of dewatering due to the pumping of water from the parking garage? How large will the pump flow be and how does that compare to water flows of the river at this spot?

6. Guadalupe River Trail.

The Guadalupe River Trail master plan calls for connection from Woz Way to an undercrossing at West San Carlos. The plans appear to show that the utility lane will end before West San Carlos. Is this intended to be trail access? Or will it be closed to the public? Will the project be building the undercrossing? If it is not being built, for what reasons are they not conforming to the master plan?

7. Valley Water land. The Assessor Parcel map suggests that this project is being built on Valley Water land, that is APN 264-28-162. Where in the narrative of the SEIR is this discussed? The project appears to straddle APN 264-28-178. This is a little confusing on the assessor map. There is a double-headed arrow from the 178 parcel to a little narrow triangular piece that goes towards parcel 22. This is Valley Water land. How has this been addressed in the SEIR? For what reason did the water district have this land? How does it affect the project? It does not appear to be addressed in the SEIR.

Thank-you,

Jean Dresden  
Jeanann2@aol.com

# Comment Letter H



September 21, 2020

*via email*

Kara Hawkins  
Environmental project Manager  
kara.hawkins@sanjoseca.gov

Re: Comments on the Almaden Office Project, H19-004 SCH# 2019050020

Dear Ms. Hawkins,

The Santa Clara Valley Audubon Society (SCVAS) thanks you for the opportunity to provide comment on the Draft Supplemental Environmental Impact Report (DSEIR) for the Almaden Office Project (H19-004). SCVAS was founded in 1926, and is one of the largest National Audubon Society chapters in California. SCVAS' mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation. SCVAS has engaged in the protection of riparian and aquatic ecosystems in Santa Clara Valley for decades. Our members have a strong interest in projects that could impact creeks, rivers, and other biological resources.

The purpose of an Environmental Impact Report (EIR) is to inform decision makers and the general public of the environmental effects of the proposed project that an agency may implement or approve. A Supplemental Environmental Impact Report (SEIR) is prepared when it is determined by the discretionary authority that changes proposed in an approved project will require revisions to a previous EIR because of possible new impacts or an increase in severity of previously identified impacts.

The Draft Supplemental Environmental Impact Report (DSEIR) for the Almaden Office Project (Project) stems from the Downtown Strategy 2040 Final Environmental Impact Report (DS2040 FEIR) (San Jose File Number PP15-102 State Clearinghouse Number 2003042127, <https://www.sanjoseca.gov/Home/ShowDocument?id=44054>)

The DS2040 FEIR incorporates San Jose's Riparian Corridor and Bird-Safe Building Policy 6-34 (<https://www.sanjoseca.gov/home/showdocument?id=12815>). This policy requires a riparian setback of 100-ft. Setback is measured from the outside drip line of the Riparian Corridor vegetation or top-of-bank, whichever is greater. The Policy allows exceptions (reduced setbacks) under limited circumstances, including infill, downtown development, and unusually

shaped parcels. The Downtown Strategy 2040 Final Environmental Impact Report assumes compliance with this policy.

**I. Incompatibility of the project with the San Jose's Riparian Corridor and Bird-Safe Building Policy 6-34**

**I.a. The Project does not qualify for reduced setbacks**

Policy 6-34 provides that a reduced setback may be considered under limited circumstances such as:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.
  - Please note that this consideration does not require a reasonable alternative to be feasible. We maintain that reasonable alternatives of reduced setback exist and must be required in this ecologically sensitive setting.
  - Not only did the DSEIR reject two reasonable reduced development alternatives, but it never analyzed a reasonable alternative that would abide by the setback requirements of the Creek Corridor Study (50-ft, see below) and thus avoid the project's Significant Unavoidable Impacts to the Guadalupe River and its riparian corridor and comply with the Santa Clara Valley Habitat Plan (VHP). We ask for a 50-ft setback reduced development alternative to be analyzed.
  
- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.
  - The Project will have a Significant Unavoidable Cumulative Impact on Biological Resources in the Guadalupe River (DSEIR Section 6, page 83).
  - The project does not meet the biological goals and objectives of the VHP and would conflict with the SCVHP stream setback requirements. This is why the Santa Clara Valley Habitat Agency recommended denial of this project (see attached).
  - Cumulative Biological Resources: Construction and operation of the new buildings within 35 feet of the riparian edge would result in a cumulatively significant and unavoidable impact to the Guadalupe River as a whole.
  
- c. The proposed uses are not fundamentally incompatible with riparian habitats (see Chapter 3, Section IB Incompatible Land Uses of the Policy Study). Section IB states, "...Incompatible land uses include, "Any subsurface disturbance, including for grading activities and underground utility lines, should be located to minimize damage to root systems of healthy riparian trees...."
  - Due to the reduced setback for both above and below ground construction, the project is likely to damage the roots of riparian trees at the top of the bank and thus, is fundamentally incompatible with riparian habitats

- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area; and
- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties
- 1000-ft from the project site, the Guadalupe River required public investment to channelize and fortify creek banks in order to reduce erosion and flooding of Downtown San Jose. Riverine ecosystems inherently meander, removing sediment from one side of a river and depositing the sediments on the other. The Guadalupe River by the project site is incised and the banks, somewhat stabilized by riparian vegetation, show evidence of erosion. It is reasonable to assume, and supported by volumes of studies of riverine systems worldwide, that projects with less than minimum setbacks will, sooner or later, require fortification of the banks to reduce erosion and risk of flooding. Fortification will be required to protect adjacent properties as well as City properties on the other side of the river (including trails, Discovery Meadows, and the Children discovery museum)

The City of San Jose allows encroachment into the Riparian Setback only when a qualified biologist finds that the encroachment will not harm the waterway and its riparian setback. Clearly, the project does not qualify.

I.b. When a reduced setback exception is granted, a minimum setback of 50-ft is required

For actual setback and buffer dimensions Policy 6-34 refers to Chapter 3 of the San Jose Riparian Policy Study. For projects that are granted exception to the 100-ft setback requirement, the 1999 Policy Study provides:

**Mitigations and Conditions: Projects with setbacks less than 100 feet should be conditioned to any measures necessary to ensure compliance with the purpose of these guidelines:**

- Minimum reduced setbacks should be no less than 50 feet or, in urban infill areas, no less than 30 feet or no less than the average of existing setbacks on adjacent properties, whichever is greater.
- Minimum reduced setbacks for those limited redevelopment sites described under the Setback Exceptions section above should represent some significant improvement over the existing setback conditions and should never be less than 30 feet.

The Project as proposed does not provide the very minimum 50-ft setbacks that are required by Policy 6-34 and thus, by the DS2040 FEIR. The Project does not even meet the absolute 30-ft minimum that would be allowed if the project represents “some significant improvement over the existing situation”. Since the project will cause significant and unavoidable cumulative degradation to the Guadalupe River and its corridor, the project can never provide significant improvement over the existing situation and must adhere to a 50-ft setback.

- Please analyse a Reduced Development Alternative that allows 50-ft setback, as required by Policy 6-34 and the Riparian Corridor Policy Study, and recirculate the EIR to allow decision makers and the public to respond to this common-sense alternative.

#### I.c. County-wide implications: Growth inducing impacts

The Santa Clara Valley Habitat Conservation Plan classifies the Guadalupe River as a Category 1 Stream. Developments adjacent to Category 1 streams require a 100-foot setback. In addition, the Plan provides that, regardless of project location, Stream Setback Exceptions may not reduce a Category 1 stream setback to a distance less than 35 feet for existing or previously developed sites. Thus, the DSEIR finds impacts to the Santa Clara Valley Habitat Conservation Plan are significant and unavoidable and a statement of overriding considerations will be needed.

The implications are likely to be felt throughout the service area of the Habitat Agency, including not only urban areas in San Jose but also Morgan Hill, Gilroy and Santa Clara County. The Final SEIR should study and mitigate growth-inducing impacts in urban areas along all rivers and tributaries within the Valley Habitat Agency boundary by setting a precedent allowing construction in the riparian corridor. The analysis should also address cumulative biological impacts of such growth for the streams, riparian corridors and watersheds of the South Bay.

## **II. The Project cannot rely on the Downtown Strategy 2040 Final Environmental Impact Report “Same as Approved Project” findings**

The Downtown Strategy 2040 Final Environmental Impact Report assumes compliance with the General Plan Policies for Riparian Corridors (Policies ER-2.1, ER-2.2, ER-2.3, ER-2.4 and ER-2.5) as well as Policy 6-34, which - as we have shown above - requires a minimum riparian setback of 50 feet. The Downtown Strategy 2040 Final Environmental Impact Report also assumes compliance with the VHP requirements of a riparian setback that does not encroach into the minimum riparian setback of 35 feet. The proposed Project does not comply with any of these policies and requirements.

The Downtown Strategy 2040 FEIR (p.80) states, “For specific projects adjacent to the riparian corridor, a setback will be established in accordance with the Council-adopted Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan) (Chapter 18.40 of Title 18 of the San José Municipal Code), the Zoning Code (Title 20 of the San José



Municipal Code), the development guidelines in the San José City Council Policy 6-34 “Riparian Corridor Protection and Bird-safe Design” Policy and GP Policy ER-2.2.”

The Downtown Strategy 2040 FEIR (page 80) continues, “Setbacks protect riparian corridors by buffering the effects of adjacent activities. Incorporating other site planning measures set forth in the ‘Riparian Corridor Protection and Bird-safe Design’ Policy development guidelines will further minimize human-induced disturbances, such as lighting, noise, and use of toxic substances. At the time individual development projects proposed near creeks in Downtown are evaluated for project-level environmental impacts, detailed evaluation will be required to determine impacts to riparian habitat and identify any necessary mitigation.”

Findings of Less Than Significant Impacts in the Downtown Strategy 2040 FEIR were therefore based on setbacks that comply with the 100-ft setback or at a minimum, the Habitat Plan exceptions (minimum 35-foot setback), Policy 6-34 (minimum 50-foot setback) or GP Policy ER-2.2.(100-foot setback except where no significant environmental impacts would occur).

The analysis in this DSEIR tiers from the Downtown Strategy 2040 FEIR, so the level of impact in the project specific analysis is presented as it relates to the findings of the Downtown Strategy 2040 FEIR. However, because the Project does not abide by the assumptions that underlie the findings of significance of the Downtown Strategy 2040 FEIR, the DSEIR cannot justifiably suggest that impacts of the Proposed Project are “Same Impact as Approved Project” and doing so is inappropriate and inadequate by CEQA standards.

### **III. Aesthetic Resources**

In our Scoping letter, we asked for the DSEIR to provide:

- Visual depictions and analyze the visual impacts of this dominant structure on park users at Discovery Meadows Park, trail users along the Guadalupe River, and users of the Children’s Discovery Museum - during the day and at night.
- Analysis of the impacts of Artificial Night Lighting and of Daytime Glare on park users at Discovery Meadows Park, trail users along the Guadalupe River, and visitors to the Children’s Discovery Museum.
- Impacts of shading on park users at Discovery Meadows Park, trail users along the Guadalupe River, and visitors to the Children’s Discovery Museum
- Impacts of reflected sunlight and glare on drivers on highways 87 and 280, and on airport traffic.
- Depictions of impacts to the San Jose view-shed from the Lick Observatory, and discuss the impact of any visible light on the night sky.

The DSEIR ignores our comments. Photos and descriptions of “land uses” surrounding the Project ignore the Guadalupe River, the trails, the parks and the museum. Instead, the EA/DSEIR proposes that that state law exempts it from analysis based on SB 743 and because the project is not located on a Scenic Highway. But the purpose of an EIR is to provide decision makers and the public with information about a project, and we maintain:

- The Guadalupe River and associated trails and parks are critically important scenic resources in the City of San Jose, appreciated by the public and equivalent in their importance to a state or county road. Indeed, the Guadalupe River Trail is a Featured National Recreation Trail, designated in 2009 (<https://www.americantrails.org/resources/san-jose-trail-network-california>). The impact of the Project on these resources cannot be ignored. Please analyze impacts to the public views from city resources such as the Guadalupe River trail, the southern part of Discovery Meadows and the Children’s Discovery Museum - will people using these facilities retain visibility of hillside areas such as the foothills of the Diablo Range and Silver Creek Hills? Will they be able to see the eastern hills at night? Please include visuals and discuss the aesthetics in the day and the night.
- Because of the proximity to the Guadalupe River and building within the minimum required setback of the riparian corridor, the project will certainly damage the “vista” of the creek corridor itself. Thus, the findings of “Same Impact as Approved Project (Less Than Significant Impact)” cannot be made for the question “d) Would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?” (see under comment II. above).
  - Lighting and glare impacts are not the same for projects outside the creek corridor setback as projects with no setback, or minimal setback. This is true for any projects, including 16-story towers as proposed for the Project. Unless modified, this project will create a new source of substantial light or glare which would adversely affect day or nighttime views in the area. This impact should be considered significant and unavoidable unless the project is modified to avoid construction within the riparian corridor setback.
- The EA interprets the criterion “Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway” incorrectly. The only requirement related to State Scenic Highways are historic buildings. Thus, the DSEIR should analyze impacts to other scenic resources, including, but not limited to trees, trails, and the Guadalupe River. This analysis is needed, and without it the finding that impacts are “Same Impact as Approved Project” cannot be made. This is important since the proximity of the development and its underground features could potentially harm the trees along the river bank and in the riparian area.
- The 2040 General Plan identifies “gateways” as freeways and rural scenic corridors where preservation and enhancement of views of the natural and man-made environment are crucial. The segment of Bird Avenue over I-280 adjacent to the Downtown area is designated as a gateway for scenic purposes. Please provide an analysis (including depictions) of the impacts of the Project on this gateway. Include visibility of the foothills of the Diablo Range and Silver Creek Hills. Please include visuals and discuss the aesthetics in the day and the night.

- General Plan Policy CD-10.3 Requires that development visible from freeways (including highways 101, 880, 680, 280, 17, 85, 237, and 87) is designed to preserve and enhance attractive natural and man-made vistas. This Project will be visible from freeways, yet it dwarfs natural vistas. Please show how the vistas from highways 87 and 280 will be impacted.
- Please discuss compliance with the City of San Jose Downtown Design Standards and Guidelines.

The San Jose community and decision makers deserve full disclosure and clear and extensive answers to our scoping comments and the additional comments submitted above.

#### **IV. Flooding and Valley Water Easement and**

The Air Quality and Greenhouse Gas Assessment pg 40, pdf page 40 states that global climate change is currently affecting changes in weather patterns and precipitation rates, and that it will increasingly do so in the future, and states, "Potential effects of global climate change that could adversely affect human health include ... more frequent and intense natural disasters such as flooding....". Concerns for flooding are also expressed in the Biological Resources report and the Geotechnical Investigation.

Indeed, Valley Water considers, "Future projections for the Southwestern U.S. and California generally indicate increasing temperatures, increasing drying tendency, increasing storm severity, and a shift in the seasonal and annual precipitation patterns. Annual average precipitation may increase, possibly as result of increased extreme storms; however, increased drought severity is also likely" (see attached).

Scoping comments by Valley Water provide, "The project area includes a portion of land that has no Assessor Parcel Number (APN) and is located between APNs: 264-28-160, 162, 019 and 153. Please note Valley Water has a flood control easement over this entire parcel, including the portion to be developed. Development of this area appears to be in conflict with the purpose of the easement."

The Geotechnical Investigation provides Flood Insurance Maps issued by the Federal Emergency Management Agency (FEMA) indicating that the Project site is within a flood hazard area. This area of San Jose has been subject to flooding in the past due to heavy rainfall. Indeed, the Project's Geotechnical exploration states, "The river banks are subject to flooding, especially within the downtown San Jose area. Based on a review of the FEMA flood insurance study, the one-percent annual chance of flood elevations of the Guadalupe River between the northern and southern bounds of the site show maximum flood elevations of 92 and 94 feet (NAVD88), respectively."

It is our belief that parcels near streams, especially when designated to provide flood control, should not allow a reduction in current or future flood control capacity. When such reduction is considered, transparency and full disclosure are needed.

- It is difficult to discern where the Valley Water easement is located. We ask that the Final SEIR include a map clearly showing the Valley Water's easement and an analysis and explanation of how any conflict may be resolved at this time and into the future.

#### **V. Relocation, Reconstruction or Added Storm Drains (Initial Study, Project Description, p. 10, Utility Improvements)**

Runoff from the site will drain into the Guadalupe River. The project is proposing three alternative options for relocating the existing storm drains on site, and potentially new outfalls into the river. The Initial Study states that permitting for new storm drains will be procured from "appropriate federal agencies".

- Please provide a full description of any construction work within the river's top-of-the-bank and the tree drip zone for each of the three options. This includes both new infrastructure and re-construction of existing infrastructure (storm drains, outfalls etc.).
- Please specify which Federal Agencies will be approached to secure permits
- Any new outfall into the Guadalupe River must be reviewed by Valley Water and permitted by the Regional Water Quality Control Board. It may also require a Streambed Alteration permit from the California Department of Fish and Wildlife. Additional permits may be needed from NOAA Fisheries, the US Fish and Wildlife Service, and Army Corps of Engineers.
  - In the final SEIR, please clarify the outfall plans, the permitting agencies and permitting process for any new or reconstructed outfall into the Guadalupe River.
- A footnote provides, "The applicant and project contractor have confirmed that all three options fit within the proposed construction schedule. Verrips, Joanne. Director – Precon & Estimating, Webcor. Personal communications. July 22, 2020."
  - Please provide documentation, in writing, to show that all three options fit within the proposed construction schedule, in light of the required permits from Valley Water, the Regional Water Quality Control Board, the Army Corps of Engineers and the California Department of Fish and Game and any other state or federal other agencies.

#### **VI. Compliance with the Downtown Design Guidelines and Standards**

On April 23, 2019 San José City Council approved the new San José Downtown Design Guidelines and Standards. This document was amended by the City Council on May 21, 2019 to add the Bird Safety Design Guidelines on page 49 and a few new definitions to the glossary. The Project Notice of Preparation was signed on May 24, 2019, after the adoption and amendment of the Downtown Design Guidelines and Standards.

- Please discuss compliance with the City of San Jose Downtown Design Standards and Guidelines in the Initial Study and analyze and mitigate deviations from the required Standards and Guidelines.
  - Please analyze compliance with the San Jose Downtown Design Standards and Guidelines from a regulatory point of view
  - Please address the requirements for Bird Safety.

## **VII. Biological Impacts**

### VII.a. Significance of Biological Impacts

The Initial Study in Section 4.4.2 (pages 27 and 28) recognizes that the Project will have a substantial adverse effect on the riparian habitat of the Guadalupe River. However, the Initial Study dismisses most of the significance thresholds for biological impacts as “Same Impact as Approved Project”. Again, we insist that this finding cannot be made because the reduced minimum setbacks have not been evaluated in the Downtown Strategy 2040 Environmental Impact Report (See comment II above). The Creek adjacent to the Project, and all the wildlife that uses it or migrates along it (including fish) will suffer from the reduced buffer from the adverse environmental impacts of the Project (including Noise and Vibrations, Light, Glare and Shading, Hazards, and more). For all these environmental resources, a determination of “no significant impact” (with or without mitigation) that is based on the “Same Impact as Approved Project” should be re-evaluated to include potentially additional or more severe impacts - both local and cumulative - due to the proximity to the Guadalupe river. Specifically, we believe that both local and cumulative impacts are substantial and unmitigable, and the project will

- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, impede the use of native wildlife nursery sites.

The Final EIR for the Downtown Strategy 2040 found that many animals in the river and the riparian corridor will sustain added shading since they are habituated to a shaded environment. However, the Final EIR for the Downtown Strategy 2040 also states, “Although riparian vegetation is generally shade tolerant as well, prolonged periods of shading can preclude some species from growing” and “The specific shade/shadow effects of new development would generally depend on the building height, distance from the riparian edge, and orientation to the creek relative to solar position”.

The two 16-story towers that are proposed within less than 50-feet (City requirements) and even less than 35-feet (Habitat Agency requirements) and the project-associated increase in lighting and degradation of protective vegetative cover in the riparian corridor will increase light penetration into the creek.

Studies show that in fish, most physiological and behavioural-biology processes are governed by daily or seasonal dynamics. Artificial light blurs the boundary between day and night, and

therefore interferes with the physiological functions and behaviour of fish. It is already known that artificial light affects the growth and development of fish, and can even disrupt the migration of diadromous (migratory) fish such as steelhead trout (<https://www.igb-berlin.de/en/news/disruptive-light-when-night-becomes-day-fish>, <https://esajournals.onlinelibrary.wiley.com/doi/pdf/10.1890/ES11-00241.1>)

Cumulatively, the increase in light levels in the creek has the potential to interfere with fish migration and substantially affect the persistence of Steelhead trout in the Guadalupe River. We believe that cumulative impacts to wildlife movement and migration, including to fish, are significant and unavoidable.

Because wildlife is regulated by the California Department of Fish and Wildlife, and cumulative harm to the riparian function will affect birds and fish in the entire watershed, the Project must seek permits from NOAA Fisheries and from the California Department of Fish and Wildlife for potential cumulative harm to Steelhead Trout and to bird populations.

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

The Project conflicts with ALL creek, riparian and watershed policies and protections in the San Jose General Plan, Downtown Strategy 2040, and Policy 6-34 and the Riparian Corridor Policy Study.

- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Allowing development within the minimum setback required by the VHP is a clear conflict with the provisions of this plan, and a breach of trust that was established when the VHP was adopted. Furthermore, approval of this Project is likely to set a terrible precedent that will stimulate development not only in downtown San Jose, but in other locations in this city as well as other cities. The conflict with the provisions of an adopted Habitat Conservation Plan and Natural Community Conservation Plan is clear, which is the reason why the Habitat Agency recommended denial for this project as proposed ([see attached](#)).

#### VII.b. Mitigation of Significant Impacts

Appendix D: Biological Resources Report, Page 7-9 proposes that encroachment from the construction of new buildings within the 100-foot setback would represent a cumulatively considerable contribution to significant cumulative impacts on riparian communities in the Santa Clara Valley, suggesting that implementation of Mitigation Measure MM BIO(C)-1.1 would reduce the severity of this impact, “but even with this mitigation, encroachment of new buildings within 35 feet of the riparian corridor (less than the minimum setback allowed by the

VHP) would result in a significant and unavoidable impact due to the contribution of such encroachment to significant cumulative impacts.”

Since riverine and riparian ecosystems are linear, cumulative impacts to a watershed can never be fully mitigated. When mitigation is proposed, such mitigation must compensate for the entire loss of beneficial uses for the stream.

The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) lists the following beneficial uses for the Guadalupe River: groundwater recharge, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, and noncontact water recreation.

As we argued above, the beneficial uses of cold freshwater habitat including fish migration, preservation of rare and endangered species, fish spawning, and wildlife habitat are all enhanced by the presence of a vegetated riparian ecosystem, without degradation. But the project’s overriding of the City of San Jose’s Riparian Policies and the Santa Clara Valley Habitat Conservation Plan’s guidance for stream and riparian setbacks will harm the riparian corridor and the beneficial uses of the river.

Mitigation Measure MM BIO(C)-1.1 proposes to purchase mitigation for building of 1.8 acres of the riparian setback, “MM BIO(C)-1.1: Compensation. Prior to the issuance of any grading or building permits, the project applicant shall provide compensatory mitigation to offset project impacts on the ecological functions and values of the riparian corridor. Such compensatory mitigation shall be provided as follows: Riparian habitat shall be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor and within the City of San José , at a minimum ratio of 2:1 (compensation:impact), on an acreage basis, for a total of 3.6 acres of enhanced or restored habitat to compensate for 1.8 acres of project encroachment within the 100-foot setback.”

- This mitigation measure should specify that mitigation in an off-site riparian corridor can only occur where all the beneficial uses of the Guadalupe River occur (especially fish, including a viable steelhead trout population), and that the mitigation site can be protected from influence of adjacent future development.

### **VIII. Health impacts of outdoor lighting**

Many of the City’s policies and directives for lighting are outdated, and fail to consider new scientific studies and lighting innovations that would reduce light pollution and the impacts of Artificial Light At Night (ALAN) on neuro-sensitive people, and reduce the risk of cancer and other health risks. The SEIR should provide mitigation for these impacts, even if the City does not require it. **Please see attached** reference lists of ALAN research studies compiled by Soft Light. Please mitigate impacts of outdoor light pollution.

In our scoping letter, we offered mitigation for use of outdoor LED lighting by using fixtures that produce Correlated Color Temperature (CCT) of no more than 3000 K (although we have learned that 2700 K is a more appropriate upper limit to protect human health and especially neuro-sensitive people from impacts of excessive lighting).

## **X. Alternatives**

Under CEQA, a lead agency may not approve a project if there are feasible alternatives that would avoid or lessen its significant environmental effects (Public Resources Code §§ 21002, 21002.1(b).) To this end, an EIR is required to consider a range of potentially feasible alternatives to a project, or to the location of a project, that would feasibly attain most of the project's basic objectives while avoiding or substantially lessening any of the project's significant environmental impacts.

The DSEIR evaluates several alternatives, and proposes that:

- Reduced Development Alternative 1 (Option 1) – Reduced Square Footage with 35 Foot setback. The DSEIR suggests that this alternative would be consistent with project objectives 1, 2, 3, 4, 5, 7, 8, 9, and 10.
- Reduced Development Alternative 1 (Option 2) – Reduced Square Footage with 100 foot setback. The DSEIR suggests that this alternative would be consistent with project objectives 3, 4, 5, 7, 8, 9, and 10.
- Reduced Development Alternative 2 – Square Footage Reduction and Increase in Height. The DSEIR suggests that this alternative would be consistent with project objectives 1, 2, 3, 4, 5, 7, 8, 9, and 10.

We maintain that each of these three alternatives meet all 10 project objectives.

- Reduced Development Alternative 1 (option 1 and 2) is consistent with project objective 6 (“Maximize use of an underutilized infill site), because the Downtown Strategy 2040 assumes compliance with the City’s General Plan 100-ft setback, the City’s required 50-foot setback and the VHP 35-foot setback. “Maximization” should occur within the City’s policies and multi-agency commitments, so that maximization of underutilized infill sites should occur while maintaining the integrity of the riparian corridor and the Guadalupe River Watershed.
- Reduced Development Alternative 1 (Option 2) also meets project objectives 1 and 2, as it would meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 of locating usable high density development on infill sites along transit corridors and advance the principal of “Smart Growth” by replacing a surface parking lot with a new high density office campus with amenity/retail, public space and associated parking. It also allows for a riparian setback that promotes the City’s environmental policies for recreation and protection of natural resources.

Thus, Reduced Development Alternative 1 (Option 2) meets all the project objectives, is least impactful to the riparian corridor and other environmental resources, and will reduce many



other significant levels to a less-than-significant with mitigation. Thus, Reduced Development Alternative 1 (Option 2) should be advanced as the Environmentally Superior Alternative.

The EIR does not explain why feasible Reduced Development Alternatives have been rejected. The Project, as proposed, cannot be approved since there are feasible alternatives that would avoid or lessen its significant environmental effects.

### **IX. Geotechnical exploration**

The Geotechnical Exploration did not include excavation sloping or shoring, soil volume change factors, flood potential, or a geohazard exploration, or work to determine the existence of possible hazardous materials. The Geotechnical Exploration does not provide evaluation of the impacts of the project on the stability of the creek banks, and potential need for predictable structural reinforcements of the creek banks due to the proximity of the Project to the creek.

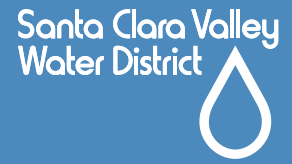
The evaluation criteria of the Initial Study do not ask the question of whether stabilization the creek banks will be needed to protect this development into its functional life-span. It is reasonable to expect that riverine function (creating meanders by cutting and deposition of material along the River Banks) will erode the banks due to natural stormwater flows in the Guadalupe River.

History shows that when buildings do not abide by minimum riparian setbacks, sooner or later, reinforcement and bank stabilization is needed to mitigate erosion, and concrete and riprap line the riverbanks. Such stabilization is harmful to the river's natural ecosystems and species. It is also very costly.

The question must be asked, and answered: Over the life-time of the project, is it likely to require protection from natural erosion processes that would require the reinforcement of the creek bank? We believe the answer will be yes, and that because of the proximity to the creek - this will be a predictable, significant and unavoidable consequence of the intrusion into the protective creek setbacks. The EIR must answer this question. It should be recirculated to provide studies, evaluations, findings and mitigation measures included in a new draft.

## Climate Change **Adaptation**

Santa Clara Valley Water District's response to the potential effects of climate change



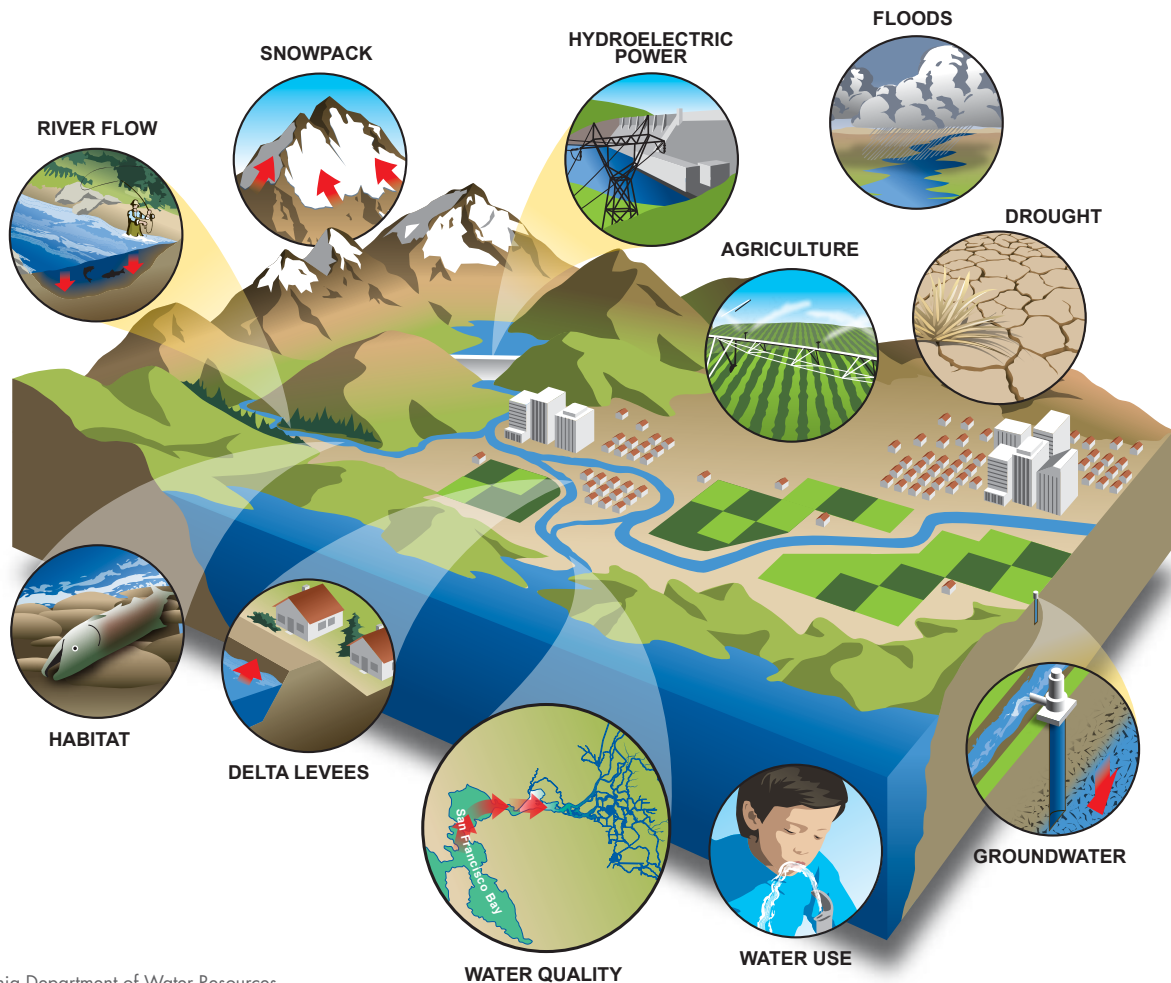
### Why the water district is concerned

The Santa Clara Valley Water District's ability to provide clean, reliable water supply, natural flood protection, and water resources stewardship may be challenged in the future by the potential of warmer temperatures, changing precipitation and runoff patterns, reduced snow pack and rising sea levels. Managing climate change related uncertainties, vulnerabilities, or risks to local water resource management, is critical to fulfill the district's mission.

Evidence of climate change is already being observed in California. In the last century, the California coast has seen a sea level rise of almost

8 inches; the average April 1 snow-pack in the Sierra Nevada region has decreased in the last half century, and wildfires are occurring more frequently, burn longer, and are more widespread.

Future projections for the Southwestern U.S. and California generally indicate increasing temperatures, increasing drying tendency, increasing storm severity, and a shift in the seasonal and annual precipitation patterns. Annual average precipitation may increase, possibly as result of increased extreme storms; however, increased drought severity is also likely. Likelihood of reduced Sierra Nevada snow pack also increases drought risk to the district.



## What the water district is doing

The district has a wide array of strategies to adapt to climate change and to reduce our impact through greenhouse gas reduction efforts. To ensure effective and coordinated management of these strategies, the water district is preparing a climate change action plan (2019) and has dedicated resources to monitor the state of the science and evolving regulations, and to ensure they are considered in project and program planning across the district. Specific adaptation strategies are intended to:

- Manage water use demands and provide drought-proof supplies, such as more non-potable recycled water and water conservation, including setting the stage for developing potable water reuse in the future.
- Increase system flexibility and optimize the use of existing supplies and infrastructure, which leverages the investments the district has already made in water supply reliability.
- Consider sea level rise and tidal influence in the district's flood protection projects, consistent with Army Corps of Engineers standards, and incorporate understanding of new hydrology and sea level rise into project management and planning.
- Create environments that enhance and benefit streams and tidal settings, such as additional riparian planting and preservation of open space. Maintain or enhance ecosystem function in the face of climate change where appropriate and feasible.
- Conduct riparian and tidal restoration or enhancements that provide benefits to wetlands, habitat, and species. Conduct activities to address invasive species issues, such as removing invasive plants to allow native plants to survive, and maintaining freshwater and tidal wetlands and riparian habitat.



Reverse osmosis vessels at Silicon Valley Advanced Water Purification Center

## Conclusion

The district's ability to provide clean, reliable water supply, natural flood protection, and water resources stewardship may be challenged in the future by the potential of warmer temperatures, changing precipitation and runoff patterns, reduced snow pack, and rising sea levels. Therefore, managing climate change-related uncertainties, vulnerabilities, or risks to local water resource management, is critical to fulfill the district's mission.



South Bay Salt Pond Restoration Project

For more information on the water district's climate change activities, please go to [www.valleywater.org/Services/climatechange.aspx](http://www.valleywater.org/Services/climatechange.aspx)

May 28, 2020

## Cancer Risk Increase from Blue Wavelength Light

Studies have shown that the risk of cancer, especially breast and prostate cancers, is greatly increased by exposure to blue wavelength light at night.

The following research studies investigate the issue of cancer increase from blue wavelength light.

### **Quote:**

“Artificial light at night is significantly correlated for all forms of cancer as well as lung, breast, colorectal, and prostate cancers individually. Immediate measures should be taken to limit artificial light at night in the main cities around the world and also inside houses.”

Evaluating the Association between Artificial Light-at-Night Exposure and Breast and Prostate Cancer Risk in Spain (MCC-Spain Study)

<https://ehp.niehs.nih.gov/doi/10.1289/ehp1837>

Outdoor Light at Night and Breast Cancer Incidence in the Nurses' Health Study II

<https://ehp.niehs.nih.gov/doi/10.1289/ehp935>

Artificial Light at Night and Cancer: Global Study

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5454613/>

Additional articles on the topic.

Evidence Supports Link Between Breast Cancer, Light Exposure at Night

<https://today.uconn.edu/2017/08/evidence-supports-link-breast-cancer-light-exposure-night/>

Blue light's link to prostate and breast cancers

<https://www.aoa.org/news/clinical-eye-care/blue-lights-link-to-prostate-and-breast-cancers>



## Santa Clara Valley Habitat Plan CONDITION 11 EXCEPTION REQUEST

<b>Date</b>	April 7, 2020
<b>Subject</b>	Stream and Riparian Setback Condition (Condition 11) Exception for South Almaden Office Project (Boston Properties), City of San Jose (#SP20-005)
<b>Recommendation</b>	<b>Not Approve</b> 0-foot minimum setback, but consider approval of reduction to 35-foot setback
<b>Reviewed By</b>	Kim Rook, Planner
<b>Date</b>	April 7, 2020

The City of San Jose is requesting an exception from Condition 11, Stream and Riparian Setback Condition for the South Almaden Office Project (“Project”), located at the northwest corner of Woz Way and South Almaden Boulevard.

The proposed project is located in the City of San Jose urban service area, at the northwestern corner of Woz Way and South Almaden Boulevard, immediately adjacent to the Guadalupe River Trail (Valley Water) and Guadalupe River west of the property. The Guadalupe River is a Category 1 Stream with a required 100-foot stream setback. The 3.67-acre parcel consists of several separate properties and is irregularly shaped, long and narrow, with varying widths approximately 144-feet to 325-feet. The property is currently developed with a City owned asphalt parking lot located adjacent to the Guadalupe River Trail and within the required Category 1 stream 100-foot setback. No permanent structures are located on the site. Surrounding uses include commercial, residential, the Guadalupe Trail, and Guadalupe River.

The Project proposes demolition of the existing parking lot and construction of an approximately 17-story, 2.6-million square foot building for office and commercial uses with underground parking. The footprint of the proposed building will occupy all areas of the site up to a distance of 14-feet from its western boundary, which is located immediately adjacent to the Guadalupe River and encroach within 1.8 acres of the 100-foot setback area. Proposed uses located within the 100-foot setback include the building footprint, pedestrian and restricted fire access paths, landscaping, bioretention areas, and proposed upgrades to the Guadalupe River Trail. No riparian trees along the Guadalupe River will be impacted (i.e., removed or trimmed) as part of the project. In addition, according to the Landscape Layout & Material Plan, (Figure 1), it appears several wood

bridges/viewing platforms may be proposed. The proposed project has a stream setback distance ranging from 0-feet to 26-feet from the riparian corridor. According to the Stream Setback Exception Request, the project has gone through multiple design changes and feasibility studies to try and accommodate a greater riparian setback, but site constraints have led to challenges.

Condition 11 applies to all covered activities that may impact streams. This includes all development inside the urban service area where a stream or the stream setback overlaps any portion of the parcel on which a covered activity is being implemented.

## Condition 11 Exception Criteria

For all proposed stream setbacks (inside or outside the urban service area), exceptions will be considered based on the following factors:

- The existence of legal uses within the setback.
- The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
- The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
- The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Other considerations may be made based on:

- the implications of a reduced setback on the riparian system and covered species, progress toward the biological goals and objectives of the Plan, and potential effects on adjacent properties; and
- if the exception would allow the project to avoid and minimize impacts on covered species and natural land cover types to the maximum extent practicable.

## Exception Applicability and Evaluation

The project is a Site Development Permit for the construction of an approximately 17-story, 2.5-million square foot building for office and commercial uses with three levels of underground parking on a 3.67-acre (gross) site. The ground floor commercial space does not occupy the entire footprint of the building above, but has pedestrian space cutouts for access to and from South Almaden Boulevard and other pedestrian oriented design features to help create an active ground space environment. The Guadalupe River and Guadalupe River Trail are located immediately west

of the project site. The project had multiple design changes and feasibility studies to try and accommodate a greater riparian setback, but site constraints have led to challenges. The proposed project has a setback distance from the riparian corridor ranging from 0-feet to 26-feet. The submitted Revised Biological Resources Report (H.T. Harvey, September 6, 2019) determined that any encroachment within a 100-foot setback would have significant impacts on the adjacent riparian communities along the Guadalupe River. However, a 35-foot setback would be acceptable with riparian restoration/enhancement and bird-safe building design.

The following Condition 11 criteria are cited as findings for the Habitat Agency recommendation of this Stream Setback Exception Request:

*1. The existence of legal uses within the setback.*

The project site is currently developed as a parking lot completely paved by impervious surfaces to the edge of the Guadalupe River Trail. The proposed project is for a Site Development Permit for the construction of a 2.5-million square foot building for office and commercial uses with underground parking on a 3.67-acre (gross) site. The proposed development has various existing legal uses located within the 100-foot setback, including a major portion of the project's main structure, pedestrian/fire access paths, landscaping with bioretention areas, and upgrades to the Guadalupe River Trail.

According to the Setback Exception Request, portions of the project encroaching into the required 100-foot setbacks allow for the project to be designed to allow a major portion of the main structure, pedestrian and required fire access paths, landscaping with bioretention areas, and upgrades to the Guadalupe River Trail. The project would require review and approval by the City of San Jose, including conformance and consistency of uses with the City's Municipal Code, Zoning Ordinance, and Building/Fire requirements. Therefore, it is anticipated the project would be consistent with legal uses within the setbacks.

*2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.*

The proposed project is located at the northwestern corner of Woz Way and South Almaden Boulevard, immediately adjacent to the Guadalupe River Trail (Valley Water) and Guadalupe River west of the property. The 3.67-acre property is irregularly shaped, long and narrow, with varying widths approximately 144-feet to 325-feet. The developable area outside the required 100-foot stream setback at the narrowest portion of the site (144-foot wide) would leave approximately a 44-foot width, which would not allow adequate space for a commercial project of this size. The Stream Setback Exception Request is for a stream setback of 0-feet - 26-foot along the western portion of the site to allow the proposed development.

Stream setback exceptions are used in a minority of cases with special circumstances that limit or restrict the ability of a landowner to fully apply the stream setback. Examples include geologic and seismic hazards, unusual lot size or configuration, unusual slope, or grading and access issues that may present site constraints that require exceptions to the stream setback conditions. (Chapter 6, pg. 6-54-Exceptions). According to the Stream Setback Exception Request, other avenues for greater setbacks were explored but were economically infeasible given the site orientation and trends in commercial space floor

plans for attracting tenants. Because of the physical orientation and nature of the site, adherence to the 100-foot setback would render the project, as proposed, infeasible.

3. *The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.*

The proposed project is consistent with the City's Municipal Code and General Plan designation. The proposed improvements will allow for increased pedestrian connectivity, provide improved landscaping and native plantings along the Guadalupe River Trail on the project site, and include bioretention and storm water areas to collect rainwater flow that currently has no avenue on the existing site. Portions of the proposed project within the 100-foot setback include portions of the building footprint, impermeable pedestrian and fire access paths, landscaping and bioretention areas, and Guadalupe River Trail improvements to implement the trail design, as required by the City.

4. *The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.*

The Guadalupe River is a Category 1 stream, known to provide habitat for several species of fish, including Central California Coast steelhead (*Oncorhynchus mykiss*), and identified in the Plan Conservation Strategy (5-20) as a major stream corridor that provides critical connections for other aquatic and terrestrial species moving through urban areas. A Revised Biological Resources Report (H.T. Harvey & Assoc., September 6, 2019) determined the riparian habitat along the reach of the Guadalupe River, adjacent to the project site, is of moderate quality, highly fragmented, and lacks connectivity to higher-quality riparian habitats in the region. The riparian habitat is characterized by dense mature riparian trees that extend over the paved Guadalupe River Trail and outward into the project site. However, because of the high ecological value of the Guadalupe River as a whole, encroachment into the required 100-foot riparian buffer would result in reduced wildlife use, health and growth of riparian habitat (shading), and bird diversity/abundance. In order to maintain suitable riparian functions and values, the H.T. Harvey Report states encroachment to within 35-feet would be acceptable with riparian restoration/enhancement and bird-safe building design.

The Habitat Plan Conservation Strategy Biological Goals provides natural community level requirements to minimize potential impacts to sensitive biological resources, including, "Improvement of the quality of streams and the hydrologic and geomorphic processes that support them to maintain a functional aquatic and riparian community to benefit covered species and promote native biodiversity." (5-7). Therefore, developments adjacent to Category 1 streams require a 100-foot setback. In addition, the Plan provides that, regardless of project location, Stream Setback Exceptions **may not reduce** a Category 1 stream setback to a distance less than 35-feet for existing or previously developed sites.



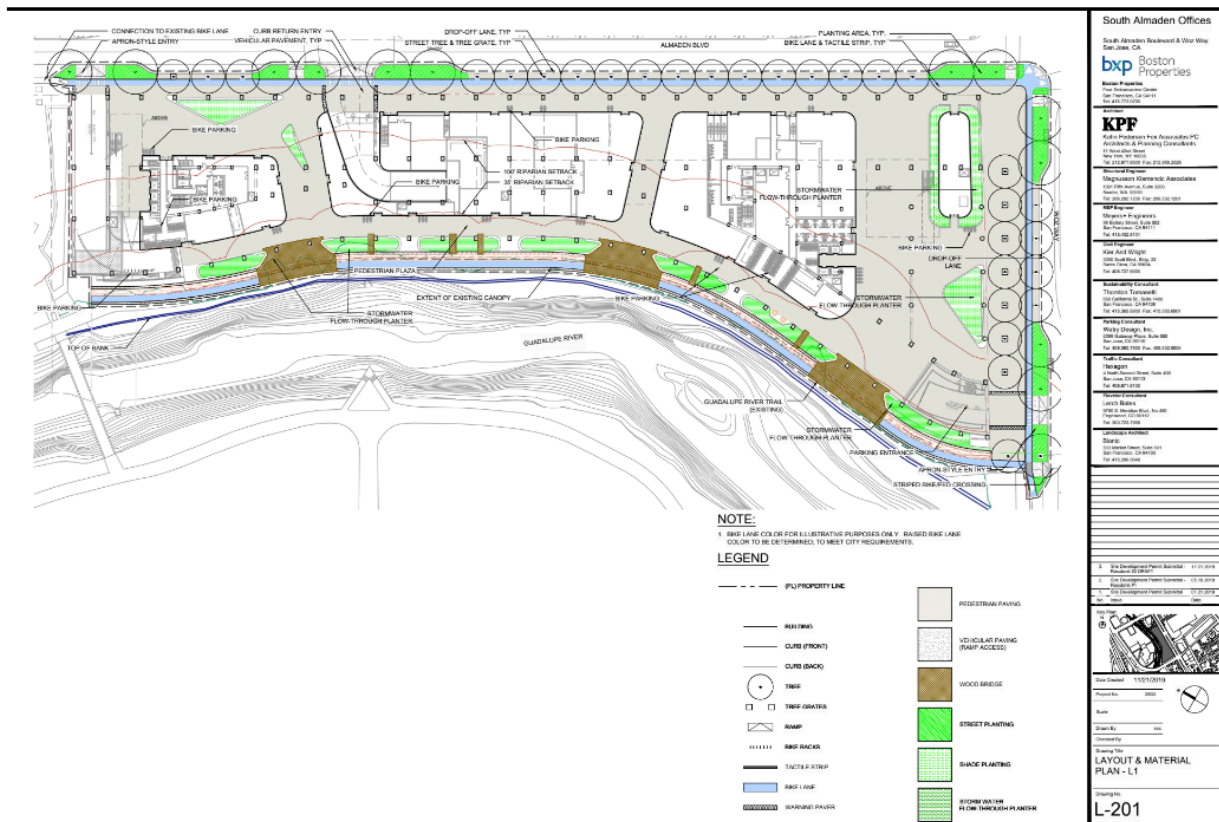
As proposed, the Project **does not** achieve the biological goals and objectives of the Habitat Plan and conflicts with the Habitat Plan stream setback requirements for development adjacent to a Category 1 stream.

## Determination

Based on site constraints and the information provided by the City of San Jose, in consultation with USFWS and CDFW, the Habitat Agency determined a reduced stream setback of a minimum of 35-foot is reasonable for this site. The Habitat Agency recommends the City **not approve** this Condition 11 Exception Request for a 0-foot stream setback for the South Almaden Office (Boston Properties) Project.

The Habitat Agency recommends the applicant redesign the project to minimize to the maximum extent possible any encroachment into the required Category 1 stream 100-foot stream setback. The Habitat Agency agrees with all mitigation measures included in the Project Biological Resources Report (HTH #4230-01) and supports the inclusion of those mitigation measures in any Project approval contemplated by the City.

Figure 1. Site Map



# Comment Letter I



September 14, 2020

City of San José Department of Transportation  
200 E. Santa Clara St., 8<sup>th</sup> Floor  
San José, CA 95113

Attn: Kara Hawkins  
By Email: [Kara.Hawkins@sanjoseca.gov](mailto:Kara.Hawkins@sanjoseca.gov)

Dear Kara,

VTA appreciates the opportunity to comment on the Draft Supplemental Environmental Impact Report (SEIR) for the Almaden Office project. VTA has reviewed the document and has the following comments:

#### Transit Delay Analysis

VTA acknowledges the transit delay analysis for bus routes included in the SEIR, but the SEIR does not disclose any potential impacts to light rail in the area. VTA requests the First Amendment to the SEIR include a transit delay analysis conducted for light rail. VTA requests coordination to develop holistic appropriate offsetting measures to reduce or eliminate the identified delays for bus, and potential delays for light rail. Transit priority measures, such as improvements to signal timing, signal priority, transit stops or passenger amenity improvements, would constitute appropriate offsetting measures.

#### Bicycle and Pedestrian Circulation and Bicycle Parking

VTA supports the design of the separated bike lanes between the sidewalk and drop-off zones along the eastern and southern project frontages on Almaden Boulevard and Woz Way. VTA also applauds the bicycle and pedestrian access between the project site and the adjacent Guadalupe River Trail. Every effort should be made to make the access areas between the trail and the project site a comfortable and welcoming environment through seating and shade.

VTA applauds the project for providing 319 bicycle parking spaces. This exceeds the recommended number identified in the VTA Bicycle Technical Guidelines. VTA requests that access to the short-term bicycle parking room be made through the lobby rather than directly outside. Lobby access increases security for those who use the bicycle room and reduces the risk of having bicycles stolen. Additionally, VTA requests that the access door be wired with ADA-compliant kick plates that allow those walking their bicycle in or out of the room to easily open and maneuver through the doors. Lastly, VTA recommends the bicycle room have space available to securely park non-traditional bicycles or bicycles with trailers that may not fit on lift racks.

#### Land Use

VTA appreciates the project's intent to intensify the land uses in the area. Surface parking lots, which this

project would replace, are not conducive to lively downtowns. This project's proximity to Diridon Station, two light rail stations, and the Guadalupe River Trail help increase the number of people within Downtown San José while reducing potential vehicle miles traveled for those working at this project.

Construction Impacts

VTA does not see any traffic impacts as part of construction in the SEIR. VTA had requested the SEIR analyze how construction impacts will affect transit operations/delay, haul routes, and queuing at specific intersections as part of the Notice of Preparation phase. VTA would like to reiterate that the construction period of 51 months is noted to be significant throughout the SEIR and impacts to the transportation system, if any, should be documented and mitigation measures disclosed.

Thank you again for the opportunity to review this project. If you have any questions, please do not hesitate to contact me at 408-321-5830.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lola Torney', written over a light blue horizontal line.

Lola Torney  
Transportation Planner III

SJ1916



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## San Francisco Bay Regional Water Quality Control Board

September 7, 2020

*Sent via electronic mail: No hardcopy to follow*

City of San Jose

ATTN: Kara Hawkins, Environmental Project Planner (kara.hawkins@sanjoseca.gov)  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, CA 95113

**Subject:** San Francisco Bay Regional Water Quality Control Board Comments on the *Supplemental Environmental Impact Report, South Almaden Office Project, File No. SP20-005, City of San Jose, Santa Clara County*  
**SCH No. 2003042127**

Dear Ms. Hawkins:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Supplemental Environmental Impact Report, South Almaden Office Project, File No. SP20-005, City of San Jose, Santa Clara County* (SEIR). The SEIR evaluates the potential environmental impacts associated with constructing the South Almaden Office Project (Project).

**Project Summary.** The Project will replace an existing parking lot with two office towers. The Project site is located in downtown San Jose, east of the Guadalupe River, west of South Almaden Boulevard, and north of Woz Way.

**Summary.** As is discussed below, the mitigation proposed for impacts to riparian habitat may not be feasible. We encourage the Project proponents to either document that proposed Mitigation Measure BIO(C)-1.1 is feasible or to revise the Project to avoid intrusion into the riparian corridor.

**Comment 1. Please verify that there are feasible opportunities for implementing 3.6 acres of riparian restoration and/or enhancement on the Santa Clara Valley floor in the City of San Jose.**

The Project site is adjacent to the Guadalupe River. The *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan) defines the beneficial uses of waters of the State. The following beneficial uses are listed in the Basin Plan for the Guadalupe River: groundwater recharge, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, and noncontact water recreation. The beneficial uses of cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, and wildlife habitat are all enhanced by the presence of a well-vegetated

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

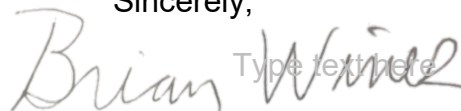
riparian corridor along the River. However, the proposed Project is seeking an exemption from the City of San Jose's Riparian Policy and the Santa Clara Valley Habitat Conservation Plan's guidance for stream and riparian setbacks, both of which recommend a 100-foot setback for riparian corridors. The Project's proposed setbacks range from zero to 26 feet, which would place structures within 1.8 acres of the preferred riparian setback.

As mitigation for the proposed reduction in the riparian setback, Mitigation Measure BIO (C)-1.1 calls for restoring or enhancing 3.6 acres of riparian habitat. The restoration is to be implemented on the Santa Clara Valley floor, in the City of San Jose, and as close to the Project site as possible. While we agree that 3.6 acres of riparian restoration and/or enhancement along the Guadalupe River would be beneficial to the beneficial uses designated for the Guadalupe River, we are concerned that it may be difficult to locate 3.6 acres of land along the Guadalupe River that are available for restoration and/or enhancement.

Much of the land along the Guadalupe River on the Santa Clara Valley floor is under the control of Valley Water, which usually does not allow other parties to implement mitigation projects on the land that Valley Water Controls. In addition, land along the Guadalupe River on the Santa Clara Valley floor is densely developed, which limits opportunities for restoring and/or enhancing significant amounts of riparian habitat. Before the SEIR is finalized, we recommend that feasible opportunities for 3.6 acres of riparian restoration and/or enhancement along the Guadalupe River be identified. If sufficient land cannot be located for full implementation of Mitigation Measure BIO (C)-1.1, then the mitigation measure should be revised to provide a feasible mitigation project. Alternatively, the Project could be revised to reduce intrusion into the riparian setback.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,

 Type text here

Brian Wines  
Water Resources Control Engineer  
South and East Bay Watershed Section

cc: State Clearinghouse ([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))  
CDFW, Kristin Garrison ([kristin.garrison@wildlife.ca.gov](mailto:kristin.garrison@wildlife.ca.gov))

# Comment Letter K



**SIERRA CLUB**  
LOMA PRIETA

SAN MATEO, SANTA CLARA & SAN BENITO COUNTIES

September 21, 2020

Kara Hawkins, Environmental Project Manager  
Department of Planning, Building and Code Enforcement  
City of San Jose  
Attn: Kara.Hawkins@sanioseca.gov

Re: Comments on Draft Supplemental EIR for the Almaden Office Project

Dear Ms. Hawkins,

Thank you very much for allowing the Sierra Club additional time to review the Draft Supplemental EIR for the Almaden Office Project (H19-004 and SP20-005). Please find attached our comments relating to specific aspects of this EIR and associated Initial Study.

The EIR should be updated to provide adequate information, to sufficiently analyze impacts, and to include important mitigations that reduce impacts. However, more importantly, we strongly request that the Supplemental EIR be updated to describe the most environmentally preferable and feasible alternative project, Reduced Development Alternative 1 (Option 2). This alternative achieves the project objective to “maximize use of an underutilized infill site,” assuming compliance with the City’s General Plan 100-foot setback, the City’s required 50-foot setback analyzed in the Downtown Strategy 2040 EIR, and the Santa Clara Valley Habitat Plan 35-foot setback.

By going forward with this reduced development alternative, many analyses, mitigations, and permitting requirements will be lessened. This will also reduce the risk of legal and permitting issues that might make the project infeasible.

We would also like to express our considerable concern that the permit required for this project has changed from a Site Development Permit to a Special Use Permit. According to City handouts, a Site Development Permit is “required to construct, enlarge, or install a building or structure” while a Special Use Permit is required for:

- Demolition of buildings without a replacement building
- Late-night (past midnight) operations in the Downtown area
- Nonresidential condominiums
- Outdoor special events on private property
- Parking that is off-site or alternating arrangements
- Residential accessory structures larger than 650 sq. ft.
- Slimline monopoles

Based on these clear instructions published by the City of San Jose, we expect the Almaden Office Project to obtain a Site Development Permit. Please update the Final EIR to reflect the correct permit requirements.

Sincerely,

A handwritten signature in cursive script that reads "Katja Irvin".

Katja Irvin, AICP  
Conservation Committee Co-chair  
Sierra Club Loma Prieta Chapter

# **Almaden Office Project Supplemental Draft Environmental Impact Report**

**Sierra Club Loma Prieta Chapter Comment, Submitted September 21, 2020**

## **General**

1. Please publish the Mitigation and Monitoring Plan along with the Final Supplemental Environmental Impact Report (SEIR) to allow for proper evaluation of the impacts and mitigated impacts resulting from the project.

## **Project Description**

1. Please include a higher resolution a site plan that can be discerned by the public on a small personal screen and make sure the plan shows the extent of below ground construction as well as ground level construction and includes a legend so that symbols on the plan can be understood. This is important since there is no public access to view plans in the Planning Office at this time.
2. Please include information about soil removal, where it will be stored and how it will be disposed of and analyze the impacts of this activity.
3. Please provide information on where staging will be located and machinery stored and analyze the impacts of this activity.

## **Cumulative Impacts**

1. Analysis of cumulative impacts should include additional projects to those listed in *Table 3.0-1: Summary Project List Within Half-Mile Radius*. We request that the following projects be included since they are reasonably foreseeable future projects or are under construction, and they are within ½ mile or very close to ½ mile of the Almaden Office Project.
  - Downtown West (PDC19-039, PD19-029, GP19-009)
  - 27 West (SP18-016)
  - Fountain Alley (H19-041 & T19-035)
  - Carlisle (H18-025)
  - Post and San Pedro Tower (H14-023)
  - Almaden Corner Hotel (H18-038)
  - Almaden Blvd Tower (H20-021)
  - 4th Street Metro Station (H17-004)
  - Invicta Towers (CP18-038)
  - Garden Gate (SP18-001)
  - Greyhound Residential Project (SP16-021 & T16-017)
  - Woz Way Project (GP19-008 & H20-004)



## **Air Quality**

1. The section on Community Risk Impacts from Project Operation – Traffic and Generators must include Balbach Street between Almaden Blvd and Market Street in the emissions analysis. Balbach will be used to access Market and the onramp to Highway 280 south and is already bumper to bumper during the evening commute. This will increase dramatically with three large new projects (traffic generators) at the intersection of Balbach and Almaden currently in the development process (Almaden Office Project, Woz Way Project, and Balbach Affordable Housing Project).

## **Biological Resources**

1. We strongly believe that a 100-ft setback recommended by 2016 San Jose Riparian Corridor Policy should be maintained. Please analyze the significance of non-compliance with the City and Habitat Agency minimum riparian corridor policies and consider the precedent this sets to develop in the riparian corridors elsewhere in San Jose. Please refer to the detailed comments made by Santa Clara Valley Audubon Society and the Guadalupe Coyote Resource Conservation District regarding the regulatory issues created by these reduced setbacks.
2. The south central California coast steelhead is an Endangered Species Act listed species for the Guadalupe River and is not covered by the Habitat Plan. Therefore, the impacts of the project on the steelhead must be analyzed. The Downtown Strategy 2040 Final EIR states that, due to the sensitivity of riparian habitat, future projects could result in a substantial adverse effect on special status fish species by generating pollution, altering flow conditions, and increasing water temperatures in the Guadalupe River.
3. The Downtown Strategy 2000 EIR determined that development in Downtown could result in a significant impact to steelhead and Chinook salmon due to possible increases in water temperatures. The Downtown Strategy 2040 only mentions construction of mid-rise buildings adjacent to Los Gatos Creek, which could increase shading in a manner that impairs growth of shaded riverine aquatic habitat. Construction of high-rise buildings adjacent to the Guadalupe River and reduced setbacks less than 35 feet are not discussed.
4. Reduced shaded riverine aquatic habitat, increased thermal radiation, or the discharge of water from construction could cause stream temperatures to rise for prolonged periods, resulting in increased fish mortality. Therefore, please assess the effects of the proposed structures (shading and thermal radiation) on riparian vegetation and creek temperatures. If the project will result in a 20 percent or more increase in shade or any increase in average daily temperature within the river corridor, alter the design to reducing shading, or implement other measures to reduce instream water temperatures. Depending on the assessment, increase the setback or include a mitigation measure to require planting of additional shaded riverine aquatic habitat to protect the stream and the fish.

5. Since the project as proposed has high potential to increase impacts on anadromous fish in the Guadalupe River, please include mitigation measures to improve the less than optimal conditions for these fish such as installation of sandy gravel substrate or removal of barriers to fish migration.
6. Include a mitigation measure stipulating that, between March 1 and October 31, the discharge of water from the construction site into the Guadalupe River shall be prohibited if the temperature of the water exceeds 72° F unless modeling studies and monitoring demonstrates that the volume of the discharge will not increase the maximum daily stream temperatures above 75.2° F. Prohibit discharges until the discharged water is cooled below the average daily stream temperature at the discharge point or maximum daily stream temperatures drop below 75° F.

## **Geology**

1. The project site is located in a seismically active site along a river and thus it may be susceptible to liquefaction or uncertain seismic action. Please analyze and discuss possible impacts. Ideally, conduct geomorphic modeling to determine the near bank shear stress values, and to determine the potential of the Project (especially underground elements) to contribute to greater erosion along the Guadalupe River and evaluate the need for bank stabilization treatments of the Guadalupe River channel in this reach to avoid bank collapse. Otherwise, include a mitigation measure to require these actions.

## **Hazards and Hazardous Materials**

1. Please add more discussion in this section of the SEIR about the potential for contaminated groundwater and related water quality impacts due to dewatering.
2. Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?
3. Due to the potential hazardous soils on the site and potential impacts to the Guadalupe River during construction dewatering, release of toxic groundwater to the river is a reasonably foreseeable upset that may release hazardous materials into the environment. Please include a mitigation measure requiring approval of a soil management plan and groundwater management strategy for dewatering prior to construction, as discussed in the Initial Study.
4. As required by the Downtown Strategy 2040 EIR, include a mitigation measure to require a site-specific Health and Safety Plan prepared by an environmental professional that includes provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities. Please also show a proposed location for this treatment facility on the site plan provided with the SEIR.

## Hydrology and Water Quality

1. The Initial Study states “[t]he Downtown Strategy 2040 FEIR concluded that with the regulatory programs currently in place, stormwater runoff from new development would have a less than significant impact on stormwater quality.” However, the Almaden Office Project doesn’t comply with the regulatory programs used as a basis for the Downtown Strategy EIR because it doesn’t comply with the City of San Jose or Habitat Plan required minimum setbacks from the riparian corridor. Please include a complete analysis of stormwater, hydrology and water quality impacts and don’t rely on the Downtown Strategy EIR in this section.
2. Under Regulatory Setting, please include a discussion of the City of San Jose Green Stormwater Infrastructure Plan.
3. New or replaced outfalls to the Guadalupe River will require permits from the Army Corps of Engineers (Clean Water Act Section 404 Permit), the California Regional Water Quality Control Board (NPDES Stormwater Permit and Clean Water Act Section 401 Water Quality Certification), the California Department of Fish and Wildlife (Lake and Streambed Alteration Agreement) and other public agencies. Please discuss these permit requirements under Regulatory Setting.
4. Since a new outfall will be installed to drain the site, please estimate the outfall volume under different circumstances and analyze the potential for substantial erosion.
5. Please analyze potential impacts from belowground structures on the water table in the surrounding area. Once the belowground structure is constructed, could pressure from groundwater displacement result in surface flooding on nearby streets or properties?
6. Since significant dewatering will take place during construction, under “Required Downtown Strategy 2040 FEIR Measures” in the Initial Study please explicitly include dewatering in addition to the more general term “non-stormwater management.” The dewatering mitigations described in this section also need to be included in the Mitigation Monitoring Plan published with the Final EIR, not just in the Stormwater Pollution Prevention Plan.
7. In order to evaluate the impacts of dewatering, please document in the SEIR or Initial Study the estimated amount of dewatering to be required for the project including the days and hours dewatering will take place, the number of months this will take place, the volume of water to be produced (discharge per minute) during dewatering, and total groundwater pumping in acre feet. Please include both groundwater dewatering and dewatering of rainwater accumulated at the bottom of the excavation site.
8. In order for impacts to be understood, please also describe in more detail where and how dewatering effluent will be contained prior to discharge, and where it will be discharged into the storm or sanitary sewer system if pollutant levels are acceptable.

9. The Downtown Strategy 2040 EIR discusses dewatering and the potential that “Dewatering activities that lower the groundwater level would increase the effective stress on the underlying sediments, potentially resulting in ground settlements and damage to structures, roadways, and/or utilities.” Please discuss the results of the geotechnical investigation with regard to groundwater level, stress on sediments, and potential for ground settlements in the SEIR or Initial Study. This discussion should also consider possible cumulative impacts considering construction and dewatering may be simultaneous with the adjacent Woz Way Project.
10. Include a mitigation measure to use a dewatering system which has a minimal impact on the groundwater level surrounding the proposed excavation, such as an internal dewatering system (from geotechnical report).
11. Include a mitigation measure to require the shoring system to extend adequately below the bottom of the excavation such that groundwater can be controlled from within the excavation and impacts to adjacent developments and the Guadalupe River can be minimized (from geotechnical report).
12. Include a mitigation measure to require that a system of construction monitoring instruments be installed. This may consist of inclinometers and groundwater monitoring wells that are installed within a distance of 5 to 15 feet from the excavation towards the existing buildings. Vibration monitoring should be considered during operation of heavy equipment, demolition, etc. In addition, a settlement survey should initially be performed on a weekly basis during excavation and on a monthly basis, approximately one month after the excavation has been completed, at a minimum (from geotechnical report).
13. Include a mitigation measure to require periodic reports during dewatering documenting current groundwater levels, pumping rates, pumped water quantity, and adherence to water quality standards.
14. Include a mitigation measure to limit dewatering during the rainy season (between November and March) to minimize stream or storm drain capacity issues.
15. Under the NPDES permit, in order to maintain or restore the site’s natural hydrologic functions, the project should maximize opportunities for infiltration and evapotranspiration, and using stormwater as a resource (rainwater harvesting for non-potable uses). A mitigation measure should be added to require use of stormwater as a resource (rainwater capture and/or installation of pervious paving) to reduce runoff and restore natural hydrologic functions.
16. This project will result in an exponential increase in traffic on Woz Way. Studies show runoff from highways contains detectable levels of zinc, lead, copper, and nitrate/nitrite. Please include a mitigation measure to require installation of bioretention areas, not just on the project site but also offsite on Woz Way, to mitigate the potential impact to water quality in the Guadalupe River.

## **Noise**

1. Although wildlife is not considered to be a sensitive receptor, a mitigation measure should be included to provide noise mitigation such as temporary sound walls along the Guadalupe riparian corridor to minimize noise impacts during construction to “normally acceptable” levels for open space or parks.

## **Utilities and Service Systems**

1. Please discuss the impacts of expanded stormwater drainage facilities and specifically the environmental impacts the new stormwater outfall(s) to the Guadalupe River that will be constructed.
2. Please consider adding a mitigation measure to require onsite greywater treatment to mitigate impacts on water supply and wastewater treatment facilities.

## **Mandatory Findings of Significance**

1. Please discuss stormwater drainage impacts under Utilities in this section of the Initial Study.

## **Alternatives**

1. We strongly request that the Final SEIR be updated to describe the most environmentally preferable and feasible alternative project, Reduced Development Alternative 1 (Option 2). This alternative achieves the project objective to “maximize use of an underutilized infill site,” assuming compliance with the City’s General Plan 100-foot setback, the City’s required 50-foot setback analyzed in the Downtown Strategy 2040 EIR, and the Santa Clara Valley Habitat Plan 35-foot setback.
2. The SEIR and the Biological Assessment do not explain why feasible Reduced Development Alternatives have been rejected. The proposed project cannot be approved since there are feasible alternatives that would avoid or lessen its significant environmental effects.

# Comment Letter L



Clean Water • Healthy Environment • Flood Protection

File: 26457  
Guadalupe River

September 14, 2020

Ms. Kara Hawkins  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, CA 95113

Subject: Supplemental EIR & Initial Study -Almaden Office Project-City File No. SP20-005

Dear Ms. Hawkins:

The Santa Clara Valley Water District (Valley Water) has reviewed the Supplemental EIR (SEIR) & Initial Study (IS) -Almaden Office Project-City File No. SP20-005, received by the Valley Water on July 31, 2020.

The Guadalupe River runs along the westerly property line and Valley Water has an easement over portions of the river and fee title property over the areas located directly adjacent to the project site. As per Valley Water's Water Resources Protection Ordinance any work proposed on Valley Water's easement, fee title property or that may impact the Valley Water facilities, including the Guadalupe River, will require issuance of a Valley Water encroachment permit prior to the start of construction. Additionally, as issuance of an encroachment permit is a discretionary act, Valley Water will be considered a responsible agency under California Environmental Quality Act (CEQA) if a permit is required.

Based on our review of the SEIR we have the following comments:

1. The SEIR notes on page 10 that there are three options for the storm drain relocation. In our discussions with the developer and City, it is our understanding that Option C (storm drain to remain in its current location) is not a feasible option. It is unclear why Option C is included in the SEIR if it is not considered feasible. If Option C is now considered feasible, Valley Water is interested in discussing moving forward with that option as it has no impacts on the Guadalupe River and Valley Water fee title property. The other two options require the construction of a new outfall and removal of the existing outfall, which is not clear in the description provided
2. The SEIR and IS do not have any discussion of impacts of the relocation of the outfall and removal of the existing outfall as proposed in Options A and B. Options A and B require issuance of Valley Water permits, as well as other regulatory permits. Additionally, as discussed with the developer and City previously, the temporary storm drain alignment in Option A would only be utilized if all the regulatory and Valley Water permits were not



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obtained in time to meet the developer's project schedule. It is preferable for the outfall to be constructed without the need for the temporary installation.

3. The discussion regarding tree replacement on page 53 of the SEIR should note that tree replacement species should be in conformance with the Guidelines and Standards for Land Use Near Streams, Design Guide 3, in order to protect the existing riparian habitat.
4. The SEIR indicates that encroachment of the project into the 100 foot riparian corridor setback would be a Cumulative Significant Unavoidable Impact. The proposed mitigation measure, MM BIO(C)-1.1 Compensation, for the 1.8 acre encroachment is to restore or enhance 3.6 acres (minimum 2:1 ratio) of riparian habitat immediately adjacent to the site and/or off site within the San Jose city limits. However, the footnotes for this mitigation on page 58 of the SEIR note that Valley Water and City approval is required to restore the area immediately adjacent to the site. Valley Water has not had discussion regarding this proposed mitigation measure and how this could impact future Valley Water work in the area or potential impacts of riparian restoration on the river hydraulics. Valley Water does not allow mitigation for non-Valley Water projects on Valley Water property due the significant mitigation needs of the Valley Water. The footnotes further note that the off-site mitigation may not be feasible if a suitable location cannot be found. Based on the discussion in the SEIR, this mitigation measure has not been determined to be feasible and no other mitigation measures are provided to address this impact.
5. Mitigation measure MM BIO(C)-1.2 Riparian Habitat Mitigation and Monitoring Plan, needs to specify that all plantings used for the riparian restoration/enhancement need to be grown from propagules collected in the watershed where the work will occur to protect the genetic integrity of the locally native riparian species and any existing mitigation plantings.
6. As it is not clear that the proposed mitigation for impacts to the riparian corridor can be mitigated, since a feasible site(s) for mitigation has not be determined, Valley Water recommends that the developer look at alternatives that reduce the encroachment into the riparian corridor setback and minimize the land needed for mitigation of this impact. Finding 3.6 acres of suitable creek land to restore/enhance may be difficult unless the City is willing to allow the work to occur on their property.
7. As indicated on page 50 of the IS, dewatering is required during construction because shallow groundwater occurs in the project location, ranging from less than 15 to 20 feet depth to groundwater below ground surface. Valley Water recommends that the construction dewatering system be designed such that the volume and duration of dewatering are minimized to the greatest extent possible. Valley Water also recommends that a more detailed analysis of construction dewatering be conducted, including estimating dewatering volumes/durations and evaluating related impacts.

It is important that the project comply with the recommendations from the geotechnical exploration report (SEIR Appendix F), which will be reviewed and approved by the

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Department of Public Works, and the City's Standard Permit Conditions for dewatering. Valley Water supports the geotechnical exploration report recommendation that the project be constructed with a structural mat foundation and waterproofing to avoid the need for permanent dewatering.

8. On page 73 of the IS, we suggest revising the following sentence "Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater recharge." to "Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater management."
9. In addition to discussion of Valley Water's Well Ordinance on page 73 of the IS, we have the following additional information regarding abandoned wells. Due to the long agricultural history of the Santa Clara Subbasin, and subsequent land development, there are likely many abandoned wells in the subbasin. While some of these abandoned wells may have been sealed prior to well permitting requirements, many have open casings and may be discovered during project construction. It is not uncommon for these wells to have significant artesian flow, which may impact dewatering and construction activities. If encountered during the proposed project, abandoned wells must be properly destroyed, with related work permitted by Valley Water.
10. The discussion on pages 76 and 82 regarding dam inundation, should be revised to note the site is also subject to inundation from the Guadalupe Reservoir Dam as well as Lenihan and Anderson dams.

Reference Valley Water File Number 26457 on further correspondence regarding this project.

If you have any questions or need further information, you can reach me at [chaggerty@valleywater.org](mailto:chaggerty@valleywater.org) or at (408) 630-2322.

Sincerely,

DocuSigned by:  
  
746949D75F1843C...

Colleen Haggerty, P.E.  
Associate Civil Engineer  
Community Projects Review Unit

cc: U. Chatwani, C. Haggerty, M. Martin, V. De La Piedra, J. Gurdak, File