

Response to Comment Letter Received November 3, 2021 (Residents and Workers for a Safe San Jose)

A comment letter was received by City staff on November 3, 2021. While the letter was received long after the close of public review, staff offers the following responses. The letter makes four primary comments/claims, addressed below.

1. The Proposed Project is Part of a Larger Regional Project with Cumulative Impacts

In response, the project under review is an application to redevelop, repurpose and operate a single 24,486 square foot warehouse with a 3,000 square foot office addition. The proposed use is a last-mile distribution facility. Warehousing and distribution are allowed uses under the City's Heavy Industrial (HI) zoning.

Based on the tenant operations narrative provided with the application and described in the Focused Initial Study (IS), the facility is intended to expedite order fulfillment and delivery to local customers. While the distribution center may support the owner's overall business operations to move and deliver goods, it is unreasonable to treat all operations and facilities as a single "project" as defined by CEQA simply because operations are related. If such an approach was the standard of review, similar uses – such as an individual grocery store, for example – would require an analysis not only of that grocery store, but also that brand's warehouse and distribution facilities, and perhaps even the growing of food that is delivered to the warehouses. CEQA provides a "rule of reason" for environmental review. Analyzing an entire supply chain, or an entire life cycle of a product, is beyond the reasonable scope of review even if the Lead Agency had access to such information.

According to Section 15151 of the CEQA Guidelines, an EIR (or in this case, a Mitigated Negative Declaration) should include "a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." The Guidelines continue to state that "an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." According to Title 14 California Code of Regulations Section 15204(a), "adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters."

As the court held in *Save the Plastic Bay Coalition v. City of Manhattan Beach* (2011), 62 Cal. 4th 155, although the area affected by a project may reach beyond the project boundaries, "[t]his does not mean, however, that an agency is required to conduct an exhaustive analysis of all conceivable impacts a project may have in areas outside its geographical boundaries...(l)ess detail, for example, would be required where those effects are more indirect than effects felt within the project area, or where it [would] be difficult to predict them with any accuracy." Furthermore, please note that cumulative VMT impacts are analyzed if a project proposes a General Plan Amendment, which could constitute an existing VMT changes. This project does not propose a General Plan Amendment.

2. The Transportation Analysis Should Not be "Screened" From VMT Analysis

Please see response to issue 1 above regarding the project definition and the fact that warehousing and distribution are allowed uses under the City's Heavy Industrial (HI) zoning. The commenter stated that the analysis into the VMT screening criteria methodology is incorrect and did not account for this specific type of use. The adopted City Council Policy 5-1 was approved with screening criteria and is the basis for CEQA impact analysis as the best available regulatory framework and methodology. Based on the scope and operation of this project, the site is a distribution facility that is allowable in the existing Zoning District and therefore, the propose project qualifies as an industrial use of under 30,000 square feet. At the time of the adoption the City Council Policy 5-1, the policy assumes that an addition of 15 single-family detached dwelling, units, 25 attached dwelling units, 10,000 square feet of gross office floor area, or 30,000 square feet of industrial gross floor area, or less, does not result in significant VMT impacts and is consistent with the State regulation. The project is consistent with the policy and therefore, does not result in significant impact under CEQA.

The proposed canopy component of the project is not floor area and therefore does not add to the square footage of the project. The canopy is simply a cover for a loading area. The permit being processed by the City is a Site Development Permit (H20-041), not a special use permit.

3. The General Plan's Air Quality Goals Have Not Been Met Because of Inadequate Study

The City's air quality goals are presented in the Initial Study beginning on page 27. As described in the detailed analysis beginning on page 28, the project would not exceed BAAQMD thresholds for construction or operational air quality emissions, and the project's job generation falls within the growth assumptions of the City's General Plan. As buildout of the General Plan was fully analyzed for cumulative air quality impacts within the plan's Final EIR, and the project is therefore consistent with these projections. Furthermore, the IS/MND was sent to the BAAQMD and City did not receive comments on the project or its analysis.

4. The Proposed Use is Fundamentally Different from a Typical Warehouse Use and Requires Different Analysis

Comments are acknowledge, but do not directly address the analysis of the Initial Study. Please see response to Issue 1 above regarding the operation of the warehouse/distribution facility.

From: [Topher Arroyo](#)
To: [Telahun, Bethelhem](#)
Subject: Re: Status for FILE NOS: H20-041
Date: Wednesday, October 27, 2021 9:51:09 AM
Attachments: [Screen Shot 2021-10-27 at 9.34.35 AM.png](#)
[San Jose 1660 Bayshore Comment Letter 9.20.21 1.pdf](#)
[Screen Shot 2021-10-27 at 9.35.01 AM.png](#)

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[External Email]

Good morning, Mr. Telahun.

Thank you for getting back to me. Is the Director's Hearing a public hearing?

Also, regarding my wife's comments, please see the attached document and screenshots. She submitted it Sept 20th and then got a prompt back almost 24-hours later that the email did not go through. She resubmitted the comments but was never certain that they went through. Our hope is that you will accept the comments for the Director to consider. Thank you in advance.

Topher

On Tue, Oct 26, 2021 at 8:11 AM Telahun, Bethelhem <Bethelhem.Telahun@sanjoseca.gov> wrote:

Hello,

This project is scheduled for Director's Hearing on November 17. When were your wife's comments sent?

Thanks,

Bethelhem Telahun

Planner I Environmental Review

From: Topher Arroyo [REDACTED]
Sent: Friday, October 22, 2021 10:43 AM
To: Telahun, Bethelhem <Bethelhem.Telahun@sanjoseca.gov>
Cc: Keyon, David <david.keyon@sanjoseca.gov>; ZoningQuestions <ZoningQuestions@sanjoseca.gov>
Subject: Status for FILE NOS: H20-041

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[External Email]

Good morning, Mr. Telahun.

I'm writing to ask for an update regarding FILE NOS: H20-041 the "1660 Old Bayshore Highway Industrial Project." Is this project going before the Planning Commission? We would appreciate understanding the approval process.

My wife, Ally Arroyo, had submitted comments by the deadline that were initially sent back by your system. She resubmitted later upon learning this and asked for your verification of which she never received. Can you please verify that you received her comments and accepted them?

Thank you in advance.

Regards,

Topher Arroyo

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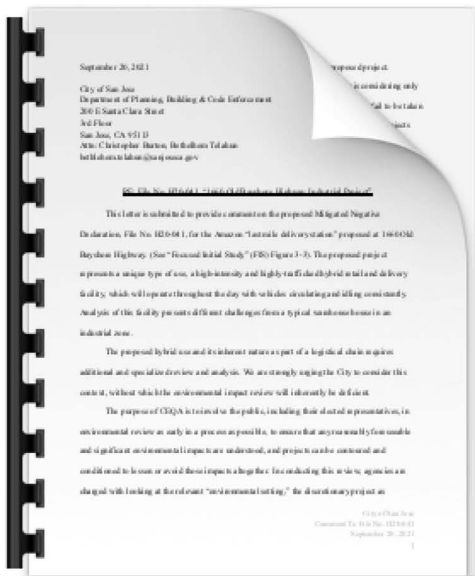
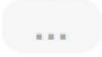
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Good evening.

Please accept these comments for File No. H20-041 the "1660 Project" on behalf of the Residents and Workers for a Safe Sar

Regards,

Ally Arroyo



San Jose 1660 Bayshore
Comment Letter_9.20.21.pdf

Save All Attachments

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☆ postmaster@sanjo... To: [REDACTED] 9/

Delivery has failed to these recipients or group

bethlehem.telahun@sanjoseca.gov

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September 20, 2021

City of San Jose
Department of Planning, Building & Code Enforcement
200 E Santa Clara Street
3rd Floor
San Jose, CA 95113
Attn: Christopher Burton, Bethelhem Telahun
bethlehem.telahun@sanjoseca.gov

RE: File No. H20-041, “1660 Old Bayshore Highway Industrial Project”

This letter is submitted to provide comment on the proposed Mitigated Negative Declaration, File No. H20-041, for the Amazon “last mile delivery station” proposed at 1660 Old Bayshore Highway. (See “Focused Initial Study” (FIS) Figure 3-3). The proposed project represents a unique type of use, a high-intensity and highly-trafficked hybrid retail and delivery facility, which will operate throughout the day with vehicles circulating and idling consistently. Analysis of this facility presents different challenges from a typical warehouse house in an industrial zone.

The proposed hybrid use and its inherent nature as part of a logistical chain requires additional and specialized review and analysis. We are strongly urging the City to consider this context, without which the environmental impact review will inherently be deficient.

The purpose of CEQA is to involve the public, including their elected representatives, in environmental review as early in a process as possible, to ensure that any reasonably foreseeable and significant environmental impacts are understood, and projects can be contoured and conditioned to lessen or avoid those impacts altogether. In conducting this review, agencies are charged with looking at the relevant “environmental setting,” the discretionary project as

proposed, and reasonably foreseeable consequences and phases of the proposed project.

“Piecemealing” CEQA is inappropriate for that reason: if every local agency is considering only each component part of a project, cumulative or aggregated impacts of the project fail to be taken into consideration and the true environmental impacts are not understood, and in turn projects cannot be contoured or conditioned to avoid potentially significant impacts.

This does not mean that local agencies with finite resources and already over-worked staff are required to infinitely expand the scope of their review and analysis to consider every possible knock-on effect or down-stream impact of a project. Instead, the standards are fairly reasonable: where a particular project is part of a larger project, or a particular phase of a project, or where the approval and operation of a project will have reasonably foreseeable consequences beyond its immediate physical impact, the public and their representatives must have sufficient information gathered for them to make a reasoned decision and implement whatever conditions or limitations necessary to lessen or prevent significant environmental impacts.

The proposed project is intricately and inherently linked with other local and regional projects, and therefore the scope of consideration needs to be at slightly higher level than the the one found in the FIS. The proposed use is also unique, and its operation distinct from that which is surmised by the FIS or accounted for by the City’s zoning code. These two factors are interrelated; the unique nature of the project’s use is a function of the project’s role as part of a larger regional project. Therefore both deeper and wider study are necessary, and the FIS is insufficient.

The Proposed Project is Part of a Larger Regional Project with Cumulative Impacts

There is no “local” or “regional” environment, at least in the sense that is relevant to the potentially significant environmental impacts of this project. There is no dividing line between “Milpitas air” and “Coyote air” and “San Jose air”; political boundaries are not environmental boundaries, particularly when it comes to nonrivalrous goods like air. Political boundaries between local agencies are not dispositive of a need to study impacts.

The proposed Amazon delivery station is one node in a logistical chain, each part interdependent on the other. Unlike the classical concept of a “warehouse,” a last-mile delivery station of the type Amazon proposes for this project is a step in a condensed retail transaction, part of a just-in-time inventory system meant to replicate, as closely as possible, a retail experience. A user purchases an item through Amazon’s website, either directly from Amazon or from a third-part seller; the order is processed by a central hub, and the item is placed into a moving stream of packaged goods that arrives at a fulfillment or sorting center--in this instance, likely the facility at 750 Laurelwood Road, next to Mineta airport, some four miles from the proposed site. The item is then moved to a “last mile” delivery station, where it is further sorted for direct delivery to the consumer by a contract or “FLEX” driver. Amazon’s purpose is to reduce this shipping time as much as possible, as the company’s shift into household consumer goods and groceries suggests. To achieve this, Amazon has frantically been securing and building warehouses for this last mile retail function over the last year and a half--just in 2020 a 100,000+ square foot warehouse was developed in Milpitas; a 140,000 square foot warehouse is being considered for Gilroy; an Amazon Prime Now warehouse in Sunnyvale; and more than a dozen locker and hub locations stretching from San Jose down to Morgan Hill, all of which generate traffic. This logistical system relies on each interdependent part, and adding capacity--in this instance, approximately 45,000 square feet of warehouse and loading canopy--inherently

suggests that the frequency and gross total mileage of deliveries is meant to change. Presumably this change will be an increase, given that more capacity is being added. This is supported by the fact that a significant proportion of the Amazon hubs in San Jose--of which there are over a dozen--came into being along with the development of the Milpitas warehouses.

The interrelation and moving of goods between sorting facilities (the local “fulfillment centers”), the existing (and planned) last-mile delivery stations, and the numerous Amazon hubs and locker spaces are all part of an interconnected “project” for purposes of CEQA. All of these elements need to be studied together to adequately analyze the potential impacts of approval of the project, both for transportation and air quality impacts.

This is not conjecture, but based on Amazon’s own analysis. In a traffic study submitted to the City of Gilroy in support of their application for a 140,000 square foot warehouse there, the traffic engineer stated that the warehouse was necessary because, currently, delivery drivers in the “South County area” including Gilroy have to travel up from Gilroy to the Milpitas delivery station and bring them back south to consumers in Gilroy and the surrounding area.¹ As Amazon expands this network, in other words, existing facilities serve as existing nodes for deliveries in further flung communities.

The scope of the environmental review conducted for an initial study must include the entire project. Specifically, “[a]ll phases of project planning, implementation, *and operation* must be considered in the initial study of the project.” (see CEQA Guidelines, § 15063, subd. (a)(1).) (emphasis added). The operations of the project include (1) sending vehicles--including trucks--into residential neighborhoods, where they will make frequent stops, idle, and take up

¹ See City of Gilroy Planning Commission Meeting, September 9, 2021

curbside space to make deliveries, (2) moving packages between existing and potentially planned facilities in this and other political jurisdictions; and (3) directly and indirectly result in development of other traffic-generating facilities, including other delivery stations, hubs and lockers. The potential impacts of these parts of the operation were not studied, nor has the applicant disclosed how this unique facility fits into a larger local and regional plan. This has implications both for air quality and transportation impacts.

The Transportation Analysis Should Not be “Screened” From VMT Analysis

The applicant relies on the size of the existing warehouse structure, at approximately 25,000 square feet, to avoid a vehicle miles traveled (VMT) analysis. The city of San Jose’s Transportation Analysis handbook, dated April 2020, indicates that “industrial infill” projects of less than 30,000 square feet of gross floor area may be “screened” from having to conduct a VMT analysis. (See Appendix C, Transportation Analysis). This exemption is based on an analogy drawn from the Institute for Transportation Engineers (ITE) Trip General Manual, 10th Edition: “An office project of this size typically generates the same number of daily trips – around 110 daily trips – as an industrial project of 30,000 square feet. [Fn4]: Based on vehicle-trip rates obtained from the ITE Trip Generation Handbook [*sic*], 10th Edition.”

This is an erroneous and misleading application of the “screen.” First, the ITE’s Trip Generation Manual 10th Edition does *not* include an industrial classification for delivery stations of the type proposed here--something else that was expressly acknowledged in the transportation analysis submitted for the Gilroy project (and reviewed by NV5, the same traffic engineers used

for this project).² The lack of this classification in the ITE Manual was a serious enough issue in the Gilroy application to compel the traffic engineers to resort to a bespoke in-house study conducted at various Amazon facilities, a study that ended up being “inconclusive.” As discussed further below, the proposed facility is a unique use, and relying on an exemption evaluating traditional (or at least, *classifiable* industrial uses) is an error. The City’s Transportation Analysis Handbook offers this exemption on the premise stated above: that a 30,000 square foot industrial use (and “employment use”) has predictable trip generation characteristics and that therefore “small infill” projects should not be required to perform a VMT analysis. As the Trip Generation Manual does not contain any trip generation analysis for a last-mile delivery station of the type being proposed, application of the Handbook screen is inappropriate.

Secondly, the design of the project makes the application of the screen inappropriate. While the project proposed 25,000 or so square feet of warehousing, the “canopy” area is a hybrid warehouse: per the applicant’s circulation plan, Figure 3-3, line haul trucks enter and exit from the south east corner, segregated to two lanes; the employees are one lane over; the bulk of the site is dedicated to allowing drivers to enter from the south west, and pick up parcels that have been moved on carts from the warehouse, to sit and await pickup under the canopy. While this is a creative exploitation of San Jose’s year-round above-freezing temperatures and 17 inches of annual rainfall on only about 60 days on average, it does not alter the actual *use and operation* of the site, which is what CEQA, and the VMT analysis, is meant to study.

The 30,000 square feet of *gross floor area* makes sense insofar as gross floor area is written to exclude “area used *exclusively* for vehicle parking or loading.”³ But the project here is

² *Id.*

³ City of San Jose Municipal Code, Section 17.84.108

using semi-covered space not exclusively for “vehicle parking or loading” but for storage, even if it is temporary storage, of packages under the canopies; circulation of employees to assist or facilitate storage and staging of deliveries.

Under this canopy, which is 3/4s of the size of the warehouse facility, trucks, seemingly four abreast and three deep, will be loaded up either by the delivery drivers themselves from the carts, or by warehouse employees. In any case, the truck queue is located approximately 45 feet from the building. There is a continuation of work from the warehouse throughout the canopy.

This is why the applicant will need to secure a special use permit for the “outdoor” use: in essence, a special use permit will allow space to be used for activity that will generate vehicle miles and trips by increasing the capacity of the site, while at the same time using the fact that this “use” falls outside of the gross floor area of the warehouse structure to avoid an adequate traffic study.

The purpose of “trip generation characteristics” is to evaluate the likely vehicle trips based on square footage of actual use on the property; excluding the canopy area subverts the purpose of CEQA.

The General Plan’s Air Quality Goals Have Not Been Met Because of Inadequate Study

For many of the reasons stated above, the air quality analysis has been insufficient. In particular, Policy M.S.-10.2, which requires consideration of “cumulative air quality impacts from proposed developments.” The nature of approving a node in a logistical system, which will have knowable, much less reasonably foreseeable, impacts, requires a higher level of analysis than is available here. The MND does not study the impact of “last mile” delivery despite this known impact from approval of the site. Last mile delivery includes vehicle queuing, but also

making of frequent stops, idling, and parking in residential areas. The knock-on effect of development of a node that will service potentially other delivery stations and hubs and locker spaces, which will themselves generate vehicle miles, are known quantities that should be studied for their cumulative impact.

Importantly, this is also something that should be studied under CEQA on its own: that is, while there is a conflict between the adoption of the MND and the General Plan objectives, there is also a failure to study cumulative impacts, which is a requirement of CEQA itself.

The Proposed Use is Fundamentally Different from a Typical Warehouse Use and Requires Different Analysis

The term “*last mile*” is sufficient to make clear that this project is not a standalone entity akin to a typical industrial-use warehouse whose impacts--particularly its transportation and air quality impacts--can be understood in isolation. The proverbial last mile is the distance from the delivery station either to hubs or to consumer’s homes. The purpose of the development is (1) to generate vehicle trips not only along arterial roads between set points, but from the facility into residential communities along variable routes and (2) decrease the delivery time from order to delivery, and thus increase the volume of sales.

As a threshold issue the City must decide whether the proposed Amazon last mile delivery station is distinct from a typical warehouse use. The foregoing information provides an answer: it clearly is. Warehouses, even warehouse that serve as modal hubs in a logistical network, are points in a fairly static and predictable chain; deliveries made from large regional facilities to retail outlets or delivering inputs to manufacturers. A “last mile” delivery station in a rapidly-expanding and interlocking network intended to send trucks and cars throughout

residential neighborhoods, make frequent stops, take up curbside space, etc., is of a different character from an industrial use warehouse.

The municipal code's definition of a warehouse does not contemplate the sort of "retail/industrial" hybrid use of this facility. Its impacts, in other words, are inherently unique. It is not akin to a warehouse, where there will be long-term storage; if this were the case, the structure would require different design to accommodate fire code provisions specific to warehousing. Nor is it akin to a "warehouse retail" use like a Sam's Club, where individual consumers shop at a large structure and take large quantities of goods home for themselves. Instead, the warehouse works as a logistical node where delivery drivers take requests from buyers in their home, and as quickly as the logistical system will allow, circulate constantly throughout the city to bring the *small* quantities of goods to homes. This hybrid industrial/use has a variety of impacts that need to be considered distinctly, and in order to do so, the City needs further information regarding how this facility will be situated within the larger "project" of Amazon retail delivery services.

Conclusion

For the foregoing reasons, we urge the City to require further study or, alternatively, to deny the mitigated negative declaration. Failure to adequately evaluate the regional logistical links, and the hybrid nature of the use, will not give a full picture of the cumulative impacts or the traffic impacts; constitutes improper piecemealing of the project; and subverts the purpose of CEQA.

Sincerely,

City of San Jose
Comment To File No. H20-041
September 20, 2021

Residents and Workers for a Safe San Jose