

## Keyon, David

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**From:** Mark Espinoza <[REDACTED]>  
**Sent:** Friday, October 06, 2017 10:23 AM  
**To:** Keyon, David  
**Subject:** Re: comments in opposition to 237 Industrial APN: 015-31-054

ORGANIZACION COMUNIDAD DE ALVISO

October 6, 2017

OCA supports and seconds all comments submitted by other agencies and individuals on the Draft EIR. Having reviewed the responses to those comments in the Final Revised EIR, we have the following concerns.

### Traffic

Even if SB 743 may technically not require a Transportation Demand Analysis at the present time, a TDA is necessary to meaningfully evaluate the project's impacts on traffic and circulation, as the Caltrans comment obviously suggests. The City should produce a TDA that evaluates whether Project-generated VMT per capita will be greater than 15% below baseline city-wide or regional values. If VMT will exceed this amount, mitigation will be required.

Since there will be significant impacts to the STN, Caltrans recommended the applicant make a "major contribution" to the SHOPP, for use in the future. The Final EIR dismissed this recommendation on grounds that mitigation would require freeway widening, which this Project alone cannot be required to fund or implement, and that the SHOPP program is voluntary. However, to the extent that a fair share contribution to the SHOPP could reasonably promote mitigation of this significant impact in the future, it constitutes "feasible mitigation" under CEQA and must be implemented.

VTA made a similar comment on the Draft EIR, explaining that "voluntary contributions to regional transportation improvements can be included as mitigation measures in CEQA documents even in the absence of a comprehensive funding strategy as described." The Final EIR's dismissal of this comment with the conclusory statement that "a voluntary contribution would not be legally binding and therefore, cannot be considered mitigation under CEQA" is disingenuous. The City could easily incorporate such a contribution into its conditions of approval for the Project, thereby making it legally binding.

### Greenhouse Gases

OCA concurs with the comments of Grasseti Environmental Consulting objecting to the lack of a project-specific GHG emissions analysis. The reliance on General Plan consistency to conclude satisfactory compliance with the City's GHG reduction strategy for build-out through 2020, and a finding of a significant and unavoidable impact thereafter, does not fulfill CEQA's mandate for good faith, reasoned analysis, or reflect a good-faith effort to "investigate and disclose all [the agency] reasonably can." As Grasseti observed, a project-level EIR may not use a finding of significant impacts from a program-level EIR covering an entire city and which includes no site- or project-specific information, as a substitute for conducting the project-specific analysis of impacts, and identifying project-specific mitigation. In other words, the lack of project-specific analysis has led improperly to a failure to consider and implement feasible mitigation measures to reduce GHG emissions by the Project itself.

### Air Quality/Health Risk/Noise Impacts from Truck Traffic

The EIR states: "It is expected that the majority of truck traffic generated by the project would originate from and utilize SR 237. The project truck routes would not include Los Esteros Road into Alviso." Alviso has a long record of experiencing truck traffic through its residential areas, despite repeated claims by industrial projects in the past that truck traffic would only use 237. OCA has submitted abundant documentation to the City of San Jose of truck traffic through its streets over the past several years.

Given that it is reasonably foreseeable - and indeed highly likely -- that this Project, with 108 truck loading bays under the light industrial option, will cause trucks to try to bypass congestion on Hwy 237 by traveling on surface streets through the Alviso community.

The City should require the developer to evaluate not only the traffic impacts of this likely outcome but, more importantly, the direct and cumulative health risks to sensitive receptors in the community, including children and the elderly, from truck-related diesel exhaust emissions over the lifetime of the Project.

### Health Risks to Alviso Students at New Agnews School

The Santa Clara Unified School District is scheduled to break ground 2019 on a new K-12 campus at 3500 Zanker Road, near the project site. Neither the Draft nor Final EIR appear to mention, let alone evaluate, potential impacts to the several hundred students at this school, including impacts from diesel particulate and other toxic air contaminant emissions from either the data center generators or

the large volume of trucks driving to and from the Project site, including along Zanker Road. The City needs to prepare and circulate a health risk assessment for future students and staff at this school of the direct and cumulative risks from exposure to airborne toxics.

Alternatives

As the environmentally superior alternative under CEQA, OCA joins Caltrans to urge the City adopt this alternative. Development under this alternative would be consistent with the City's General Plan; would not result in greater greenhouse gas (GHG) emissions impacts, conforming to the City's GHG Reduction Strategy; result in less soil disturbance; and generate less traffic.

There is insufficient compelling evidence in the EIR to support the conclusion that this alternative does not meet the objectives of the project and does not wholly mitigate the project's impacts. As Caltrans noted, partial mitigation is preferable to no mitigation whatsoever (i.e., a determination of "significant and unavoidable") and complete mitigation not required for this alternative to be considered a viable alternative.

Thank You

Mark Espinoza

OCA President

On Oct 6, 2017, at 10:13 AM, Mark Espinoza <[REDACTED]> wrote:

Fyi can you reply that you have received.

Begin forwarded message:

**From:** Mark Espinoza <[REDACTED]>  
**Subject:** Re: comments in opposition to 237 Industrial APN: 015-31-054  
**Date:** October 6, 2017 at 10:07:14 AM PDT  
**To:** Kieulan Pham <[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)>

Hi Kieulan,

Attached is OCA's opposition of the proposed development 237 industrial SCH# 2016052053

Please reply once received.

<ME comments to Planning Commission.pages>



**DEPARTMENT OF TRANSPORTATION**  
DISTRICT 4  
OFFICE OF TRANSIT AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D  
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*Making Conservation  
a California Way of Life.*

October 6, 2017

04-SCL-2017-00253  
SCL/237/PM 8.6  
SCH #: 2016052053  
GTS ID: 6676

Mr. David Keyon  
Department of Planning  
City of San Jose  
200 E. Santa Clara Street, Tower 3  
San Jose, CA 95113

Dear Mr. Keyon:

### **237 Industrial Center – First Amended Draft Environmental Impact Report**

This letter is in reply to the responses provided by the City of San Jose (City) in its First Amended Draft Environmental Impact Report (FEIR). Please see the California Department of Transportation (Caltrans) previous comment letter, dated July 17, 2017.

#### **Response to Comment B4**

*As stated in this comment, SB 743 removes Level of Service (LOS) as the common metric of traffic analyses under CEQA and replaces it with the metric Vehicle Miles Travelled (VMT). The State Office of Planning and Research (OPR) has not yet submitted new CEQA Transportation Guidelines to the Natural Resources Agency to begin the formal rulemaking process.*

*The City currently calculates VMT to determine impacts related to traffic-generated air quality and greenhouse gas (GHG) emissions, consistent with the General Plan. However, the City is not currently required by SB 743 to prepare a Travel Demand Analysis consistent with this comment. OPR does not expect to have completed the formal rulemaking process that will amend the State's CEQA Guidelines until mid-2019. San Jose expects to be in full compliance with SB 743, potentially, prior to mid-2019. For this reason, the project's TIA did not include a VMT analysis, nor was it required.*

#### **Reply to Response to Comment B4**

The Response to Comment B4 does not address the fact that this project's environmental documents have not been submitted to the MPO, as required under the California Environmental Quality Act (CEQA) Guidelines Section 15206(b). "Section 1.0 List of Agencies and Organizations to Whom Notice of Availability for the Draft EIR was Sent" of the FEIR does not

list the Metropolitan Transportation Commission (MTC) as having received notice of or commented on this project. As stated in our previous comments, this project's potential for statewide, regional, and areawide significance require this EIR be circulated to the MTA.

**Response to Comment B5 (in part)**

*As stated on page 219 of the DEIR, the project site is not served by any transit. The nearest transit stops are located south of SR-237; approximately one-half mile at the McCarthy Boulevard/Ranch Drive intersection and 1.5 miles at the Zanker Road/Tasman Drive intersection, as shown on Figure 3.13-2 of the DEIR. There are no sidewalks or paths linking the project site with these transit stops. The nearest Light Rail Transit station is located approximately 1.5 miles south of the project site.*

**Reply to Response to Comment B5**

Caltrans is pleased the City acknowledges in its Response that this project is wholly unserved by any transit, thereby confirming the need for this project to propose transit facilities to connect this project to the public transit network. As stated in Caltrans' previous comment letter and acknowledged in the EIR, this project is expected to have significant impacts to the State Transportation Network (STN) (see EIR Impact TRAN-2 and Impact TRAN(C)-1). It should include paths and sidewalks linking the project site with the nearest transit stops with sidewalks and paths and nearest Light Rail Transit station via shuttles and buses as mitigation for these impacts.

The City's Envision San Jose General Plan states, "Land Use and Transportation Policies... support a balanced transportation system and encourage a reduction in motor vehicle trips, particularly those in single-occupant vehicles." "They enhance facilities for walking, biking, and transit and create incentives for these modes of transportation while creating disincentives for driving. Driving will remain a significant transportation mode in San Jose. These Transportation Policies address this reality and seek to maximize the efficiency of San Jose's existing street system for personal and commercial vehicular use while still promoting complete streets that provide for pedestrian, bicycle, and public transit mode." It also states the following policies:

LU-1.2: Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

LU-1.3: Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

LU-1.7: Locate employee-intensive commercial and industrial uses within walking distance of transit stops. Encourage public transit providers to provide or increase services to areas with high concentrations of residents, workers, or visitors.

San Jose's Transportation Goals, Policies and Actions aim to:

- Establish circulation policies that increase bicycle, pedestrian, and transit travel, while reducing motor vehicle trips, to increase the City's share of travel by alternative transportation modes.
- Promote San Jose as a walking- and bicycling-first city by providing and prioritizing funding for projects that enhance and improve bicycle and pedestrian facilities.

According to the California Government Code Section 65302 and the California Complete Streets Act of 2008, San Jose's Circulation Element must plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.

TR-1.1: Accommodate and encourage use of non-automobile transportation modes to achieve San Jose's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).

TR-1.2: Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.

TR-1.3: Increase substantially the proportion of commute travel using modes other than the single-occupant vehicle.

TR-1.4: Through the entitlement process for new development, fund needed transportation improvements for all transportation modes, giving first consideration to improvement of bicycling, walking and transit facilities. Encourage investments that reduce vehicle travel demand.

TR-1.5: Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.

This project and environmental document conflict with the City's own stated policies, goals, and actions to be taken by failing to require this project to include new multimodal facilities, connecting it to nearby existing public transit facilities. Impacts by this project should be identified and mitigated in a manner that supports the use of public transit and multimodal transportation modes.

**Response to Comment B5**

*As stated on page 219 of the DEIR, the project site is not served by any transit. The nearest transit stops are located south of SR-237; approximately one-half mile at the McCarthy Boulevard/Ranch Drive intersection and 1.5 miles at the Zanker Road/Tasman Drive intersection, as shown on Figure 3.13-2 of the DEIR. There are no sidewalks or paths linking the project site with these transit stops. The nearest Light Rail Transit station is located approximately 1.5 miles south of the project site.*

**Reply to Response to Comment B5**

See Reply to Response to Comment B4.

**Response to Comment B6 (in part)**

*As stated on page 221 of the DEIR, mitigation of significant project impacts on freeway segments would require freeway widening to construct additional through lanes, thereby increasing freeway capacity. It is not feasible for an individual project to bear the responsibility for implementing such extensive transportation system improvements due to constraints in acquisition and cost of right-of-way. Furthermore, no comprehensive project to increase freeway capacity on the adjacent or nearby freeways (SR-237 and I-880) has been developed by Caltrans, so there are no identified improvement projects in which to pay fair share fees.*

**Reply to Response to Comment B6**

The statement that there are no comprehensive projects to increase capacity on SR 237 and I-880 is incorrect. The project can contribute a fair share payment to the SR 237 Express Lanes Phase II and SR 237 Auxiliary Lanes between Zanker Road and McCarthy Boulevard. Voluntary contributions to regional transportation improvements can be included as feasible mitigation measures in CEQA documents even in the absence of a comprehensive funding strategy. As stated previously, voluntary contributions are legally binding and fully enforceable through permit conditions, agreements or other legally-binding instruments under control of the City and can be considered mitigation under CEQA.

In Response C4 to the VTA's *Comment C4 Freeway Impacts*, the City refers to Response B6 and states, "A voluntary contribution to regional transportation improvements is not a feasible mitigation measure under CEQA. CEQA requires that mitigation measures be fully enforceable through permit conditions, agreements, and other legally binding instruments (Section 15126.4(2)). A voluntary contribution would not be legally binding and therefore, cannot be considered mitigation under CEQA." A voluntary contribution to regional transportation improvements and other potential mitigation that includes the requirements of other agencies such as Caltrans are fully enforceable under CEQA through permit conditions, agreements, or other legally-binding instruments under the control of the City. However, the City has not accepted Caltrans invitations to enter such agreements.

Mr. David Keyon/City of San Jose

October 6, 2017

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Should you have any questions regarding this letter, please contact Brian Ashurst at (510) 286-5505 or [brian.ashurst@dot.ca.gov](mailto:brian.ashurst@dot.ca.gov).

Sincerely,

A black rectangular redaction box covers the signature area. A blue scribble is visible to the left of the box.

PATRICIA MAURICE  
District Branch Chief  
Local Development - Intergovernmental Review

c: Scott Morgan, State Clearinghouse – electronic copy  
Robert Swierk, VTA – electronic copy



## Keyon, David

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**From:** Tam, Tracy  
**Sent:** Wednesday, October 11, 2017 7:43 AM  
**To:** Mendrin, Shaunn; Keyon, David; Do, Sylvia  
**Cc:** Hughey, Rosalynn  
**Subject:** FW: Oct. 11, 2017 Agenda Item 5a. – Microsoft/Cilker 237 Industrial Center  
**Attachments:** Water SupplyAppendix%20L%20-%20Water%20Supply%20Assessment.pdf

fyi

**TRACY TAM** | Planner  
City of San Jose | Planning Division | PBCE  
[tracy.tam@sanjoseca.gov](mailto:tracy.tam@sanjoseca.gov) | (408) 535-3839  
200 E. Santa Clara Street, San Jose, CA 95113

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**From:** Jean Marlowe [mailto: ]  
**Sent:** Wednesday, October 11, 2017 12:47 AM  
**To:** Jean Marlowe [mailto: ]; Planning Commission 2 <PlanningCom2@sanjoseca.gov>; Planning Commission 3 <PlanningCom3@sanjoseca.gov>; Planning Commission 4 <PlanningCom4@sanjoseca.gov>; Planning Commission 5 <PlanningCom5@sanjoseca.gov>; Planning Commission 6 <PlanningCom6@sanjoseca.gov>; Planning Commission 1 <PlanningCom1@sanjoseca.gov>; Tam, Tracy <tracy.tam@sanjoseca.gov>; Klein, Nanci <Nanci.Klein@sanjoseca.gov>  
**Cc:** Planning Commission 7 <PlanningCom7@sanjoseca.gov>  
**Subject:** Oct. 11, 2017 Agenda Item 5a. – Microsoft/Cilker 237 Industrial Center

Oct. 11, 2017 Agenda Item 5a. – Microsoft/Cilker 237 Industrial Center

Hello Planning Commissioners,

My name is Jean Marlowe, President of RONA (River Oaks Neighborhood Association)

I am requesting a deferral on Item 5a. C15-054, SP16-053,V17-004

It has come to my attention, that the city has required, as a condition of approval for the project, the purchase and dedication of a 2,500-square foot property for SJMWS's future construction of a potable water well. (EIR Appendix L *Water Supply Assessment*, Page 14) Microsoft has identified our park, Iris Chang Park, as a location for this well in NSJ.

The park was approved years ago. It has already been designed, approved and funded for construction It has been held up for various reason, but it is now on track to be built - we thought. We were never notified that the city planned to take away part of our park for this well as well as parking lot for access to the well, and redesign the park.

I am requesting a deferral, because I feel the city should have gotten in touch with the neighbors regarding this issue. Our community deserves to know what is going on. In addition, we should have a chance see what the new design looks like for the new park, since the park is now affected by this condition.

Furthermore, I have questions as to why our park was chosen for this well. There are already 4 wells on the 237 site now, of which 2 are already backup. (Final Water Assessment for the Industrial Project Report dated May 2017 (See Attachment)) In addition, the City of San Jose already has a SJMWS well about 200 yards from Iris Chang Park on the creek levee. This well number is #2 785 Ovation Ct. If there needs to be another well, why not have it on the creek levee, instead of taking park space?

RONA is not for this well being placed on the Iris Chang Park land.

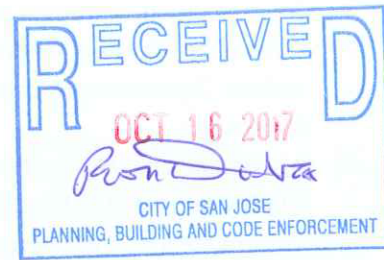
Thank you,  
Jean Marlowe

To  
October 16, 2017

Ada E. Márquez  
[REDACTED]

City Council  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

City Council of  
Administrative  
Record, 1



RE: *Conforming Rezoning, Special Use Permit and Development Exception for Real Property Located at 1657 Alviso-Milpitas Road. CEQA: 237 Industrial Center Environmental Impact Report. Planning Commission recommends approval (7-0-0). (Planning, Building and Code Enforcement) C15-054, SP16-053 & V17-004 - Council District 4*

Dear Honorable City Councilmembers, Ms. Davis, Ms. Arenas, Mr. Jones, Mr. Peralez, Mr. Nguyen, Mr. Rocha, Mr. Jimenez, Mr. Diep, Mr. Khamis, and Mayor Liccardo and Vice Mayor Carrasco:

This letter documenting numerous examples of inadequacies and violations per CEQA do not equate to the lack of support to Microsoft's presence in Alviso. However, the City of San Jose has the ethical and legal obligation to comply with CEQA, protect the environment and human health per CEQA, and provide the fullest protection via feasible mitigations per CEQA. Most important, Microsoft has the legal obligation to provide community benefits for the residents of Alviso and the City of San Jose, not only through mitigation measures for the physical impacts; but also has a good neighbor to provide social and economic benefits to offset their project's physical impacts.

As a public school teacher and a neighbor residing in District 5, I hope that our leader will take into consideration our City's long term future of our environment.

I am submitting an Appeal of an Environmental Determination of the Planning Commissioners' recommendation on October 11<sup>th</sup>, 2017 to City Council. Since City Council is the final decision-making body, please reconsider the following:

- (a) Adopt a resolution (i) approving the Water Supply Assessment and, then, (ii) certifying the 237 Industrial Center Environmental Impact Report and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a Statement of Overriding Considerations and Mitigation, Monitoring and Reporting Program, all in accordance to the California Environmental Quality, Act, as amended.
- (b) Consideration of an ordinance of the City of San José Rezoning an approximately 64.59 gross acre site, located northwest of Highway 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road), from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District.
- (b) Consideration of an ordinance of the City of San José Rezoning an approximately 64.59 gross acre site, located northwest of Highway 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road), from **the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District** (Cilker Carl A And Kathleen C Trustee, Owners).

The City of San Jose's 237 Industrial Central documents and City's responses to the DEIR submitted by numerous government agencies are incomplete and do not provide substantial evidence to prove otherwise (Draft EIR, First Amendment to Draft EIR, Responses to EIR Comments and Text Edits). The following are only some examples of significant legal inadequacies by the City of San Jose:

- 1) Inadequate Project Description and project objectives per CEQA. Per CEQA, the project description must include permits required and analyze the environmental impacts.
- 2) During the Planning Commission Hearing on October 11th, 2017, City staff did not mention or address Oganizacion Comunidad de Alviso (10/06/2107) comments, which was submitted before the hearing.
- 3) Inadequate analyses and mitigations for Biological Resources, Riparian Corridor Policy, Air Quality and Human Health, Greenhouses Gases/ CA Climate Change policies and regulations, Transportation, Agriculture, Energy Impacts per Appendix F per CEQA, not conformance to the Alviso Master Plan, stormwater runoff, hazards/hazardous materials, geological impacts and impacts, *others.*
- 4) Inadequate and lack of Cumulative Impact analyses in the DEIR/ First Amendment, and text revisions
- 5) Staff inadequate and inaccurate CEQA responses to public comments on October 11, 2017.
- 6) Several technical reports lacked the data output sheets to confirm the assumptions, methodologies, factor, and variables. As an environmental scientist, I have the legal right to confirm their scientific methods. For example, the technical report for Air Quality did not analyze mobile (operational) long term sources and the data center, and cumulatively.
- 7) Inadequate Significance Level and Disclosure: Community Risk and Hazard Impacts
- 8) BIO- Fees to the SCHCP is inadequate and will not mitigate loss of foraging habitat by this project. See errors on page 11, 12, and 14 . *Habitat (acres) can be added to city of SJ WPCP bufferlands or nearby.*

The community of Alviso is experiencing significant development along First Street, Nortech Parkway, Gold Street, and across Highway 237. According to the Office of Environmental Health Hazard Assessment (OEHHA) CalEnviroScreen 3.0 Results<sup>1</sup>, Alviso has a 71-80 percentile indicating a higher relative pollution burden. The City of San Jose must be transparent of its decisions that balance the local economy, environment, and health. {Government Code section 11135, subdivision (a); Pub. Res. Code, §21083, subd. (b)(3); CEQA Guidelines §15126.2} The BAAQMD Care Program identified a significant part of the City of San Jose with vulnerable communities that have disproportionate pollution levels and significant health effects. The residents of Alviso have the right to know the cumulative health impacts and adequate mitigation measures.<sup>2</sup> The City of San Jose has an ethical and legal obligation to protect all citizens and provide equal access to public participation. Although this site is a private development, the City of San Jose must also consider the long term environmental effects of both the physical environment and human beings.

Thank you,  
 Ada E. Márquez  
 Ccd: BAAQMD, Santa Clara County, CalTrans, VTA, the residents of Alviso

<https://oag.ca.gov/environment/communities/justice>; <https://oag.ca.gov/environment/ceqa>  
 Banning Ranch Conservancy v. City of Newport Beach  
 Cleveland v. SANDAG  
 CEQA Statutes and Guidelines 2017