


CITY COUNCIL ACTION REQUEST

Department(s): Transportation	CEQA: File No. PP18-044 Charcot Avenue Extension Project EIR Adopted by Council 6/9/2020 under Resolution No. 79559	Coordination: DOT, PBCE, CAO, and CMO - Budget Office	Dept. Approval: /s/ John Ristow
Council District(s): 4			CMO Approval: 

SUBJECT: CHARCOT AVENUE EXTENSION PROJECT ENVIRONMENTAL IMPACT REPORT DECERTIFICATION

RECOMMENDATION:

- (a) Approve a Settlement Agreement in the lawsuit entitled *Protecting the Children of Orchard School v. City of San José* whereby Petitioner agrees to dismiss the CEQA lawsuit against the City of San José in exchange for City Council rescinding the Charcot Avenue Extension Project Environmental Impact Report and payment of fees and costs in the amount of \$115,000.
- (b) Adopt a resolution to repeal City Council Resolution No. 79559 adopted on June 9, 2020 to decertify the Charcot Avenue Extension Project Environmental Impact Report.

BASIS FOR RECOMMENDATION:

The Charcot Avenue Extension (Project) proposed to extend Charcot Avenue from Paragon Drive on the east, over Interstate 880 to Oakland Road on the west in the North San José area. An Environmental Impact Report (EIR) for the Project was completed and approved on June 9, 2020.

On September 1, 2020, Protecting the Children of Orchard School (Petitioner) filed a California Environmental Quality Act (CEQA) lawsuit against the City of San José (City). On February 1, 2022, as part of Item 5.2 on the City Council agenda, the City Council directed the City Manager to no longer move forward with the construction of the Project and to take any steps necessary to cease progress on the project. Staff has since ceased all work on the Project and has moved to settle the lawsuit.

City staff recommends approval of the Settlement Agreement, which requires the Petitioner to dismiss the lawsuit in exchange for rescission of City Council’s approval of the Project, decertification of the Project EIR, and payment of Petitioner’s attorneys’ fees and costs in the amount of \$115,000. To meet the conditions of the Settlement Agreement, City staff recommends the City Council repeal Resolution No. 79559 adopted by City Council on June 9, 2020 certifying the Charcot Avenue Extension EIR.

Approval of the recommended actions will settle the lawsuit and decertify the Project EIR.

Climate Smart San José: The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

Commission Recommendation/Input: No commission recommendation or input is associated with this action.

COST AND FUNDING SOURCE:

On December 2, 2021, the Santa Clara Valley Transportation Authority (VTA) board voted to reallocate \$9.5 million of Measure B funding that was set aside for the Project to other North San José highway projects eligible for Measure B. On December 7, 2021, City Council directed City staff to work with VTA to reallocate the remaining \$27.5 million of Measure B funding set aside for the Project to other North San José highway projects during the next biennial VTA Measure B budget cycle. In addition, City Council directed the City Manager to divert the remaining \$3.3 million in budgeted Capital Improvement Program funds reserved for the Project to other North San José highway projects.

The table below identifies the fund and appropriation for the payment of Petitioner's attorney's fees and costs recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	Amount for Contract	2021-2022 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
349	7690	North San José Improvement – 880/Charcot	\$3,417,389	\$115,000	694	10/19/2021, 30682

FOR QUESTIONS CONTACT: Zahir Gulzadah, Division Manager, (408) 975-3257