

From: [PlanningSupportStaff](#)
To: [Le, Thai-Chau](#)
Subject: FW: St. James Park Capital Vision and Levitt Pavilion Project
Date: Monday, October 26, 2020 10:39:31 AM

From: Finn Jenssen [REDACTED]
Sent: Saturday, October 24, 2020 8:19 PM
To: PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>
Subject: St. James Park Capital Vision and Levitt Pavilion Project

[External Email]

Dear City Leaders,

I am interested in San Jose's history and our original St. James Historical Park. The changes along with making it a musical venue will change the Park, our historical culture and have effects on the surrounding residents and institutions. The proposed changes have shades of the Cultural Revolution that happened in China in the mid 1960's where historical locations were changed and many historical artifacts were destroyed. Some of you may have had relatives that lived through that era in areas of Asia or elsewhere where revolutionary governments sought to rewrite history with cultural changes.

It is important for you to know that there are many in San Jose who do not want the proposed cultural changes.

There are better locations for the proposed venue.

Finn Jenssen

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Fw: Comment - Today's City Council Meeting Item 7.2 20-1283

City Clerk

Tue 10/27/2020 3:31 PM

To: Agendadesk <[REDACTED]>

From: William Gates <[REDACTED]>
Sent: Tuesday, October 27, 2020 9:47 AM
To: City Clerk <[REDACTED]>
Subject: Comment - Today's City Council Meeting Item 7.2 20-1283

[External Email]

Dear Honorable Mayor and City Council Members,

The St. James Park Capital Vision and Performing Arts Pavilion Project EIR fails to adequately respond to my Draft EIR comment letters noted below for your review. In particular, my July 6, 2020 letter (AA) has a relevant comment that the project's intense uses are inconsistent with the General Plan and the response is that it is not an environmental issue. That is incorrect; the inconsistency relates to environmental impacts to be addressed by CEQA. Also, my letter of July 1 (P) states among other things that "the Project violates numerous City of San Jose Ordinances contained in Chapter 13.48, entitled "Historic Preservation." No response to that statement is made. In fact, the project requires no impact to any feature or park structure, which is not excused by a finding of consistency with the ordinance purpose. In this case, any such finding would be unsupported; regardless it is not enough to comply with the ordinance. The EIR responses also fail to adequately address the viability of project alternatives and rely on a finding of significant environmental impact to excuse analysis of the extent of impacts and available mitigations and alternatives.

I therefore request that today's recommendations regarding this project be deferred pending further review of the violations noted above.

Thank you for your consideration.

William Gates, Attorney, GED Law

AA. William "Bill" Gates (dated July 6, 2020)

Comment AA.1: The dramatic increases of events at St. James Park, envisioned by the Draft EIR, Dated May, 2020, must be consistent with the City of San Jose General Plan. The General Plan designation "Open Space, Park & Habitat", Chapter 5, Page 18 reads: "Lands in this designation are typically devoted to open space, parks, recreation areas, trails, habitat buffers, nature preserves and other permanent open space areas". This designation is intended for "low intensity uses" and the St. James "Capital Vision" is therefore inconsistent with the General plan in that uses contemplate up to 5,000 people attending up to 300 events per year in the park.

Response AA.1: This comment does not raise any issues under CEQA or with the adequacy of the Draft EIR; therefore, no further response is required.

P. William “Bill” Gates (dated July 1, 2020)

Comment P.1: This letter is submitted on behalf of my client, the Sainte Claire Historic Preservation Foundation, an IRC 501(c)(3) Nonprofit Charitable Organization, in response to the Draft Environmental Impact Report regarding the “St. James Park Capital Vision and Performing Arts Pavilion Project” (“the Project”), dated May, 2020.

The City of San Jose proposes to renovate St. James Park by implementing physical changes that would result in the demolition of the landscaping and most of the existing improvements at the park. In doing so, the Project must comply with the following:

- 1) The U.S. Secretary of Interior’s Standards for the Treatment of Historic Properties;
- 2) The California Environmental Quality Control Act (CEQA);
- 3) The San Jose Envision 2040 General Plan Goals and Policies for historic districts;
- 4) The 2004 Draft San Jose Downtown Historic Guidelines; and
- 5) The St. James Square Historic District Design Guidelines of 1989.

The Project is neither in compliance with nor consistent with any of the above, as indicated by the Draft EIR and the conclusions of numerous experts, retained by the City of San Jose, to assess the Project. In addition, the Project violates numerous City of San Jose Ordinances contained in Chapter 13.48, entitled “Historic Preservation.”

The EIR describes several structures designed as an outdoor music and performance venue for up to 5,000 spectators at a time. The structures described include four new buildings, one of which is 1,800 square feet and another which measures 1,250 square feet, and a Performing Arts Pavilion comprised of an approximately 4,000 square foot stage and a canopy 18 to 35 feet tall.

At the outset, the City must determine whether each element of the Project complies with all applicable ordinances, standards, regulations, and guidelines. The outcomes of these assessments are binary; each element of the Project either meets applicable legal standards or it does not. Our review of the various documents prepared by the City’s consultants, including (1) Archives and Architecture, LLC’s “Rehabilitation Project Assessment, St. James Park” and (2) “Historic Resource Project Assessment; St. James Park Capital Vision and Performing Arts Pavilion Project,” reveals that the Project elements do not comply with applicable standards. Namely, the consultants’ assessments describe the Project elements as being “not fully consistent with,” “not fully compatible with,” and “not fully meeting” the applicable standards. These descriptors are analogous to describing a person as “a bit dead,” or “a tad pregnant.” Either a person is dead or alive or is pregnant or not. Since this Project does not meet the requirements of our laws and guidelines, and it must be described as such; adding qualifiers does not remedy the Project’s flaws, and allowing the Project to continue on that basis ignores their importance of laws, standards and guidelines and violates the rights of the public to enjoy a valuable and historic asset.

Response P.1: The determination of consistency can vary by degree, as is indicated in the conclusions of the historic assessment and the determination of consistency is used to conclude the level of impact, if any, under CEQA. Neither the City nor the Secretary of the Interior required complete and absolute compliance with their standards and guidelines. Substantial compliance is necessary to make finding of less than significant under CEQA. Because of the degree to which a project meets or does not meet each of the standards and/or guidelines, the qualified historian determines if a project is substantially compliant. The Draft EIR (Section 3.5.2.1) clearly identifies a significant and unavoidable impact on the historic integrity of the park and the district because it was determined that the proposed design was not substantially consistent with the applicable standards.

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October 26, 2020

Honorable Sam Liccardo, Mayor
and Members of the City Council
City of San José

via email [REDACTED]

Subject: Public Hearing, October 27, 2020
File 20-1283, Item 7.2: Actions Related to the St. James Park Capital
Vision and Performing Arts Pavilion Project
Historic Preservation Permit

Dear Mayor Liccardo and Members of the City Council:

On behalf of the Sainte Claire Historic Preservation Foundation, I write to underscore the Foundation's longstanding, detailed objections (also described in my recent letter to Deputy Planning Director Robert Manford) to this Council's issuance of a historic preservation (HP) permit and related actions to further the St. James Park Capital Vision and Performing Arts Pavilion Project. As currently proposed, the inclusion of the oversized Pavilion with attendant overly-intense new events is illegally inconsistent with the city's codified Historic Preservation Ordinance. The city's approvals would also violate mandates of the California Environmental Quality Act.

While this project has been pending for years, its approval will have permanent impacts and necessarily awaits compliance with local and state law. City staff concedes significant environmental impacts to important historic resources and their environs. To comply with CEQA and Municipal Code Chapter 13.48.240, the Foundation respectfully requests that the Council *not approve the project as proposed* and commit to *feasible revisions to revitalize St. James Park in compliance with protective laws and policies*.

Significant Environmental Impacts

As you know, among the proposed findings before you are some that acknowledge significant environmental impacts relating to the new Pavilion uses that threaten the Park's historic integrity. In summary, quoting the findings verbatim:

Cultural Resources Impact CUL-1. "Implementation of the Project would impact the historic integrity of St. James Park and the St. James Park Historic District."
Finding after Mitigation: "[T]here are no feasible mitigation measures that would reduce the impact to a less than significant level. (**Significant Unavoidable**)"
Facts in Support of Finding: "[T]he Project would affect the historic significance of the site, change eligibility [to the National Register of Historic Places], remove character-defining features, and/or compromise integrity of the Project site and *the Project would have a significant impact on the historic integrity of the park and the district.*"

Noise Impact NOI-1. “Operation of the proposed performing arts pavilion portion of the Project would result in interior noise levels above the City’s residential interior noise standard of 45 dBA DNL.”

Finding after Mitigation: “... [T]he operation of the pavilion would still result in interior noise levels of 45 to 50 dBA within the residences along St. James Street. **(Significant Unavoidable Impact)**”

Facts in Support of Finding: “Project features will reduce noise impacts, such as large concerts (*define*)* ending by 8:00 PM, limits on sound system outputs, continuous noise monitoring during operations of certain sized (*specify size*)*¹ events, retrofitting the most sensitive noise receptors such as the Trinity Church ... However, ... it does not ensure that the Project would not result in a substantial increase in interior noise levels at the nearest noise-sensitive receptors ... [T]he proposed pavilion component of the overall Project would result in operational [significant] noise to the City’s residential interior noise standards, even with the limitation of usable hours.”

Aesthetic Impact AES-1: “Implementation of the Project would impact the visual character of the site”

Finding after Mitigation: “[T]he Project would change the visual character of the site and the buildings and, as designed, would be constructed in a manner that would impact the historic significance of the park and the St. James Historic District and ... impact the visual character of the site. **(Significant Unavoidable)**”

Facts in Support of Finding: “...[A]bsent a redesign of the Project that would be fully consistent with the *Secretary of the Interior’s Standards for Rehabilitation*, the proposed mitigation measures would ... still result in a significant unavoidable impact.”

Recreation Impact REC-1: “The proposed changes to St. James Park would impact the visual character and historic integrity of the park and would result in an operational noise impact.”

Finding after Mitigation: “... [T]he Project would be a recreational facility that would result in adverse physical effects to the environment. **(Significant Unavoidable)**”

Facts in Support of Finding: “... [T]he overall physical changes to the park is [*sic*] connected with the significance in change in visual character of the Park. As the project was found to have significant unavoidable impacts to Cultural Resources, Aesthetics, and Noise ... the proposed recreational facility would also result in an adverse physical effect to the environment overall.”

Historic Preservation Permit

Municipal Code section 13.48.240 mandates that after considering the historic significance of the Park and appurtenant fixtures including *parking, site plan, landscaping, relationship of new construction to other park buildings, the street or public way, or other buildings or structures*, the Council has 2 choices:

¹ The findings as published in the final Council agenda on October 27 are inadequate as they leave “large concerts” and event “sizes” undefined.

- The Council *may issue* the HP permit if the work approved “will *not* be detrimental to an historic district *or to a structure or feature* of significant architectural, cultural, historical, aesthetic, or engineering interest or value *and* is consistent with the spirit and purposes of this chapter...”
- The Council *shall deny* the permit if the work approved “will be detrimental to an historic district *or to a structure or feature* of significant architectural, cultural, historical, aesthetic or engineering interest or value *or* is inconsistent with the purposes of this chapter, despite [imposed] conditions. The only exception is hardship proven under section 260 that is not relevant here.

The Council is aware that — as reflected in the project EIR and fairly conceded in its staff reports — construction and implementation of the project *could* damage existing historic elements and *would impact* the historic integrity of St. James Park and the St. James Park Historic District. The city concedes that the project is *not* in substantial conformance with the general character and surface treatment (including fenestration, materials, detailing, and color) of the *St. James Square Historic District Guidelines*. The project does not conform with the *Secretary of the Interior’s Standards for Rehabilitation* that the city applies to properties affecting valued historic resources. The non-conformance extends to proposed new structures and even the “overall design.”

Applying the plain meaning of the city’s Municipal Code Chapter 13.48.240, the Council’s discretion to approve this HP permit is limited. Because the project *would be* detrimental to *a structure or feature* of the Park, the Council must deny the permit. The project’s conceded significant impacts are *not* cured by a proposed finding of project consistency with the ordinance’s purposes: as explained above, an HP permit must be denied if it would result *either* in detrimental impact to a Park structure or feature *or* inconsistency with the purposes of the HP ordinance.

Failure to Comply with CEQA’s Mandates

Responses to Comments. The EIR is inadequate, as the Sainte Claire Historic Foundation and so many residents have expressed. Among other inadequacies pointed out in the record, a significant problem is its failure to respond to comments, including from nearby San José residents and members of local churches and facilities like the Sainte Claire Club that would be substantially affected by events in the historic Park.

The EIR failed to adequately respond to comments relating to parking, including but not limited to comment letters by Jacqueline Snell, James Dawson, Gordon McDonald, Victoria Baugh, Tiffany Crawford, and Jeff Rampe. The EIR’s general *non-*response was that CEQA does not require analysis of parking. However, recent case law does not so state and Section 13.48.240, quoted above, specifically *requires this Council to consider parking in the historic district*. EIR analysis must follow.

Other areas inadequately addressed in the EIR’s responses to comments include significant unmitigated noise impacts, the need for adequate toilet facilities, and the feasible relocation of the proposed Pavilion to Discovery Meadow to avoid its significant impacts to the historic Park and environs. Conceding that noise will exceed

codified standards and cause significant impacts due to the changed use of the site to include the intense uses of the proposed Pavilion does not excuse full analysis of noise impacts and mitigation in the EIR, as raised in the comments.

Adoption of Feasible Alternatives. From its inception, CEQA has protected the 'built' environment along with the natural environment. (Pub. Resources Code, § 21001, subd. (b) ["... it is the policy of the state to take all action necessary to provide the people of this state with ...enjoyment of aesthetic, natural, scenic, and historic environmental qualities ..."].) As the California Supreme Court emphasized in *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 183-184, it is "the policy of the state to 'preserve ... examples of the major periods of California history.'" (Pub. Resources Code, § 21001, subd.(c).) Accordingly, the CEQA definition of "environment" includes "objects of historic or aesthetic significance." (Pub. Resources Code, § 21060.5.)

CEQA has substantive mandates. The Legislature has declared "the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ..." (Pub. Resources Code, § 21002, see also §§ 21061.1, 21081.) The Supreme Court ruled in *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 123 that "a public agency must also consider measures that might mitigate a project's adverse environmental impact, and *adopt them if feasible*" (id. at 123) due to "CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives ..."

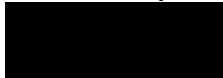
Because the project as proposed would have significant environmental impacts, the Council thus cannot approve it if there are any feasible alternatives. The EIR provides a particularly appropriate alternative. The "Discovery Meadow Alternative Pavilion Location," meets "most" of the EIR's stated project objectives. The city's revised finding calling the Pavilion a "main" objective does not make it so; it is one of many EIR objectives proposed in combination to revitalize the Park. If the Pavilion is relocated to add to the city's performance venues, the Park would still be revitalized.

At the Director's hearing on the HP permit last week, city staff was asked by a citizen speaker what the process would be for relocating the Pavilion to Discovery Meadow to avoid significant impacts to the Park and environs. Staff's thoughtful response was essentially that it could seek additional public input in determining how to alter the project. That is what must happen now, both to comply with CEQA and meet the mandates of the city's Historic Preservation Ordinance.

Please do not approve the project as proposed.

Thank you for your consideration.

Sincerely,


Susan Brandt-Hawley