



August 1, 2022

To: Rules and Open Government Committee  
City of San Jose

Re: Item C1: Quick-build Interim Housing Considerations: Noble avenue

Dear Chair Jones and Council members,

The Santa Clara Valley Audubon Society (SCVAS) is one of the largest National Audubon Society chapters in California. Our 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. The John Gross Percolation Ponds and open space surrounding them are of interest to our members who enjoy birding along the Penitencia Creek Park, are concerned with the loss open space near water features, and believe that the undeveloped areas of the park should fulfill their original intent of providing habitat for wildlife and enjoyment opportunities to the public. Many species of migratory birds use the area in winter, and so do our members who appreciate the abundance of birds and the natural setting<sup>1</sup>. As our climate changes, and population increases, parks are more important than ever before. We write to ask the City of San Jose to find paved urban areas to use for housing people in need, and not develop a natural city park for this purpose.

We write in Support of Council Member Cohen's memo which asks for work on this site to be paused while exploring the legitimacy of using this park for this purpose, providing transparency and opportunity for the community to engage, and vetting alternative sites. We also support Council member Cohen's memo looking to explore privately owned properties and consider public private partnerships, and to remove arbitrary, internal deadlines that limit staff's ability to perform the necessary due diligence in identifying practical EIHC sites in District 4.

The San Jose City charter SECTION 1700 defines "'public parks" means any and all lands of the City which have been or are dedicated, improved and opened to the public for public park purposes." The land proposed for a tiny home facility on Noble Ave. is adjacent to the Dr. Robert Gross Percolation Ponds and is an integral part of the Penitencia Creek County Park.

The creation of the Penitencia Creek Park was a joint effort that started almost 50 years ago. Recognizing that the area surrounding Penitencia Creek is of the most park-deficient areas in the county, Santa Clara County, the City of San Jose, Santa Clara County Water District and the Berryessa and East Side School Districts prepared the Penitencia Creek County Park Plan<sup>2</sup> (Figure 1). The 1977 County Park Plan looked to create a regional park in the Alum Rock and Berryessa area, to include the Dr. Robert Gross percolation ponds and Penitencia Creek in a "chain of lakes" that encompassed 225 acres on school lands, 63 acres on Water District land and 770 acres owned by the

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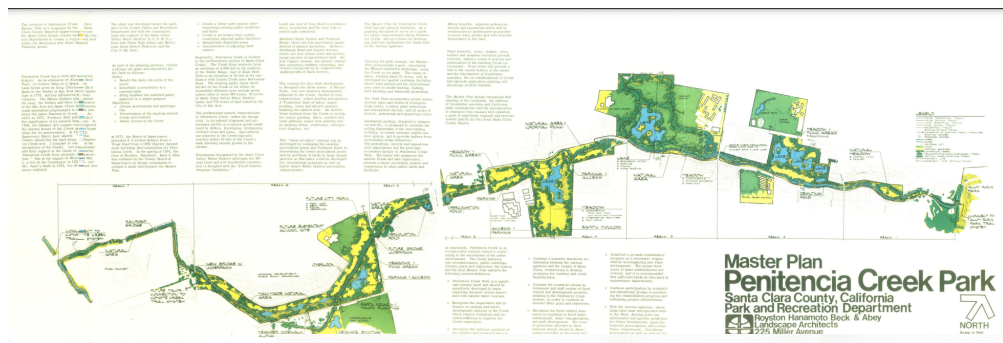
<sup>1</sup> <https://scvas.org/self-guided-birding/penitencia-creek-trail-fallwinter>

<sup>2</sup> <https://parks.sccgov.org/sites/g/files/exjcpb961/files/penitencia-creek-county-park-master-plan-july-1977.pdf>

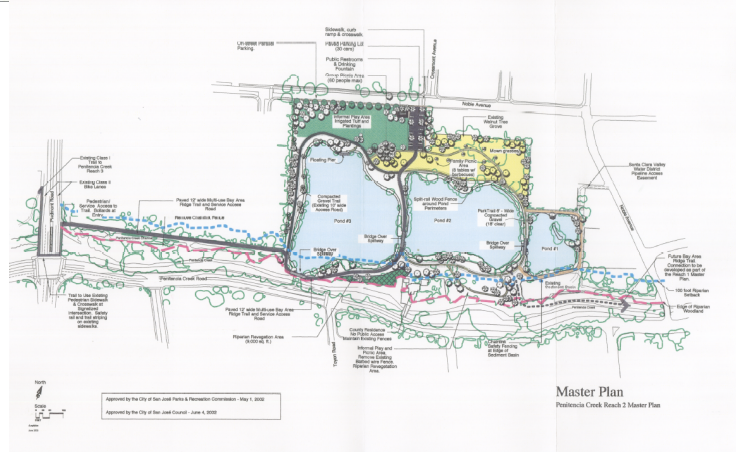
City of San Jose. San Jose followed with a detailed Master Plan for Reach 2<sup>3</sup> (Figure 2), and the San Jose City Council approved the Penitencia Creek Park Master Plan unanimously on June 4, 2002<sup>4</sup>. This plan included reference to the 1981 tri-party agreement (Santa Clara County, City of San Jose and the Santa Clara Valley Water District) (Figure 3) which looks to develop the Penitencia creek chain for “ park, recreation, open space, flood protection and water conservation purposes”.

This approval by council forms clearly indicates the dedication of the park. Land purchase for the purpose of creating a park<sup>5</sup>, and joint use agreements with Santa Clara County and the Water District also demonstrate dedication. As envisioned, both paved and “natural soil”<sup>6</sup> trails were developed in the park (Figure 3), which has been open to the public and used as a park since that time. The City of San Jose has placed signs on the property asking residents and visitors to respect this designation (Figure 4). Neighbors have been involved in stewardship activities at the site, including the installation of irrigation and tree plantings with Our City Forest (Mr. Karl Ball, Personal Information).

**Figure 1:** Penitencia Creek County Park Plan<sup>7</sup>



**Figure 2:** Penitencia Creek Reach 2 Master Plan, approved by San Jose City Council in 2002.



<sup>3</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/20651/636687674429930000>

<sup>4</sup> [http://www3.sanjoseca.gov/clerk/2002\\_CnclMins/06-04-02%20Min.htm](http://www3.sanjoseca.gov/clerk/2002_CnclMins/06-04-02%20Min.htm)

<sup>5</sup> <https://oac.cdlib.org/findaid/ark:/13030/c8280fc6/> shows the purchase of land from Kiperash Family Farm “to complete Penitencia Creek Park”.

<sup>6</sup> On Page 15 of the Penitencia Creek County Park plan, Trail Criteria included paved trails for bikes, and “natural soil with good drainage” for pedestrians (page 15). SCVAS self-guided tour describes these trails, “The trails are made from gravel and offer easy, level walking”.

<sup>7</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/20643/636687674417770000>

Figure 3: from page 3-4 of Jun 2002 master plan

## Current Agency Operations

1981 Penitencia Creek Park Joint Parties Agreement. The City of San José, the County of Santa Clara County and the Santa Clara County Valley Water District entered into a tri-party agreement on July 6, 1981 for the joint use and development of the Penitencia Park Chain for park, recreation, open space, flood protection and water conservation purposes.

Penitencia Creek Reach 2 Park Master Plan  
Narrative Report

3  
June 2002

This agreement was amended and updated on February 3, 1987 and then again on October 22, 1992.

### Trails Criteria:

1. Separate pedestrian, bicycle and equestrian trails where feasible.
2. Pedestrian trail - 3 to 5 feet wide, natural soil with well drained surface.
3. Equestrian trail - 2 to 4 feet wide, natural compacted soil, decomposed granite or sawdust.

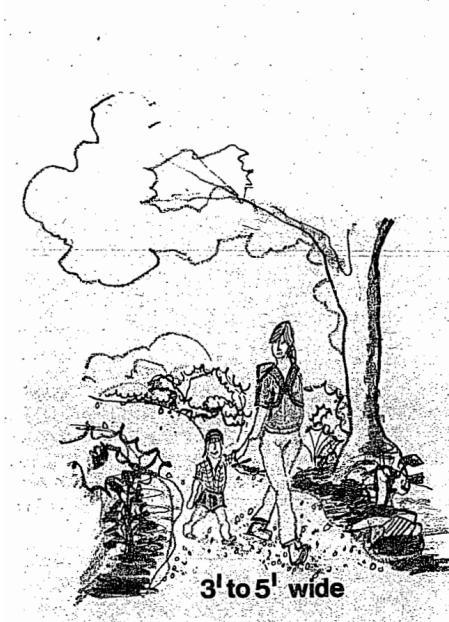


Figure 4 (right) Trail Criteria (Penitencia Creek County Park Master Plan). Note that pedestrian trails are not paved. Instead, pedestrian trails are described as “3-5 feet wide, natural soil with well drained surface”. Thus, investment in trails in this park included trails that did not require paving.

Figure 5 (below): San Jose Parks signs placed at the Noble site. The signs are providing visitors with direction on permitted and desired behaviors and activities at the park.



There is no doubt that the Noble Ave. site is a park, part of Penitencia Creek Park. Parks that serve the community, birds and wildlife - especially parks in proximity to water bodies - provide green infrastructure and have a role in our process of adaptation to climate change. We need to consider using spaces like the land by the Dr. Robert Gross percolation ponds to plant trees and enhance habitat, as well as to provide opportunities to the community and school children to enjoy and explore their environment.

We thank Councilmember Cohen for highlighting the importance of this park in this memo, and ask the committee to approve it.

Respectfully,

Shani Kleinhaus, Ph.D.  
Environmental Advocate  
Santa Clara Valley Audubon Society

MARGIE MATTHEWS



Rules and Open Government Committee

Chappie Jones, Chair

Raul Peralez, Vice Chair

Sylvia Arenas, Member

David Cohen, Member

Dev Davis, Member

August 3 Rules Committee, Item # C1 Community Outreach for Quick Build  
Interim Housing

Dear Rules Committee,

I urge you to adopt Councilmember David Cohen's recommendation contained in his memo entitled "Quick-Build Interim Housing Considerations."

My history and commitment to the Penitencia Creek Park Chain goes back 45 years when my family and I moved near the creek on Noble Avenue. Over the years I served on countless parks, open space, and flood control committees with a goal of preserving precious open space, creek trails, and parklands.

I also served as the director of affordable housing for Santa Clara County for seven years and understand how hard it is to house the homeless. I know homelessness has grown far greater in the last 10 years and commend the City and County for the great strides you have made to provide suitable living areas for unhoused people.

But sacrificing parkland — anywhere in the city — is unacceptable. Parks are sacred. They belong to the community. This particular park, on the banks of Penitencia Creek, goes back to the Spanish land grants and its heritage must be protected. To add insult to injury, moving forward to build 100 transitional housing units at this park, with no community notification or input shows disdain for the residents of San Jose — no matter which district they live in.

One other experience I'll share is this: After my term as a Councilmember I moved to Los Angeles and served as the executive officer of that city's department of recreation and parks. The city had already replaced its rivers and creeks with concrete box culverts and squeezed out most open space with development. Many of the parks were small and in undesirable locations — on dead end streets along the box culverts and freeways. When I worked for the city of L.A. in 2000-2002, the Mayor and Council had decided to help the schools by carving up many of its parks, to add school sites! Is this the kind of city we are becoming?

Thank you for all your efforts to solve the serious homeless problem. But cannibalizing our parks and open spaces is not an acceptable solution.

Margie Matthews  
Former Councilmember, District 4

cc. Mayor and Councilmembers  
City Manager  
City Attorney

**Fw: Aug. 3rd Rules Cmte, Agenda Item # C1: "Community Outreach for Quick Build Interim Housing"**

Agendadesk &lt;Agendadesk@sanjoseca.gov&gt;

Wed 8/3/2022 8:31 AM

To: Rules and Open Government Committee Agendas &lt;rulescommitteeagenda@sanjoseca.gov&gt;

 1 attachments (434 KB)

LLA - Penitencia tiny homes-1.pdf;

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**From:** Lames <[REDACTED]>**Sent:** Tuesday, August 2, 2022 10:43 PM**To:** District1 <district1@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>**Cc:** City Clerk <city.clerk@sanjoseca.gov>; Cicirelli, Jon <Jon.Cicirelli@sanjoseca.gov>; Yotam, Avi <Avi.Yotam@sanjoseca.gov>; Sellers, Sara <Sara.Sellers@sanjoseca.gov>; james.ortbal@sanjoseca.gov <james.ortbal@sanjoseca.gov>; [REDACTED] <[REDACTED]>; Sewell, Liz <Elizabeth.Sewell@sanjoseca.gov>; [REDACTED] <[REDACTED]>**Subject:** Aug. 3rd Rules Cmte, Agenda Item # C1: "Community Outreach for Quick Build Interim Housing"You don't often get email from [REDACTED]. [Learn why this is important](#)

[External Email]

[External Email]

Please see my letter (attached) regarding Emergency Interim Housing Communities (EIHCS) along the Penitencia Creek.

~Larry Ames, longtime parks-, creeks-, and trails advocate.

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Rules and Open Government Committee:

Chappie Jones, Chair

Raul Peralez, Vice Chair

Sylvia Arenas, Member

David Cohen, Member

Dev Davis, Member

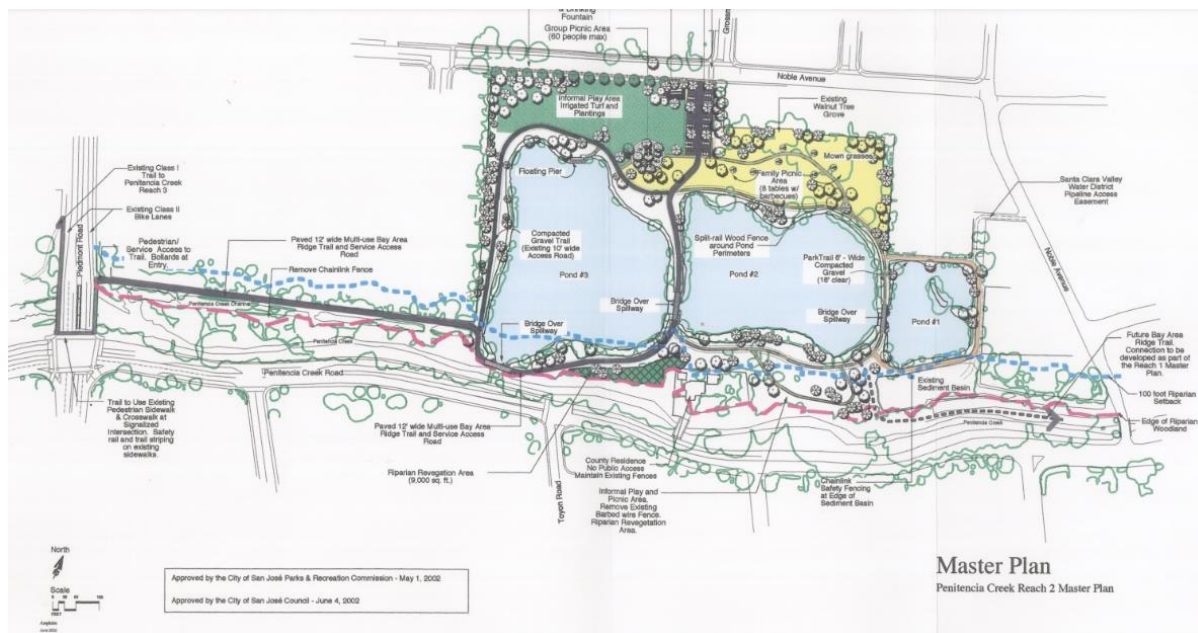
via email, sent August 2, 2022

re: Aug. 3rd Rules Cmte, Agenda Item # C1: "Community Outreach for Quick Build Interim Housing"

Dear Rules Committee,

I am writing as an individual to join the chorus of those expressing concern and opposition to the proposed Emergency Interim Housing Communities (EIHCs) being considered along the Penitencia Creek in Council District 4.

Regarding the Noble EIHC site, I echo Councilmember Cohen's concern regarding "the legitimacy of utilizing a city park for an EIHC site." As shown in the diagram below (p. 28 in the Penitencia Creek Trail Master Plan,<sup>1</sup> adopted by Council in 2002), the site being proposed for housing is already parkland that has been master-planned for "informal play" (in green) and "family picnic" (in yellow).



It takes a vote of the public to approve the taking of parkland, but I've heard it argued that the law only applies to "dedicated parks" that have been developed and opened to the public. If that interpretation were to prevail, it would be challenging or impossible to ever again build a new park in the city. Parks don't just "magically appear" fully developed: it takes time (years!) to acquire and assemble parcels,

<sup>1</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/20651/636687674429930000>



then more time to design and publicly review the proposed park amenities (which are designed to fit the specific site's conditions), and then finally time to construct them and complete the park. If the land could be taken over for some other purpose during that process, how will the Parks Dept. ever be able to plan and construct a park? There's nearly always some other need eyeing virtually any empty land in the city, be it for needed housing, or a needed fire station, or a needed street-water treatment pond, or.... But we the residents of San José need parks, too! We need to be able to get outdoors and meet our friends and neighbors; we need parks for our physical and emotional well-being – and we need to be involved in the major decisions affecting our parks: don't think of taking parkland, even undeveloped parkland, without approval by a majority vote of the citizens of San José.

I've also heard it argued that these Emergency Interim Housing Communities are just an "interim" solution to the housing emergency. But too often, "interim" solutions are not as "interim" as initially promised: for example, the US government built "temporary buildings" on the National Mall<sup>2</sup> for the emergency of the first World War, and I saw them still there a half century later (!)

A second EIHC in D4 is also planned along the Penitencia Creek, this project on King/Lundy, across from the Berryessa BART Station. (Is this site even large enough to accommodate the housing and all the associated necessary support services?) This parcel is immediately adjacent the Penitencia Creek Trail, which provides a non-motorized-vehicle connection between BART and the community: any "interim projects" should be designed so as to not impact the trail, either in its current condition or with any future planned enhancements.

Housing is important – but it shouldn't be constructed, even on an "interim" basis, at the expense of parks. Parks are important, too!

~Larry Ames  
longtime parks-, creeks-, and trails advocate.

cc: City Clerk  
PRNS Director Jon Cicirelli, and Deputy Dir. Avi Yotam and Sara Sellers  
Jim Ortbal, Tiny Homes Project Manager  
SJ Parks Advocates: Jean Dresden  
Liz Sewell, SJ Trails Coordinator  
Save Our Trails: Bill Rankin

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<sup>2</sup> [https://en.wikipedia.org/wiki/Temporary\\_buildings\\_of\\_the\\_National\\_Mall](https://en.wikipedia.org/wiki/Temporary_buildings_of_the_National_Mall)

## Fw: Rules Committee: 8/3 -- Support Cohen

Agendadesk <Agendadesk@sanjoseca.gov>

Wed 8/3/2022 12:18 PM

To: Rules and Open Government Committee Agendas <rulescommitteeagenda@sanjoseca.gov>

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**From:** City Clerk <city.clerk@sanjoseca.gov>

**Sent:** Wednesday, August 3, 2022 12:17 PM

**To:** Agendadesk <Agendadesk@sanjoseca.gov>

**Subject:** FW: Rules Committee: 8/3 -- Support Cohen

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**From:** Marjorie Matthews <[REDACTED]>

**Sent:** Wednesday, August 03, 2022 11:37 AM

**To:** City Clerk <city.clerk@sanjoseca.gov>

**Cc:** Keerti [REDACTED]

**Subject:** Rules Committee: 8/3 -- Support Cohen

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[External Email]

Please forward to the entire City Council and Mayor:

VOTE YES ON COUNCILMEMBER COHEN'S MEMO REGARDING TINY HOMES IN DISTRICT 4.  
OUR PARKLANDS ARE SACRED AND NOT TO BE CANNIBALIZED.

Thank you.

**Margie Matthews, Former Councilmember  
District 4**

[www.margiematthews.com](http://www.margiematthews.com)

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## Fw: Emergency Interim Housing Project

Agendadesk <Agendadesk@sanjoseca.gov>

Wed 8/3/2022 12:20 PM

To: Rules and Open Government Committee Agendas <rulescommitteeagenda@sanjoseca.gov>

 1 attachments (76 KB)

BUSD Letter Emergency Interim Housing Project.pdf;

Also for Letters from the Public. Thanks,

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**From:** City Clerk <city.clerk@sanjoseca.gov>  
**Sent:** Wednesday, August 3, 2022 12:17 PM  
**To:** Agendadesk <Agendadesk@sanjoseca.gov>  
**Subject:** FW: Emergency Interim Housing Project

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**From:** Kim Gomez <[REDACTED]>  
**Sent:** Wednesday, August 03, 2022 11:19 AM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Cc:** Roxane Fuentes [REDACTED]  
**Subject:** Emergency Interim Housing Project

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[External Email]

To the Attention of City of San Jose City Clerk's Office,

Please distribute the attached letter on behalf of the Berryessa Union School District Board of Trustees to the members of the Rules and Open Government Committee and place it on the public record for today's meeting.

If you have any questions, please contact Superintendent Dr. Roxane Fuentes at [REDACTED].

Best Wishes,  
Kim Gomez  
Administrative Assistant  
Superintendent's Office  
Berryessa Union School District  
[REDACTED]

**For Meetings of the Board of Trustees:**Agendas After May 1, 2022: [Gamut Meetings](#)Agendas Prior to May 1, 2022: [AgendaOnline](#)

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Roxane Fuentes, Ed.D.  
Superintendent



Phone: [REDACTED]  
Fax: [REDACTED]

Wednesday, August 3, 2022

Re: Emergency Interim Housing (EIH) Project

Dear Honorable Mayor Liccardo and Members of the City Council,

Yesterday, the Berryessa Union School District Board of Trustees engaged in an important listening session with our community at our first board meeting of the school year. Berryessa residents are very concerned and disappointed in the city's decision to use a vital open, shared space near Noble Elementary School for an Emergency Interim Housing Project (EIH).

For many years, the proposed location has provided a critical outdoor learning space for teachers and students, a place where our staff is able to teach about the environment, local habitat and wildlife, and where trails and parklands benefit our student athletes and all residents. Had the city engaged with Berryessa residents, city staff would have gathered valuable insight into the current use of the proposed location. **We strongly urge the City of San Jose to find an alternative site for the proposed EIH in the Berryessa community.**

While we understand the city's urgency to create housing opportunities, community engagement and input should be a central part of this city process and should not be rushed. Berryessa residents have organized themselves and are very interested in being part of the city's process. As a matter of fact, hundreds of Berryessa community members were present at Councilmember David Cohen's press conference this week to express their support of his advocacy efforts. We appreciate their collaborative efforts with our Councilmember.

In closing, the Berryessa Union School District Board of Trustees asks for your diligent consideration of our community's feedback. As a school district, we furthermore would like to stress the importance of evaluating community safety, especially safety of our children, as you consider possible sites across the city. **We believe that EIH projects should not be placed in close proximity to schools or places where children learn and play for their safety.**

Thank you for your time and attention. If we can be helpful in your outreach efforts, we welcome the opportunity to be of assistance.

Sincerely,

[REDACTED]  
Hugo Jimenez,  
Board President  
Berryessa Union School District

In Partnership With:  
Khoa Nguyen, Vice President  
Jai Srinivasan, Clerk  
Thelma Boac, Member  
Kansen Chu, Member

**BOARD OF TRUSTEES**

Thelma Boac

Hugo Jiménez

Khoa Nguyen

Jai Srinivasan

Kansen Chu

**FW: ROGC 22-306: Community Outreach for Quick-Build Interim Housing**

City Clerk &lt;city.clerk@sanjoseca.gov&gt;

Wed 8/3/2022 4:14 PM

To: Rules and Open Government Committee Agendas &lt;rulescommitteeagenda@sanjoseca.gov&gt;

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**From:** Juan Estrada [REDACTED]**Sent:** Wednesday, August 3, 2022 3:49 PM**To:** City Clerk <city.clerk@sanjoseca.gov>**Subject:** ROGC 22-306: Community Outreach for Quick-Build Interim Housing

[External Email]

Dear Rules Committee,

We acknowledge the urgent and pressing need for emergency interim housing. While any new location is likely going to have some level of opposition, that reality should not preclude efforts to identify sites that avoid significant environmental impacts and would better serve the individuals to be housed.

I have two requests.

- 1.
- 2.
3. The first request is for transparency. It would help the process, and trust in the process, to make detailed information
4. about previously explored sites and new alternative sites public and easily accessible. For example, it is my understanding that multiple additional alternative sites have been suggested and may be evaluated in District 4. I submitted a request to staff on
5. August 1st for information regarding those sites. I have not yet received information. Whether details are provided via a web page or on demand by staff, please direct staff to make that information easily accessible.
- 6.
- 7.
- 8.
9. The second request: We have concerns about the planned use of the Noble Ave/Reach 2 site, which is open space
10. near water features that provides habitat for wildlife and enjoyment opportunities to the public. We strongly encourage city staff to vet all potential alternative sites. Green Foothills supports a diligent effort to find alternative locations in the District
11. that do not have the same, concerning environmental impacts and may be much more suitable for the currently unhoused.
- 12.

Sincerely,

Juan Estrada



**Juan Estrada**

Advocacy Associate and Organizer

[REDACTED] | [greenfoothills.org](https://greenfoothills.org)

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