

From: Josh Scullen < >

Sent: Monday, March 25, 2019 5:38 PM

To: The Office of Mayor Sam Liccardo; District4

Cc: District1; District2; District3; District5; District 6; District7; District8; District9; District 10; kleinhaus, shani; Yiwei Wang; Ankola, Aparna

Subject: Deferral request: agenda item 10.1(c), File no. 19-127 PP18-084 City of San Jose Zoning Code Amendments_Buisness Center Signs in Alviso Master Plan Area

To The Honorable Mayor Sam Liccardo and City Councilmembers:

I am writing to request deferring a decision on agenda item 10.1(c), File no.19-127, title PP18-084 - Amendment to Title 23 (Sign Code) for Commercial and Industrial Zoning Districts and Neighborhood Business Districts in the Alviso Master Plan Area.

I work for the San Francisco Bay Bird Observatory and conduct year-round bird population monitoring on the west bank of the Coyote Creek, north of State Route 237. I am in the impact area of this decision but was not notified about it until today, and have not been able to participate in the discussion leading up to this decision.

I am concerned that the map included in the Memorandum for this decision (attached) does not include 300-ft buffer zones around designated Burrowing Owl habitat adjacent to PDC01-088, PDC83-020, and PDC83-064, and improperly demarcates the 100-ft Riparian Habitat buffer zone along Coyote Creek near PDC01-088.

I would appreciate a deferral of the decision on this agenda item to further study this issue and provide recommendations to appropriately update the buffer zones that are missing and / or improperly marked. Thank you for your consideration.

Sincerely,

Josh Scullen

Landbird Program Director

San Francisco Bay Bird Observatory

2. Map of Potential Sites for Business Center Signs within Alviso Master Plan Area

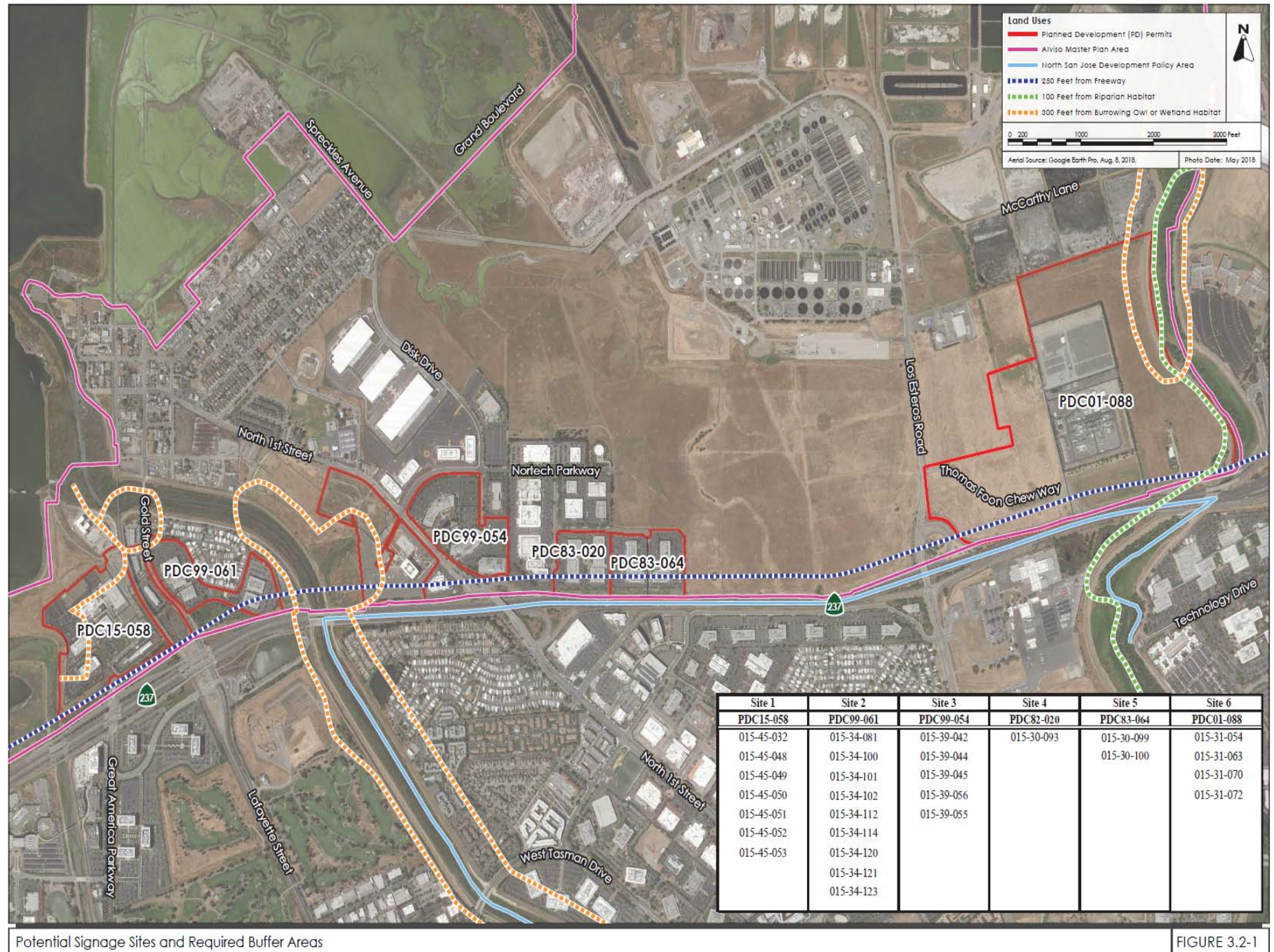


FIGURE 3.2-1

----- Forwarded message -----

From: **shani kleinhaus** <>

Date: Tue, Mar 26, 2019 at 11:09 AM

Subject: SCVAS comments and suggestions: March 26, agenda item 10.1 (c): PP18-084 - Amendment to Title 23 (Sign Code)

To: <mayoremail@sanjoseca.gov>, District1 <district1@sanjoseca.gov>, District2 <district2@sanjoseca.gov>, Raul Peralez <district3@sanjoseca.gov>, District4 <district4@sanjoseca.gov>, Magdalena Carrasco <district5@sanjoseca.gov>, District 6 <district6@sanjoseca.gov>, District7 <district7@sanjoseca.gov>, District8 <district8@sanjoseca.gov>, District9 <District9@sanjoseca.gov>, District 10 <district10@sanjoseca.gov>

Cc: Ankola, Aparna <aparna.ankola@sanjoseca.gov>, Dashiell Leeds <

Dear Mayor Liccardo and San Jose City Council Members,

In the attached letter, Santa Clara Valley Audubon Society expresses concerns with the March 26, agenda item 10.1 (c): PP18-084 - Amendment to Title 23 (Sign Code) for Commercial and Industrial Zoning Districts and Neighborhood Business Districts in the Alviso Master Plan Area.

We provide the following suggestions to reduce the impacts of this Amendment:

1. Keep a minimum 200-ft setback from creeks and wetlands
2. Keep a minimum 500-ft setback from burrowing owl habitat:

Our letter explains the background and reasoning for these suggestions.

Thank you,

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



March 26, 2019

Santa Clara Valley Audubon Society (SCVAS) submits the following comments on San Jose City Council meeting of **March 26, agenda item 10.1 (c): PP18-084 - Amendment to Title 23 (Sign Code) for Commercial and Industrial Zoning Districts and Neighborhood Business Districts in the Alviso Master Plan Area.**

SCVAS has long engaged in the protection of birds and their habitat in San Jose. We strongly believe that birds are the closest element of nature that is accessible to residents in the urban landscape. Riparian corridors are vulnerable, crucial habitats for birds and many other species. Healthy riparian corridors contribute to a healthy ecosystem that benefits the well being of wildlife and humans alike. As such, we must preserve this resource. The Riparian Corridor Protection and Bird Safe Design Policy 6-34 provided some protection in 2016, and we now witness relaxation of the meager protection that was afforded to bird habitats including creeks, wetlands, and burrowing owl habitat.

In sections 1-3 below, we express concerns with the proposed amendment. In Section 3 we offer recommendations that can help reduce the adverse impacts of this amendment.

1. The proposed amendment states that any electronic signs must be “Consistent with City Council Policy 6-34, “Riparian Corridor Protection and Bird Safe Design”.

- The map associated with Council Policy 6-34 covers the entire area north of 237 (as shown in Attachment A of Policy 6-34). The entire area of the proposed signage falls within the designated “Bird Safe Building Design Area” of Policy 6-34. Policy 6-34 is not limited to areas near the Bay, streams and wetlands (the reason for that was that the Alviso Area was deemed critically important to migratory birds - even more so than parks and riparian corridors elsewhere in the City). For this entire area, Policy 6-34 provides the following conditions:
 - 6-34 A, 4, a) *"New development should use materials and lighting that are designed and constructed to reduce light and glare impacts to Riparian Corridors."*
 - 6-34 A, 4, b) *"Lighting should not be directed into Riparian Corridors."*
 - 6-34 B, 5) *"Avoid or minimize up-lighting and spotlights."*

- 6-34 B, 6) *"Turn non-emergency lighting off, or shield it, at night to minimize light from Buildings that is visible to birds, especially during bird migration season (February - May and August - November)."*

It is our opinion that electronic signage is contradictory to these stipulations. The effect electronic signs creates is similar to that of up-lighting and spotlights, and the hazard to migratory birds is equivalent to the hazard of up-lighting and spotlights.

2. In addition, for recreational uses, the Riparian and Bird Safe Policy 6-34 recommends a 200-300-ft setback from ALL creek for Recreational Uses. Policy 6-34 States:

- *"Night-lighted facilities should have a larger setback – 200 to 300 feet is preferred."*
- *"Lighting and mechanical noise generating sources" - 200 ft setback - "Physically screen Riparian Corridor where feasible under site conditional and operational constraints. Night-time light sources should not be visible (a technical report may be required)."*

Electronic signs should be considered equivalent in their impacts to Riparian corridors, and should be set 200-300 ft from creeks, wetlands and water features.

3. The proposed amendment includes: *"Non-emergency lighting should be turned off, or shielded at night to minimize light from signage that is visible to birds, especially during bird migration season..."* Electronic signs that are used for advertisement are - by definition - not emergency light. The ordinance states that *"No sign, visible from a wetland, burrowing owl habitat or Riparian Corridor, shall illuminated between 9:59 p.m. and 5:59 a.m."* This time window, however, allows for lights to be illuminated during nighttime and therefore contradicts the provision that *"Non-emergency lighting should be turned off or shielded at night."*

4. Recommendations:

1. Keep a minimum 200-ft setback from creeks and wetlands
2. Keep a minimum 500-ft setback from burrowing owl habitat

Justification for recommendations

To minimize impacts to sensitive species, including species of special concerns such as San Francisco Common Yellowthroat, the Burrowing owl, and other migratory birds north of 237, we suggest:

1. Keep a minimum 200-ft setback from creeks and wetlands

The proposed amendment provides, *"Signs will not be allowed within at least 100 feet of an existing wetland, burrowing owl habitat, or the vegetative edge of a Riparian Corridor or top of bank, whichever is greater"*. However, the Riparian Corridor Protection and Bird-Safe Design Policy 6-34 defines Riparian projects as all projects within 300-ft from a creek riparian corridor. Furthermore, Riparian Corridor Protection and Bird-Safe Design Policy 6-34 mandates a 200 ft setback for all "lighting and mechanical noise generating sources", adding: *"Physically screen Riparian Corridor where feasible under site conditional and operational constraints"* and *"Night-time light sources should not be visible (a technical report*

may be required)." Thus, if electronic signs are permitted, they should be limited to a minimum setback of 200-ft from creeks and wetlands.

2. Signs should only be permitted at a 500-ft setback from burrowing owl habitat

The open space along Highway 237 provides critical habitat for the burrowing owls, and any construction or light pollution in this area will have a significant impact on the last viable a population of burrowing owls in the South Bay. Tragically, Burrowing Owl populations are plummeting; Only 25 pairs nested in the south Bay in 2018 - a 50% decline from the 2013 population. Nine of the 25 pairs nested them at the Regional Wastewater Plant. Current efforts to recover and re-establish a burrowing owl population south of San Jose are likely to take a decade or more. The map provided in the staff report neglects to delineate or highlight buffers from designated burrowing owl habitat.

The Habitat Agency designated a distance of half a mile (2640-ft) from a burrowing owl nesting site as significant to the success of nesting pairs, and bases its burrowing owl fees on this assessment. To protect burrowing owls from light pollution and blight of their habitat, we ask for a buffer of at least 500-ft from burrowing owl habitat.

CEQA

Due to potentially significant and unavoidable impacts to migratory birds, including the burrowing owl and the San Francisco Common Yellowthroat, and due to inconsistencies with established City Policy 6-34 and the Envision 2040 General Plan, we maintain that a new CEQA document must be prepared for this amendment, and the City cannot rely on the Addendum to the Alviso Master Plan EIR (Resolution No. 68577), Envision San Jose 2040 General Plan EIR (Resolution No. 76041), Envision San Jose General Plan Supplemental EIR (Resolution No. 77617), and other existing CEQA documents. The full impacts of light pollution are an emerging science, and the impacts to habitats and sensitive species North of 237 were not fully studied in these existing documents. However, we believe that City Council should include our recommendations as requirements for any new signage north of Highway 237.

Respectfully,

Shani Kleinhaus,
Environmental Advocate

Dashiell Leeds,
Environmental Advocacy Volunteer