

190526-000014

Abandoned Vehicle

Car left abandoned on Manzanita every week for over last 2 years. Was subject for vandalism twice.

05/26/2019 08:49 AM

Open



190526-000013

Abandoned Vehicle

Car is abandoned for over a week no place to set garbage bins for pick up.

05/26/2019 08:47 AM

Open



190526-000012

Abandoned Vehicle

Car involved in accident dropped and left for over a week.

05/26/2019 08:45 AM

Open



On Tue, Nov 7, 2017 at 2:29 PM, Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov> wrote:

Hello All,

I will try to address all the questions that came up in the previous emails in this chain. First, we will be sending out the formal letter to Eaves soon requesting that they reopen the closed parking spaces. Once that is sent out, I will send it to this email group for you to also read.

Parking Math from our Planning Department:

Older apartments – 1,112 spaces required

2001 phase II addition- 70 spaces required

Total required under city's zoning code: 1,182

They have indicated they are providing 1,300 spaces so even closing the approximately 38 spaces they are still meeting the required parking.

While the Eaves address is on Saratoga Ave., they still have driveways that face Manzanita Dr. It would be unlikely that we could exclude them from a parking permit zone. We are also not currently adding any more parking permit zones in the city due to funding.

I spoke with Councilmember Jones, and at this point we do not believe another meeting would be productive. In order to have a productive meeting we would want to be able to offer additional solutions. We would like to be able to offer you more solutions, but I'm afraid we have run out of options.

Regards,
Jerad

Jerad Ferguson

Chief of Staff

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall - [200 E. Santa Clara St., 18th Floor](#)

[San Jose, Calif. 95113](#)

[408-535-4901](#)

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From: Dina Yevelev [mailto: [REDACTED]]
Sent: Monday, November 06, 2017 11:06 PM
To: Elena Kuk [REDACTED] >
Cc: Gary Sweet < [REDACTED] >; Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>;

[REDACTED]
Igor Yevelev [REDACTED] >

Subject: Re: 10/23 Manzanita Dr - District 1 Office Follow Up

And we would like to have another meeting ASAP.

Please don't ignore our request again.

We suffer enough and deserve to be heard as well as to hear from all of you personally again.

Eaves apartments has turned our neighborhood into a total mess.

It is just disgusting to take a walk on our streets because they are dirty, filled with cars, and bags of dog poop that never get cleaned up.

Eaves is making money at our expense. And they must to take REAL auctions to improve the situation.

They owe it to us.

And the City of San Jose should play a much bigger role in solving this problem once and for all.

Please send us all the information about the next meeting.

Thank you.

Regards,

Dina Yevelev

On Nov 6, 2017 6:11 PM, "Elena Kukhtina" [REDACTED] wrote:

Hi Jerad,

We completely support Gary's email.

Why don't you reply to us with any updates? Or nothing is happening since your first introduction to us???

Sent from my iPhone

On Nov 6, 2017, at 5:51 PM, Gary Sweet [REDACTED] > wrote:

Please explain.

When you Google Eaves apartment living in California what do you find?

Why can't a multimillion dollar company such as Eaves/Avalon that has over 20 bay area locations and more in southern California fix their parking structure in the west valley location apartments. Now I don't know and really care if they are franchised owned or not they still have a lot of resources and money to retro fit and fix their parking facility to accommodate more of their tenants.

Let's do the math, estimated 1250 units at how much per month in rent per apartment? Let's say 2500.00 to make it fair, so that's roughly about 312,500 dollars per month in rents, times 12 and what do you get per year \$3,750,000.00 dollars in rents. Of course there is expenses and taxes and blah blah blah, what is the bottom dollar? GP. That is just a wild guess mind you and if they have over 20 locations. Plus all the money they are pulling in now for charging extra for parking per month.

Yes, maybe my numbers are way off, but you get my idea.

How many years will it take for them to save up and fix their parking structure ?

Maybe the 38 spaces that they will acquire by fixing the parking structure will get 38 more cars off the Streets of Manzanita dr., and Desert Isle dr. think about that.

Quote ". Even with the loss of the 38 spaces due to the garage condition, the complex is still providing the required number of parking spaces under the City's rules. This includes the parking requirements for the newly added apartments and the permit they received in 2001. Councilmember Jones will be writing the Eaves Complex a formal letter strongly encouraging them to repair these spaces and bring them back online, but it is not something that the City can require them to do.

Did Councilmember Jones ever write a formal letter to Eaves Complex yet? and tell them and if so what did he say, where is it posted so we can all read it?

how many parking spaces is required under the city rules by the way?

Can you just keep building and not provide any parking?

Gary Sweet

From: Ferguson, Jerad [mailto:Jerad.Ferguson@sanjoseca.gov]

Sent: Monday, October 23, 2017 5:49 PM

To: [REDACTED]

Subject: 10/23 Manzanita Dr - District 1 Office Follow Up

Dear Manzanita Dr. Residents,

I would like to follow up on my previous emails to you. First, I want to recap what we have been able to accomplish so far:

- Reduced red curbing at beginning of street to free up additional street parking spaces
- In process/near completion moving dumpster collection for Eaves complex from on-street to onsite
- Eaves added additional stop signs at its exits.
- Eaves added additional dog waste stations

I was hopeful that there would be more options to pursue with regards to the offline parking spaces within the Eaves parking lot. I did some additional research of my own and worked with our City's Planning Department. We reviewed in detail the previous permits and entitlements to the property. Even with the loss of the 38 spaces due to the garage condition, the complex is still providing the required number of parking spaces under the City's rules. This includes the parking requirements for the newly added apartments and the permit they received in 2001. Councilmember Jones will be writing the Eaves Complex a formal letter strongly encouraging them to repair these spaces and bring them back online, but it is not something that the City can require them to do.

At this point we do not have many solutions left to fully address all of your issues. The one remaining item where we might be able to take some action is with single-car driveways. I know there a number along the street. The Department of Transportation might be willing to add red curbing at the edges of those. If there are neighbors interested in this, please send the request to me via a separate email with the request and address. I will forward it on to DOT for them to assess.

Regards,
Jerad

Jerad Ferguson

Chief of Staff

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall - [200 E. Santa Clara St., 18th Floor](#)

[San Jose, Calif. 95113](#)

[408-535-4901](#)

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Hi Jerad

Thanks for taking over and keeping up with our issues here.

But first off let me give you a scenario or a hypothetical situation

Lets say that Jerad owns a house for lets say 25-30 year in a nice quiet neighborhood. He has a family and kids and parents and brothers and sisters. Sometimes Jerad likes to have his family or friends come over to his house for dinner or party's or Sunday bbq's and get together with friends and family. Now mind you the Jerad has been doing this for over 25-30 years this way with his family and friends. Now one day recently someone owns a big apartment complex down the street (which has been there for years with the previous owners, and never had a problem) and suddenly doesn't have any parking for their people to park so they decided to park in front of Jerad's house. Now Jerad's family and friends want to come over to visit and have dinner, even his parents. They ask Jerad where do I park my car I can't park in front of your house? So Jerad's 80 year old or so parents and family have to park a half mile down the street and walk to Jerad's house because they (Jerad's parents) or brothers/sisters or friends can't park in front of his house that he Owns for over 25-30 years now.

What do you think Jerad would say or do? Do you think Jerad is happy about this? Also the people that are parking in front of Jerad's house are leaving there garbage in his curb and dog poop on his front yard and in the street in front of his house. Now Jerad is trying to be nice and understanding for those people but it's not their falt, it is the complex where they live that has created the problem and now it has become Jerad's problem because they are affecting his family and life style. Jerad's can no longer invite his own family and friends to come visit him because all of a sudden there is no where to park in front of Jerad's house.

Tell me what Jerad thinks now? How's Jerad's blood pressure doing? How's Jerad's health and Jerad's wives health? How is Jerad's life now?

Thanks for listening.

And remember actions speak louder than words. Get something done about this.

Gary Sweet

used parts manager

Specialty Truck Parts inc.

[REDACTED]

[REDACTED]

[REDACTED]

From: Ferguson, Jerad [mailto:Jerad.Ferguson@sanjoseca.gov]

Sent: Tuesday, October 10, 2017 10:15 AM

To: [REDACTED]

Cc: john toy; [REDACTED]

Elena Kukhtina; [REDACTED]

Dina Yevelev; [REDACTED]

Subject: RE: Community Update 9/29 - Breaking News

Hello Althea,

As I indicated in my email to Dina, I am still working on the Eaves parking issue. We will still need more time to resolve it, and I cannot make any promises, other than that we will keep listening and do all that we can.

Regards,
Jerad

Jerad Ferguson

Chief of Staff

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall - [200 E. Santa Clara St., 18th Floor](#)

[San Jose, Calif. 95113](#)

[408-535-4901](tel:408-535-4901)

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From: Althea T. Kippes [mailto:[REDACTED]]

Sent: Friday, October 06, 2017 11:00 PM

To: Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>

Cc: john toy [REDACTED];

Subject: RE: Community Update 9/29 - Breaking News

Hello all,

An update on the Eaves tenants crowding our streets with their cars: the current state of parking on Manzanita is EXACTLY THE SAME.

Eliminating the red curb from Manzanita has not decreased the number of cars blocking our driveways and street. In fact, this problem is going to get worse, since Eaves residents will most likely see more parking on the street and decide not to pay the \$70 month to park in the Eaves parking lot.

The Eaves is creating a public nuisance by eliminating parking spaces from their complex. Eaves is refusing to fix the parking structure, filling other lots with junk and stolen shopping carts, blocking other lots and charging people for parking. There are PLENTY of parking spaces in The Eaves complex. You can go there any time, day or night, and see them.

The Eaves is not only creating a public nuisance, but is also violating their obligation to provide the number of parking spaces they were supposed to provide in order to build.

WHAT IS THE CITY GOING TO DO ABOUT THE PUBLIC NUISANCE THE EAVES HAS CREATED?!

All of us would appreciate your response.

Best regards,

Althea Kippes

[REDACTED]
Cell [REDACTED]

On Oct 6, 2017 10:32 AM, "Ferguson, Jerad" <Jerad.Ferguson@sanjoseca.gov> wrote:

Hello Dina,

Councilmember Jones is not abandoning you, and we are continuing to work with you. However, there are no easy solutions to fix all these issues. I cannot promise you that we will be able to fix all of these issues completely, but I can promise you that we will listen and do all that we can. So far we have done a number of things to try and address the issues you and your neighbors are facing on the street. If you have other ideas, I welcome any further suggestions. Here is what we have done, and some things we continue to work on.

Dog waste – Eaves has installed new stations with baggies for pick up. I agree and understand how frustrating it is when those pet owners choose to be very inconsiderate with not picking up after their pet.

New stop sign exiting parking – We can continue to monitor this situation regarding height, but it is a positive change – going from no posted sign to having a posted sign.

Parking / Dumpsters – Eaves is in the process of moving their dumpster collection onsite, which also allowed us to free up additional parking on the street. I understand that this has not fully addressed the issue, but it is something. I am continuing to work on the other issue with the closed parking stalls onsite at Eaves, and I will keep you posted, however this could still take some time.

Regards,

Jerad

Jerad Ferguson

Chief of Staff

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall - [200 E. Santa Clara St., 18th Floor](#)

[San Jose, Calif. 95113](#)

[408-535-4901](#)

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From: Dina Yevelev [mailto: [REDACTED]]
Sent: Wednesday, October 04, 2017 10:32 PM
To: Elena Kukhtina [REDACTED]; Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov>
Cc: Brooks, Ed < [REDACTED] >
[REDACTED]
Subject: Re: Community Update 9/29 - Breaking News

Dear Jerald,

Welcome to the team. We really hope that you will not abandon us in our struggle to return peace and dignity to our forgotten street, Manzanita Drive.

I did sincerely thank Ed for the job he did up to this point (even though it took a year).

However, I finally had time to walk around the neighborhood and here is what I saw:

I saw one STOP sign installed so low, that I doubt any driver could see it.

I saw our sidewalk littered with dog poop again (much of which ends up in our garbage bins), as well as with plastic cups, condoms, clothes, empty cigarette packs and much more.

Furthermore, there is green waste littered along our street, and we cannot sweep it up because cars are constantly parked right along the curb.

And lastly, I saw even more cars parked on our street, which continues to see considerable road damage from all the traffic.

With all of this being said, let me ask you, dear Jerald:

If you were looking to buy a house, would you be willing to buy one on a street where your kids would be totally unsafe? I am certain that you wouldn't, but that is the reality on Manzanita Drive and Desert Isle Drive.

The problem is, Eaves Apartments is damaging the value of our properties; damaging our health by putting us all under constant stress and anxiety; and is creating significant dangers for all us because of how fast people drive on our street, and how aggressive they are towards us when we bring up these issues.

My husband and I were almost run over twice by apartment tenants, and in response to our warning about their speed, we were called names and shown the middle finger.

So where do we go from there?

I would really suggest for you, dear Jerald, to come up with better ideas that could REALLY HELP us. And, most importantly, please listen to our voices about the main source of the problem, which is Eaves apartments, their tenants and management.

I think that it is as important for you as it is for us. Because if something, G-d forbid, would happen, all the people from whom we have been asking for help for so long will be coming to court.

Thank you very much for your time and consideration. We look forward to working with you and hope to make progress on the issues facing our street.

Best regards,

Dina Yevelev

On Mon, Oct 2, 2017 at 2:34 PM, Elena Kukhtina [REDACTED] > wrote:

Thank you Ed, but still isn't something that we talked about on the meeting and it should be on our to do list?

Sent from my iPhone

On Oct 2, 2017, at 12:25 PM, Brooks, Ed <Ed.Brooks@sanjoseca.gov> wrote:

Hi Elena,

I don't know of any DOT projects. Since it is one day it is likely a contractor doing work.

Regards,

Ed Brooks

Community Relations Director

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall - [200 E. Santa Clara St., 18th Floor](#)

[San Jose, Calif. 95113](#)

[408-535-4918](#)

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From: Elena Kukhtina [[mailto:e\[REDACTED\]](mailto:e[REDACTED])]

Sent: Sunday, October 01, 2017 12:21 PM

To: Brooks, Ed <Ed.Brooks@sanjoseca.gov>

Cc: [REDACTED]
[REDACTED]
[REDACTED]

Subject: Re: Community Update 9/29 - Breaking News

Hi Ed,

Passing by many streets with this sign, what is progress on it for our neighborhood?

<image002.jpg>

Sent from my iPhone

On Sep 30, 2017, at 9:12 AM, Elena Kukhtina [REDACTED] > wrote:

Thank you Ed for an update,

Unfortunately a speed trailer, stop signs and narrowing the street still doesn't solve the main problem- PARKING, only

1. their uncluttered parking spaces and
2. fixed dangerous for now to park structure and giving them to their tenants to use will help.

I really hope that repainted from red to gray curbing space on Manzanita will free parking spots for our own vehicles, but two items above should be in a process of action and so far you didn't mentioned what is done. Please update us on these.

Thank you!

Elena

Sent from my iPhone

On Sep 29, 2017, at 10:33 PM, Dina Yevelev [REDACTED] > wrote:

Thank you for your support!

I have one more," and that is our street needs a huge repair.

It is not our fault. It mainly had happen during the building of the new addition to the Eaves apartments.

And also they are ONE STOP SIGN SHORT. Please double check on it.

Please take a note of these two issues, dear Ed.

Have a great weekend.

Warmest regards,

Dina.

On Sep 29, 2017 6:54 PM, "Brooks, Ed" <Ed.Brooks@sanjoseca.gov> wrote:

Hello Dina,

You're welcome. As much of a challenge as it can be at times, I really do enjoy serving the residents of our community.

As far as what is left? Well, we want to see the impact of the speed trailer and the narrowing of the street on street speed. If speed continues to be a problem we can see if DOT can help with some other solution.

We also want to see if the street near your homes will be empty enough to have them swept on the normal sweep schedule. Once we see how that plays out we will figure out if we need to keep swinging or not.

Please remember that each street in our district and the city is unique with its own set of needs and challenges to addressing those needs. There are far more requests on services than the city can provide because the city does not have unlimited resources. So we have to fight for resources we need and deploy them in the best possible way.

I am hopeful that the actions outlined here will bring some peace to your neighborhood.

Regards,

Ed Brooks

Community Relations Director

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall - [200 E. Santa Clara St., 18th Floor](#)

[San Jose, Calif. 95113](#)

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From: Dina Yevelev [mailto:[\[REDACTED\]](#)]

Sent: Friday, September 29, 2017 5:59 PM

To: Brooks, Ed <Ed.Brooks@sanjoseca.gov>

Cc: [\[REDACTED\]](#)

Subject: Re: Community Update 9/29 - Breaking News

Dear Ed,

Thank you for the good news and your persistent work.

Let's hope that all those changes will work out well to improve the living condition on our street.

What else is left on your agenda

in regards of this matter?

Thank you once again.

Kind regards,

Dina Yevelev.

On Sep 29, 2017 3:48 PM, "Brooks, Ed" <Ed.Brooks@sanjoseca.gov> wrote:

Hello Manzanita Dr/Desert Isle Dr Residents,

We wanted to let you know immediately about news from the Eaves Apartments.

- Stop signs have just been erected at exits from the Eaves Apartments on Manzanita Dr.
- Beginning immediately GreenTeam will no longer be repairing dumpsters on the street but will be repairing them onsite.
- GreenTeam and Eaves have begun a transition to pull dumpsters off of Manzanita Dr. By October 20 there should be no more dumpsters on Manzanita Dr... We have communicated this date with DOT and asked them to prepare to make changes to the curbing for both additional parking and sightlines.
- SJPd does have Manzanita Dr on their list to provide a speed trailer (flashing lights that show speed)

Recap of other actions:

- Have confirmed with Parking Enforcement they still have abandoned vehicles on their list to deal with on Manzanita Dr.
- Eaves has installed 3 additional dog waste stations over the past 4 weeks
- Eaves is cleaning parking trash from the street gutters by the complex
- Eaves has sent reminders to residents that the city will ticket abandoned cars and those blocking driveways

We received feedback from our Environmental Services group that Yard Trimming Carts are available in 32, 64, 96, gallon containers for \$4.76/month (regardless of size). You can contact GreenWaste directly to subscribe [\(408\) 283-4800](tel:4082834800).

While Eaves does have an area closed off for safety and they utilize space inside the facility for storage, shop work etc, the number of spaces available for parking exceeds the number of spaces required by the City. Therefore the City cannot require Eaves to open additional spaces for parking.

Regards,

Ed Brooks

Community Relations Director

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

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Dina Yevelev

10/11/17

Beautify said, Gary. Our situation is exactly what you have described. And ou...



Igor Yevelev [Redacted] > 10/11/17

to **Christopher**, Gary, Jerad, plin2006, Hongxi, David, Joanne, atkippers, Jinhua, AT, Rita, James, Howard, Elena, garrido.c, john

Hello all,

Thank you Gary for nice writing. It does reflect the situation on our street and lack of actions since we have filed 3 petitions to City of San Jose, and also to a Congresswoman Eshoo.

However, almost 2 years later we still do not see any improvements.

We pay many thousands of dollars (as property taxes, and garbage collection) - to keep the street clean and nice, and to keep the values of our properties high.

City does not care. They ignore our petitions, do not act to make driving along the street safe, do not improve cleaning of the street and worse of all - as you can see from the Jerad's Memo - won't make any efforts to act soon. You have met City representatives during 2 meetings, you saw smirks on their faces, when we explained the dangers.

I think we need 3 actions to make things happen:

1. NO PROPERTY TAX PAYMENTS this year.
2. Recall Major of San Jose Mr. Liccardo.
3. Recall Congresswoman Mrs. Eshoo.
and as temporary solution
4. Return doggy shit to the EAVES office - every night.

I vote for all 4 - YES!



Igor Yevelev [REDACTED] > 12/14/17

to Gary, Jerad, plin2006, Hongxi, David, Joanne, atkippers, Jinhua, AT, Rita, James, Howard, Elena, Dina, garrido.c, john

Hello all,

If you have read the last mail from Councilmen, you should understand what is going on: EAVES plans to build 300 more units (read 600 more cars with no parking provided)!

That the reason they do not want to give away parking spots (or repair those spots).

And we will have even many more problems than we have now. And it is going to be garbage, noise, criminal situation again. And the street will be destroyed by tracks and heavy machinery.

And EAVES will rent out their apartments to even more people who do not share our values, to foreigners and H1B visa holders, to their shitty pets!

The same thing happened many years back, when Moorland School District sold its property to Oakwood

without our neighborhood's consent.

It means we should act immediately and establish NO PARKING ZONE between 10 pm and 6 am on Manzanita Drive.

And sure enough collect doggy shit (currently contaminating our streets) and deliver it to EAVES in packages.

BTW. You should be aware that criminal situation worsened during last few months: I have witnessed 6 cars have been burglarized on parking lot near Walgreens and Ethiopian restaurant day before yesterday.

IN SUMMARY: We need to protest the EAVES actions ASAP!

Happy New YEAR!



Jinhua
Cao 12/15/17

Dear Jerad, Thanks for your detailed updating. 300 more units, 600 more cars,...
4 older messages



Elena
Kukhtina 12/15/17

In regards of your Restrictions for Parking permit programs - - are establish...

Igor Yevelev [REDACTED] > 12/19/17

to Jerad, Joanne, Elena, Jinhua, Gary, plin2006, Hongxi, David, atkippers, AT, Rita, James, Howard, Dina, garrido.c, john

Mr. Ferguson,

We are sending our Petition to City of San Jose.
This is a very serious matter, and we are looking forward to hear from Council members ASAP.

Thank you

2 Attachments



Dina Yevelev 12/20/17

Dear Jerad, It was nice talking to you today. Thank you for your efforts and ...



Ferguson, Jerad <Jerad.Ferguson@sanjoseca.gov> 12/21/17

to me, Joanne, Elena, Jinhua, Gary, plin2006, Hongxi, David, atkippers, AT, Rita, James, Howard, Dina, garrido.c, john

Hello everyone,

Thank you for sharing this petition with Councilmember Jones. I have responded the points/questions raised in the petition below.

1. Block the plan of the further expansion of the EAVES Apartments. Notify us about cancellation of the plan.

The property owners/developer has the right to submit an application and for the project to be considered by the Planning Department. However, that does not mean that the project has the endorsement of the City or Councilmember Jones. There will be additional opportunities for public comment through meetings and hearings. This project still has many hurdles to cross, and there is no guarantee of approval by the City.

2. Install restricting signs along our street – to disallow parking from 10 pm to 6 am to ALL NON-OWNERS.

As I explained in the email quoted in the petition, an overnight parking restriction would not allow any parking overnight on the street. Allowing residents to park overnight would be a residential parking permit program, and as I have explained, we cannot offer that to your street or neighborhood at this time. Even if this street were to have residential permit parking we cannot only give permits to owners versus tenants as both are residents.

3. Reinforce the rule to all pet owners from EAVES – to clean up after their pets, and demand EAVES – to install collection bins within Apartment complex.

Eaves committed to communicating again with their residents about cleaning up after their pets. They are looking into the request to install additional trash bins for disposal by their property. I will let you know when I hear back from them.

4. For EAVES. Immediately establish the policy of the providing of the parking spots – to all EAVES tenants – free!

Councilmember Jones asked Eaves consider this option, or even a temporary reduction, to try to incentivize more use of the onsite spaces.

5. Department of Transportation – to monitor installation of the “STOP” signs at all exits from EAVES parking structure.

Moving violations are issued by the Police Department and not the Department of Transportation / Parking Compliance. However, we cannot enforce these “STOP” signs since they are on private property.

6. Establish City verification process for all actions as above and make EAVES financially responsible for disregarding of the policies, and EAVES tenants - with issuing “parking violation tickets”.

The City cannot require certain parking policies for Eaves tenants or issue tickets to tenants parking on their premise as it is private property.

Councilmember Jones would like to continue to work with your neighborhood on ideas and solutions. We are limited in our tools and resources. If there is an interested in no overnight parking, then we would like to get your feedback on that.

Jerad Ferguson

Chief of Staff

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall - [200 E. Santa Clara St., 18th Floor](#)

[San Jose, Calif. 95113](#)

[408-535-4901](#)

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CITY OF SAN JOSE

**RESIDENTS and HOMEOWNERS
Primerose Neighborhood**

URGENT!!!

THIS LETTER TO BE READ at the City Council on June 11th

June 1, 2019

Dear Sir or Madam,

This letter is to inform City of San Jose, that we – homeowners of the Manzanita Drive are extremely unsatisfied with the way our Petition, as well as our multiple responses and concerns expressed during Community Meetings – towards the plan to build new AVALON complex in our Neighborhood. All our requests to cancel this Project were ignored.

Project itself is very poorly designed. As we described at all Meetings, design is absolutely unacceptable due to the following unbelievable errors:

- our Neighborhood is NOT configured to handle huge increase in population by tenants and their vehicles and also their PETS
- there is going to be only one exit from newly configured parking structure – into Manzanita Drive
- construction of the new buildings for AVALON management / pools / Doggy Park / and living units during planned 3 years will completely destroy the lives of the residents and homeowners of all streets around this AVALON complex, including Moorpark, Desert Isle and more
- as we can see from the plan, new addition will create a traffic jams at the intersections Saratoga vs Manzanita and Saratoga vs Moorpark
- EIRs presented to our Community were so poorly and unprofessionally done, that documents became simply laughable matters. For example: EIR considers impact on hummingbirds not on HUMANS (read us).
- we have increase in crime. Cars are been breaking in, alarms sound all night without police attention.

None of the construction documents describes the situation in our neighborhood at the time being:

- our streets not been swiped for over 7 years! And our streets had been destroyed during previous AVALON (OAKWOOD) construction, not been repaired as promised by Office of Councilman Chappie Jones
- cars and tracks from current AVALON tenants parked on our streets for weeks obstructing our driveways and garbage collection on Mondays
- tenants from AVALON became real dangers to all children and drivers, since they leave parking structure without stop at the exits
- tenants with their pets had become a real nonsense, since they “distribute” their dogs’ poop on front yards and in front of the Phelan School

None of the construction planning documents describes the situation in our neighborhood when construction will start:

- dust and noise from huge concrete removal. It is planned for whole week including weekends!
- streets will be closed to incoming and outgoing traffic

IN SUMMARY:

We protest the decision of the Planning Commission to approve this Project, as well as permit to allow “rezoning”. In case City of San Jose approves the AVALON construction (read destruction) we plan to continue protesting to prevent future development.

Attachments: Petitions, emails, concerns, since 2017.

People who are in charge to approve AVALON expansion

Igor Yevelev [REDACTED]

Sat 5/25/2019 1:58 PM

To: Igor Yevelev [REDACTED]

<https://sanjosespotlight.com/mayor-sam-liccardo-failed-to-disclose-property-near-google-development/>

Abandoned and damaged vehicles filled our street now

Igor Yevelev [REDACTED] >

Sun 5/26/2019 8:58 AM

To: Igor Yevelev [REDACTED] >;

 1 attachments (283 KB)

Abandoned cars.jpg;

Hello everyone,

Manzanita Drive is used as parking lot for abandoned and damaged cars

I have reported all of the cars - no effect!

Sorry for disturbing, however it is impossible to leave driveway!

The most exciting City Proposal by our famous Councilman

Igor Yevelev [REDACTED] >

Sun 5/26/2019 9:40 AM

To: Igor Yevelev [REDACTED] >;

Making San Jose smarter – Vice Mayor Chappie Jones

San Jose's Office of Civic Innovation and Digital Strategy has been working to increase "the number of public private partnership opportunities with the city to demonstrate, pilot and scale process, data and technology solutions that bring community benefit," to San Jose residents. Jones wants to use funding to help create essential staffing positions to allow the office to grow. He added that his office will work with tech companies, as well as the Office of Civic Innovation and Digital Strategy, to help engage youth groups and the community in technology pilot programs.

What will it cost? – \$500,000, one-time funding

Re: AVALON Expansion and Meetings

Van Der Zweep, Cassandra

Wed 5/29/2019 4:34 PM

Sent Items

To: Igor Yevelev [REDACTED];

Good afternoon Igor,

Thank you for the provided comments. This will be added to the project's public record along with your other comments.

The recorded discussion of Planning Commission is available for your listening at: <http://www.sanjoseca.gov/index.aspx?nid=3431>.

Additionally, please note the public comments received up until the Planning Commission hearing were included as an attachment to the project's staff report. Here is a link to the Staff Report for Planning Commission. <http://www.sanjoseca.gov/DocumentCenter/View/84812>.

The link to City Council agenda is here:

<http://www.sanjoseca.gov/index.aspx?NID=399>

Please note that the agenda will be posted a week before the hearing.

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement

City of San José | 200 East Santa Clara Street

Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Igor Yevelev [REDACTED]

Sent: Wednesday, May 29, 2019 2:15:39 PM

To: Igor Yevelev

Subject: Fwd: AVALON Expansion and Meetings

FYI

I have received few minutes ago.

AVALON PROJECT WAS RECOMMENDED APPROVAL AT THE MEETING ON MAY 22nd.

ALL OUR OBJECTIONS AND PETITION TO BLOCK CONSTRUCTION
IN PROPOSED DESIGN - ARE IGNORED>

LIGHTS OUT...

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

From: Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>

5/29/2019

Mail - Cassandra.VanDerZweep@sanjoseca.gov

Date: Wed, May 29, 2019 at 10:42 AM
Subject: RE: AVALON Expansion and Meetings
To: Igor Yevelev [redacted] >
Cc: Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>

Hi Igor,

The project was recommended approval by the Planning Commission on May 22nd and will be heard at the City Council on June 11th.

I apologize for the link error on the EIR website, I will get that updated.

The link to City Council agenda is here:
http://www.sanjoseca.gov/index.aspx?NID_399

Please note that the agenda will be posted a week before the hearing

Best regards,
Thai

From: Igor Yevelev [mailto:[redacted]]
Sent: Wednesday, May 29, 2019 10:35 AM
To: Igor Yevelev <[redacted]>
Subject: AVALON Expansion and Meetings

Hello all,

I have checked the City Site for any updates after Meeting which was suppose to take place on May 22.

There is NONE.
=====

Hearing Dates:

- **Planning Commission: May 22, 2019 – 6:30 p.m.;** City Council Chambers, City Hall, 200 E. Santa Clara St., San José

=====
As for the City Council Meeting scheduled for June 11
I have tried to understand what is to be an agenda - link does not work.
Since I am SW Test Engineer - FAILURE means... FAILURE or
NOBODY CARES.

- **City Council: June 11, 2019- 6:00 p.m.;** City Council Chambers, City Hall, 200 E. Santa Clara St., San José

Agendas are posted a week prior at [Commissions and Hearings](#) page.

Thanks for reading.

Re: We demand this letter to be read at the City Council on June 11

Van Der Zweep, Cassandra

Tue 6/4/2019 4:40 PM

Sent Items

To: Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>;

Cc: Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; Igor Yevelev [REDACTED]; AT Kippes [REDACTED]; john [REDACTED]; Jinhua Cao [REDACTED]; Gary Sweet [REDACTED]; Joanne Glen [REDACTED]; Hongxi Shen [REDACTED]; Harry [REDACTED]; Howard Yin [REDACTED]; Jenny Bixby [REDACTED]; Cc: Dina Yevelev [REDACTED]

Good afternoon Igor,

I would like to confirm receipt of this email. Your comments will be added to the project's public record which is shared with the decisions makers.

Please note, while Staff will not read the letters into the record, the decision makers will receive copies of the comments. Additionally, meeting attendees can speak during the public hearing for the item. Note, usually two (2) minutes is given per speaker. (Here is a link to the city's agenda for June 11th, a pdf of the published agenda can be downloaded here as well: <https://sanjose.legistar.com/MeetingDetail.aspx?ID=675600&GUID=F04CC3B7-B98E-47E6-82ED-147824477818&Search=>).

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement

City of San José | 200 East Santa Clara Street

Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Le, Thai-Chau

Sent: Tuesday, June 4, 2019 3:22 PM

To: Van Der Zweep, Cassandra

Subject: FW: We demand this letter to be read at the City Council on June 11

From: Igor Yevelev [REDACTED]

Sent: Saturday, June 1, 2019 11:00 AM

To: Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; cassandra.vanderzweep@sanjoseca.gov

Cc: Dina Yevelev [REDACTED]; Igor Yevelev [REDACTED]; AT Kippes [REDACTED]; john toy [REDACTED]; Jinhua Cao [REDACTED]; Gary Sweet [REDACTED]; Joanne Glen [REDACTED]; Hongxi Shen [REDACTED]; Harry [REDACTED]; Howard Yin [REDACTED]

6/4/2019

Mail - Cassandra.VanDerZweep@sanjoseca.gov

<[REDACTED]> Jenny Bixby <[REDACTED]>

Subject: We demand this letter to be read at the City Council on June 11

This is Urgent letter to San Jose City Council.

Must be read to all Councilmen during Meeting on June 11,
and
Primerose Neighborhood homeowners should get confirmation!

Re: We demand this letter to be read at the City Council on June 11

Van Der Zweep, Cassandra

Thu 6/6/2019 10:36 AM

Sent Items

To: Igor Yevelev [REDACTED];

Cc: Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; AT Kippes [REDACTED]; john toy <[REDACTED]>; Jinhua Cao <[REDACTED]>; Gary Sweet <[REDACTED]>; Joanne Glen <[REDACTED]>; Hongxi Shen <[REDACTED]>; Harry <[REDACTED]>; Howard Yin <[REDACTED]>; Cc: Dina Yevelev <[REDACTED]>;

Good afternoon Igor,

Thank you for your comments.

I have spoken to our web support services. The second memorandum link has been added to the City Council agenda item, it was not live before but this has been fixed. Page 19 and 20 summarize the community meetings and comments received. Copies of the written public comments received begin on page 300 of the link.

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement

City of San José | 200 East Santa Clara Street

Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Igor Yevelev [REDACTED]

Sent: Tuesday, June 4, 2019 9:12:08 PM

To: Van Der Zweep, Cassandra

Cc: Le, Thai-Chau; Jones, Chappie; The Office of Mayor Sam Liccardo; AT Kippes; john toy; Jinhua Cao; Gary Sweet; Joanne Glen; Hongxi Shen; Harry; Howard Yin; Cc: Dina Yevelev

Subject: Re: We demand this letter to be read at the City Council on June 11

Hello all,

I have reviewed the documents regarding THE PROJECT.

Our petition was never mentioned.

Our protests and comments during Meetings - not described.

What was done in the Documentation intentionally?

Document has only my name as "COMMUNITY MEMBER"!

One person is against the whole Project! (Makes me really proud...)

Please post your comments here

https://sanjose.granicusideas.com/meetings/3508-city-council/agenda_items?page=5

and **attend the Council Meeting on June 11.**

Thank you

Please post your Comments online ASAP.

On Tue, Jun 4, 2019 at 4:40 PM Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov> wrote:

Good afternoon Igor,

I would like to confirm receipt of this email Your comments will be added to the project's public record which is shared with the decisions makers.

Please note, while Staff will not read the letters into the record, the decision makers will receive copies of the comments Additionally, meeting attendees can speak during the public hearing for the item Note, usually two (2) minutes is given per speaker. (Here is a link to the city's agenda for June 11th, a pdf of the published agenda can be downloaded here as well: <https://sanjose.legistar.com/MeetingDetail.aspx?ID=675600&GUID=F04CC3B7-B98E-47E6-82ED-147824477818&Search=>).

Thank you,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement

City of San José | 200 East Santa Clara Street

Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Le, Thai-Chau

Sent: Tuesday, June 4, 2019 3:22 PM

To: Van Der Zweep, Cassandra

Subject: FW: We demand this letter to be read at the City Council on June 11

From: Igor Yevelev [mailto:]

Sent: Saturday, June 1, 2019 11:00 AM

To: Le, Thai Chau Thai.Chau.Le@sanjoseca.gov ; Jones, Chappie Chappie.Jones@sanjoseca.gov ; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; cassandra.vanderzweep@sanjose.cagov

Cc: Dina Yevelev < >; Igor Yevelev < >; AT Kippes < >; john toy < >; Jinhua Cao < >; Gary Sweet < >; Joanne Glen < >; Hongxi Shen < >; Harry < >; Howard Yin < >; Jenny Bixby < >

Subject: We demand this letter to be read at the City Council on June 11

This is Urgent letter to San Jose City Council

Must be read to all Councilmen during Meeting on June 11,
and

Primerose Neighborhood homeowners should get confirmation!

Dear Mason,

This letter is in regards of our phone conversation from a few weeks ago.

You have asked me to send you an e-mail about our situation.

First of all, would you please get back to us on the Manzanita Dr repair condition. We are seeing that the road was marked during the last week but we don't know what it means and no one cares to send us any information about it.

ONCE AGAIN on behalf our neighborhood I would like to repeat that our road was completely destroyed by the Eaves apartments while they were building the new addition to their complex.

Now, I am a disabled person with lots of pain in my joints and muscles who had no choice but to go and clean the street in front of our front-yard from the plastic cups, cigarette cases, condoms, cigarettes, pieces of paper and other endless dirt. And this is ONLY if there are no cars parked near my house which NEVER HAPPENED:-((

I suffer from physical pains while doing so and get emotionally distressed each time I am going through this process.

My husband constantly picking up the bags filled with dogs poop (yes, it is happening almost every day still even though they put the collectors!). He comes from work being very tired and has to go and clean up the area.

We never see the street sweeping car anymore. And even if it comes how can our street gets cleaned if cars are parked there 24/7.

Everywhere else the signs get put out not to park during certain days and hour for cleaning. When we asked for the same approach we have been told that the City doesn't have money for it!!! Don't we pay the property taxes that you could do the work to stop our street look dirty and completely neglected:-((???

If we put the garbage bins outside to prevent our driveway from being blocked the tenants of the Eaves apartments with throw the dog poop into them. If we won't put them out there they will block our driveway and my husband can not to get out of it at 6:30am to go to work!!!

If we tell them people get very angry and hostile.

**We feel that we are being discriminated and live in the ghetto now:-(((
No one from the City of San Jose will stand up for us. We feel that we been treated like a second sort citizens:-((But during the election in November we were getting endless phone calls and people coming to our door asking to vote for this or that person. Why should we, if none of them was willing to help us in our desperate situation???**

I would like to ask you why it has to be so unfair to us, good honest citizen who cares about our street and our community. Where is here the respect to all of us, the respect that we have deserved?

Would you please be so kind and explain to me why some people have to have it good at the expense of other people sufferings.

And WHY this such unfair situation could not be fixed and problem cannot be solved???

I am still not giving up my hopes and patiently waiting for your answers (and you are the third person at this position!!!) and assistance at this matter.

At the end we would like to invite you to come and take a tour in our neighbor and see it ALL by yourself!!!

Thank you very much in advance and we look forward to hearing from you very soon with a positive and helpful answers to our unfortunate situation.

Warmest regards,
Dina Yevelev.

Response from Mason Fong

Dec 14, 2018, 4:54 PM

Dear Dina,

Thank you for writing to me your concerns. **I will follow up with City Staff and get back to you as soon as I hear back.**

Sincerely,

Mason R. Fong

Housing & Transportation Analyst

Office of Councilmember Chappie Jones

San Jose City Councilmember, District 1

San Jose City Hall | 200 E. Santa Clara St., 18th Floor, San Jose, CA 95113

408-535-4901

The above letter was written to Mason Fong 2 months ago.

As you can see the response was he would contact the City and get back to me.

I never heard from Mason Fong again.

And then there was a Meeting on February 6, 2019. We hoped to get his answers at the meeting, however he was not there. As far as the Meeting outcome, we want to emphasize that we have heard about the plan that will have measures designed to assist the renters to help them to survive the construction. The plan was thoughtful in terms of having the Dog Park, Internet, and coffee shops serving tenants and population of San Jose, including the swimming pool to help tenants to relax, etc. But there was not even one word about making the lives residents of the Manzanita survivable during 3 + years of the demolitions and constructions.

It is going to (for neighborhood and specifically for owners on Manzanita Drive) extreme conditions for every day and night, intolerable amount of noise, dust, garbage and terrible dangerous driving conditions, as well as indescribable amount of stress and anxiety, which will affect our health tremendously.

We were not offered any plan of deviation from this construction.

What was astonishing that representative of the AVALON, that he was giving us the list of the major improvements, done by EAVES AVALON complex, and its management, as it was their achievement. And they took all the credits for themselves, for better conditions for all of us - residents from MANZANITA and BLACKFORD streets. It is impossible to describe the amount and severity of our efforts, and cost to our health to write all the letters, collect all the signatures, make numerous phone calls, attending meeting... and yes, to yell and scream to get minimal attention from AVALON reps as well as City Councilmen.

As Igor Yevelev's wife, I want to make a clear statement:

- it takes a lot to get exemplary highly intelligent man like my husband Igor to a condition of the highest anxiety he is in now. Every day blocked driveways, dog poop, garbage in our bins, dirty street, which never get cleaned due to the City negligence, and cars parked for many days without being towed away (as we reported), abusive and rude drivers – tenants from EAVES AVALON... That is the reality we live for many years, since OAKWOOD Apartments became EAVES, and last expansion completed.

Prior to the Meeting started, I have asked when the road will be repaired, since it was abandoned for last 6 years. And the answer of the person (who evidently does not care at all) was: "Some time by someone between AVALON and City of San Jose will do the job..." That was the answer! And that how ill-prepared were people who arranged the meeting and were presenting their plans.

So, to summarize all last time? We wanted to let you know, that if you think that you will be able to do your project without putting us (the residents of the neighborhood), who have been really caring for well-being of the neighborhood in the past years, you all are making a huge mistake.

Because we can promise you. There are going to be many articles in local and state papers about this situation. And for the future please keep in mind, that we are not participating in any future meeting, unless the plan was changed to accommodate our demands, change the construction plan and schedule, and notify us about such rearrangements.

We are all good citizens, we pay our property taxes, and we deserve to be treated properly.

Congresswoman Anna G. Eshoo

District Office

698 Emerson Street
Palo Alto, California 94301

**RESIDENTS of Manzanita Drive
San Jose, CA**

Contact: Igor and Dina Yevelev

September 08, 2017

cc: EAVES Apartments, Office of the Major of San Jose

Dear Congresswoman Eshoo,

It is with great disappointment that, on behalf of the homeowners of Manzanita Drive in San Jose, we would like to inform you that **absolutely nothing had changed since our first collective letter sent to your Office.**

We had another meeting with city Community Relations Director Ed Brooks, Councilmember Chappie Jones and the representative from EAVES apartments in July.

Unfortunately, none of them have been able to help us in our desperate situation. Instead, they were trying to put all the responsibility on us, asking the homeowners to take pictures of the cars that have been parked on our street for a long time. We were advised to call the police, the tow companies and to deal with the people who block our driveways and often are extremely rude and even dangerous to communicate with.

In the meantime, our street remains totally unsafe and completely neglected.

Our beloved neighborhood is losing the dignity, warmth and comfort that it has known for years (we have such wonderful residents who have lived here for as long as 55 years!) at catastrophic speed:

*The street is dirty and dusty, as green garbage containers from the EAVES apartments have been left unattended for days. More than that, some of them are broken and have just three wheels, which is extremely unsafe.

*The Stop signs at the exits from EAVES apartments are still not in place, which makes the traffic situation highly dangerous. There is no speed limit monitor, which had been promised, and as a result drivers are very often reckless.

*The tenants are leaving endless dog poop bags on our front yards, or even worse, putting them in our garbage bins.

*Meanwhile, the EAVES apartment parking lots are half-empty but our street is packed. This is because EAVES charges \$75 a month for a second car parking space, which their tenants don't want to pay.

*There is a tremendously hostility between Eves residents and the homeowners of this street.

***What is even worse that the children from the Discovery Charter School are watching this tremendous abuse of nature. There are a green bags with the dogs' poop being just shamelessly squeezed into the wired fence of their beloved school. The area around the school is littered and filthy.**

Please note: ALL THESE UNRESOLVED ISSUES ALREADY CAUSE MANY RESIDENTS LOTS OF STRESS, AND EVEN PANIC ATTACKS. Our neighbors are experiencing some health issues in connection of such situation.

People get anxiety attacks, high blood pressure episodes and even nervous breakdowns. And this does call for the liability issues, pain and suffering.

We are SCREAMING for help to be protected and kept safe in our own homes, on our beloved street. Before it's too late, before (G-d forbid) a fatal accident, before people get upset to the point of physical fight or (again, G-d forbid) gunshots, we are asking you to help us in our desperate situation.

If bad things happen, all the names of the people whom we've begged for help (with no results) will be there for the judges to see. If in two weeks we do not see a meeting where positive steps are announced, we will be sending a very detailed letter to the local TV station and to the NBC Investigative unit.

We are homeowners who appreciate our beloved homes, who regularly pay property taxes and who by taking a great care of our properties make the City of San Jose a great place to live. We want to be respected and appreciated for it, instead of being punished for the good we are doing and suffering endlessly.

We demand that the City of San Jose limit parking on our street to homeowner residents only. We demand that EAVES apartment residents remove their disgusting and dirty and broken garbage containers away from our street. We demand that the complex solves its own parking issues so their tenants won't bother us. We demand that the City of San Jose fix the road on Manzanita Drive. We demand that the DMV and Transportation Department finally put appropriate "STOP" signs at all the exits from EAVES parking structure, and control the street's speed limit. We demand that the Eves management send letters to their tenants, telling them that they will be heavily fined for littering the neighborhood with dog poop and other garbage. And if this action will not work, our demand would be "No pets allowed" in their complex. Because it is ABSOLUTELY unacceptable for them to make a billions of dollars at the experience of OTHER PEOPLE SUFFERING AND TREMENDOUS INCONVENIENCE.

We collectively demand that the Eves Apartment complex owners and management FINALLY take THE FULL RESPONSIBILITY for all the negative actions that take place on our streets and our neighborhood. Even with the closed parking lot that needs repair that has created this problem the Eaves complex charges their tenants to park in their own lots that are supposed to accommodate their tenants. The number of spaces to tenant ratio is not really the issue here. The building codes and retrofit and repair of the parking structure needs to be addressed asap. This is what is creating most of the problem. Most of the parking lots on both sides (Manzanita dr. and Blackford Ave) are empty at all hours of the day and night and are not being used sufficiently.

Once again this parking was never an issue when the Oakwood apartments were the owners. Over 30yrs living on Manzanita dr. Eaves apartments has created quality of life issues (health and stress and dangerous situations) and is going to be in a big trouble when law suits are filed shortly.

Thank you for your time and thank you for your help in advance.

Kindest regards, *Homeowners of Manzanita Drive, signed below*

ELECTRONIC SIGNATURES

Elena Kukhtina

to me, Ed, J.G.Toy, Ritahanna, doedhl, horgiyi.rehs, althea, garrido.c, caojinhua, michaeldowney, plin2006, dvanbeveren, j.rapheld, joanne.glen, atkippers, yinhoward, Gary

YES!!!!

Sent from my iPhone



Althea T. Kippes Sep 5

to me, J.G.Toy, plin2006, dvanbeveren, Gary, doedhl, joanne.glen, atkippers, caojinhua, althea, Ritahanna, E_Kuk, j.rapheld, yinhoward, Ed, garrido.c, michaeldowney, horgiyi.rehs

Yes

Jinhua Cao

Sep 6

to me, Ed, J.G.Toy, Ritahanna, doedhl, horgiyi.rehs, althea, garrido.c, michaeldowney, plin2006, E_Kuk, dvanbeveren, j.rapheld, joanne.glen, atkippers, yinhoward, Gary

YES!!!

-Jinhua (Jason)

David Van Beveren Sep 6

to **atkippers**, me, j.g.toy, plin2006, Gary, doedhl, joanne.glen, atkippers, caojinhua, althea, ritahanna, e_kuk, j.rapheld, yinhoward, Ed, garrido.c, michaeldowney, horgiyi.rehs

YES!

john toy Sep 6

to me, Ed, Ritahanna, doedhl, horgiyi.rehs, althea, garrido.c, caojinhua, michaeldowney, plin2006, E_Kuk, dvanbeveren, j.rapheld, joanne.glen, atkippers, yinhoward, Gary

Yes!

Sep 6

Gary Sweet

Yes. Double yes.

Rita Hanna

Sep 6

Yes

Rita Hanna

Hongxi Shen [redacted] Sep 8

to Jinhua, me, Ed, J.G.Toy, Ritahanna, doedhl, horgiyi.rehs, althea, garrido.c, michaeldowney, plin2006, E_Kuk, dvanbeveren, j.rapheld, joanne.glen, atkippers, yinhoward, Gary

Absolutely YES, Igor, thank you and everyone for taking care of this.

Regards, Hongxi

Joseph Lo [redacted] Sep 8

Count me in Yes!

Name	Address	Signature
Igor and Dina Yevlev	[redacted]	[redacted]
Cathy Lizzoraga		
Alex Berelov		
Lori, Ben & Jacob Kahn		
Sam Ford		
Nidhi Gupta		
Lorie & Cary Leard		

RE: We demand this letter to be read at the City Council on June 11

Van Der Zweep, Cassandra

Tue 6/11/2019 8:26 AM

Saratoga

To: Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>;

Cc: Dina Yevelev [redacted]; AT Kippes [redacted]; john toy [redacted]; Jinhua Cao [redacted]; Gary Sweet [redacted]; Joanne Glen [redacted]; Hongxi Shen [redacted]; Harry [redacted]; Howard Yin [redacted]; Jenny Bixby [redacted];

Good morning Igor,

Thank you for our comments. They have been added to the public record.

Best,

Cassandra van der Zweep

Supervising Planner | Planning, Building & Code Enforcement

City of San José | 200 East Santa Clara Street

Email: cassandra.vanderzweep@sanjoseca.gov | Phone: (408)-535-7659

From: Igor Yevelev [redacted]

Sent: Monday, June 10, 2019 7:54 PM

To: Le, Thai-Chau <Thai-Chau.Le@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; cassandra.vanderzweep@sanjoseca.gov

Cc: Dina Yevelev [redacted]; AT Kippes [redacted]; john toy <[redacted]>; Jinhua Cao [redacted]; Gary Sweet [redacted]; Joanne Glen [redacted]; Hongxi Shen <[redacted]>; Harry <[redacted]>; Howard Yin [redacted]; Jenny Bixby [redacted];

Subject: Re: We demand this letter to be read at the City Council on June 11

Hello all,

Just wanted to let you know that I have swiped long stretch of Manzanita Drive across from our house.

It was not a very pleasant job:

- there were few used condoms hanging from our lemon-tree;
- since vehicles from AVALON parked overnight (or better say "overnights") most of the garbage was not removed.

Item #1:

I have checked with neighbors. Condoms didn't belong to any of them. The size was way too small. Someone called it "condominiums"

Item #2:

Since the street across my house was not cleaned, all garbage I have collected is to be returned to AVALON.

6/11/2019

Mail - Cassandra.VanDerZweep@sanjoseca.gov

Thank you

Igor



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
brian@lozeaudrury.com

June 11, 2019

By E-mail and hand delivery

Sam Liccardo, Mayor
Charles Jones, Vice Mayor
Sergio Jimenez
Raul Peralez
Lan Diep
Magdalena Carrasco
Devora Davis
Maya Esparza
Sylvia Arenas
Pam Foley
Johnny Khamis
City Council
City of San Jose
200 E. Santa Clara St.
San Jose, CA 95113
Email: CityClerk@sanjoseca.gov

Re: Comment on the Final Environmental Impact Report for the Avalon West Valley Expansion Project (File Nos. PDC17-056, PD17-027, SCH 2018042029).

Dear Mayor Liccardo, Vice Mayor Jones, and Honorable Members of the San Jose City Council:

I am writing on behalf of Laborers International Union of North America Local Union 270 (“LIUNA”) concerning the Final Environmental Impact Report (“FEIR”) for the Avalon West Valley Expansion Project (File Nos. PDC17-056, PD17-027, SCH 2018042029) (the “Project”) in San Jose. LIUNA previously submitted written comments on the Draft Environmental Impact Report (“DEIR”) to the San Jose Planning Commission on February 11, 2019. In May 2019, a First Amendment to the Draft EIR, which in conjunction with the DEIR comprised the FEIR for the Project, was released and contained responses to LIUNA’s February 11, 2019 comment letter. LIUNA submitted oral comments on the FEIR at the Planning Commission meeting on May 22, 2019.

After reviewing the FEIR, we conclude that the FEIR fails to analyze all environmental impacts and to implement all necessary mitigation measures. We request that the City of San

Jose (“the City”) refrain from certifying the FEIR and instead prepare a recirculated DEIR (“RDEIR”) in order to incorporate our concerns discussed below.

We hereby incorporate our previous comment letter of February 11, 2019 in its entirety. This comment has been prepared with the assistance of Certified Industrial Hygienist Francis Offermann, PE, CIH and wildlife biologist Shawn Smallwood Ph.D. Mr. Offermann’s comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference in their entirety. Dr. Smallwood’s comment and curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

The site for the Project is 18.9-acres comprised of six parcels (APNs 299-37-024, -026, -030, -031, -032, and -033) located east of Saratoga Avenue, between Blackford Avenue and Manzanita Drive. Currently, the site has 873 residential apartment units within 25 buildings, three parking garages, and several surface parking spaces. The Project would redevelop approximately 7.46 acres of the 18.9-acre site. The Project would demolish two of the existing parking garages and the leasing/amenity buildings.

The Project would construct up to 307 new residential units, 17,800 square feet of retail/commercial space, residential amenities including two pools, and a total of 1,148 new parking spaces. The construction would involve two new buildings (Avalon Building and Manzanita Building) and one parking garage. The Avalon Building would be a 252-unit, six- to seven-story mixed-use building (approximately 85 feet tall) with up to 17,800 square feet of retail space, located above a three-level parking structure (two levels below-grade and one level above-grade). The Manzanita Building would be a three-story residential building (approximately 45 feet tall) with 55 units. The parking garage would be three levels above-grade and one level below-grade (approximately 35 feet tall) with up to 742 parking stalls.

II. LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances). *See, e.g.*, Pub. Res. Code § 21100. The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal. App. 4th 98, 109.)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1).) “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.) The EIR has been described as

“an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (CEQA Guidelines § 15002(a)(2).) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (Pub.Res.Code (“PRC”) § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).)

The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. (PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354.) The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings Cnty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.)

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets, supra*, 91 Cal. App. 4th at 1355 [quoting, *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12.].) A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado Cnty. Water Agency* (1999) 76 Cal.App.4th 931, 946.)

III. DISCUSSION

A. The FEIR Fails to Adequately Analyze and Mitigate the Potential Significant Impacts of the Project on Indoor Air Quality.

Mr. Offermann, a Certified Industrial Hygienist and Professional Mechanical Engineer, concludes that it is likely that the Project will expose future residents to significant impacts

related to indoor air quality, and in particular, emissions for the cancer-causing chemical formaldehyde. Mr. Offermann is one of the world's leading experts on indoor air quality and has published extensively on the topic. Mr. Offermann's comment letter and curriculum vitae are attached as Exhibit A.

Mr. Offermann explains that many composite wood products typically used in modern home construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (Ex. A, pp. 2-3.)

Formaldehyde is a known human carcinogen. Mr. Offermann states that that residents of the Project likely will be exposed to a cancer risk from formaldehyde of at least 125 per million. (Ex. A, p. 3.) This is far above the Bay Area Air Quality Management District's ("BAAQMD") CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann's cancer risk calculation of 125 in a million assumes the Project will use current "CARB-compliant" materials. (Ex. A, p. 3.)

In addition to residential exposure, the employees of the hotel and commercial and office buildings are also expected to experience work-day exposures. (Ex. A, p. 4.) This exposure for employees would result in "significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in retail buildings." (*Id.*) Assuming eight-hour work days, five days per week for 50 weeks per year, an employee would be exposed to a cancer risk of 18.4 per million, which is nearly double the 10 per million CEQA threshold. (Ex. A, p. 5.)

Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Ex. A, p. 5.) Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. (Ex. A, p. 12-13.)

The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. (*See Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597-598 ("under CEQA, the lead agency bears a burden to investigate potential environmental impacts")). In addition to assessing the Project's potential health impacts to residents and workers, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Project's future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the BAAQMD level. (Ex. A, pp. 5-9.) Such an analysis would be similar in

form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

The failure to address the project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("CBIA"). At issue in CBIA was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. (CBIA, 62 Cal.4th at 800-801.) However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801 ["CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present].) In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on *a project's users or residents* that arise *from the project's effects* on the environment." (*Id.* at 800 [emphasis added].)

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Residents will be users of the residential units, and employees will be users of the hotel and offices. Currently, there is presumably little if any formaldehyde emissions at the site. Once the Project is built, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in CBIA expressly finds that this type of effect by the project on the environment and a "project's users and residents" must be addressed in the CEQA process.

The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects *on human beings*, either directly or indirectly.'" (CBIA, 62 Cal.4th at 800 [emphasis in original].) Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." (*Id.* [citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d)].) It goes without saying that the thousands of future residents and employees at the Project are human beings and the health and safety of those workers is as important to CEQA's safeguards as nearby residents currently living near the project site.

Although the City claims that the project would be built in accordance to the most recent California Green Building Code ("CALGreen"), which specifies that composite wood products (such as hardwood plywood and particleboard) meet the requirements for formaldehyde as specified in the California Air Resources Board's ("CARB") Air Toxic Control Measures ("ATCM"), Mr. Offermann has advised that "using composite wood products, including those that meet the most recent CARB ATCM Phase 2 requirements, do not achieve indoor

concentrations of formaldehyde with cancer risks that meet the BAAQMD CEQA requirements.” (Ex. A, p. 9.) In other words, compliance with CALGreen does not reduce the impact of formaldehyde emissions to less-than-significant levels. Even if the building materials for the Project comply with CALGreen criteria, the City still must prepare an EIR which analyzes and mitigates the impact of formaldehyde emissions to less-than-significant levels.

Lastly, although the City claims that “it would be speculative for the City to estimate the type and volume of building materials that may contain formaldehyde,” Mr. Offermann stresses that he is not asking the City to “speculate.” Rather, Mr. Offermann has concluded that the City must “at the design stage [] select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health ‘Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers’, (CDPH, 2017), and use the procedure described earlier (i.e. Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.” (Ex. A, p. 10.)

B. The FEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Biological Resources.

Wildlife biologist Dr. Shawn Smallwood, Ph.D, submitted an expert comment on the DEIR to the Planning Commission on February 11, 2019. The First Amendment to the Draft EIR released in May 2019 contained the City’s response to Dr. Smallwood’s comment. Dr. Smallwood’s response to the City is attached as Exhibit B and is summarized below.

In response to Dr. Smallwood’s comment regarding the baseline description of wildlife on site, the City responded:

[T]he project site is located within an area designated as “Urban-Suburban” land under the Santa Clara Valley Habitat Plan (SCVHP). “Urban-Suburban” land is comprised of areas where the native vegetation has been cleared for residential, commercial, industrial, transportation, or recreational structures. The current project site is developed with residential apartment units within 25 buildings, three parking garages, and several surface parking spaces. There are areas of minor vegetation and ornamental landscaping within the site. Furthermore, the project site and surrounding area is fully developed with no natural habitats that are present that would support endangered, threatened, or special-status species. There are no sensitive habitats onsite or within a one-mile radius, such as creeks and rivers, freshwater marsh or serpentine grasslands.

(First Amendment to the Draft EIR, pp. 15-16.)

However, according to Dr. Smallwood, “[The] City of San Jose’s response deflects from the issue I raised by arguing that no natural habitats occur in the project area.” (Ex. B, p. 1.) Rather, Dr. Smallwood explains, “[b]iologists infer habitat through use-and-availability analysis,

where use is based on sampling, and availability is the proportion of the sampled environment composed of the suite of plant species and/or terrain measured by the investigator.” (*Id.*) Importantly, “[n]atural vegetation is not a prerequisite for the occurrence of wildlife in California. . . . Wildlife will make use of whatever conditions we leave them, including far less than ideal conditions.” (Ex. B, pp. 1-2.) As such, “regardless of the quality or extent of habitat in the local area . . . [a]n analysis is needed of how many birds of which species are flying across the project site, and at which times of year, so that bird-window collisions can be predicted and measures taken to minimize impacts.” Without such an analysis, the EIR fails to provide substantial evidence that the Project will not have a significant impact on birds.

In response to Dr. Smallwood’s comment regarding the impact of window collisions on bird species, the City responded:

While bird strikes are a known issue in areas of Santa Clara County, the project site is located within a developed, urbanized part of San José. . . . Additionally, the project site is located adjacent to residences, retail, commercial/office businesses, and schools that vary in height from one to three stories. . . . Furthermore, the proposed project does not propose to use highly reflective construction material (e.g., mirrored glass).

(First Amendment to the Draft EIR, p. 17.)

Dr. Smallwood responded, “Most of the available studies of bird-window collision rates were performed in places like the proposed project, so the mean and 90% confidence interval I used to predict collision rate at the project site were representative of the environment into which the project is proposed.” (Ex. B, p. 2.) As such, it is irrelevant that the Project site is located within an urbanized area because the studies relied upon by Dr. Smallwood were performed in similar environments. Furthermore, Dr. Smallwood points out that “collision risk is attributed to more window attributes than just reflectance.” (*Id.*) Thus, “[n]ot using highly reflective glass does not eliminate the need for mitigation.” (*Id.*)

In response to Dr. Smallwood’s comment regarding the impact of vehicle collisions on bird species, the City responded:

[M]ost special status animal species occurring in the Bay Area use habitats that are not present on the project site. Since native vegetation of the area is no longer present onsite, native wildlife species have been supplanted by species that are more compatible with an urbanized area.

(First Amendment to the Draft EIR, p. 17.)

Dr. Smallwood responded that the City’s response “misses the point” of his comment. (Ex. B, p. 3.) Dr. Smallwood was not concerned about vehicles striking wildlife on the Project site. Rather, “[w]ildlife will be killed by cars and trucks driving to and from the project site at the predicted rate of 1,896 daily trips. These impacts will occur wherever the generated traffic

traverses roadways that bisect wildlife travel routes.” (*Id.*) Because this impact was not analyzed and mitigated, the City must prepare a revised EIR to adequately evaluate and mitigate this potential impact.

In response to Dr. Smallwood’s comment regarding the impact of artificial lighting on bird species, the City responded:

The site is currently developed with residential units within 25 buildings, three parking garages, and several parking lots. Sources of light and glare in the project area include streetlights, parking lot lights from nearby businesses, security lights, vehicular headlights, internal building lights, and reflective building surfaces and window. As discussed in *Section 3.1.2.6* of the Draft EIR, while implementation of the project would result in an increase in nighttime lighting due to the proposed building design and the net increase in vehicles traveling to and from the site, it would not be perceptible compared to existing conditions since the adjacent land uses and existing residences and parking garages on-site use artificial lighting.

(First Amendment to the Draft EIR, p. 18.)

Dr. Smallwood responded that “[t]he response is restricted to a human impact perspective, thereby implying a false equivalency in lighting impacts between human residents and wildlife.” (Ex. B, p. 3.) As such, an analysis of the impacts of artificial lighting on *wildlife*, not humans, is necessary in an EIR in order to properly disclose and mitigate those impacts.

In response to Dr. Smallwood’s comment regarding the impact of the Project on wildlife movement, the City responded:

As discussed in the Draft EIR, the 18.9-acre project site is currently developed with 25 residential apartment buildings, three parking garages and several surface parking lots. As discussed in *Section 3.3 Biological Resources* of the Draft EIR, the project site is not located in an area that is particularly important for wildlife movement and that any wildlife movement would not be substantially inhibited by the project because the development footprint is within a 7.46-acre area of the 18.6-acre site which is already developed. Therefore, no additional analysis or mitigation measures would be required for wildlife movement.

(First Amendment to the Draft EIR, p. 18.)

Dr. Smallwood responded that the City’s reply lacks foundation: “No surveys were performed to quantify wildlife use of the project site. No surveys were performed to quantify wildlife movement in the region. The only foundation for the [City’s] conclusion is wishful speculation.” (Ex. B, p. 3.) Dr. Smallwood points to the eBird records demonstrating that many birds have flown through the Project area to conclude, “All of those birds contributing to all of those records on eBird would have flown to where they were recorded, and along the way they would have stopped over wherever they could, including on the diminishing islands of open

space within San Jose.” (*Id.*) As such, the City’s conclusion is not supported by substantial evidence and a revised EIR must be circulated which quantifies wildlife use and wildlife movement in relation to the Project site.

In response to Dr. Smallwood’s comment regarding the inadequacy of the sole mitigation measure requiring pre-construction surveys, the City responded:

In accordance with the Migratory Bird Treaty Act, California Department of Fish and Wildlife, and General Plan Policies ER-5.1 and ER-5.2, the project would implement Mitigation Measure BIO-1.1 to reduce impacts to raptors and migratory birds during construction. As stated in the responses above, the project site has been disturbed and is developed with existing residences and parking garages. There are no sensitive habitats on-site. Habitats in developed areas, such as the site, are typically low in diversity and include predominantly urban adapted birds and animals. Therefore, no additional detection surveys are required.

(First Amendment to the Draft EIR, p. 19.)

Dr. Smallwood responded that “City of San Jose again erroneously characterizes preconstruction surveys as an impact reduction measure. . . . Preconstruction surveys are typically characterized as a take-avoidance measure, but really they can only avoid take of the few individual animals that are readily detectable just prior to construction grading. . . . Preconstruction surveys uninformed by detection surveys and unpaired with other mitigation measures will not reduce project impacts on birds to less than significant levels.” (Ex. B, pp. 3-4.) Thus, as Dr. Smallwood noted in his prior comment letter, the City must prepare an EIR with detection surveys coupled with the pre-construction surveys in order to ensure that the impact on wildlife is mitigated to a less-than-significant level.

IV. Conclusion

LIUNA requests that the City Council refrain from approving and certifying the FEIR in order to allow staff additional time to address the concerns raised herein and to prepare an EIR to incorporate these concerns. Please include this letter in the record of proceedings for this project. Thank you for your attention to these comments.

Sincerely,



Brian B. Flynn
Lozeau | Drury LLP

EXHIBIT A



INDOOR ENVIRONMENTAL ENGINEERING



1448 Pine Street, Suite 103 San Francisco, California 94109

Telephone: (415) 567-7700

E-mail: offermann@IEE-SF.com

<http://www.iee-sf.com>

Date: May 24, 2019

To: Michael R. Lozeau
Lozeau | Drury LLP
1939 Harrison Street, Suite 150
Oakland, California 94612

From: Francis J. Offermann PE CIH

Subject: Indoor Air Quality: Avalon West Valley Expansion
(IEE File Reference: P-4251)

Pages: 16

Indoor Air Quality Impacts

Indoor air quality (IAQ) directly impacts the comfort and health of building occupants, and the achievement of acceptable IAQ in newly constructed and renovated buildings is a well-recognized design objective. For example, IAQ is addressed by major high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014). Indoor air quality in homes is particularly important because occupants, on average, spend approximately ninety percent of their time indoors with the majority of this time spent at home (EPA, 2011). Some segments of the population that are most susceptible to the effects of poor IAQ, such as the very young and the elderly, occupy their homes almost continuously. Additionally, an increasing number of adults are working from home at least some of the time during the workweek. Indoor air quality also is a serious concern for workers in hotels, offices and other business establishments.

The concentrations of many air pollutants often are elevated in homes and other buildings relative to outdoor air because many of the materials and products used indoors contain and release a variety of pollutants to air (Hodgson et al., 2002; Offermann and Hodgson,

2011). With respect to indoor air contaminants for which inhalation is the primary route of exposure, the critical design and construction parameters are the provision of adequate ventilation and the reduction of indoor sources of the contaminants.

Indoor Formaldehyde Concentrations Impact. In the California New Home Study (CNHS) of 108 new homes in California (Offermann, 2009), 25 air contaminants were measured, and formaldehyde was identified as the indoor air contaminant with the highest cancer risk as determined by the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), No Significant Risk Levels (NSRL) for carcinogens. The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000 (i.e., ten in one million cancer risk) and for formaldehyde is 40 µg/day. The NSRL concentration of formaldehyde that represents a daily dose of 40 µg is 2 µg/m³, assuming a continuous 24-hour exposure, a total daily inhaled air volume of 20 m³, and 100% absorption by the respiratory system. All of the CNHS homes exceeded this NSRL concentration of 2 µg/m³. The median indoor formaldehyde concentration was 36 µg/m³, and ranged from 4.8 to 136 µg/m³, which corresponds to a median exceedance of the 2 µg/m³ NSRL concentration of 18 and a range of 2.3 to 68.

Therefore, the cancer risk of a resident living in a California home with the median indoor formaldehyde concentration of 36 µg/m³, is 180 per million as a result of formaldehyde alone. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the South Coast Air Quality Management District (SCAQMD, 2015).

Besides being a human carcinogen, formaldehyde is also a potent eye and respiratory irritant. In the CNHS, many homes exceeded the non-cancer reference exposure levels (RELs) prescribed by California Office of Environmental Health Hazard Assessment (OEHHA, 2017b). The percentage of homes exceeding the RELs ranged from 98% for the Chronic REL of 9 µg/m³ to 28% for the Acute REL of 55 µg/m³.

The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and

particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.

In January 2009, the California Air Resources Board (CARB) adopted an airborne toxics control measure (ATCM) to reduce formaldehyde emissions from composite wood products, including hardwood plywood, particleboard, medium density fiberboard, and also furniture and other finished products made with these wood products (California Air Resources Board 2009). While this formaldehyde ATCM has resulted in reduced emissions from composite wood products sold in California, they do not preclude that homes built with composite wood products meeting the CARB ATCM will have indoor formaldehyde concentrations that are below cancer and non-cancer exposure guidelines.

A follow up study to the California New Home Study (CNHS) was conducted in 2016-2018 (Chan et. al., 2018), and found that the median indoor formaldehyde in new homes built after the 2009 with CARB Phase 2 Formaldehyde ATCM materials had lower indoor formaldehyde concentrations, with a median indoor concentrations of 25 $\mu\text{g}/\text{m}^3$ as compared to a median of 36 $\mu\text{g}/\text{m}^3$ found in the 2007 CNHS.

Thus, while new homes built after the 2009 CARB formaldehyde ATCM have a 30% lower median indoor formaldehyde concentration and cancer risk, the median lifetime cancer risk is still 125 per million for homes built with CARB compliant composite wood products, which is more than 12 times the OEHHA 10 in a million cancer risk threshold (OEHHA, 2017a).

With respect to this project, the buildings at Avalon West Valley Expansion include multi-family residential buildings in addition to retail buildings. The residential occupants will potentially have continuous exposure (e.g. 24 hours per day, 52 weeks per year). These exposures are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in residential construction

Because these residences will be constructed with CARB Phase 2 Formaldehyde ATCM

materials, and be ventilated with the minimum code required amount of outdoor air, the indoor residential formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of 25 $\mu\text{g}/\text{m}^3$.

Assuming that the residential occupants inhale 20 m^3 of air per day, the average 70-year lifetime formaldehyde daily dose is 500 $\mu\text{g}/\text{day}$ for continuous exposure in the residences. This exposure represents a cancer risk of 125 per million, which is more than 12 times the BAAQMD CEQA cancer risk of 10 per million (BAAQMD, 2017). For occupants that do not have continuous exposure, the cancer risk will be proportionally less but still substantially over the BAAQMD CEQA cancer risk of 10 per million (e.g. for 12/hour/day occupancy, more than 6 times the BAAQMD CEQA cancer risk of 10 per million).

This project will also include retail buildings and the employees are expected to experience work-day exposures (e.g. 40 hours per week, 50 weeks per year). This exposure for employees is anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in retail buildings.

Because these retail buildings will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and be ventilated with the minimum code required amount of outdoor air, the indoor retail building formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of 25 $\mu\text{g}/\text{m}^3$.

Assuming that the employees work 8 hours per day and inhale 20 m^3 of air per day, the formaldehyde dose per work-day at the hotel is 167 $\mu\text{g}/\text{day}$.

Assuming that the retail employees work 5 days per week and 50 weeks per year for 45 years (start at age 20 and retire at age 65) the average 70 year lifetime formaldehyde daily dose is 73.6 $\mu\text{g}/\text{day}$.

This is 1.84 times the NSRL (OEHHA, 2017a) of 40 µg/day and represents a cancer risk of 18.4 per million, which exceeds the CEQA cancer risk of 10 per million. This impact should be analyzed in an environmental impact report (“EIR”), and the agency should impose all feasible mitigation measures to reduce this impact. Several feasible mitigation measures are discussed below and these and other measures should be analyzed in an EIR.

While measurements of the indoor concentrations of formaldehyde in residences built with CARB Phase 2 Formaldehyde ATCM materials (Chan et. al., 2018), indicate that indoor formaldehyde concentrations in buildings built with similar materials (e.g. hotels, residences, offices, warehouses, schools) will pose cancer risks in excess of the CEQA cancer risk of 10 per million, a determination of the cancer risk that is specific to this project and the materials used to construct these buildings can and should be conducted prior to completion of the environmental review.

The following describes a method that should be used prior to construction in the environmental review under CEQA, for determining whether the indoor concentrations resulting from the formaldehyde emissions of the specific building materials/furnishings selected for the building exceed cancer and non-cancer guidelines. Such a design analyses can be used to identify those materials/furnishings prior to the completion of the City’s CEQA review and project approval, that have formaldehyde emission rates that contribute to indoor concentrations that exceed cancer and non-cancer guidelines, so that alternative lower emitting materials/furnishings may be selected and/or higher minimum outdoor air ventilation rates can be increased to achieve acceptable indoor concentrations and incorporated as mitigation measures for this project.

Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment.

This formaldehyde emissions assessment should be used in the environmental review under CEQA to assess the indoor formaldehyde concentrations from the proposed loading of building materials/furnishings, the area-specific formaldehyde emission rate data for building materials/furnishings, and the design minimum outdoor air ventilation rates. This assessment allows the applicant (and the City) to determine before the conclusion of the

environmental review process and the building materials/furnishings are specified, purchased, and installed if the total chemical emissions will exceed cancer and non-cancer guidelines, and if so, allow for changes in the selection of specific material/furnishings and/or the design minimum outdoor air ventilations rates such that cancer and non-cancer guidelines are not exceeded.

1.) Define Indoor Air Quality Zones. Divide the building into separate indoor air quality zones, (IAQ Zones). IAQ Zones are defined as areas of well-mixed air. Thus, each ventilation system with recirculating air is considered a single zone, and each room or group of rooms where air is not recirculated (e.g. 100% outdoor air) is considered a separate zone. For IAQ Zones with the same construction material/furnishings and design minimum outdoor air ventilation rates. (e.g. hotel rooms, apartments, condominiums, etc.) the formaldehyde emission rates need only be assessed for a single IAQ Zone of that type.

2.) Calculate Material/Furnishing Loading. For each IAQ Zone, determine the building material and furnishing loadings (e.g., m² of material/m² floor area, units of furnishings/m² floor area) from an inventory of all potential indoor formaldehyde sources, including flooring, ceiling tiles, furnishings, finishes, insulation, sealants, adhesives, and any products constructed with composite wood products containing urea-formaldehyde resins (e.g., plywood, medium density fiberboard, particleboard).

3.) Calculate the Formaldehyde Emission Rate. For each building material, calculate the formaldehyde emission rate (µg/h) from the product of the area-specific formaldehyde emission rate (µg/m²-h) and the area (m²) of material in the IAQ Zone, and from each furnishing (e.g. chairs, desks, etc.) from the unit-specific formaldehyde emission rate (µg/unit-h) and the number of units in the IAQ Zone.

NOTE: As a result of the high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014), most manufacturers of building materials furnishings sold in the United States conduct chemical emission rate tests using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017), or other equivalent chemical emission rate

testing methods. Most manufacturers of building furnishings sold in the United States conduct chemical emission rate tests using ANSI/BIFMA M7.1 Standard Test Method for Determining VOC Emissions (BIFMA, 2018), or other equivalent chemical emission rate testing methods.

CDPH, BIFMA, and other chemical emission rate testing programs, typically certify that a material or furnishing does not create indoor chemical concentrations in excess of the maximum concentrations permitted by their certification. For instance, the CDPH emission rate testing requires that the measured emission rates when input into an office, school, or residential model do not exceed one-half of the OEHHA Chronic Exposure Guidelines (OEHHA, 2017b) for the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017). These certifications themselves do not provide the actual area-specific formaldehyde emission rate (i.e., $\mu\text{g}/\text{m}^2\text{-h}$) of the product, but rather provide data that the formaldehyde emission rates do not exceed the maximum rate allowed for the certification. Thus for example, the data for a certification of a specific type of flooring may be used to calculate that the area-specific emission rate of formaldehyde is less than $31 \mu\text{g}/\text{m}^2\text{-h}$, but not the actual measured specific emission rate, which may be 3, 18, or $30 \mu\text{g}/\text{m}^2\text{-h}$. These area-specific emission rates determined from the product certifications of CDPH, BIFA, and other certification programs can be used as an initial estimate of the formaldehyde emission rate.

If the actual area-specific emission rates of a building material or furnishing is needed (i.e. the initial emission rates estimates from the product certifications are higher than desired), then that data can be acquired by requesting from the manufacturer the complete chemical emission rate test report. For instance if the complete CDPH emission test report is requested for a CDHP certified product, that report will provide the actual area-specific emission rates for not only the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017), but also all of the cancer and reproductive/developmental chemicals listed in the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), all of the toxic air contaminants (TACs) in the California Air Resources Board Toxic Air Contamination List (CARB, 2011), and the 10 chemicals with the greatest emission rates.

Alternatively, a sample of the building material or furnishing can be submitted to a chemical emission rate testing laboratory, such as Berkeley Analytical Laboratory (<https://berkeleyanalytical.com>), to measure the formaldehyde emission rate.

4.) Calculate the Total Formaldehyde Emission Rate. For each IAQ Zone, calculate the total formaldehyde emission rate (i.e. $\mu\text{g/h}$) from the individual formaldehyde emission rates from each of the building material/furnishings as determined in Step 3.

5.) Calculate the Indoor Formaldehyde Concentration. For each IAQ Zone, calculate the indoor formaldehyde concentration ($\mu\text{g/m}^3$) from Equation 1 by dividing the total formaldehyde emission rates (i.e. $\mu\text{g/h}$) as determined in Step 4, by the design minimum outdoor air ventilation rate (m^3/h) for the IAQ Zone.

$$C_{in} = \frac{E_{total}}{Q_{oa}} \quad (\text{Equation 1})$$

where:

C_{in} = indoor formaldehyde concentration ($\mu\text{g/m}^3$)

E_{total} = total formaldehyde emission rate ($\mu\text{g/h}$) into the IAQ Zone.

Q_{oa} = design minimum outdoor air ventilation rate to the IAQ Zone (m^3/h)

The above Equation 1 is based upon mass balance theory, and is referenced in Section 3.10.2 “Calculation of Estimated Building Concentrations” of the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017).

6.) Calculate the Indoor Exposure Cancer and Non-Cancer Health Risks. For each IAQ Zone, calculate the cancer and non-cancer health risks from the indoor formaldehyde concentrations determined in Step 5 and as described in the OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines; Guidance Manual for Preparation of Health Risk Assessments (OEHHA, 2015).

7.) Mitigate Indoor Formaldehyde Exposures of exceeding the CEQA Cancer and/or Non-Cancer Health Risks. In each IAQ Zone, provide mitigation for any formaldehyde exposure

risk as determined in Step 6, that exceeds the CEQA cancer risk of 10 per million or the CEQA non-cancer Hazard Quotient of 1.0.

Provide the source and/or ventilation mitigation required in all IAQ Zones to reduce the health risks of the chemical exposures below the CEQA cancer and non-cancer health risks.

Source mitigation for formaldehyde may include:

- 1.) reducing the amount materials and/or furnishings that emit formaldehyde
- 2.) substituting a different material with a lower area-specific emission rate of formaldehyde

Ventilation mitigation for formaldehyde emitted from building materials and/or furnishings may include:

- 1.) increasing the design minimum outdoor air ventilation rate to the IAQ Zone.

NOTE: Mitigating the formaldehyde emissions through use of less material/furnishings, or use of lower emitting materials/furnishings, is the preferred mitigation option, as mitigation with increased outdoor air ventilation increases initial and operating costs associated with the heating/cooling systems.

In the First Amendment to the Draft EIR for this project (City of San Jose, 2018b), the City states the following.

“The proposed project would be built in accordance to the most recent California Green Building Code (CALGreen), which specifies that composite wood products (such as hardwood plywood and particleboard) meet the requirements for formaldehyde as specified in the California Air Resources Board’s (CARBs) Air Toxic Control Measures. The proposed project would be built in accordance to the most recent California Green Building Code (CALGreen), which specifies that composite wood products (such as hardwood plywood and particleboard) meet the requirements for formaldehyde as specified in the California Air Resources Board’s (CARBs) Air Toxic Control Measures. In addition, the project would be required to comply with the City’s Green Building Ordinance as set for in Municipal Code Section 17.84.”

However, using composite wood products, including those that meet the most recent CARB ATCM Phase 2 requirements, do not achieve indoor concentrations of formaldehyde with cancer risks that meet the BAAQMD CEQA requirements as discussed earlier in the referenced

Chan study (2018). Composite wood products that are NAF or ULEF are required to achieve acceptable cancer risks.

Further, the First Amendment to the Draft EIR for this project (City of San Jose, 2018b), the City states the following.

“Lastly, even with the regulations in place, if materials containing formaldehyde were to be used, it would be speculative for the City to estimate the type and volume of building materials that may contain formaldehyde. Per Section 15145 of the CEQA guidelines, speculative analysis is not acceptable. Because there would be no way to quantify the off-gassing of materials, and because no thresholds exist, no additional analysis or mitigation measures related to formaldehyde would be required.

We are not asking that the builder “speculate” on what and how much composite materials be used, but rather at the design stage to select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017), and use the procedure described earlier (i.e. Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Outdoor Air Ventilation Impact. Another important finding of the CNHS, was that the outdoor air ventilation rates in the homes were very low. Outdoor air ventilation is a very important factor influencing the indoor concentrations of air contaminants, as it is the primary removal mechanism of all indoor air generated air contaminants. Lower outdoor air exchange rates cause indoor generated air contaminants to accumulate to higher indoor air concentrations. Many homeowners rarely open their windows or doors for ventilation as a result of their concerns for security/safety, noise, dust, and odor concerns (Price, 2007). In the CNHS field study, 32% of the homes did not use their windows during the 24-hour Test Day, and 15% of the homes did not use their windows during the entire preceding week. Most of the homes with no window usage were homes in the winter field session. Thus, a substantial percentage of homeowners never open their windows, especially in the winter season. The median 24-hour measurement was 0.26 ach, with a range of 0.09 ach to 5.3 ach. A total of 67% of the homes had outdoor air exchange rates below the minimum California

Building Code (2001) requirement of 0.35 ach. Thus, the relatively tight envelope construction, combined with the fact that many people never open their windows for ventilation, results in homes with low outdoor air exchange rates and higher indoor air contaminant concentrations.

The Avalon West Valley Expansion project in San Jose is a residential and retail project and is located close to roads with moderate to high traffic (e.g. 280, Moorpark Avenue, Saratoga Avenue). As a result of the outdoor traffic noise, this has been determined to be a sound impacted site according to the Draft Environmental Impact Report (City of San Jose, 2018a), with noise levels ranging from 62-72 dBA DNL.

As a result of the high outdoor noise levels, the current project will require the need for mechanical supply of outdoor air ventilation air to allow for a habitable interior environment with closed windows and doors. Such a ventilation system would allow windows and doors to be kept closed at the occupant's discretion to control exterior noise within residential interiors.

PM_{2.5} Outdoor Concentrations Impact. An additional impact of the nearby motor vehicle traffic associated with this project, are the outdoor concentrations of PM_{2.5}. According the Air Quality section of the Draft Environmental Impact Report (City of San Jose, 2018a), this development is located in an area, which is a Federal non-attainment area for PM_{2.5}.

An air quality analyses should to be conducted to determine the concentrations of PM_{2.5} in the outdoor and indoor air that people inhale each day. This air quality analyses needs to consider the cumulative impacts of the project related emissions, existing and projected future emissions from local PM_{2.5} sources (e.g. stationary sources, motor vehicles, and airport traffic) upon the outdoor air concentrations at the project site. If the outdoor concentrations are determined to exceed the California and National annual average PM_{2.5} exceedence concentration of 12 µg/m³, or the National 24-hour average exceedence concentration of 35 µg/m³, then the buildings need to have a mechanical supply of outdoor air that has air filtration with sufficient PM_{2.5} removal efficiency, such that the indoor

concentrations of outdoor PM_{2.5} particles is less than the California and National PM_{2.5} annual and 24-hour standards.

It is my experience that based on the projected high traffic noise levels, the annual average concentration of PM_{2.5} will exceed the California and National PM_{2.5} annual and 24-hour standards and warrant installation of high efficiency air filters (i.e. MERV 13 or higher) in all mechanically supplied outdoor air ventilation systems.

Indoor Air Quality Impact Mitigation Measures

The following are recommended mitigation measures to minimize the impacts upon indoor quality:

- indoor formaldehyde concentrations
- outdoor air ventilation
- PM_{2.5} outdoor air concentrations

Indoor Formaldehyde Concentrations Mitigation. Use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins (CARB, 2009). Other projects such as the AC by Marriott Hotel – West San Jose Project (Asset Gas SC Inc.) and 2525 North Main Street, Santa Ana (AC 2525 Main LLC, 2019) have entered into settlement agreements stipulating the use of composite wood materials only containing NAF or ULEF resins.

Alternatively, conduct the previously described Pre-Construction Building Material/Furnishing Chemical Emissions Assessment, to determine that the combination of formaldehyde emissions from building materials and furnishings do not create indoor formaldehyde concentrations that exceed the CEQA cancer and non-cancer health risks.

Outdoor Air Ventilation Mitigation. Provide each habitable room with a continuous mechanical supply of outdoor air that meets or exceeds the California 2016 Building Energy

Efficiency Standards (California Energy Commission, 2015) requirements of the greater of 15 cfm/occupant or 0.15 cfm/ft² of floor area. Following installation of the system conduct testing and balancing to insure that required amount of outdoor air is entering each habitable room and provide a written report documenting the outdoor airflow rates. Do not use exhaust only mechanical outdoor air systems, use only balanced outdoor air supply and exhaust systems or outdoor air supply only systems. Provide a manual for the occupants or maintenance personnel, that describes the purpose of the mechanical outdoor air system and the operation and maintenance requirements of the system.

PM_{2.5} Outdoor Air Concentration Mitigation. Install air filtration with sufficient PM_{2.5} removal efficiency (e.g. MERV 13 or higher) to filter the outdoor air entering the mechanical outdoor air supply systems, such that the indoor concentrations of outdoor PM_{2.5} particles are less than the California and National PM_{2.5} annual and 24-hour standards. Install the air filters in the system such that they are accessible for replacement by the occupants or maintenance personnel. Include in the mechanical outdoor air ventilation system manual instructions on how to replace the air filters and the estimated frequency of replacement.

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Francis (Bud) J. Offermann III PE, CIH

Indoor Environmental Engineering

1448 Pine Street, Suite 103, San Francisco, CA 94109

Phone: 415-567-7700

Email: Offermann@iee-sf.com

<http://www.iee-sf.com>

Education

M.S. Mechanical Engineering (1985)
Stanford University, Stanford, CA.

Graduate Studies in Air Pollution Monitoring and Control (1980)
University of California, Berkeley, CA.

B.S. in Mechanical Engineering (1976)
Rensselaer Polytechnic Institute, Troy, N.Y.

Professional Experience

President: Indoor Environmental Engineering, San Francisco, CA. December, 1981 - present.

Direct team of environmental scientists, chemists, and mechanical engineers in conducting State and Federal research regarding indoor air quality instrumentation development, building air quality field studies, ventilation and air cleaning performance measurements, and chemical emission rate testing.

Provide design side input to architects regarding selection of building materials and ventilation system components to ensure a high quality indoor environment.

Direct Indoor Air Quality Consulting Team for the winning design proposal for the new State of Washington Ecology Department building.

Develop a full-scale ventilation test facility for measuring the performance of air diffusers; ASHRAE 129, Air Change Effectiveness, and ASHRAE 113, Air Diffusion Performance Index.

Develop a chemical emission rate testing laboratory for measuring the chemical emissions from building materials, furnishings, and equipment.

Principle Investigator of the California New Homes Study (2005-2007). Measured ventilation and indoor air quality in 108 new single family detached homes in northern and southern California.

Develop and teach IAQ professional development workshops to building owners, managers, hygienists, and engineers.

Air Pollution Engineer: Earth Metrics Inc., Burlingame, CA, October, 1985 to March, 1987.

Responsible for development of an air pollution laboratory including installation a forced choice olfactometer, tracer gas electron capture chromatograph, and associated calibration facilities. Field team leader for studies of fugitive odor emissions from sewage treatment plants, entrainment of fume hood exhausts into computer chip fabrication rooms, and indoor air quality investigations.

Staff Scientist: Building Ventilation and Indoor Air Quality Program, Energy and Environment Division, Lawrence Berkeley Laboratory, Berkeley, CA. January, 1980 to August, 1984.

Deputy project leader for the Control Techniques group; responsible for laboratory and field studies aimed at evaluating the performance of indoor air pollutant control strategies (i.e. ventilation, filtration, precipitation, absorption, adsorption, and source control).

Coordinated field and laboratory studies of air-to-air heat exchangers including evaluation of thermal performance, ventilation efficiency, cross-stream contaminant transfer, and the effects of freezing/defrosting.

Developed an *in situ* test protocol for evaluating the performance of air cleaning systems and introduced the concept of effective cleaning rate (ECR) also known as the Clean Air Delivery Rate (CADR).

Coordinated laboratory studies of portable and ducted air cleaning systems and their effect on indoor concentrations of respirable particles and radon progeny.

Co-designed an automated instrument system for measuring residential ventilation rates and radon concentrations.

Designed hardware and software for a multi-channel automated data acquisition system used to evaluate the performance of air-to-air heat transfer equipment.

Assistant Chief Engineer: Alta Bates Hospital, Berkeley, CA, October, 1979 to January, 1980.

Responsible for energy management projects involving installation of power factor correction capacitors on large inductive electrical devices and installation of steam meters on physical plant steam lines. Member of Local 39, International Union of Operating Engineers.

Manufacturing Engineer: American Precision Industries, Buffalo, NY, October, 1977 to October, 1979.

Responsible for reorganizing the manufacturing procedures regarding production of shell and tube heat exchangers. Designed customized automatic assembly, welding, and testing equipment. Designed a large paint spray booth. Prepared economic studies justifying new equipment purchases. Safety Director.

Project Engineer: Arcata Graphics, Buffalo, N.Y. June, 1976 to October, 1977.

Responsible for the design and installation of a bulk ink storage and distribution system and high speed automatic counting and marking equipment. Also coordinated material handling studies which led to the purchase and installation of new equipment.

PROFESSIONAL ORGANIZATION MEMBERSHIP

American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)

- Chairman of SPC-145P, Standards Project Committee - Test Method for Assessing the Performance of Gas Phase Air Cleaning Equipment (1991-1992)
- Member SPC-129P, Standards Project Committee - Test Method for Ventilation Effectiveness (1986-97)
 - Member of Drafting Committee
- Member Environmental Health Committee (1992-1994, 1997-2001, 2007-2010)
 - Chairman of EHC Research Subcommittee
 - Member of Man Made Mineral Fiber Position Paper Subcommittee
 - Member of the IAQ Position Paper Committee
 - Member of the Legionella Position Paper Committee
 - Member of the Limiting Indoor Mold and Dampness in Buildings Position Paper Committee
- Member SSPC-62, Standing Standards Project Committee - Ventilation for Acceptable Indoor Air Quality (1992 to 2000)
 - Chairman of Source Control and Air Cleaning Subcommittee
- Chairman of TC-4.10, Indoor Environmental Modeling (1988-92)
 - Member of Research Subcommittee
- Chairman of TC-2.3, Gaseous Air Contaminants and Control Equipment (1989-92)
 - Member of Research Subcommittee

American Society for Testing and Materials (ASTM)

- D-22 Sampling and Analysis of Atmospheres
 - Member of Indoor Air Quality Subcommittee
- E-06 Performance of Building Constructions

American Board of Industrial Hygiene (ABIH)

American Conference of Governmental Industrial Hygienists (ACGIH)

- Bioaerosols Committee (2007-2013)

American Industrial Hygiene Association (AIHA)

Cal-OSHA Indoor Air Quality Advisory Committee

International Society of Indoor Air Quality and Climate (ISIAQ)

- Co-Chairman of Task Force on HVAC Hygiene

U. S. Green Building Council (USGBC)

- Member of the IEQ Technical Advisory Group (2007-2009)
- Member of the IAQ Performance Testing Work Group (2010-2012)

Western Construction Consultants (WESTCON)

PROFESSIONAL CREDENTIALS

Licensed Professional Engineer - Mechanical Engineering

Certified Industrial Hygienist - American Board of Industrial Hygienists

SCIENTIFIC MEETINGS AND SYMPOSIA

Biological Contamination, Diagnosis, and Mitigation, Indoor Air'90, Toronto, Canada, August, 1990.

Models for Predicting Air Quality, Indoor Air'90, Toronto, Canada, August, 1990.

Microbes in Building Materials and Systems, Indoor Air '93, Helsinki, Finland, July, 1993.

Microorganisms in Indoor Air Assessment and Evaluation of Health Effects and Probable Causes, Walnut Creek, CA, February 27, 1997.

Controlling Microbial Moisture Problems in Buildings, Walnut Creek, CA, February 27, 1997.

Scientific Advisory Committee, Roomvent 98, 6th International Conference on Air Distribution in Rooms, KTH, Stockholm, Sweden, June 14-17, 1998.

Moisture and Mould, Indoor Air '99, Edinburgh, Scotland, August, 1999.

Ventilation Modeling and Simulation, Indoor Air '99, Edinburgh, Scotland, August, 1999.

Microbial Growth in Materials, Healthy Buildings 2000, Espoo, Finland, August, 2000.

Co-Chair, Bioaerosols X- Exposures in Residences, Indoor Air 2002, Monterey, CA, July 2002.

Healthy Indoor Environments, Anaheim, CA, April 2003.

Chair, Environmental Tobacco Smoke in Multi-Family Homes, Indoor Air 2008, Copenhagen, Denmark, July 2008.

Co-Chair, ISIAQ Task Force Workshop; HVAC Hygiene, Indoor Air 2002, Monterey, CA, July 2002.

Chair, ETS in Multi-Family Housing: Exposures, Controls, and Legalities Forum, Healthy Buildings 2009, Syracuse, CA, September 14, 2009.

Chair, Energy Conservation and IAQ in Residences Workshop, Indoor Air 2011, Austin, TX, June 6, 2011.

Chair, Electronic Cigarettes: Chemical Emissions and Exposures Colloquium, Indoor Air 2016, Ghent, Belgium, July 4, 2016.

SPECIAL CONSULTATION

Provide consultation to the American Home Appliance Manufacturers on the development of a standard for testing portable air cleaners, AHAM Standard AC-1.

Served as an expert witness and special consultant for the U.S. Federal Trade Commission regarding the performance claims found in advertisements of portable air cleaners and residential furnace filters.

Conducted a forensic investigation for a San Mateo, CA pro se defendant, regarding an alleged homicide where the victim was kidnapped in a steamer trunk. Determined the air exchange rate in the steamer trunk and how long the person could survive.

Conducted *in situ* measurement of human exposure to toluene fumes released during nailpolish application for a plaintiffs attorney pursuing a California Proposition 65 product labeling case. June, 1993.

Conducted a forensic *in situ* investigation for the Butte County, CA Sheriff's Department of the emissions of a portable heater used in the bedroom of two twin one year old girls who suffered simultaneous crib death.

Consult with OSHA on the 1995 proposed new regulation regarding indoor air quality and environmental tobacco smoke.

Consult with EPA on the proposed Building Alliance program and with OSHA on the proposed new OSHA IAQ regulation.

Johnson Controls Audit/Certification Expert Review; Milwaukee, WI. May 28-29, 1997.

Winner of the nationally published 1999 Request for Proposals by the State of Washington to conduct a comprehensive indoor air quality investigation of the Washington State Department of Ecology building in Lacey, WA.

Selected by the State of California Attorney General's Office in August, 2000 to conduct a comprehensive indoor air quality investigation of the Tulare County Court House.

Lawrence Berkeley Laboratory IAQ Experts Workshop: "Cause and Prevention of Sick Building Problems in Offices: The Experience of Indoor Environmental Quality Investigators", Berkeley, California, May 26-27, 2004.

Provide consultation and chemical emission rate testing to the State of California Attorney General's Office in 2013-2015 regarding the chemical emissions from e-cigarettes.

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“Finding Hidden Mold: Case Studies in IAQ Investigations”, AIHA Northern California Professionals Symposium; Oakland, CA, May 8, 2002.

“Assessing and Mitigating Fungal Contamination in Buildings”, Cal/OSHA Training; Oakland, CA, February 14, 2003 and West Covina, CA, February 20-21, 2003.

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“Mold Remediation: The National QUEST for Uniformity Symposium”, Invited Speaker, Orlando, Florida, November 3-5, 2003.

“Mold and Moisture Control”, Indoor Air Quality workshop for The Collaborative for High Performance Schools (CHPS), San Francisco, December 11, 2003.

“Advanced Perspectives In Mold Prevention & Control Symposium”, Invited Speaker, Las Vegas, Nevada, November 7-9, 2004.

“Building Sciences: Understanding and Controlling Moisture in Buildings”, American Industrial Hygiene Association, San Francisco, CA, February 14-16, 2005.

“Indoor Air Quality Diagnostics and Healthy Building Design”, University of California Berkeley, Berkeley, CA, March 2, 2005.

“Improving IAQ = Reduced Tenant Complaints”, Northern California Facilities Exposition, Santa Clara, CA, September 27, 2007.

“Defining Safe Building Air”, Criteria for Safe Air and Water in Buildings, ASHRAE Winter Meeting, Chicago, IL, January 27, 2008.

“Update on USGBC LEED and Air Filtration”, Invited Speaker, NAFA 2008 Convention, San Francisco, CA, September 19, 2008.

“Ventilation and Indoor air Quality in New California Homes”, National Center of Healthy Housing, October 20, 2008.

“Indoor Air Quality in New Homes”, California Energy and Air Quality Conference, October 29, 2008.

“Mechanical Outdoor air Ventilation Systems and IAQ in New Homes”, ACI Home Performance Conference, Kansas City, MO, April 29, 2009.

“Ventilation and IAQ in New Homes with and without Mechanical Outdoor Air Systems”, Healthy Buildings 2009, Syracuse, CA, September 14, 2009.

“Ten Ways to Improve Your Air Quality”, Northern California Facilities Exposition, Santa Clara, CA, September 30, 2009.

“New Developments in Ventilation and Indoor Air Quality in Residential Buildings”, Westcon meeting, Alameda, CA, March 17, 2010.

“Intermittent Residential Mechanical Outdoor Air Ventilation Systems and IAQ”, ASHRAE SSPC 62.2 Meeting, Austin, TX, April 19, 2010.

“Measured IAQ in Homes”, ACI Home Performance Conference, Austin, TX, April 21, 2010.

“Respiration: IEQ and Ventilation”, AIHce 2010, How IH Can LEED in Green buildings, Denver, CO, May 23, 2010.

“IAQ Considerations for Net Zero Energy Buildings (NZEB)”, Northern California Facilities Exposition, Santa Clara, CA, September 22, 2010.

“Energy Conservation and Health in Buildings”, Berkeley High School Green Career Week, Berkeley, CA, April 12, 2011.

“What Pollutants are Really There ?”, ACI Home Performance Conference, San Francisco, CA, March 30, 2011.

“Energy Conservation and Health in Residences Workshop”, Indoor Air 2011, Austin, TX, June 6, 2011.

“Assessing IAQ and Improving Health in Residences”, US EPA Weatherization Plus Health, September 7, 2011.

“Ventilation: What a Long Strange Trip It’s Been”, Westcon, May 21, 2014.

“Chemical Emissions from E-Cigarettes: Direct and Indirect Passive Exposures”, Indoor Air 2014, Hong Kong, July, 2014.

“Infectious Disease Aerosol Exposures With and Without Surge Control Ventilation System Modifications”, Indoor Air 2014, Hong Kong, July, 2014.

“Chemical Emissions from E-Cigarettes”, IMF Health and Welfare Fair, Washington, DC, February 18, 2015.

“Chemical Emissions and Health Hazards Associated with E-Cigarettes”, Roswell Park Cancer Institute, Buffalo, NY, August 15, 2014.

“Formaldehyde Indoor Concentrations, Material Emission Rates, and the CARB ATCM”, Harris Martin’s Lumber Liquidators Flooring Litigation Conference, WQ Minneapolis Hotel, May 27, 2015.

“Chemical Emissions from E-Cigarettes: Direct and Indirect Passive Exposure”, FDA Public Workshop: Electronic Cigarettes and the Public Health, Hyattsville, MD June 2, 2015.

“Creating Healthy Homes, Schools, and Workplaces”, Chautauqua Institution, Athenaeum Hotel, August 24, 2015.

“Diagnosing IAQ Problems and Designing Healthy Buildings”, University of California Berkeley, Berkeley, CA, October 6, 2015.

“Diagnosing Ventilation and IAQ Problems in Commercial Buildings”, BEST Center Annual Institute, Lawrence Berkeley National Laboratory, January 6, 2016.

“A Review of Studies of Ventilation and Indoor Air Quality in New Homes and Impacts of Environmental Factors on Formaldehyde Emission Rates From Composite Wood Products”, AIHce2016, May, 21-26, 2016.

“Admissibility of Scientific Testimony”, Science in the Court, Proposition 65 Clearinghouse Annual Conference, Oakland, CA, September 15, 2016.

“Indoor Air Quality and Ventilation”, ASHRAE Redwood Empire, Napa, CA, December 1, 2016.

EXHIBIT B

Shawn Smallwood, PhD
3108 Finch Street
Davis, CA 95616

Rosalynn Hughey, Director
City of San Jose Planning, Building and Code Enforcement
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

26 May 2019

RE: Avalon West Valley Expansion

Dear Ms. Hughey,

I write to reply to the City of San Jose's (2019) responses to my 6 February 2019 comments on the Draft EIR prepared for the proposed Avalon West Valley Expansion Project. My qualifications were summarized in my comment letter of 6 February 2019.

Response

F.4 Baseline description of wildlife on site

Identifying the species of birds flying through the project area, including special-status species, is relevant for this proposed project because the project would rely extensively on glass façades and would therefore pose substantial collision risk to birds flying through or residing in the area. City of San Jose's response deflects from the issue I raised by arguing that no natural habitats occur in the project area. However, as I pointed out in my comment letter, habitat is defined by the species' use of the environment (Hall et al. 1997, Morrison et al. 1998), and not by city staff. Biologists infer habitat through use-and-availability analysis, where use is based on sampling, and availability is the proportion of the sampled environment composed of the suite of plant species and/or terrain measured by the investigator (Smallwood 2002). Even without use-and-availability analysis, observed use of the environment indicates habitat is available. If birds are flying through the project area, then habitat is available for them, even if it is composed of ornamental vegetation.¹

Natural vegetation is not a prerequisite for the occurrence of wildlife in California. Just yesterday I observed a northern alligator lizard on my front porch, which is a fairly common occurrence in my residential neighborhood. Habitat of these alligator lizards consists of yards far from any unmanaged patches of vegetation. I also see Swainson's hawks -- a California Threatened species -- flying over my house and along my street. Again, the habitat of these Swainson's hawks includes my neighborhood. I know this

¹ In characterizing conditions of the site as including "minor vegetation," it is unclear whether the response meant to characterize the vegetation as diminutive in stature, occurring in small patches, or of some insignificant species. Whatever the intended meaning, "minor vegetation" has no scientific origin and is insufficiently informative in a CEQA review document.

because I see them here daily. Wildlife will make use of whatever conditions we leave them, including far less than ideal conditions. Wildlife in urban areas are of no less value than wildlife in wilder portions of California, and in many cases they are the same animals spending time in both types of environment as they must find migration flight space and stop-over habitat across increasingly larger expanses of anthropogenic landscapes.

Many birds have been reported on eBird as having been observed around the project site. None of the reported observations would have happened had there not been habitat in the area for each species reported. And regardless of the quality or extent of habitat in the local area, birds are flying through the area. An analysis is needed of how many birds of which species are flying across the project site, and at which times of year, so that bird-window collisions can be predicted and measures taken to minimize impacts.

F.5 Bird-window collisions

The response implies that the bird-window collision issue is insignificant because “...*the project site is located within a developed, urbanized part of San José.*” However, the bird-collision studies I used to predict fatalities at the project were mostly located in developed, urbanized areas similar to the site of the proposed project. After all, most windows are not constructed in the wild, but rather on buildings in urban, commercial and industrial environments. Most of the available studies of bird-window collision rates were performed in places like the proposed project, so the mean and 90% confidence interval I used to predict collision rate at the project site were representative of the environment into which the project is proposed.

The response also implies that my prediction of fatalities is unreliable because “*The greatest risk of avian collisions with buildings occurs in the area within 40 to 60 feet of the ground...*” Whereas I agree that most of the collision risk can be found below 60 feet on most buildings, the City’s lower range of 40 feet is speculative in origin. With high-rises it is usually unknown where a bird found as a fatality actually struck the building. Regardless, the data I collected from studied buildings included glass located below and above 60 feet and included many single-story structures, so the average collision rate of 0.077 birds per m² of glass was averaged across all heights above ground and across all types of glass and glass settings included in the available studies.

City of San Jose adds, “*Furthermore, the proposed project does not propose to use highly reflective construction material (e.g., mirrored glass). Therefore, no additional mitigation would be needed.*” As I pointed out in my comment letter, collision risk is attributed to more window attributes than just reflectance. Transparency might be the largest factor contributing to collision risk, which why it was the very first window attribute upon which City of San Jose (2014) recommended should be reduced in its priority list of recommended measures to reduce bird-window collisions in San Jose. Although I concur with the City of San Jose’s (2014) prioritizing of transparency over reflectance in its recommended order of window attributes to minimize citywide, I

believe the verdict is still out over whether transparency or reflectance is the larger contributing factor to bird-window collisions. In my comment letter I listed multiple other window attributes thought to serve as bird-collision factors, as well. Not using highly reflective glass does not eliminate the need for mitigation.

F.6 Traffic generation will kill wildlife

City of San Jose misses the point of my comment. Traffic impacts on wildlife will occur outside the building footprint. The response implies that I was concerned about generated traffic killing wildlife in the parking garage, I suppose, but that is not where the impacts will occur. Wildlife will be killed by cars and trucks driving to and from the project site at the predicted rate of 1,896 daily trips. These impacts will occur wherever the generated traffic traverses roadways that bisect wildlife travel routes, especially along stream corridors, open spaces or utility right-of-ways. This impact needs to be analyzed and mitigated in a revised EIR.

F.7 Artificial lighting impacts on wildlife

The response is restricted to a human impact perspective, thereby implying a false equivalency in lighting impacts between human residents and wildlife. Wildlife live outdoors, whereas human residents mostly reside indoors during the night. Potential impacts are not the same. For example, artificial lights are known to confuse nocturnally active birds, contributing to higher collision rates with anthropogenic structures. This same pattern does not hold for people. An analysis of potential impacts on wildlife is needed, as well as a mitigation plan.

F.8 Wildlife movement

The response states, “...*the project site is not located in an area that is particularly important for wildlife movement...*” However, this statement lacks foundation. No surveys were performed to quantify wildlife use of the project site. No surveys were performed to quantify wildlife movement in the region. The only foundation for the conclusion is wishful speculation. eBird implies a different reality, as its location records for many bird species would not have been possible unless those same bird species move across the landscape at and around the project site. California gulls and barn owls, for example (Figure 1 in my comment letter), would not have been recorded where they were unless they flew there. The same is true for all the other birds recorded on eBird. All of those birds contributing to all of those records on eBird would have flown to where they were recorded, and along the way they would have stopped over wherever they could, including on the diminishing islands of open space within San Jose.

F.9 Preconstruction surveys as the only mitigation measure

City of San Jose again erroneously characterizes preconstruction surveys as an impact reduction measure. Impact reduction can only be achieved after the project has been

developed and impacts ongoing. Preconstruction surveys are typically characterized as a take-avoidance measure, but really they can only avoid take of the few individual animals that are readily detectable just prior to construction grading. Preconstruction surveys should be performed, but their effectiveness increases greatly when preceded by detection surveys, as I discussed in my comment letter. Preconstruction surveys uninformed by detection surveys and unpaired with other mitigation measures will not reduce project impacts on birds to less than significant levels.

F.12 Introductory paragraphs

City of San Jose incorrectly characterizes my introductory statements as “comments.”

F.13 Biological Impacts Assessment

According to the response, the City of San Jose’s summary dismissal of the possibility of special-status species occurrences in the project area was “*based on substantial data*” and consistent with the findings in the Santa Clara Valley Habitat Plan (SCVHP), which the City claims was unconcerned about special-status species in the project area. City of San Jose ought to share those substantial data in the EIR, or at minimum provide information for the reader to locate and examine those data.

I must also point out that in my review of the SCVHP, and in my experience as a member of SCVHP’s expert panel on burrowing owl conservation, I found no evidence of SCVHP’s alleged lack of concern for special-status species in the project area. Furthermore, of the 26 special-status species I identified as known or likely to fly through the project area, none are covered by the incidental take permit issued for the SCVHP (Table 1). Impacts to these species have no bearing on the SCVHP conservation plan. Further yet, other than having to pay a nitrogen deposition mitigation fee to the SVCHP, the City is not requiring any further fee payment to offset impacts to wildlife. The impacts I address in my comment letter, including bird-window collisions, are not addressed or mitigated in the SCVHP, nor are they mitigated in the EIR.

F.14 Bird nests

See my reply to response F.9, above. I will add that avoidance of impacts to active bird nests is helpful, but it does not prevent the permanent loss of breeding capacity resulting from the project. Nest substrates will be eliminated, resulting in a permanent spatial reduction in productivity that will go unmitigated. If birds later attempt nesting in replacement trees, they and their fledglings will be vulnerable to collision with the extensive windows right next to their nest trees.

Table 1. Species reported on eBird (<https://eBird.org>) on or near the proposed project site, and whether covered by the Santa Clara Valley Habitat Plan incidental take permit.

Species	Scientific name	Status¹	Covered by SCVHP?
Pallid bat	<i>Antrozous pallidus</i>	SSC, WBWG3	No
Western red bat	<i>Lasiurus blossevillii</i>	SSC	No
Fringed myotis	<i>Myotis thysanodes</i>	SSC, WBWG4	No
Long-eared myotis	<i>Myotis evotis</i>	WBWG3	No
Small-footed myotis	<i>Myotis cililabrum</i>	WBWG	No
California gull	<i>Larus californicus</i>	TWL	No
Red-tailed hawk	<i>Buteo jamaicensis</i>	CDFW 3503.5	No
Ferruginous hawk	<i>Buteo regalis</i>	TWL, CDFW 3503.5	No
Red-shouldered hawk	<i>Buteo lineatus</i>	CDFW 3503.5	No
Sharp-shinned hawk	<i>Accipiter striatus</i>	CDFW 3503.5, TWL	No
Cooper's hawk	<i>Accipiter cooperi</i>	CDFW 3503.5, TWL	No
White-tailed kite	<i>Elanus leucurus</i>	CFP, TWL, CDFW 3503.5	No
American kestrel	<i>Falco sparverius</i>	CDFW 3503.5	No
Merlin	<i>Falco columbarius</i>	CDFW 3503.5, TWL	No
Peregrine falcon	<i>Falco peregrinus</i>	CE, CFP, BCC	No
Great-horned owl	<i>Bubo virginianus</i>	CDFW 3503.5	No
Western screech-owl	<i>Megascops kennicotti</i>	CDFW 3503.5	No
Barn owl	<i>Tyto alba</i>	CDFW 3503.5	No
Vaux's swift	<i>Chaetura vauxi</i>	SSC2	No
Costa's hummingbird	<i>Calypte costae</i>	BCC	No
Allen's hummingbird	<i>Selasphorus sasin</i>	BCC	No
Nuttall's woodpecker	<i>Picoides nuttallii</i>	BCC	No
Olive-sided flycatcher	<i>Contopus cooperi</i>	SSC2	No
Oak titmouse	<i>Baeolophus inornatus</i>	BCC	No
Yellow warbler	<i>Setophaga petechia</i>	SSC2, BCC	No
Common yellowthroat	<i>Geothlypis trichas</i>	BCC	No

¹ Listed as BCC = U.S. Fish and Wildlife Service Bird Species of Conservation Concern, CE = California endangered, CFP = California Fully Protected (CDFG Code 4700), CDFW 3503.5 = California Department of Fish and Wildlife Code 3503.5 (Birds of prey), and SSC1, SSC2 and SSC3 = California Bird Species of Special Concern priorities 1, 2 and 3, respectively, and TWL = Taxa to Watch List (Shuford and Gardali 2008), and WBWG = priority listing by Western Bat Working Group.

F.15 Special-status species occurrences

The response that an EIR was prepared is humbly noted. As stated throughout my comment letter, I meant to say that the EIR should be revised.

According to the response, *“The City reviewed the eBirds website, which is described as “the world’s largest biodiversity-related citizen science project” which allows experts and non-experts to list bird sightings on a mapped database. While there were various bird species noted in the project area, the validity of the data cannot be confirmed.”*

The validity of the data on eBrid can often be confirmed by performing surveys at locations where birds were reported. Another way is to examine the photos and written notes often provided along with occurrence records. Yet another way is to check the names of the reporting individuals, many of whom are known to the birding community as expert in their bird identification skills. The data base is run by Cornell University Lab of Ornithology, which is widely recognized as the current leading institutional authority on ornithology in the USA. Scientific papers are available on the reliability and use of the data, which when interpreted carefully have contributed to new understanding and ongoing revisions to geographic range maps of birds (Sullivan et al. 2014, 2017). In summary, the City’s assertion is misleading and largely untrue.

On the other hand, the validity of wishful speculation in the absence of any data can be readily confirmed as unreliable. The validity of data in any scientific data base should be questioned routinely, and it should be improved as more is learned about the data base. But there is no equivalence between this core scientific process and concluding species’ absences without having looked for the species. This is especially true for rare or cryptic species, for which erring on the side of caution defines the precautionary principle in risk assessment (National Research Council 1986). In other words, in the absence of adequate evidence of occurrence of special-status species, the appropriate decision is to assume presence until absence is somehow proven. This is why detection surveys are essential for determining the occurrence potential of special-status species, and why detection survey guidelines have been developed for most special-status species.

Contrary to the City of San Jose’s assertion, the mitigation consisting of preconstruction nest surveys will do nothing to minimize impacts caused by the issue of greatest concern in my comment letter. The most important project impact I identified was bird-window collisions. Preconstruction nest surveys will not minimize bird-window collisions.

The response attempts to cast doubt on the merit of the bat sighting I reported in my comment letter. It does not matter which Apple Campus I saw the bat next to, as the farthest of the two possible distances from the project site was only 2 miles – a distance that can be covered by a bat in 36 seconds. Bats can fly much faster than birds, and individual bats forage over vast areas each night. The issues I raised remain unaddressed in the EIR, including the need for surveys to be performed on site to locate bat roosts, and the need to mitigate for impacts on bats.

City of San Jose says, *“No other supporting documentation is provided to show that any bats, let alone the five bats species listed in Table 1, have any probability of being located on the project site,”* and so *“no additional analysis is required.”* No evidence should have been needed from me for the City to do what is expected per the goals and objectives of CEQA. No evidence should be needed from me to compel the City to

require detection surveys for special-status species of bats, birds, and other wildlife. No surveys were performed. The EIR is so far uninformed by any detection surveys – surveys that are routinely performed at the majority of project sites that have previously undergone CEQA review or are currently undergoing CEQA review.

F.16 Bird-Window collisions

City of San Jose introduces a false standard to justify doing nothing to minimize bird-window collisions that will be caused by the project. According to the City, “*There is no evidence presented that the project site would be more susceptible to bird strikes than other locations in the City outside the downtown or south of Highway 237.*” Whether or not the project would cause more collisions had it been proposed north of Highway 237 changes nothing about the predicted collision rate based on the available data. The data on collision rates do not discriminate projects north or south of Highway 237.

The response is also a bit disingenuous by selectively pointing out that Envision San Jose 2040 General Plan limited the implementation of bird-friendly design standards to areas north of Highway 237 and near riparian corridors. In fact, City staff recommended citywide implementation of the guidelines (City of San Jose 2014). The first measure recommended by City staff was to reduce large areas of transparent or reflective glass (City of San Jose 2014). City staff has been aware that transparency is equally if not more dangerous to birds than reflective glass, and it has been aware that the threat posed by glass windows is citywide.

According to the response, “*There is ... no evidence to support that the proposed development in this location would have a substantial adverse effect on any species or substantially interfere with flight corridors. Therefore, no further analysis is required.*” This assertion is not true. I provided an impact prediction based on 176 buildings and façades for which bird collisions per m² of glass per year could be calculated and averaged from locations across the USA. My prediction included a 90% confidence interval, which captures the range of variation in the data and applies it to the project site. I also provided ample evidence via eBird records that multiple species of birds, including special-status species of birds known to collide with windows, have been reported in the project area. I provided the evidence along with a reasonable prediction accompanied by an error term expressed as 90% CI. I provided more evidence than City of San Jose needs to minimize the project’s impacts on birds by requiring bird-friendly design standards.

Anyone familiar with the bird-window collision issue can see the excessive threat that the proposed building design poses to birds. The proposed structures, located right where they are proposed, will have killed thousands of birds by several decades following construction. The available scientific data support my prediction. City of San Jose should follow up on its own recommendations and implement bird-friendly measures at the project.

F.17 Estimated glass extent leading to impact prediction

City of San Jose is incorrect in its assertion that my estimate of the area of glass on the structures was based on no supportable evidence. As I reported in my comment letter, I measured the area of glass that is visible in the DEIR's cover image of the proposed Avalon Building. The evidence is the image, which anyone with sight can see for themselves and from which anyone can make their own measurements to determine whether my estimate of the extent of glass was in the ballpark. If my estimate of the extent of glass was in error, then my predicted collision rate would need to be adjusted in proportion to my error. Keep in mind, however, that I took a conservative approach in extending the percentage of glass on the façades I could not see in the DEIR's cover image by assuming it was only half of the percentage of glass on the façades I could see. If my glass area was in error, it was probably in error on the low side.

Given the City of San Jose's assertion, I took another look at the project design in DEIR Figure 2.1-4. I noticed façades surrounding courtyard space that I glossed over in my analysis leading to my fatality prediction. I noted the differences in building heights among the Avalon, Manzanita and Fitness Center buildings. I also decided to see what window area I would estimate in the project by eliminating my conservative assumption that windows composed only 50% of façades unseen in the DEIR's cover image compared to those shown in the cover image. The resulting estimate was 7,445 m² of glass windows in the project. With this estimate, the mean fatality rate from bird-window collisions across the USA would predict 566 bird deaths annually (90% CI: 320-809). After 50 years this mortality would total 28,291 (90% CI: 16,007-40,464). This evidence-based prediction, including the confidence interval, can be interpreted this way: If the project was built as designed in 100 places, 90 of them would cause between 320 and 809 bird fatalities per year. Avian mortality would be substantial even at the low end of the predicted range. But wherever the actual fatality rate falls within the 90% prediction range, it is preventable, which makes it a significant impact under CEQA.

The response mischaracterized my assumptions. In predicting a collision rate, I made no assumptions about window reflectance or landscaping. The only assumption I made in my comment letter was conservatively assuming the unseen portions of buildings in the available image consisted of 50% of the windows compared to the portion of buildings I could see. I stated my assumption, and I recommended that the EIR provides more detail of the glass on the structures. Certainly my prediction would be more accurate if City of San Jose provided more information about the extent and types of windows proposed in the project. My prediction accuracy could also improve if City of San Jose would follow through with its 2014 recommendation to monitor for bird-window collisions.

F.18 Road mortality

See my reply F.6. My point was that some special-status species not occurring on the project site will be at risk of vehicle collision mortality at locations where they *do* exist, if the project-generated traffic travels into those areas. City of San Jose erroneously

assumes that project-generated traffic would affect species at the project site, but such traffic does not stay at a project site.

As an example in my comment letter, I described the toll on wildlife along a small stretch of road in Contra Costa County. Those traffic-caused fatalities were caused by cars and trucks originating at developed project sites far from where the animals were killed. Vehicles making trips to and from the proposed project site will also travel into areas where California red-legged frogs and American badgers reside, and those locations are not very far from the project site.

F.19 Artificial light impacts on wildlife

See my reply F.7.

F.20 Wildlife Movement

See my reply F.8.

F.21 Cumulative impacts

According to the response, “*As noted on page 171 of the Draft EIR, biological impacts resulting from the project would result solely from construction of the project.*” City of San Jose further claims, “*The commenter did not provide sufficient evidence to support a conclusion of significant biological impacts not already identified in the Draft EIR.*” In fact, I provided evidence of bird-window collision rates from 179 building façades across the USA. This evidence would apply to the project post-construction until sometime years into the future when the buildings come down. The impacts would be ongoing, incremental and additive to the unmitigated bird-window collisions at hazardous building façades throughout San Jose. I provided the evidence and justification for performing a cumulative impact analysis.

F.22 Mitigation

See my reply F.9.

Thank you for your attention,



Shawn Smallwood, Ph.D.

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Kenneth Shawn Smallwood

Curriculum Vitae

3108 Finch Street
Davis, CA 95616
Phone (530) 756-4598
Cell (530) 601-6857
puma@dcn.org

Born May 3, 1963 in
Sacramento, California.
Married, father of two.

Ecologist

Expertise

- Finding solutions to controversial problems related to wildlife interactions with human industry, infrastructure, and activities;
- Wildlife monitoring and field study using GPS, thermal imaging, behavior surveys;
- Using systems analysis and experimental design principles to identify meaningful ecological patterns that inform management decisions.

Education

Ph.D. Ecology, University of California, Davis. September 1990.
M.S. Ecology, University of California, Davis. June 1987.
B.S. Anthropology, University of California, Davis. June 1985.
Corcoran High School, Corcoran, California. June 1981.

Experience

- 477 professional publications, including:
 - 81 peer reviewed publications
 - 24 in non-reviewed proceedings
 - 370 reports, declarations, posters and book reviews
 - 8 in mass media outlets
 - 87 public presentations of research results at meetings
 - Reviewed many professional papers and reports
 - Testified in 4 court cases.

Editing for scientific journals: Guest Editor, *Wildlife Society Bulletin*, 2012-2013, of invited papers representing international views on the impacts of wind energy on wildlife and how to mitigate the impacts. Associate Editor, *Journal of Wildlife Management*, March 2004 to 30 June 2007. Editorial Board Member, *Environmental Management*, 10/1999 to 8/2004. Associate Editor, *Biological Conservation*, 9/1994 to 9/1995.

Member, Alameda County Scientific Review Committee (SRC), August 2006 to April 2011. The

five-member committee investigated causes of bird and bat collisions in the Altamont Pass Wind Resource Area, and recommended mitigation and monitoring measures. The SRC reviewed the science underlying the Alameda County Avian Protection Program, and advised the County on how to reduce wildlife fatalities.

Consulting Ecologist, 2004-2007, California Energy Commission (CEC). Provided consulting services as needed to the CEC on renewable energy impacts, monitoring and research, and produced several reports. Also collaborated with Lawrence-Livermore National Lab on research to understand and reduce wind turbine impacts on wildlife.

Consulting Ecologist, 1999-2013, U.S. Navy. Performed endangered species surveys, hazardous waste site monitoring, and habitat restoration for the endangered San Joaquin kangaroo rat, California tiger salamander, California red-legged frog, California clapper rail, western burrowing owl, salt marsh harvest mouse, and other species at Naval Air Station Lemoore; Naval Weapons Station, Seal Beach, Detachment Concord; Naval Security Group Activity, Skaggs Island; National Radio Transmitter Facility, Dixon; and, Naval Outlying Landing Field Imperial Beach.

Fulbright Research Fellow, Indonesia, 1988. Tested use of new sampling methods for numerical monitoring of Sumatran tiger and six other species of endemic felids, and evaluated methods used by other researchers.

Peer Reviewed Publications

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