

March 31, 2021

City Manager Dave Sykes:

It is San Jose Parks Advocates' understanding that the Urban Confluence project is moving towards a late spring 2021 Council meeting for a check-in and a go-no go decision. The proponents have shared eloquently what they see as the advantages of the project.

After viewing the size and complexity of the finalist, many questions arise. The following list is not meant to be comprehensive, but it does express significant concerns about the project and its hidden costs through this list of unanswered questions. The answers should be day-lighted before the project moves forward.

This list of about 100 questions has been sorted into 20 categories (A to V):

A. Equity Lens

- 1. How will the equity lens be applied to the project?
- 2. How will the project encourage equity?
- 3. How will people of different economic, (dis)ability, and cultural backgrounds be able to enjoy the project?
- 4. How will the costs to the City be minimized so as to not negatively impact communities of color, poverty, or other historic disadvantages?

B. Art Project or Structure

- 5. Is the Urban Confluence project a structure or a piece of art?
- 6. Will the California Artist's Rights Law apply? That is, if the City were to choose to remove or dismantle a display, will the City have to return the art, or store it? For how long?
- 7. Can structures have restaurants or other commercial activities and still be art?
- 8. If this art, does the artist receive a royalty from the commercial activities?

- 9. Does the artist have the right to reject or approve the nature, design, and operation of the commercial activities?
- 10. When does the artist's rights expire, if ever?

C. Structural Integrity

This is a very unusual design and outside the scope of what the City Building and Public Works staff normally evaluates for conformance to universal building code.

- 11. How will the City evaluate the unique structural design of project? Will the City use outside structural engineers?
- 12. How will the structure be evaluated for performance in wind storms? How will the project protect against having individual reeds banging into one-another, and possibly entangling?
- 13. How will the project be evaluated for earthquake safety? What seismic analysis will be performed? The reeds have different lengths and different resonant frequencies: will a strong quake pull apart the upper walkways and/or cause reeds to crash into one-another?
- 14. Will the project pay for these independent evaluations?

D. Construction Costs

This is a very large project with what looks to be significant infrastructure needs.

- 15. Based on what you see, is \$100 Million a reasonable ballpark estimate? \$150 Million?
- 16. Recognizing that the design/construction documents are not finalized, the large scale gives hint about the impacts to the park. What expenses, if any, are the City expected to provide?

For example,

Is the City expected to relocate the carousel?

Relocate and reconstruct the bathroom?

Upgrade sewage or electrical?

Relocate utilities? Upgrade or realign streets?

17. How will these expenses be paid for? Do impact fees apply?

Invoice to Urban Confluence for direct expenses? Indirect expenses?

From Park Capital Funds (C & C or Park Trust Fund)?

Cultural Affairs Office?

E. Timing

The project is very large and will cost a great deal of money.

- 18. How many years will the donors be given to raise money? 2 years? 5? 10?
- 19. What milestones and achievement standards will be established, for example 50% by year 2 and 100% by year 5?
- 20. At what point in time will council give a final go/no go?
- 21. What criteria will staff use to give the recommendation of go/no go?
- 22. At what point in time will the project reach enough design and construction certainty so that Parks Department be able to restore/repair the playground that has been removed? How long will community members have to wait until the project is completed before the new playground can be installed?

23. When does this project expire? What is the sunset date for this project if it is not constructed?

F. Fundraising

- 24. What is the fundraising schedule?
- 25. From whom do the project sponsors expect to raise the \$150M plus? The City?
- 26. How does their fundraising schedule compare to other large \$150M fundraising campaigns for art or memorials?
- 27. The City previously has commissioned studies of philanthropic resources in the valley. Stanford's Center on Philanthropy and Civil Society (PACS) has studied philanthropic trends in the Silicon Valley and beyond. What do these reports and studies say about the capacity for such a large fundraising project for an art project in San Jose?
- 28. Anecdotally, non-profit fundraising professionals tell about the impact of large projects on their efforts, describing large projects as "sucking all the philanthropic dollars out of the community."

What is the City's view of the statement:

"Taking \$150M out of the community for this project probably means \$150M less for other charitable causes, such as The Arts, Affordable Housing, or Equity Projects. Donors can be generous, but they are not a limitless resource."

- 29. How does a large multi-year fundraising project impact fundraising by other local organizations with less marketing acumen or budget?
- 30. To what extent will smaller arts organizations be unable to survive the COVID pandemic due to philanthropic arts dollars being shifted to this project?
- 31. Have the project's sponsors paid for an analysis of the fundraising capacity and the impact on local arts organizations? Will the City fund an analysis?
- 32. Will the City be analyzing the potential impact on local non-profits if this project fundraises for the next two years, five years, ten years? Will this be shared with the Council so they may be able to decide if this single project is in the best interest of the City?
- 33. The City already has approved design and fundraising for a Levitt music Pavilion in St. James park priced at about \$20 Million and additional design for the rest of the park as well.

To what extent will fundraising for this large project compete with fundraising for the already Council-approved Levitt Music Pavilion and St James park plan? If unknown, how will this risk be analyzed?

G. Technology Maintenance Upgrades

The project has technology components that are key to the artistic experience. Technology evolves. Parts and software that were common 50 years ago, such as vacuum tubes and COBOL programming language, are not possible to find today.

- 34. How will the City handle technology upgrades as the project ages?
- 35. What organization will pay to upgrade the technology? The City?

- 36. Will the artist/designer be responsible for selecting and installing the replacement equipment or will the City?
- 37. Under the California artists' work protection provisions will the city be allowed to change the technology to modern equipment without the artist's/designer's permission or will the project be required to have no updates? What if the designer/artist is dead?

H. Maintenance/Routine

A large structure requires very expensive routine maintenance, due to the specialized equipment to reach heights. Examples

- --washing the structure to eliminate bird guano
- --annual structural inspections
- --replacement of LEDs
- --graffiti and vandalism at height
- --security structures to prevent climbing
- 38. How will routine maintenance of the structure be funded?
- 39. Will the initial fundraising be required to endow a maintenance account? If so, for how many years?
- 40. What organization will provide ground-level maintenance surrounding the structure?
- 41. How will costs be allocated between the project sponsors and the city?

I. Maintenance/Structural

Large structures like these have complex structural components and due to their unique design may have unusual structural maintenance requirements.

42. What organization will be paying for this structural maintenance and repair?

J. Maintenance Funding

The project's leaders expressed their hope that they will raise money during the operation of the site.

- 43. What business enterprises are proposed?
- 44. What business plan or business concept has been shared?
- 45. What if the enterprises fail to meet expectations? How will expenses be covered?

K. Governance

The current project is led by three board members, one of whom serves as the Executive Director. They are all Caucasian, and two of whom are near 70 years old.

- 46. What concerns does the city have about the composition of the board attributes: age, number, ethnicity?
- 47. At what point might the City require a larger and more diverse board?
- 48. What concerns does the City have about the optics of engaging with such a small and not diverse group for such a large project that diverts parkland to a non-profit's use?

- 49. What is the organization's succession plan for their current small and older board?
- 50. Once the structure moves towards construction or operations, what will be the governance structure be?
- 51. What organization is expected to operate the business enterprises that the current board believes will support the ongoing operation of the site?
- 52. What sort of community involvement will be part of that organization?
- 53. Operationally:

Will the same board operate the enterprise and project?

Will the City operate the enterprise and project?

Will a new organization be formed to operate the project and enterprise?

- 54. Is a new non-profit that focuses on operations expected to be created? Will it be more diverse in age and ethnicity? Will the board be larger?
- 55. When will the governance structure be decided?
- 56. To what extent will the lack of a governance plan be a barrier to going forward?
- 57. When will the City start negotiations with the project sponsor's for a long-term governance plan?

L. Staff Time

The project's leaders have described their many and regular meetings with staff including those from parks, public works, planning, and the Cultural Affairs group. Several of these staff groups are cost recovery or draw from special funds, and not funded by the General Fund. A PRNS memo indicates over 850 staff hours have been expended to March 2021.

- 58. To what extent is the City charging for this staff time?
- 59. If the City is not charging the project for staff time, what City budget is paying for staff time?
- 60. To what extent is Park Trust Fund or Park C&C money being used to pay for staff time in PRNS, Public Works, and Planning?
- 61. How has the diversion of 850 hours of staff time impacted workloads for council priority projects? Has this been junior staff or executive staff time?
- 62. What is the dollar value, with fringe, of 850 hours of staff time?
- 63. How much staff time is expected as the project moves through various stages?
- 64. How will staff hours and profile change with each milestone?
- 65. To what extent will the city require compensation for the staff time?
- 66. Will the City be negotiating payment, retroactively, for the 850 hours of staff time?

M. Impact to City Budgets, staffs, operations

- 67. At what point in time will the city require the project team prepare a business plan, budget and impact to city staff/operations/budget for different stages:
 - a. fundraising, b. construction planning, c. building permit, 4. operations
- 68. When will an economic cost/benefit analysis be prepared along with a financial risk assessment?

N. Restaurant Concept/Long Tern Lease/City Election?

The project has indicated a plan for commercial enterprises in order to fund operations.

- 69. Would the commercial enterprise be offered a long-term contract with the city?
- 70. Or would the lease be limited to a renewable 3-year contract as presently done with Guadalupe River Conservancy and Veggielution?
- 71. Under what circumstances would a city election be required to write a long-term lease for this park to a commercial enterprise?
- 72. Under what circumstance is a non-profit owned, for profit commercial enterprise exempt from a city election to turn over dedicated parkland?
- 73. What if the business does not cover the operational costs? Will the non-profit entity cover the shortfall?
- 74. What if the restaurant/commercial enterprise fails? Will the non-profit recruit another operator?
- 75. Does the city have refusal rights on the selection of the restaurant operator?
- 76. What if the non-profit has ceased to exist? Will the city be expected to find a tenant operator and run the business enterprise?

O. Risk Management

The concept includes opportunities to climb to heights.

- 77. How will the design reflect best practices in safety? Suicide prevention?
- 78. Will the City be at risk of liability if the non-profit operator fails to institute best practices?
- 79. What insurance will be required of the organization?
- 80. How will the project protect against high-tech vandals using drones, kites, or balloons?

P. Airport Concerns

In the discussions of locations, the Audubon Society indicated that a lighted structure would attract birds flying to the structure through and in the flight path.

- 81. What risk is there to aircraft engines with birds attracted to the flight path?
- 82. Will this project be referred to the Santa Clara County Airport Land Use Commission?

Q. Environmental Concerns/EIR/CEQA

- 83. How will the CEQA requirement be fulfilled?
- 84. Will it be a full-scale EIR document?
- 85. Will it be supplemental to a prior EIR? If so, which one?
- 86. Is it expected to be an IS/MND?
- 87. Will the organization pay for the CEQA documents and staff time to evaluate?

R. Relationship to Prior Lawsuits and Legal Settlements

In 1993 and 1996 there were disagreements and legal actions about the final design of the Guadalupe River from San Carlos to Julian. Long-time San Jose residents have shared their recollection that the settlements affect Arena Green West. Due to the pandemic, research has not been completed at Superior Court and Federal Court to confirm their statements. Newspaper reports are imprecise.

89. To what extent does the 1993 settlement with the Consortium of Agencies about the Guadalupe River Flood Control project affect the mitigation measures implemented at Arena Green West, and limitations commercial enterprises and structures in Arena Green West? 90. To what extent does the settlement of the 1996 lawsuit affect Arena Green West and various mitigation measures installed at Arena Green?

S. Life of the Project

All structures of this size have a life span when they must be rehabilitated or removed.

- 90. What is the expected life span of this project? 50 years? 100 years?
- 91. What if the project does not attract visitors, or becomes controversial? Can it be removed? (Like the Christopher Columbus status and the Fallon statue).
- 92. Will the City retain the rights to cancel the relationship with the project's donors/operators and remove the project?
- 93. What criteria will be used for removal? Will those criteria be within the contract?
- 94. What if design features can no longer be operated?

T. Modification Costs

Unusual structures sometimes develop unanticipated quirks, such as whistling or creaking sounds.

- 95. Will the City be able to order the donor/operator to modify the structure to eliminate these quirks?
- 96. Will the City or the donor/operator be responsible for the retrofitting costs?
- 97. How might artist rights impact the ability to correct these unattractive quirks?

U. Demolition Costs

In addition to a lifespan, structures of such unusual form can develop unusual and unanticipated stress cracks and failure points leading to the partial or complete demolition.

- 98. Will the City require the donors to provide sufficient funds on deposit prior to construction to demolish the structure and restore the park?
- 99. Roughly about how much would it cost in today's dollars to demolish the structures? 100. What would be disposal costs?
- 101. If the donors are not required to deposit funds prior to construction, would the donor organization be contractually obligated to raise funds to remove?
- 102. What if the donor organization no longer exists?

V. Conflict of Interest

Several City elected officials donated to the project.

103. Is this a conflict of interest? Are they required to recuse themselves on votes about the project? Does the size of donation make a difference?

Building a privately proposed large structure and commercial enterprise in a city park is a new endeavor generating many questions about process and procedure. We hope that these questions are helpful as you and your staff prepare your analysis for council. We look forward to the daylighting of the answers to these questions.

Sincerely,

/s/ Jean

Jean Dresden

CC.

Jennifer Maguire, Assistant City Manager Angel Rios, Deputy City Manager Jim Shannon, Director, Budget Jon Cicirelli, Director PRNS Nicolle Burnham, Deputy Director PRNS Matt Cano, Director of Public Works Michael Ogilvie, Director of Public Art Parks and Recreation Commission San Jose Light Tower Corporation

Sent: Monday, April 26, 2021 3:00 PM

To: Mossing, Mackenzie

Subject: Fw: PLEASE do not approve the San Jose light tower project!

From: A Moss Sent: Saturday, April 24, 2021 11:33 AM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>

Subject: PLEASE do not approve the San Jose light tower project!

[External Email]

Hello Mr. Mayor and Councilmen,

I am a San Jose resident who is very opposed to the light tower project that is currently being proposed. I am in support of preserving our natural habitats and ensuring our man made structures do not interfere with birds and animals, and this structure most definitely does. Here are more reasons why I hope you do NOT approve this structure:

- **The wrong structure** An imposing 200-ft tall, massive, illuminated structure will generate unacceptable, city wide, light pollution. This structure generates light pollution intentionally, by design, making it impossible to shield and protect residents, waterways, wildlife, and the dark sky from harm.
- In the wrong place Arena Green Park is the confluence of two important waterways, and two riparian corridors. It is also an important community gathering place. This Project would dominate our public space and harm our riparian ecosystems, birds, fish beavers, and wildlife by lighting up this sensitive environment.
- At the wrong time As the human and economic losses of the pandemic continue to haunt our community, San Jose should encourage investment in what people need and want not in top-down projects.
- The wrong symbol for San Jose The illuminated white light rods of this structure are intended to represent Silicon Valley Tech companies. Our diverse community is not represented in this monolithic white structure that can harm us with light pollution. The promoters showed little interest in diversity, equity or inclusion.
- Let's help our community instead The City should instead direct philanthropy to an environmentally sensitive project that improves our lives and represents San Jose's culture and community.

PLEASE do not approve this light tower project! Thank you for listening to the residents and nature-protectors!

Sincerely, Anica Moss

Sent: Monday, April 26, 2021 2:44 PM

To: Mossing, Mackenzie

Subject: Fw: San Jose Light Tower Objection

From: Ratana, Christopher <christopher.ratana@sanjoseca.gov>

Sent: Monday, April 26, 2021 2:36 PM

To: Kline, Kelly <Kelly .Kline@sanjoseca.gov>; Devalcourt, Joel <Joel.Devalcourt@sanjoseca.gov>

Subject: Fw: San Jose Light Tower Objection

FYI -- these emails go to you both, right?

From: B Mccalment <

Sent: Sunday, April 25, 2021 7:54 PM

To: District4 < District4@sanjoseca.gov>; The Office of Mayor Sam Liccardo

<TheOfficeofMayorSamLiccardo@sanjoseca.gov>

Subject: San Jose Light Tower Objection

[External Email]

Mayor Liccardo and Councilmember Cohen:

Respectfully please reconsider your decision to accept this structure. There are so many things that the city could do with this substantial gift other than build a light tower to illuminate but accomplish nothing.

It will not add to our reputation as a progressive city. It will in fact be a detriment, not moving toward a green city, but instead provide light pollution where we want less. Consider anything that values less, rather than more light: aviation, research at multiple sites, wildlife that needs darkness for safety, health of the citizens. In addition, nothing about this structure will provide an improvement to the citizens of San Jose and the surrounding areas - health, safety, improved living conditions, schools, supporting infrastructure. It is simply a waste of potential. Please reconsider this.

Sincerely, Barbara McCalment District 4

Sent: Monday, April 26, 2021 2:58 PM

To: Mossing, Mackenzie **Subject:** Fw: Light Tower project

From: Josie Matsushita

Sent: Saturday, April 24, 2021 3:11 PM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>

Subject: Light Tower project

[External Email]

Dear Mayor Liccardo,

I think this is an awful idea on so many levels - of which I'm sure you've heard/read them all, so I'll keep it brief:

Say no thanks to this project and move on to a better one for San Jose.

Sincerely, Josie Matsushita

Sent: Monday, April 26, 2021 3:00 PM

To: Mossing, Mackenzie

Subject: Fw: Against the proposed San Jose Light Tower - Say No to Light Pollution

From: Rachelle Curry >

Sent: Saturday, April 24, 2021 11:07 AM

Subject: Against the proposed San Jose Light Tower - Say No to Light Pollution

[External Email]

As a San Jose resident and a bird lover, I am against a \$120million dollar structure that is not only unnecessary and ugly, but will also serve to kill an already decimated bided population in this valley.

Birds have lost so much of their natural habitat that we cannot afford to kill off more of them with the construction of this tower; the proposed location is in the confluence of two riparian corridors and two waterways and will harm wildlife e.g. beavers, birds, and others.

With San Jose suffering from unhoused who trash our streets and freeways, the money should be allocated to provide housing and cleanup this City.

Please don't let this eyesore be built - it's not the right way to spend \$'s when there are so many other issues where the money can do good.

Regards,

Rachelle Curry District 6

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Be yourself - Everyone else is taken.

Oscar Wilde

From: Devalcourt, Joel <Joel.Devalcourt@sanjoseca.gov>

Sent: Monday, April 26, 2021 2:44 PM

To: Mossing, Mackenzie

Subject: Fwd: Proposed light tower in downtown San Jose

Joel Devalcourt

Senior Advisor on Land Use and Economic Development in the Office of Mayor Liccardo

Cell:

Email: joel.devalcourt@sanjoseca.gov

COVID-19 Community Resources & Information at Silicon Valley Strong: www.siliconvalleystrong.org

The Office of Economic Development (OED) has established a new email address, covid19sjbusiness@sanjoseca.gov, where employers, businesses, non-profits, and workers impacted by COVID-19 can ask questions.

From: Ratana, Christopher <christopher.ratana@sanjoseca.gov>

Sent: Monday, April 26, 2021 2:31:23 PM

To: Kline, Kelly <Kelly.Kline@sanjoseca.gov>; Devalcourt, Joel <Joel.Devalcourt@sanjoseca.gov>

Subject: Fw: Proposed light tower in downtown San Jose

From: Marion Farber

Sent: Monday, April 26, 2021 10:31 AM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>

Subject: Proposed light tower in downtown San Jose

[External Email]

Dear Mr. Liccardo,

I am writing to express my opposition to the proposed light tower to be placed at the confluence of the Guadalupe River and Los Gatos Creek. This 200 foot tall light generating structure will shine across the City, spill light into the confluence of waterways on the valley floor, and will be visible all the way to Mt. Hamilton and Mt. Umunhum. This light will keep residents up at night, disorient and harm birds and wildlife, and pollute our view of the night sky. It could interfere with the research function of the world-famous Lick Observatory. It can distract pilots as they land at the nearby airport.

I also feel that the money spent on this project would be much better spent benefiting the residents of San Jose that need help right now, such as the homeless (let's get them away from our creeks!) and those with food insecurity and in danger of losing their housing.

Please do all you can to prevent this structure from being built!

Respectfully, Marion Farber, San Jose

Sent: Monday, April 26, 2021 2:54 PM

To:Mossing, MackenzieSubject:Fw: Light "donation"

From: Mary Stenseth

Sent: Saturday, April 24, 2021 5:51 PM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>

Subject: Light "donation"

[External Email]

What a despicable gift to overload our city's natural environment with unnatural light. Do not add this to a misguided list of mayoral achievements .

Sincerely,

Mary Stenseth

Former San Jose Unified Board of Education Willow Glen

Sent from my iPhone

Sent: Monday, April 26, 2021 3:00 PM

To:Mossing, MackenzieSubject:Fw: Light Pollution

From: Roberta Baker

Sent: Saturday, April 24, 2021 8:27 AM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>

Subject: Light Pollution

[External Email]

ΗI

I live in Willow Glen and am strongly against the Urban Light Confluence Project. Thanks but no thanks! It will cause light pollution and harm wildlife. Roberta Baker

Fw: I strongly support the Breeze of Innovation Landmark project

City Clerk <city.clerk@sanjoseca.gov>

Wed 4/28/2021 8:06 AM

To: Agendadesk < Agendadesk@sanjoseca.gov>

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor San Jose, CA 95113

Main: 408-535-1260 Fax: 408-292-6207

How is our service? Please take our short survey.

From: Karin Church

Sent: Wednesday, April 28, 2021 6:56 AM To: City Clerk <city.clerk@sanjoseca.gov>

Subject: I strongly support the Breeze of Innovation Landmark project

[External Email]

Dear City Clerk Taber,

My dad, Leigh Weimers, whose column ran in the San Jose Mercury News for more than 40 years, was a lifelong champion and eloquent supporter of the arts, technology and innovation of Silicon Valley. During his career, he had always wanted to see a project like the Breeze of Innovation Landmark for San Jose. Because the city sprawls across so much ground, this landmark will be an excellent focal point and world-class destination.

Urban Confluence has been completely mindful of protecting the riparian corridor (including flora, fauna, and lighting) and the airport since the beginning of the project four years ago. This project is privately funded and no city funds will be used to build, operate, or maintain the project. I hope you approve of this design, allowing this project to move forward, so I and my family will be able to see my dad's dream for a worthy landmark fulfilled.

Sincerely,

Karin Church

Fw: Urban Confluence, Breeze of, Agenda Item 7.1, 5/4/2021

City Clerk <city.clerk@sanjoseca.gov>

Wed 4/28/2021 8:06 AM

To: Agendadesk < Agendadesk@sanjoseca.gov>

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113 Main: 408-535-1260 Fax: 408-292-6207

How is our service? Please take our short survey.

From: Jeffery Lee

Sent: Wednesday, April 28, 2021 6:04 AM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>

Cc: City Clerk <city.clerk@sanjoseca.gov>; Borkenhagen Steve

Subject: Urban Confluence, Breeze of , Agenda Item 7.1, 5/4/2021

[External Email]

Dear Mayor Liccardo and Members of the San Jose City Council:

I wish to address **Agenda Item 7.1** on the upcoming **May 4, 2021** meeting, Urban Confluence, **Breeze of Innovation.** I support the finalist's design and have additional comments regarding its benefit to our City.

I see in the not too distant future a deep dive review of the benefits of this project; both aesthetically and fiscally.

I see the attraction and attractiveness that this iconic structure will bring many visitors into our City core. The experience will leave visitors with an excitement not often felt or provided for by municipalities.

I see a competition to complement Arena Green Park to continually attract and encourage better uses of public spaces for a broad scope of enjoyment: From the active to the serene to the contemplative. I see a renewed **city-regional pride** that complements our rich agricultural to aeronautical to

educational to technological history.

I see an educational dialogue that is driven by the ingenuity of the past to the innovations of whatif to can-do generations. I see resources from visitors indirectly contributing to community health clinics, senior activity programs, drug and alcohol programs, affordable housing and homelessness corrections; each benefiting from revenue taxes from hotel stays, barista cafes to restaurants, bookshops to art and museum visits, construction permits and all support staff and functions. I see additional revenues to our City's treasuries and vastly adding to "quality of life" objectives of the City's Strategic Plans.

I see an opportunity to improve and make even better an already vibrant and rich community. As such, I urge an unanimous "yes vote" on Breeze of Innovation.

Respectfully submitted,

Jeffery Lee, DDS, retired

Fw: Breeze of innovation strong supporter

City Clerk <city.clerk@sanjoseca.gov>

Wed 4/28/2021 9:52 AM

To: Agendadesk < Agendadesk@sanjoseca.gov>

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113 Main: 408-535-1260 Fax: 408-292-6207

How is our service? Please take our short survey.

From: Randy Zechman

Sent: Wednesday, April 28, 2021 9:37 AM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; City Clerk

<city.clerk@sanjoseca.gov>

Subject: Breeze of innovation strong supporter

[External Email]

Sam and team- Next week the city council votes to approve the urban confluence project- breeze of innovation as a gift to San Jose. I have been involved in downtown and its core for almost 25 years. I helped start the downtown retail advocates many years ago. I'm an active participant in downtown activities. I bring my family downtown. I own multiple businesses that are headquartered in San jose and employ over 100 people. I'm invested in San Jose. Even further, I have talked to city council members and mayors for years- from Dave Cortese, to Cindy Chavez, to Madison Nguyen, Chuck Reed and more about the need for an iconic structure in San Jose. It is one of the last pieces of the puzzle to truly turn San Jose and Silicon Valley into a world class city. I also know this group has worked very hard to be environmentally conscious about the building of this product. It is at the core of all the submissions they received. You see I also own a solar installation company, so I'm very aware of the environment and it's need for care. I have great faith in our downtown leadership and I trust you will do the only responsible thing which is to pledge your support towards this project. I want to pledge my strong support and am always open to help make this city become one of the great cities of the world.





YES, I want to sign the petition to SAVE CALIFORNIA SOLAR!

We love your referrals! Click here to earn \$500!

Fw: Urban Confluence project

Agendadesk < Agendadesk@sanjoseca.gov >

Thu 4/29/2021 8:47 AM

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

From: City Clerk <city.clerk@sanjoseca.gov> Sent: Thursday, April 29, 2021 8:44 AM

To: Agendadesk < Agendadesk@sanjoseca.gov >

Subject: Fw: Urban Confluence project

From: David Cohen

Sent: Thursday, April 29, 2021 8:40 AM

To: District 6 < district6@sanjoseca.gov>; District 10 < District10@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>;

City Clerk <city.clerk@sanjoseca.gov> Subject: Urban Confluence project

[External Email]

Mayor, Vice-mayor, City Clerk and Council Members,

I have had the pleasure of participating, from the beginning, in community meetings regarding the iconic structure project for downtown San Jose. Consequently, my wife Barbara and I, chose to contribute financially to this top shelf urban project. To date, this was our small foundation's largest grant. What a wonderful process the board of Urban Confluence has applied to the international design competition. The grant was well deserved!

The unprecedented community outreach and transparency at every step of the way can only be praised. From environmental and geographic concerns to the solely private funding of the iconic endeavor, one can only marvel at the depth of commitment of all those involved.

Our city, in the past, has missed opportunities for urban growth. From the denial of Macy's Department store to move downtown, to the rejection of bringing BART to downtown, are well known. Those short sighted consequences are felt to this day.

As concerned citizens who care deeply about San Jose, we encourage the council and mayor to approve the winner of the international design competition. It's an opportunity we don't want to pass up!

Sincerely, David E. Cohen San Jose, CA 95126



- "Andrà tutto bene"
- -Things will get better

"There are two ways to live: you can live as if nothing is a miracle: you can live as if everything is a miracle."

-Albert Einstein

"Leave the gun, take the cannoli."

-Peter Clemenza, The Godfather

"In Sicily, the women are more dangerous than shotguns."

-Calo, The Godfather

MICHAEL E. WILLIS, FAIA

23 April 2021

Dear Mayor and Members of the City Council:

I was one of the jurors on the Urban Confluence project, and now that the selection has been made, I feel I can now ask you for your support of the winner, *The Breeze of Innovation*.

As an architect I have visited many parts of the world which are homes to their icons: Paris' Eiffel Tower, the St. Louis Arch in my hometown, the Brandenburg Gate in Berlin; and the Basilica by Palladio in 16th century Vicenza. I know that these icons are shorthand for the spirit of their cities, and like all things made by people, sometimes the icons had to earn their places in the hearts and minds of the population, as did the Eiffel Tower. But once embraced, everyone who sees the Eiffel Tower, knows where it is and it is loved. So in that way, an icon is by its nature an aspiration, a hope that the built object will become a the embodiment of the spirit of the city. That is the dream for the **Breeze of Innovation.**

Like all new structures, as it progresses, it will have to meet all the codes and requirements, structural and environmental reviews, and take on the comments of its neighbors and citizens, and in so doing, become a better project for the ages. It should be no other way. And it is to be privately funded and run, and offered to the citizens of San Jose as a gift to the city. And so I strongly support the vision of Urban Confluence Silicon Valley to create a magnificent landmark for San Jose. **Breeze of Innovation** will be a catalyst in the downtown core, a place to wonder, to wander, to embrace its moving and moveable grace, and of which to be proud. I ask you to encourage the citizens of San Jose to embrace this gift to the city, the region, and to the people of the world.

We look forward to your approval of this design, allowing this project to move forward.

Sincerely,

Michael E. Willis, FAIA NOMA

Fw: I support Breeze of Innovation

City Clerk <city.clerk@sanjoseca.gov>

Thu 4/29/2021 2:25 PM

To: Agendadesk < Agendadesk@sanjoseca.gov>

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113 Main: 408-535-1260 Fax: 408-292-6207

How is our service? Please take our short survey.

From: Gary Shara

Sent: Thursday, April 29, 2021 12:47 PM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1

<district1@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District2

<District2@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7

<District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10

<District10@sanjoseca.gov>

Cc: City Clerk <city.clerk@sanjoseca.gov> **Subject:** I support Breeze of Innovation

[External Email]

Dear Mayor and Members of the City Council:

I am writing to say that I strongly support the vision of Urban Confluence Silicon Valley to create a magnificent landmark for our city. Breeze of Innovation will convert Arena Green into an inclusive and welcoming urban park that will become a global destination. It will serve as both a wonderful and fun filled gathering place for our families to enjoy but also an icon that will have people around the world talking about our beautiful city and Silicon Valley.

San Jose and Breeze of Innovation will be linked together as a wonderful example of civic pride in beauty, wonder and community connection for all peoples regardless of age, gender, race, or ethnicity. We look forward to your approval of this design, allowing this project to move forward.

Sincerely,

Gary T. Shara

THIS IS A PRIVILEGED AND CONFIDENTIAL COMMUNICATION FROM: Gary T. Shara, Attorney at Law.

Fw: 5/4/2021 Council Agenda Item 7.1, Light Tower: Time to Acknowledge that a New **Direction is Needed**

City Clerk <city.clerk@sanjoseca.gov>

Thu 4/29/2021 2:55 PM

To: Agendadesk < Agendadesk@sanjoseca.gov>

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113 Main: 408-535-1260 Fax: 408-292-6207

How is our service? Please take our short survey.

From: Dave Poeschel <

Sent: Thursday, April 29, 2021 2:52 PM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>

Cc: Agendadesk <Agendadesk@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

Subject: 5/4/2021 Council Agenda Item 7.1, Light Tower: Time to Acknowledge that a New Direction is Needed

[External Email]

Dear San Jose Mayor Liccardo and City Council Members,

As someone who appreciates the arts, I'm disappointed that PRNS staff, commissions, and Council time have facilitated the San Jose Light Tower Corporation's (SJLTC) top-down process while the "Private Percent for Art" languishes in the staff queue with no attention since staff does not have adequate resources. The General Plan asks that we, "Cultivate communitybased art projects that support neighborhood revitalization goals."

SJLTC has provided multiple presentations but has never been sincere in soliciting input from the San Jose populace and has refused to incorporate any of the suggestions provided by outside organizations.

The philanthropic funding expected from tech companies and others is a scarce resource and the millions of dollars expected to be required will be denied elsewhere. Imagine how far these resources could go if our City leaders instead required "private percent" and sought millions of dollars in donations for art throughout our City, developing local youth to work on things like murals, just for example, https://www.ktvu.com/news/san-jose-seeks-cultural-beauty-throughcolorful-murals, https://www.kqed.org/arts/13845793/walkabout-san-joses-chicano-murals.

I sincerely appreciate all effort that is involved in creating an iconic feature as imagined by SJLTC. But we must not feel obligated to continue to ask for millions of dollars of donations to build this particularly inappropriate design at this particularly inappropriate site selected by SJLTC. Please note that their site selection process considered the environmental impact that a site could provide to the project but did not analyze the effects the project would have on the environment of the site.

Because Audubon Society, Sierra Club, and others had early on expressed concerned about the process, https://www.sanjoseinside.com/opinion/op-ed-san-joses-proposed-light-tower- <u>leaves-us-in-the-dark/</u>, and dangers of a large lighted structure at this narrow confluence of two stream riparian corridors and the disorienting effect that artificial lights have on avian species in particular, SJLTC assured us that that environmental impacts would be avoided. I was invited to review proposals to contribute to a ranking provided to their selected contest judges. It was an honor to serve and fascinating to see so many artistic concepts.

Unfortunately, our concerns were not taken seriously and were definitely NOT addressed. This proposal is for a glowing structure, 75ft. wide, 200 ft. tall, will not only cast glare on the streams but is of such a scale to cause light to cast on many windows throughout much of the city.

The chosen design is worse for nature than I had feared with the original idea of a light tower. It would also be a risk to the health and safety of human beings flying into SJC. The 200 ft. tall lighted tower would be just below the flight path at about 350 ft. near the runway and the bright lights would be a distraction to pilots. Moreover, the glowing lights of such a tower is also likely to cause birds to congregate (like moths to a porch light — I don't know why but studies show they do this) right where planes are approaching to land. I'd rather not have birds sucked into my airliner's jet engines. https://webtrak.emsbk.com/sjc3

Many who appreciate art also appreciate dark skies at night both to sleep soundly and to have the opportunity to view and imagine the universe. This project would surely disrupt those desires for many and set back the efforts to protect the telescopes at the Lick Observatory.

More and more studies are showing how artificial light disrupts many forms of life and is harmful to human health, https://pubmed.ncbi.nlm.nih.gov/26375320/.

Please consider ways that you can help redirect this distraction and potential disaster toward art.

Sincerely, Dave Poeschel

Fw: Please approve Breeze of Innovation

Gregory, Barbara <Barbara.Gregory@sanjoseca.gov>

Thu 4/29/2021 3:52 PM

To: Agendadesk < Agendadesk@sanjoseca.gov>

Thank You,

Barb Gregory **Analyst II Office of the City Clerk** 200 E Santa Clara St FL T-14

San Jose, C-A 95112

408-535-1272 Fax: 408-292-6207

e-mail: barbara.gregory@sanjoseca.gov

How is our service? Please take our short survey.

From: Coombs,Tom <

Sent: Thursday, April 29, 2021 3:11 PM To: City Clerk <city.clerk@sanjoseca.gov> Subject: Please approve Breeze of Innovation

[External Email]

Dear City Clerk, Mayor and Members of the City Council:

I strongly support the vision of Urban Confluence Silicon Valley to create a magnificent landmark for our city. I have attended many of the virtual meetings and I believe Breeze of Innovation offers a unique opportunity to re-define our downtown core. Now is the time to encourage the citizens of San Jose to embrace an iconic and world recognizable art symbol that will define our City visually and give a meaningful gift to all of our families, the City of San Jose, Silicon Valley, and those visiting from around the world. This project is privately funded and no city funds will be used to build, operate, or maintain the project. I look forward to your approval and/or influence to approve this design, allowing this project to move forward. Breeze of Innovation will bring pride and economic growth to San Jose and Silicon Valley.

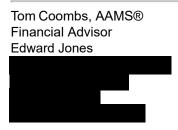
Stay safe.

In Partnership.

Tom

Tom Coombs, AAMS | Financial Advisor **Edward Jones - Making Sense of Investing**

Our Commitment: To partner with you and your family so you feel Informed, Understood, Secure and In Control.



If you are not the intended recipient of this message (including attachments) or if you have received this message in error, immediately notify us and delete it and any attachments.























April 30, 2021

Re: Item 7.1 on the 4/5/21 Agenda: Urban Confluence by Light Tower Corporation

Dear Mayor Liccardo and Council members,

The undersigned organizations represent thousands of residents who care about the environment in San Jose, and about the future of the City. Our organizations include youth and climate action groups as well as environmental groups that work to protect, enhance, restore, and clean our waterways and our riparian corridors, and to educate the public about the ecology of these important ecosystems.

We are all concerned about the illuminated structure that is proposed by the Light Tower Corporation at Arena Green. Not only are we concerned with the environmental impacts of the selected design, but we are also perplexed at the prioritization of this project at this time. So many of our fellow citizens are struggling to provide basic necessities for their families, and Parks and Recreation and Neighborhood Services (PRNS) resources are stretched so thin. This project sends the wrong message about San Jose's priorities during a time of historic turmoil and suffering.

Project conflicts with San Jose Park's vision and goals

Based on San Jose planning documents and ordinances, staff concludes that future projects in Arena Green should:

- **Promote nature-based and ecological education**. This project promotes light pollution, which is now recognized as a driver of environmental harm. It is contrary to nature-based and ecological education.
- **Encourage art**. San Jose's murals and small sculptures, even the City's utility boxes, recognize art in San Jose. Is a \$150 million tribute to tech companies, designed by an Australian group, the right approach to encouraging art in San Jose?
- Increase social cohesion and community health. There is scientific consensus in the environmental and medical fields that Artificial Light at Night (ALN) is harmful to humans, plants, animals and ecosystem health. A San Jose "iconic structure" that exudes light pollution in a densely populated area next to a major riparian corridor cannot by any stretch of imagination symbolize a healthy community.
- Advance the identity of San Jose. The project solely promotes Silicon Valley tech
 companies. San Jose should be proud of its identity and its symbols should capture the
 rich, colorful and diverse culture of San Jose. Five hundred lighted identical poles say
 nothing about San Jose.
- Enhance the connectivity / accessibility to the park from all neighborhoods. Arena Green is a popular gathering space for public events. This project will fill the space currently available for these gatherings, limiting not enhancing accessibility.

Project conflicts with City policies, plans and ordinances

- The Staff report states, "It seems likely that the proposed SJLTC project has certain elements that may not be viable under the city's current ordinances". Staff does not clarify the elements or the ordinances that make the project unviable.
- Staff also says that amendments to the Guadalupe River Park Master Plan may be needed.
- Furthermore, we maintain that the project is inconsistent with the Riparian Corridor Policy and the San Jose General Plan.
- From previous staff communications, we understand that a charter amendment may be necessary to allow the project to operate in a way that will bring in revenue.

Fiscal Responsibility

There is an anticipated need to spend an increasing amount of staff time to support the project development. This comes at a time when priorities for the Parks Department are split between supporting cleanups, maintenance services, preschool programs, and food support. The pandemic has stretched already thin resources for this department, and we are concerned that the budget for additional staff time will take away resources from other needed projects, especially those that serve underserved communities.

For example, it seems that a comprehensive process will be needed for staff to identify all the inconsistencies with City policies, ordinances, and planning documents. Some of these inconsistencies may require new planning documents and environmental review. The efforts to identify the inconsistencies and ways to move forward will consume staff time and community resources, all at the time that the City and its residents are still recovering from the impacts of the COVID-19 pandemic. Not surprisingly, the Light Tower Corporation letter (page 3) asks the City to "treat the staff reimbursement issue with a tempered approach."

• Does this mean that the City should continue to invest in the project with no guarantee of reimbursement?

We are concerned that the Light Tower Corporation will not be able to reimburse the City and furthermore, that their expressed commitment to funding the maintenance and operation of the finished project will not be realized. The pandemic has shown us that we cannot make such an in-perpetuity commitment in full expectation that it will be realized. San Jose should be cautious and look the gift tower in the mouth.

Environmental and ecological concerns

1. (Un) Sustainability

The Breeze of Innovation purports to convey a message of hope in the face of climate change. It seems ironic that a structure inspired by sustainability should promote lighting-up the environment, at great harm to biodiversity and ecosystem health, all at the confluence of two major waterways. Climate change combined with other human activities continues to cause environmental degradation, loss and fragmentation of habitat, leading to a loss of biodiversity and extinction of species. These changes to our ecosystems and ecosystem services have impacts on human health and well-being.

This illuminated artistic structure design is fundamentally contradictory: it strives to symbolize sustainability, but will actually cause lasting, anthropogenic harm to our already compromised environment and wildlife.

2. Ecological impacts: Creek ecosystems

Light at night is harmful to all living things and to entire ecosystems. This is because life on earth evolved to respond to light/dark cycles and to seasonal changes in day length. In plants, light regulates biological functions such as timing of germination, flowering, fruiting, dropping leaves in fall and re-leafing in springtime. In animals, light triggers behaviors such as reproduction, feeding, migration. Lighting the night disrupts biological synchrony and harms our plants, wildlife and ecosystems.

Creek corridor ecosystems are, by nature, continuous. Disruptions such as light can curtail migration in the aquatic or riparian ecosystems, with regionally devastating impacts. This is why the City's Riparian Policy recommends that highly lit facilities, such as sports fields, should be set 200-ft back from creeks. It is unfortunate that the light tower project is proposed so close to and will loom over the confluence of two waterways.

Because plants and animal species respond differently to light (wavelength, brightness, correlated heat temperature etc.), mitigation of the impacts in riparian corridors is not enough. Lighting should be avoided.

3. Ecological impacts: Birds

San Jose is located on the Pacific Flyway for migratory birds. The vast majority of these birds fly at night, and often concentrate along oceans, wetlands and waterways. Nocturnal migratory birds are attracted to light. This attraction can be fatal due to collision with both lightemitting and nearby structures. It can also lead to disorientation and exhaustion as birds are "captured" by the light and circle ceaselessly around and above the light source.



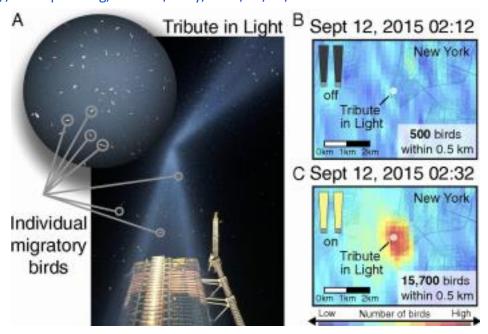
Birds' attraction to light should not come as a surprise to the

City of San Jose, given historical reports of birds and insects that swarmed the original light tower, including that "[b]irds and insects came in violent contact with the tower and the electric wires and fell to the ground below dead. A couple of bushels of them could be gathered up on the street." The Wikipedia entry for the tower states that "the police on the local beat made money selling birds that collided with the tower to local restaurants."

The Tribute in Light iconic memorial to the Twin Towers in New York City is lit only once a year, on September 11th. A 7-yearlong study of bird behavior showed that when the installation was illuminated, birds congregated in high densities, followed circular flight paths, and vocalized frequently. Bird densities near the installation exceeded magnitudes 20 times greater than surrounding baseline densities during each year's observations. These significant behavioral alterations occurred even though this is a heavily light polluted environment. The Tribute in Light study used visual, auditory and radar methodology to estimate the number of birds that were

attracted to the light. Figure 1 below shows one night in which the number of birds within 0.5-km of the iconic light plume increased from 500 to 15,700 within 20 minutes. The birds circled the light until it was extinguished.

Figure 1: Tribute in Light site. Observations from the September 2015 Tribute in Light depicting altered behaviors of nocturnally migrating birds. (A) Direct visual observation. (B) Radar observation without TiL illumination and (C) with TiL illumination. Source: https://www.pnas.org/content/early/2017/09/26/1708574114#sec-1



The proposed Urban Confluence project is likely to attract a large number of birds to Arena Green in San Jose from surrounding areas. The project site is immediately adjacent to the Outer Safety Zone - South. It is reasonable to expect that birds will be attracted to the installation and will circle the sky, disoriented, within the safety zone, at various heights. This risk of attracting flocks of nocturnally migrating birds into the airspace near the airport poses an unacceptable hazard to aircraft.

Public process, inclusion and equity

The process that ended in the selection of the "Breeze of Innovation" project was not supported by grassroots sentiment and does not represent San Jose's diverse community and culture. The entire process has been top-down, with community, environmental and equity concerns dismissed. Furthermore, despite early indication by the Light Tower Corporation that the project

will not be a light tower, the winning design is a massive illuminated object that will be seen from Mt. Hamilton to Mt. Umunhum.

The business plan for the project promises that the project will generate revenue. We expect a charge to be required for community members to enjoy the amenities, programming and events. Will less affluent residents suffer the light pollution, but be excluded from the benefits?

We are especially concerned about the staff report's suggestion that the Light Tower Corporation continue to conduct public outreach for the Light Tower project, while PRNS lead community engagement and outreach regarding redesign of the park and for modification of the Guadalupe River Park Master Plan (should that be necessary).

Should the City elect to continue processing the acceptance of the "gift" of light pollution, we ask that PRNS should conduct ALL public outreach, starting with an unbiased City-Wide survey, similar to the one that was conducted for Phase 2 of the electronic signs.

We live in challenging times. Global climate change, global loss of biodiversity and the ongoing and reverberating impacts of the Covid-19 pandemic on our society should wake us to a transformed reality. We must take better care of our planet, our nature, and each other.

The pandemic sharpened our senses and helped us appreciate the value of nature, of birdsong, of dark starry nights and the beauty of the Milky Way. An illuminated tower anywhere in the city will be harmful to our environment and should not be promoted in the 21st century. It is time for San Jose to reconsider this project, and, hopefully, direct philanthropy in the city to better causes.

We ask you not to approve any staff and budget resources that would allow this project to advance.

Respectfully,



Shani Kleinhaus Environmental Advocate Santa Clara Valley Audubon Society

Dave Poeschel Conservation Chair, Guadalupe Regional Group Sierra Club Loma Prieta Chapter Steve Holmes Founder and Executive Director South Bay Clean Creeks Coalition

Maggie Dong, Co-Lead, San Jose Action Team Silicon Valley Youth Climate Action

Esther Duong Co-Lead, San Jose Action Team Silicon Valley Youth Climate Action

Monica Mallon Transit Lead, Climate Advocate Silicon Valley Youth Climate Action

Deb Kramer Executive Director Keep Coyote Creek Beautiful

Linda Ruthruff Conservation Chair California Native Plant Society, Santa Clara Valley Chapter

Susan Butler-Graham Chapter Coordinator Mothers Out Front Silicon Valley

Rhonda Berry Executive Director Our City Forest

Justin Wang Advocacy Manager Greenbelt Alliance

Brian Schmidt Legislative Advocacy Director Green Foothills