

**Appendix A**  
*NOP and Comments Received*

**NOTICE OF PREPARATION OF A  
DRAFT ENVIRONMENTAL IMPACT REPORT  
FOR THE 237 INDUSTRIAL CENTER PROJECT**

FILE NO: C15-054  
PROJECT APPLICANT: Cilker Orchards Management Corp.  
APN: 015-31-054

**Project Description:** The project site is primarily fallow farmland with a single-family house and some accessory structures located near the southern portion of the site. The site is currently supported by well water and a septic tank system. The project includes two development options. Option 1 proposes approximately 1,197,700 square feet of light industrial development and Option 2 proposes an approximately 2.35 million square foot data center and up to four stories tall.

**Location:** The 66.5-acre project site is located north of Highway 237 between Zanker Road and Coyote Creek in the City of San José.

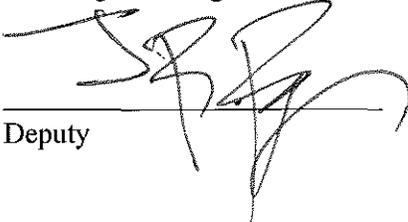
As the Lead Agency, the City of San José will prepare an Environmental Impact Report (EIR) for the project referenced above. The City welcomes your input regarding the scope and content of the *environmental information that is relevant to your area of interest, or to your agency's statutory responsibilities* in connection with the proposed project. If you are affiliated with a public agency, this EIR may be used by your agency when considering subsequent approvals related to the project. The project description, location, and probable environmental effects that will be analyzed in the EIR for the project can be found on the City's Active EIRs website at [www.sanjoseca.gov/activeeirs](http://www.sanjoseca.gov/activeeirs), including the EIR Scoping Meeting information.

According to State law, the deadline for your response is 30 days after receipt of this notice; however, we would appreciate an earlier response, if possible. Please identify a contact person, and send your response to:

City of San José  
Department of Planning, Building and Code Enforcement  
Attn: Kieulan Pham, Environmental Project Manager  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San José CA 95113-1905  
Phone: (408) 535-3844, e-mail: [Kieulan.pham@sanjoseca.gov](mailto:Kieulan.pham@sanjoseca.gov)

Harry Freitas, Director  
Planning, Building and Code Enforcement

Deputy



Date

5-20-16

**NOTICE OF PREPARATION OF A  
DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE  
237 INDUSTRIAL CENTER PROJECT**

**May 27, 2016**

***Introduction***

The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the environmental effects of a proposed project that an agency may implement or approve. The EIR process is intended to provide information sufficient to evaluate a project and its potential for significant impacts on the environment; to examine methods of reducing adverse impacts; and to consider alternatives to the project.

The EIR for the proposed project will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. In accordance with the requirements of CEQA, the EIR will include the following:

- A summary of the project;
- A project description;
- A description of the existing environmental setting, environmental impacts, and mitigation measures for the project;
- Alternatives to the project as proposed; and
- Environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments of resources; (c) the growth inducing impacts of the proposed project; and (d) cumulative impacts.

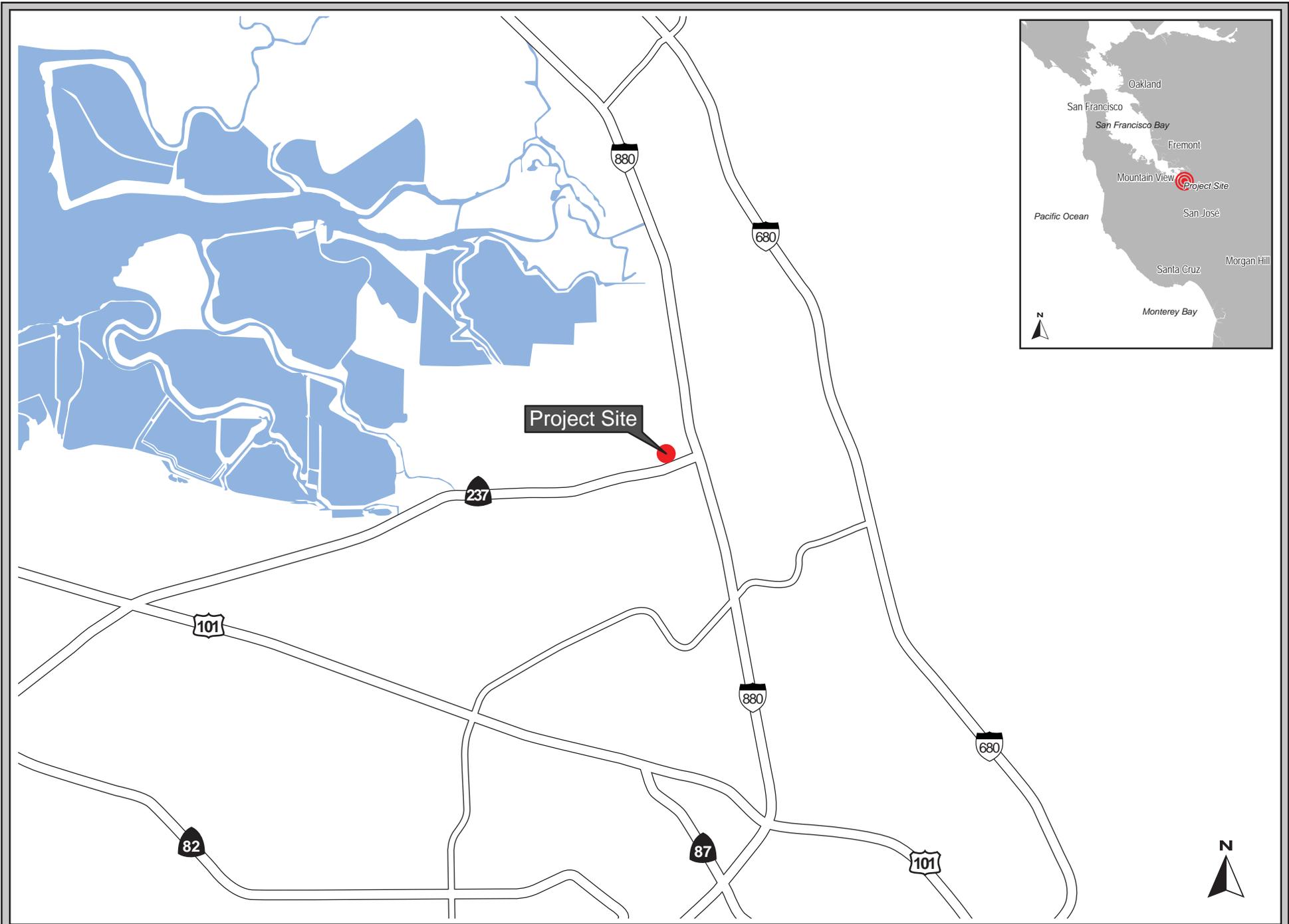
***Project Location***

The 66.5-acre project site is located north of Highway 237 between Zanker Road and Coyote Creek in the City of San José (see Figures 1, 2, and 3).

***Project Description***

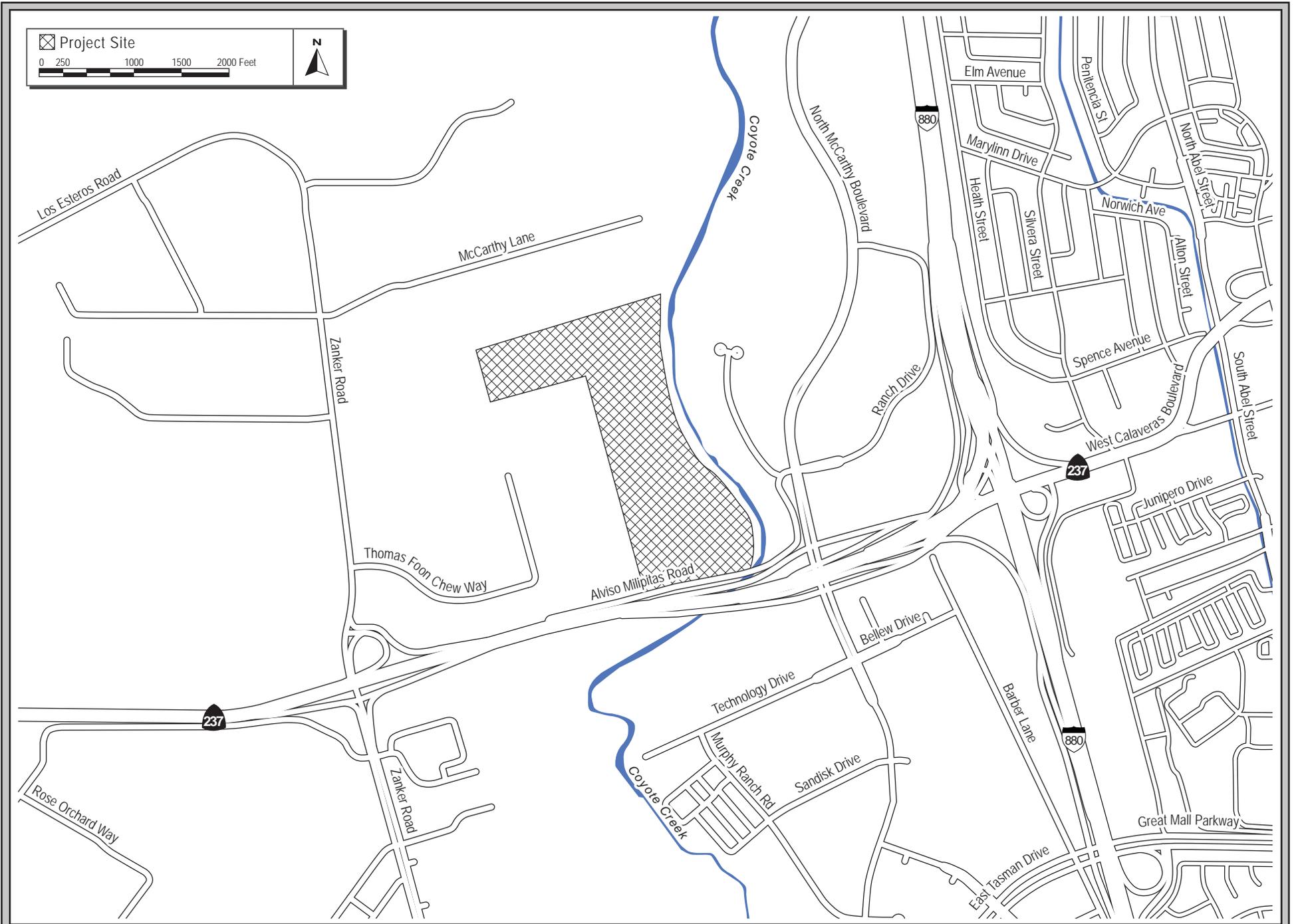
The project site is primarily fallow farmland with a single-family house and some accessory structures located near the southern portion of the site. The site is currently supported by well water and a septic tank system. The project includes two development options. Option 1 proposes approximately 1,197,700 square feet of light industrial development and Option 2 proposes an approximately 2.35 million square foot data center and up to four stories tall.

Option 1 would include seven two-story light industrial buildings with a maximum height of 45 feet and a floor area ratio (FAR) of 0.43. Approximately 2,621 parking spaces would be provided in surface lots surrounding the buildings. Types of uses could include warehousing, wholesaling, light industrial manufacturing, and associated service establishments.



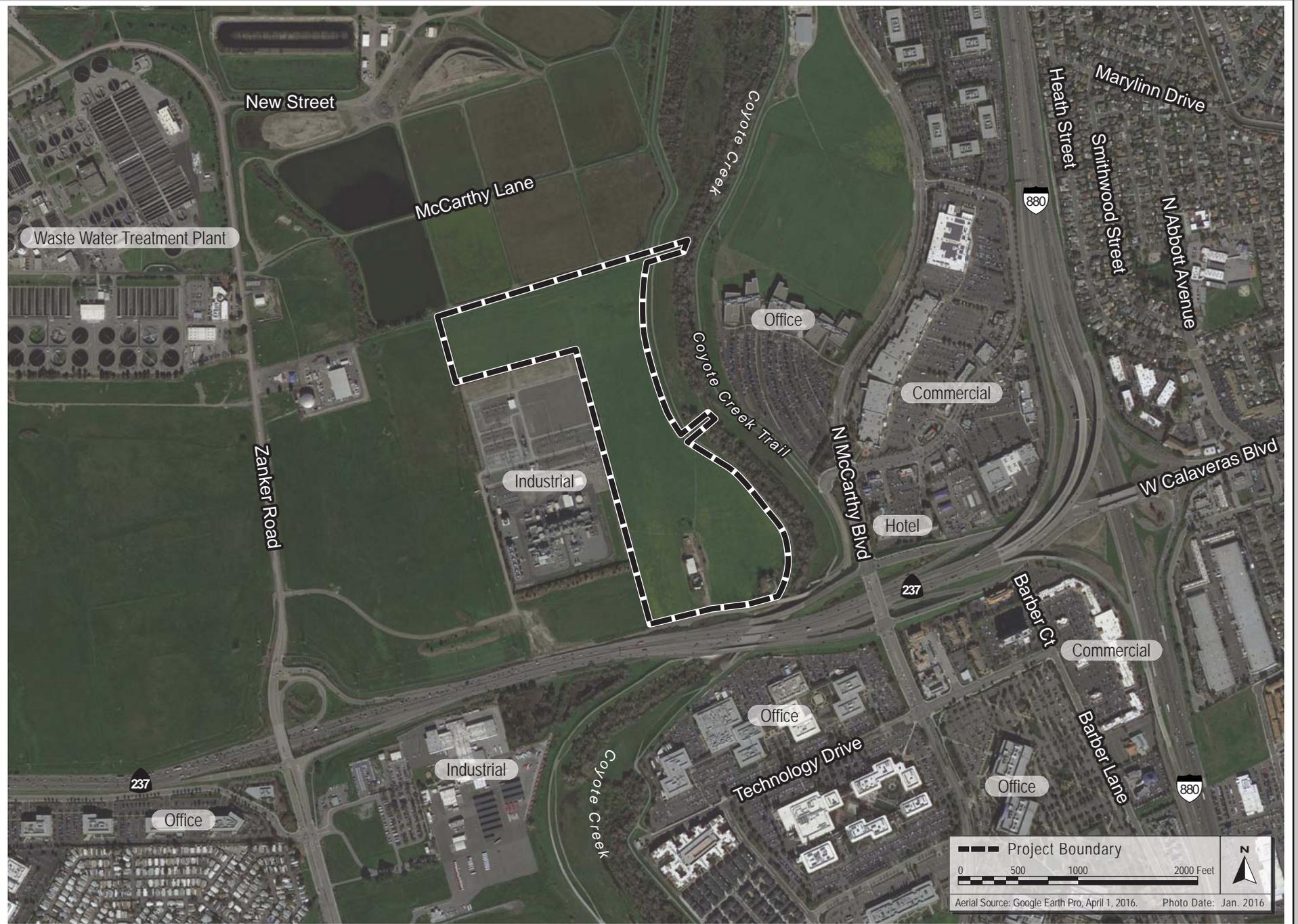
REGIONAL MAP

FIGURE 1



VICINITY MAP

FIGURE 2



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

FIGURE 3

Option 2 would include five buildings for data center uses. The three main buildings would be a maximum height of 100 feet and the two secondary structures would be a maximum of 30 feet tall. Approximately 350 parking spaces would be provided in three surface lots located adjacent to the main buildings. A new approximately 103,300 square foot electrical substation with a maximum height of 45 feet would be constructed along the northern boundary of the project site.

Access to the site would be provided by two new public streets from Zanker Road. Existing access from Ranch Drive near the southeast corner of the site would be maintained over Coyote Creek. Under Option 1, the project site would be accessed from both northern and southern entry points. Under Option 2, the project site would be accessed through a secured entry adjacent to the substation.

There are very few existing utilities on-site; therefore, water, sanitary sewer, stormwater, electrical, natural gas, and telecom facilities will be extended onto the site. A new stormwater outfall to Coyote Creek and emergency back-up generators may also be necessary.

The project site is designated *LI – Light Industrial* under the City’s General Plan and zoned *A(PD) – Agricultural Planned Development*. Development of the project would be consistent with the City’s General Plan land use designation and the Alviso Master Plan. It is anticipated that the project would be rezoned to the conventional zoning designation of *Light Industrial*. Data Centers are conditional uses in this zoning district.

***Possible Required Project Approvals:***

1. Rezoning
2. Conditional Use Permit
3. Site Development Permit
4. Grading, Building, and Occupancy Permits

***Potential Environmental Impacts of the Project***

The EIR will identify the significant environmental effects anticipated to result from development of the project as proposed. Mitigation measures will be identified for significant impacts, as warranted. The EIR will include the following specific environmental categories as related to the proposed project:

*1. Land Use*

The project site is surrounded by public and private utilities/power stations, Coyote Creek, percolation fields, and remnant vacant property. The EIR will describe the existing land uses adjacent to and within the project area, in addition to the current General Plan and zoning designations of the site. Land use impacts that would occur as a result of the proposed project will be analyzed, including the consistency of the project with the City’s General Plan and Zoning Code and compatibility of the proposed and existing land uses in the project area.

## 2. *Aesthetics and Visual Resources*

The EIR will describe the existing visual setting of the project area and the visual changes that are anticipated to occur as a result of the proposed project. The EIR will also describe the project's conformance with the City of San José General Plan policies pertaining to visual and aesthetic impacts.

## 3. *Geology*

The project site is located in the most seismically active region in the United States. The EIR will discuss the possible geological impacts associated with seismic activity and the existing soil conditions on the project site.

## 4. *Hydrology and Water Quality*

The EIR will address the possible flooding issues of the site as well as the effectiveness of the proposed storm drainage system and the project's effect on stormwater quality consistent with the requirements of the Regional Water Quality Control Board. The EIR will also include the percentage of pervious and impervious surfaces on-site (under existing and project conditions), and a list of proposed stormwater control measures that meet Low Impact Development Requirements.

## 5. *Biological Resources*

The project site is fallow farmland with little vegetation; however, it is designated burrowing owl habitat in the Santa Clara Valley Habitat Plan. Protocol-level burrowing owl surveys will be completed on the site. Potential impacts to the adjacent riparian corridor of Coyote Creek will be identified. The EIR will discuss the overall loss of existing habitat and the project's consistency with the Santa Clara Valley Habitat Plan.

## 6. *Hazards and Hazardous Materials*

The project site was historically used as agricultural land and may contain residual pesticides. The EIR will summarize known hazardous materials conditions on and adjacent to the project site and will address the potential for the proposed development to result in significant hazardous materials impacts.

## 7. *Cultural Resources*

The project area has a high sensitivity for potentially buried archaeological sites. A cultural resources evaluation will be prepared for the proposed project to determine if there are potential subsurface cultural materials on-site and in the project area. A literature review of previously recorded sites will be conducted at the Northwest Information Center at Sonoma State University. A site reconnaissance will be completed due to the proximity of Coyote Creek, a sensitive cultural resource. The EIR will analyze the potential for as yet undocumented subsurface resources (i.e., prehistoric/historic cultural, Native American, and paleontological) to be to be encountered during project construction.

## 8. *Transportation and Circulation*

The EIR will examine the existing traffic conditions in the immediate vicinity of the project site. A Transportation Impact Analysis (TIA) will be prepared that addresses both development options to identify the transportation impacts of the proposed project on the existing local and regional transportation system and the planned long-range transportation network. The TIA will be completed according to City of San José and Congestion Management Program (CMP) requirements.

## 9. *Air Quality*

The EIR will address the regional air quality conditions in the Bay Area and discuss the proposed project's impacts to local and regional air quality according to 2011 Bay Area Air Quality Management District (BAAQMD) guidelines and thresholds. BAAQMD recommends a 1,000-foot radius for assessing community risks and hazards from Toxic Air Contaminant (TAC) stationary sources. Due to the distance between sensitive receptors and the project site, a TAC analysis is not required.

## 10. *Noise*

The project site is designated *Light Industrial* under the General Plan and is not located in proximity to sensitive land uses such as residential development. The EIR will determine existing noise levels on-site utilizing the City's General Plan and Municipal code and noise levels will be evaluated for consistency with applicable standards and guidelines of the City of San José. Potential noise impacts to wildlife within the adjacent riparian corridor will be identified.

## 11. *Utilities*

Implementation of the proposed project will result in an increased demand for utilities and public facilities compared to existing conditions. The EIR will examine the need to expand utilities to the site and the potential impacts of the project on public services, including utilities such as sanitary and storm drains, water supply, and solid waste management.

## 12. *Public Services*

Implementation of the proposed project will increase the daytime employee population of the City which will result in an increased demand on public services, including police and fire protection. The EIR will address the availability of public facilities and service systems and the potential for the project to require the construction of new facilities.

## 13. *Energy*

Implementation of the proposed project will result in an increased demand for energy on-site. The EIR will address the increase in energy usage on-site and proposed design measures to reduce energy consumption.

#### *14. Greenhouse Gas Emissions*

The EIR will address the proposed project's contribution to regional and global greenhouse gas emissions based on the City's greenhouse gas emissions reduction strategy. Proposed design measures to reduce energy consumption, which in turn would reduce greenhouse gas emissions, will be discussed.

#### *15. Alternatives*

The EIR will examine alternatives to the proposed project including a "No Project" alternative and one or more alternative development scenarios depending on the impacts identified. Other alternatives that may be discussed could include reduced development alternatives (e.g., smaller project site or reduced density alternatives), alternative land uses, and/or alternative locations. Alternatives discussed will be chosen based on their ability to reduce or avoid identified significant impacts of the proposed project while achieving most of the identified objectives of the project.

#### *16. Significant Unavoidable Impacts*

The EIR will identify those significant impacts that cannot be avoided, if the project is implemented as proposed.

#### *17. Cumulative Impacts*

The EIR will include a Cumulative Impacts section that will address the potentially significant cumulative impacts of the project when considered with other past, present, and reasonably foreseeable future projects in the development area.

In conformance with the CEQA Guidelines, the EIR will also include the following sections: 1) consistency with local and regional plans and policies, 2) growth inducing impacts, 3) significant irreversible environmental changes, 4) references and organizations/persons consulted, and 5) EIR authors.

## NATIVE AMERICAN HERITAGE COMMISSION

1550 Harbor Blvd., Suite 100  
West Sacramento, CA 95691  
Phone (916) 373-3710  
Fax (916) 373-5471  
Email: [nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
Website: <http://www.nahc.ca.gov>  
Twitter: @CA\_NAHC



June 14, 2016

Kieulan Pham  
City of San Jose  
200 E. Santa Clara Street Tower 3  
San Jose, CA 95113

sent via e-mail:  
[kieulan.pham@sanjosea.gov](mailto:kieulan.pham@sanjosea.gov)

RE: SCH# 2016052053 The 237 Industrial Center Project, draft Environmental Impact Report, City of San Jose, Santa Clara County, California

Dear Ms. Pham:

The Native American Heritage Commission has received the Notice of Preparation (NOP) for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.), specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b) (CEQA Guidelines Section 15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared. (Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

**CEQA was amended significantly in 2014.** Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a **separate category of cultural resources**, "tribal cultural resources" (Pub. Resources Code § 21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code § 21084.3 (a)). **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. § 800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments. **Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

#### AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. **Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code § 21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code § 21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code § 21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or environmental impact report. (Pub. Resources Code § 21080.3.1(b)).
  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18). (Pub. Resources Code § 21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code § 21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code § 21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code § 21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code § 21082.3 (b)).
7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
  - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code § 21080.3.2 (b)).
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code § 21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code section 21084.3 (b). (Pub. Resources Code § 21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
  - a. Avoidance and preservation of the resources in place, including, but not limited to:
    - i. Planning and construction to avoid the resources and protect the cultural and natural context.

- ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i. Protecting the cultural character and integrity of the resource.
    - ii. Protecting the traditional use of the resource.
    - iii. Protecting the confidentiality of the resource.
  - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d. Protecting the resource. (Pub. Resource Code § 21084.3 (b)).
  - e. Please note that a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code § 815.3 (c)).
  - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code § 5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
  - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
  - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code § 21082.3 (d)). *This process should be documented in the Cultural Resources section of your environmental document.*

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code § 65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code § 65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code section 65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction. (Gov. Code § 65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

## NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have been already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.
3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

Please contact me if you need any additional information at [gayle.totton@nahc.ca.gov](mailto:gayle.totton@nahc.ca.gov).

Sincerely,



Gayle Totton, M.A., PhD.  
Associate Governmental Program Analyst

cc: State Clearinghouse



**Pacific Gas and  
Electric Company**

Scott Brady  
Land Agent

408.282.7543 (Office)  
Scott.Brady@pge.com

Land Management

111 Almaden Boulevard  
Room 814  
San Jose, CA 95113

June 15, 2016

Kieulan Pham  
Environmental Project Manager  
City of San Jose  
Department of Planning, Building, and Code Enforcement  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113-1905

Subject: Notice of Preparation of a Draft Environmental Impact Report  
The 237 Industrial Center Project, File C15-054, APN 015-31-054  
PG&E Comments

Dear Kieulan:

Thank you for the opportunity to provide comment on the subject Notice of Preparation of a Draft Environmental Impact Report.

1. PG&E owns and operates gas transmission facilities which are located within the area of project. PG&E also owns and operates electric transmission facilities which are located adjacent to the proposed project boundaries. To promote the safe and reliable maintenance and operation of utility facilities, the California Public Utilities Commission (CPUC) has mandated specific clearance requirements between utility facilities and surrounding objects or construction activities. To ensure compliance with these standards, project proponents should coordinate with PG&E early in the development of their project plans. Any proposed development plans should provide for unrestricted utility access, and prevent easement encroachments that might impair the safe and reliable maintenance and operation of PG&E's facilities.

**PG&E personnel will be required to standby when exposing (potholing) gas transmission facilities to confirm location and depth of the pipeline. Please contact USA North, at 1-800-227-2600, for marking of existing underground utilities and to request a PG&E standby representative to monitor potholing activities.**

2. Developers will be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate their proposed development. Because facilities relocations require long lead times and are not always feasible, developers should be encouraged to consult with PG&E as early in their planning stages as possible.

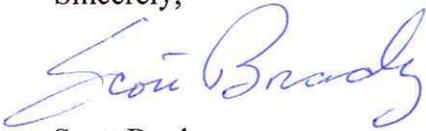
3. Should any improvement work take place near PG&E's gas transmission facility, PG&E will need to review improvement plans to determine if there will be any conflicts with the construction as well as provide wheel loading calculations to determine maximum wheel loads over the pipe line. The developer will need to contact me to obtain the necessary information if work will be required near the pipe line.
4. Relocations of PG&E's electric transmission facilities (50,000 volts and above) may also require formal approval from the California Public Utilities Commission. If required, this approval process may take up to two years to complete. Proponents with development plans that may affect such electric transmission facilities should be referred to PG&E for additional information and assistance in the development of their project schedules.
5. Please note that continued development consistent with your General Plan will have a cumulative impact on PG&E's gas systems and may require on-site and off-site additions to the facilities that supply these services. Because utility facilities are operated as an integrated system, the presence of an existing gas transmission or distribution facility does not necessarily mean the facility has capacity to connect new loads.
6. Expansion of distribution and transmission lines and related facilities is a necessary consequence of growth and development. In addition, to adding new distribution feeders, the range of electric system improvements needed to accommodate growth may include upgrading existing capacity, and building new substations and interconnecting transmission lines. Comparable upgrades or additions to accommodate additional load on the gas system may include facilities such as regulator stations, odorizer stations, valve lots, and distribution and transmission lines.
7. We recommend that environmental documents for proposed development projects include adequate evaluation of cumulative impacts to utility systems, the utility facilities needed to serve those developments, and any potential environmental issues associated with extending utility service to the proposed project. This will assure the project's compliance with CEQA and reduce potential delays to the project schedule.
8. PG&E remains committed to working with the City of San Jose to provide timely, reliable and cost effective gas and electric services to the area. Please contact me at 408-282-7543 if you have any questions regarding PG&E's comments. We would also appreciate being copied on future correspondence regarding this property as things develop.
9. The California Constitution vests in the California Public Utilities Commission (CPUC) exclusive power and sole authority with respect to the regulation of privately owned or investor owned public utilities such as PG&E. This exclusive power extends to all aspects of the location, design, construction, maintenance and operation of public utility facilities. Nevertheless, the CPUC has provisions for regulated utilities to work closely with local governments and give due consideration to their concerns. PG&E must balance our commitment to provide due consideration to local concerns with our obligation to provide the

Kieulan Pham  
June 15, 2016  
Page 3 of 3

public with a safe, reliable, cost-effective energy supply in compliance with the rules and tariffs of the CPUC.

Thank you for the opportunity to provide comment.

Sincerely,



Scott Brady  
Pacific Gas and Electric Company  
Land Agent

cc: File

# County of Santa Clara

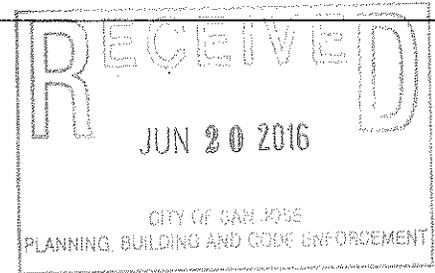
Roads and Airports Department

101 Skyport Drive  
San Jose, California 95110-1302  
1-408-573-2400



June 15, 2016

Kieulan Pham  
Environmental Project Manager  
Department of Planning, Building and Code Enforcement  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113-1905



**SUBJECT: Notice of Preparation of a Draft Environmental Impact Report  
237 Industrial Center Project**

Dear Ms. Pham:

The County of Santa Clara Roads and Airports Department appreciates the opportunity to review to the Notice of Preparation (NOP) and is submitting the following comments.

Transportation Impact Analysis (TIA) should be prepared for the proposed project following the latest adopted Congestion Management Program (CMP) TIA Guidelines to identify significant impacts. The analysis should include, but not limited to, all signalized and unsignalized intersections along Montague Expressway between US 101 and I-680.

The analysis should be conducted using County signal timing for County study intersections and the most recent CMP count and LOS data for CMP intersections. Please contact Ananth Prasad at (408) 494-1342 or [Ananth.Prasad@rda.sccgov.org](mailto:Ananth.Prasad@rda.sccgov.org) for the correct signal timing.

The preliminary Comprehensive County Expressway Planning Study – 2040 project list should be consulted for a list of mitigation measures for significant impacts to the expressways. Should the preliminary Expressway Plan 2040 project list not include an improvement that would mitigate a significant impact, the TIA should identify mitigation measures that would address the significant impact. Mitigation measures listed in the TIA should be incorporated into the EIR document.

If you have any questions or concerns about these comments, please contact me at (408) 573-2462 or [aruna.bodduna@rda.sccgov.org](mailto:aruna.bodduna@rda.sccgov.org)

Sincerely,

Aruna Bodduna  
Associate Transportation Planner

cc: DSC, MA, AP



June 17, 2016

City of San Jose  
Department of Planning and Building  
200 East Santa Clara Street  
San Jose, CA 95113

Attention: Kieulan Pham

Subject: City File No. C15-054 /

Dear Mr. Pham:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the NOP for 1.2 million square feet of industrial development on 66.5 acres north of SR 237 between Zanker Road and Coyote Creek. We have the following comments.

Transportation Impact Analysis (TIA) Report

VTA's Congestion Management Program (CMP) requires a Transportation Impact Analysis (TIA) for any project that is expected to generate 100 or more net new peak-hour trips. The NOP notes that a TIA will be prepared per CMP requirements (pg. 7). The updated 2014 TIA Guidelines, which can be found at <http://www.vta.org/cmp/tia-guidelines>, include updated procedures for documenting auto trip reductions, analyzing non-auto modes, and evaluating mitigation measures and improvements to address project impacts and effects on the transportation system. For any questions about the updated *TIA Guidelines*, please contact Robert Swierk of the VTA Planning and Program Development Division at 408-321-5949 or [Robert.Swierk@vta.org](mailto:Robert.Swierk@vta.org).

Pedestrian and Bicycle Accommodations

VTA requests that the TIA analysis of Pedestrian and Bicycle Accommodations consider the completeness of the pedestrian and bicycle network on roadways and intersections adjacent to and nearby the Project site. Currently, the area surrounding the site does not provide formal pedestrian and bicycle facilities. A significant pedestrian and bicycle facilities gap exists between the site and the adjacent Coyote Creek Trail, which crosses Alviso Milpitas Road near the site. However, there are no sidewalks or pedestrian paths on this section of Alviso Milpitas Road, and no crosswalks, signals or other crossing facilities for trail users to safely cross Alviso Milpitas Road along the trail. VTA recommends that the project developer work with the City to create pedestrian and bicycle connections to the Coyote Creek Trail to facilitate commute trips, access to transit (VTA Line 47 along McCarthy Boulevard), and access to retail amenities via Ranch Drive.

VTA also recommends that the City require bicycle parking consistent with City of San José bicycle parking standards as a Condition of Approval for the Project. VTA supports bicycling as an important transportation mode and thus recommends inclusion of conveniently located bicycle parking for the Project. Bicycle parking facilities can include bicycle lockers or secure indoor parking for all-day storage and bicycle racks for short-term parking. VTA's Bicycle Technical Guidelines provide guidance for estimating supply, siting and design for bicycle parking facilities. This document may be downloaded from [www.vta.org/bikeprogram](http://www.vta.org/bikeprogram).

#### Roadway Connectivity

VTA encourages new projects to improve access and connectivity with surrounding areas. The project description notes the creation of "two new public streets from Zanker Road" (pg. 5). A previous TIA Scope referral described a new access point along the site's northern boundary, connecting to Zanker Road. VTA supports such improved connectivity. VTA notes that the current project description per the NOP retains an existing access from Ranch Drive, which was previously considered for potential closure as part of the TIA Scope.

#### Transportation Demand Management/Trip Reduction

In order to reduce the number of single occupant vehicle trips generated by the Project, VTA recommends that the City and Project sponsor consider a comprehensive Transportation Demand Management (TDM) program for the office portion of this Project. VTA notes that such programs can be more effective when they include a vehicle trip reduction target, third-party monitoring of trip generation upon Project completion and a Lead Agency enforcement/penalty structure.

Effective TDM programs that may be applicable to the Project include:

- \* Parking pricing and parking cash-out programs
- \* Public-private partnerships or contributions to improved transit service to the area
- \* Bicycle lockers and bicycle racks
- \* Showers and clothes lockers for bicycle commuters
- \* Preferentially located carpool parking
- \* Employee carpool matching services
- \* Parking for car-sharing vehicles

#### CMP Facilities

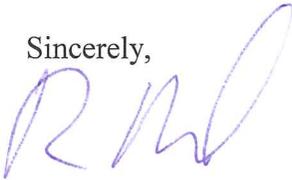
Based on the size and location of this development, there may be impacts to one or more CMP facilities, including freeway segments and CMP intersections. If the transportation analysis indicates that there will be significant impacts according to CMP criteria, VTA suggests early coordination with the appropriate agencies to identify potential mitigation measures and

City of San Jose  
June 17, 2016  
Page 3

voluntary contribution opportunities based on the latest Valley Transportation Plan (VTP) projects in the project area, such as SR 237 Express Lanes Phase II (VTP ID H3).

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,



Roy Molseed  
Senior Environmental Planner

cc: Michael Liw, San Jose Development Services  
Patricia Maurice, Caltrans  
Brian Ashust, Caltrans

SJ1528

## Pham, Kieulan

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**From:** Katja <katja.irvin@sbcglobal.net>  
**Sent:** Sunday, June 19, 2016 9:45 PM  
**To:** Pham, Kieulan  
**Cc:** 'Barbara Kelsey'; 'Mike Ferreira'  
**Subject:** NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE 237 INDUSTRIAL CENTER PROJECT

June 20, 2016

City of San Jose  
Department of Planning, Building and Code Enforcement  
Attn: Kieulan Pham, Environmental Project Manager  
200 East Santa Clara Street, 3rd Floor Tower  
San Jose CA 95113-1905

Sent via e-mail to: Kieulan.pham@sanjoseca.gov

Dear Kieulan Pham and Associates,

The Sierra Club Loma Prieta Chapter has a few comments about the need to study riparian impacts in the Environmental Impact Report for the 237 Industrial Center Project, as follows.

1. Natural riparian areas and associated wildlife are sensitive to light and noise. The maximum potential light and noise impacts of light industrial uses at this site must be analyzed and mitigated.
  - a. This project should mitigate light pollution by using the guidelines set forth in the International Dark-Sky Association Model Ordinance (<http://darksky.org/our-work/public-policy/mlo/>).
2. All alternatives must preserve at least a 100' setback from top of bank. At least one alternative with larger setback of 150-200 feet should be considered in the EIR since this location is subject to flooding and the adjacent riparian corridor is of particular importance due to its proximity and to the Don Edwards National Wildlife Refuge and its importance as a transition area for wildlife.
3. Development can increase opportunities for dumping and impacts due to increased access to the riparian corridor. Such additional access and potential for pollution should be mitigated through required signage, fencing, and security systems to detect illegal dumping.

Please confirm that our comments will be part of the scoping record for this EIR.

Sincerely,



Katja Irvin  
Water Committee Chair  
Sierra Club Loma Prieta Chapter

# County of Santa Clara

## Parks and Recreation Department

298 Garden Hill Drive  
Los Gatos, California 95032-7669  
(408) 355-2200 FAX 355-2290  
Reservations (408) 355-2201

[www.parkhere.org](http://www.parkhere.org)



June 24, 2016

Kieulan Pham, Environmental Project Manager  
City of San Jose  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113-1905

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report for the 237 Industrial Center Project

Dear Ms. Pham:

The County of Santa Clara, Parks and Recreation Department (“County Parks Department”), has reviewed the Notice of Preparation of a Draft Environmental Impact Report for the 237 Industrial Center Project. The project includes two development options: Option 1 proposes approximately 1,197,700 square feet of light industrial development and Option 2 proposes an approximately 2.35 million square foot data center and up to four stories tall.

The County Parks Department is charged with the planning and implementation of *The Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan)*, an element of the Parks and Recreation Section of the County General Plan adopted by the Board of Supervisors on November 14, 1995. Although responsibility for the actual construction and long-term management of each individual trail varies, the County Parks Department provides general oversight and protection of the overall trail system. The *Countywide Trails Plan* indicates the following regional trail routes adjacent to the project site:

- ***Coyote Creek/Llagas Sub-regional Trail (S1)*** – This partially existing trail follows Coyote Creek and Llagas Creek from the San Francisco Bay to the South of Gilroy. The route North of Highway 237 is designated for hiking and cycling, and is part of the San Francisco Bay Trail route.
- ***San Francisco Bay Trail (Route R1-B)*** – This partially existing trail provides a regional connection along the San Francisco Bay shoreline. An existing route follows Coyote Creek Sub-regional Trail and then connects to the Highway 237

**Board of Supervisors:** Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian

**County Executive:** Jeffrey V. Smith



Bike Path; this route is designated for hiking and cycling. Proposed Bay Trail alignments are located to the north and west of the proposed Project site.

The County Parks Department respectfully recommends that the following items be addressed in the EIR as they relate to the existing and proposed countywide trail routes in the vicinity of the Project site.

### **Aesthetics and Visual Resources**

In regard to the potential for visual and aesthetic impacts, the EIR should evaluate any degradation of views in the area of the Project site, including from the adjacent Coyote Creek/ Llagas Sub-regional Trail and San Francisco Bay Trail.

### **Hydrology and Water Quality**

The EIR should study stormwater runoff and other drainage from the proposed Project, and ensure that excessive off-site flows are fully eliminated. The evaluation should also include impacts to water quality and the overall hydrology of the neighboring riparian corridor.

### **Biological Resources**

The EIR should evaluate potential impacts to the Coyote Creek riparian corridor. The EIR should specifically evaluate the potential for light or glare from the Project to impact the riparian ecosystem, including reproduction, foraging and migration. Wherever possible, mitigation measures should be incorporated into the Project scope that seek to reduce negative impacts.

### **Transportation and Circulation**

A full traffic study should be performed to analyze additional traffic the Project may generate, including how it might impact the surrounding neighborhood and the existing Coyote Creek/ Llagas Sub-regional Trail. The EIR should evaluate the potential impacts the Project may have on regional trails and minimize impacts to the trail routes and users by incorporating complete streets designs to the proposed new public streets. The EIR should also consider the proposed San Francisco Bay Trail alignments, and whether the Project would preclude the future development of that trail.

### **Noise**

The EIR should evaluate potential noise impacts both during and after construction is completed.

### **Public Services**

The Project may potentially impact recreational facilities in the Project vicinity, such as the Coyote Creek/ Llagas Sub-regional Trail. Project maps and the overall EIR should document the countywide trail routes, and acknowledge that the trails offer opportunities for non-motorized connections from the surrounding neighborhoods to the project site. As documented routes of countywide significance, these trails also provide connections between nearby parks, trails, and open space areas.

**Board of Supervisors:** Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian

**County Executive:** Jeffrey V. Smith



The EIR should also address the proposed project's consistency with the *Countywide Trails Plan* as mentioned above.

Thank you for the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the 237 Industrial Center Project. The County Parks Department requests a copy of the Draft EIR once it is released for public review. If you have questions related to these comments, please call me at (408) 355-2228 or e-mail me at [Hannah.Cha@prk.sccgov.org](mailto:Hannah.Cha@prk.sccgov.org).

Sincerely,



Hannah Cha  
Provisional Associate Planner

cc: Annie Thomson, Principal Planner



**Board of Supervisors:** Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian

**County Executive:** Jeffrey V. Smith

## Pham, Kieulan

---

**From:** Michael McWalters <mmcwalters@earthlink.net>  
**Sent:** Tuesday, May 24, 2016 5:39 PM  
**To:** Pham, Kieulan  
**Subject:** C15-054 Option 2 is the best fit

Hello,

I will not be able to attend the meeting on Thursday June 9, 2016. I would like to say that (OPTION 2) a Data Center would be the best possible fit. The minimum amount of people would be affected by the smell of the sludge from the SJ/SC Water Treatment Facility. Traffic would be minimal as well.

Regards,

Michael McWalters  
POB 338  
Alviso, CA 95002



SANTA  
CLARA  
UNIFIED  
SCHOOL  
DISTRICT

1889 Lawrence Road  
Santa Clara, CA  
95051  
408-423-2000

Stanley Rose III, Ed.D.  
Superintendent

Via EMAIL

June 27, 2016

Kieulan Pham  
Environmental Project Manager  
City of San Jose  
200 East Santa Clara Street  
3<sup>rd</sup> Floor Tower  
San Jose, Ca 95113-1905  
Kieulan.pham@sanjoseca.gov

RE: NOP for EIR; City of San Jose; 237 Industrial Center Project

Dear Ms. Pham:

The Santa Clara Unified School District appreciates the opportunity to provide input for the CEQA Environmental Impact Report (EIR) for this proposed development. The development has impacts to schools and the environment the EIR should consider.

Students are extremely sensitive receptors to pollution and the air quality around schools can have a significant effect on students' health. The increased traffic congestion, construction equipment, and ongoing airborne contaminants due to the project should be studied. An Air Health Risk Assessment is suggested for emissions to ensure levels are not significant for students, parents and faculty. The increase in vehicle trips may also affect the transportation and safety of students to and from the schools.

Every development has impacts on the School District. Based on the current estimated cost of building new elementary, middle, and high schools, we request the above development mitigate their impact on the District by paying the full mitigation amount per square foot of commercial/industrial construction.

The Santa Clara Unified School District is requesting a Health Risk Study and asking the developers to work with the District to mitigate these impacts related to additional classrooms and/or schools. The District will likely submit additional comments when the EIR document is circulated. Please contact me with any questions.

Sincerely,

Michal Healy  
Bond Programs Consultant  
School Building Consultants, Inc.  
mhealy@scusd.net

Board  
of Education

...

Jim Canova  
Albert Gonzalez  
Jodi Muirhead  
Andrew Ratermann  
Michele Ryan Ph.D.  
Noelani Sallings  
Christopher Stampolis

# LOS ESTEROS CRITICAL ENERGY FACILITY, LLC

717 TEXAS AVENUE  
SUITE 1000  
HOUSTON, TX 77002

June 27, 2016

Kieulan Pham, Environmental Review Planner  
Tracy Tam, the Project Manager  
City of San Jose  
200 East Santa Clara Street, 3rd Floor Tower,  
San Jose CA 95113-1905

Re: Comments of Los Esteros Critical Energy Facility, LLC: *237 Industrial Center Planned Development Rezoning & Environmental Impact Report*, File No. C15-054: Environmental Impact Report (EIR) Public Scoping Meeting, June 9, 2016.

Dear Kieulan Pham and Tracy Tam:

As noticed in the “Public Comment Sheet” distributed at the June 9, 2016, Public Scoping Meeting, the City is seeking public comments on the issues to be addressed in the Environmental Impact Report (“EIR”) that will be prepared for the *237 Industrial Center Planned Development Rezoning & Environmental Impact Report*, File No. C15-054. A “Notice Of Preparation [“NOP”] Of A Draft Environmental Impact Report For The 237 Industrial Center Project File No: CI 5-054” has been filed as well, noting the Project Applicant as the Cilker Orchards Management Corporation, APN: 015-31-054 (hereinafter, the “Cilker Project”).

Los Esteros Critical Energy Facility, LLC (“LECEF”) welcomes the opportunity to provide these comments on the Cilker Project and scope of the EIR. LECEF is also the owner of the Los Esteros Critical Energy Facility (the “LECEF Facility”) located at 800 Thomas Foon Chew Way, San Jose, California. The LECEF Facility was constructed and placed in operation by Calpine in 2003. In 2013, LECEF completed an upgrade on the LECEF Facility converting it from a simple-cycle generation facility to a combined-cycle generation facility capable of generating up to 309 megawatts of electricity. In addition to the increase in capacity, the upgrade project increased the efficiency and environmental performance of the plant.

## **I. PROJECT DESCRIPTION**

LECEF offers the following comments on the Project Description for the Cilker Project.

### **A. The Project Description Discusses Two Separate and Distinct CEQA “Projects”.**

The NOP describes the “Project” as two projects, or two “Options,” in the alternative:

The project includes two development options. Option 1 proposes approximately 1,197,700 square feet of light industrial development and Option 2 proposes an approximately 2.35 million square foot data center and up to four stories tall.

An EIR must consider a reasonable range of feasible alternatives to the project and the project location that satisfy most of the project's basic objectives.<sup>1</sup> However, the two "Options" in the NOP are not CEQA alternatives. Instead, they are two separate and distinct projects (Light Industrial use versus a Data Center) with separate and distinct objectives. LECEF is unaware of any CEQA provisions that allow a single EIR to consider two distinct projects with two distinct sets of project objectives.

Given the dramatic differences in density and intensities of use between (1) the proposed Light Industrial development, and (2) a Data Center, LECEF seeks clarification on the Project Description. Does the City intend to include a Project EIR level of information for these two separate and distinct projects? The EIR's Project Description should address these issues.

**B. The Information Presented at the June 9, 2016 Scoping Meeting Strongly Suggested that the CEQA "Project" is Solely the Rezoning of the Cilker Property.**

At the June 9, 2016, Scoping Meeting for the Cilker Project, a representative of the developer stated that the CEQA "Project" was simply the Rezoning of the subject property from the currently zoned "Agricultural Planned Development" ("APD") zone to the Light Industrial ("LI") zone. This emphasis on the rezoning of the land alone is at odds with the two CEQA Projects set forth as Options in the NOP. Is the CEQA Project limited to the rezoning of the subject property alone? If so, will the EIR not analyze the potential effects of the two Options set forth in the NOP?

**C. The EIR Should Clearly Identify the Discretionary Permits that Will Consider Based on the EIR's Determinations.**

As noted above, the Cilker Project has been described as both two "Options" (Light Industrial and Data Center) and orally at the Scoping Meeting as simply a rezoning of the property. In terms of discretionary approvals, the NOP lists several "Possible Required Project Approvals": (1) Rezoning; (2) Conditional Use Permit; (3) Site Development Permit; and (4) Grading, Building, and Occupancy Permits. (NOP, p. 5.) The EIR should identify with specificity which discretionary permits are associated with the discretionary approvals requested for the Cilker Project.

**D. Is it the Intent of the EIR to Provide Environmental Clearances for Option 1 in the NOP, the Light Industrial Option, Without Any Further CEQA Clearances or Discretionary Permits?**

The San Jose Zoning Ordinance provides, in pertinent part, that Option 1 in the NOP, Light Industrial, is a permitted use in the proposed Light Industrial ("LI") Zone. The LI Zone is described as follows:

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<sup>1</sup> 14 California Code of Regulations ("CCR") § 15126.6.

The light industrial zoning district is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. The design controls are less stringent than those for the industrial park zoning district. \* \* \* (San Jose Zoning Ordinance, Chapter 20.50, Industrial Zoning Districts; Section 20.50.010.C.4.)

Section 20.50.100.B defines “Permitted Uses” as those shown on the General Plan with the combined industrial/commercial land use designation. Table 20-110 further provides that Light Industrial uses are permitted uses in the LI Zone.

Will the EIR be premised on the position that once the subject property is rezoned to LI, the Option 1 Light Industrial use will be allowed as a “Permitted Use” without need for further discretionary review and CEQA clearances? Is a rezone of the property alone sufficient to grant a right to develop the subject property without any further CEQA review or discretionary approvals? The EIR’s Project Description should address these ambiguities.

**E. Is it the Intent of the EIR to Provide Environmental Clearances for Option 2 in the NOP, the Data Center Option, Without Any Further CEQA Clearances or Discretionary Permits?**

The San Jose Zoning Ordinance provides, in pertinent part, that Option 2 in the NOP, a Data Center, in the proposed LI Zone requires a Special Use Permit. Section 20.50.010.E states: “‘Special’ uses are indicated by a ‘S’ in Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a special use permit as set forth in Chapter 20.100.” Data Centers are designated as an “S” or “Special” use in Table 20-110.

Section 20.100.800 related to the “Applicability” of the City’s Special Use Permits to projects provides as follows:

The provisions of this part apply to and govern the issuance of all permits made subject to the provisions of this part [Part 7 - Special Use Permits]. All permits governed under this part shall hereinafter be referred to as special use permits, and shall be issued by the director or by the planning commission on appeal from a decision of the director, except that the city council shall issue certain special use permits as identified in Section 20.100.220, Table 20-260 and for any project that requires certification of an environmental impact report for environmental clearance *unless the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level.* (Emphasis Added.)

Will the EIR be premised on the position that once the subject property is rezoned to LI, Data Centers will be allowed as a “Permitted Use” without need for further discretionary review and CEQA clearances? In other words, is a rezone of the property alone sufficient to grant a right to develop the subject property as a Data Center without any further CEQA review or discretionary approvals? Will the EIR be premised on the position that no further CEQA clearances or discretionary permits will be required for a Data Center after the rezoning so long as “the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level” as set forth in Section 20.100.800? The EIR’s Project Description should address these questions.

## **II. THE EXISTING ENVIRONMENTAL SETTING SHOULD BE IDENTIFIED AND CONSIDERED IN THE EIR’S ANALYSIS OF POTENTIALLY SIGNIFICANT EFFECTS.**

LECEF offers the following comments on the existing environmental setting relevant to the scope and content of the environmental information that should be included in the EIR.

### **A. The EIR Should Identify and Account for the LECEF Facility Project’s Linear.**

The LECEF Facility has certain project linear features that should be identified, located within the existing environmental setting, and accounted for in the EIR’s analyses. The major LECEF Facility linear features include, but are not limited to, the following:

- The LECEF Facility’s generation tie lines to the PG&E substation are located underground and run north from the LECEF Facility through the parcel owned by Silicon Valley Power and into the PG&E substation located to the north of the Silicon Valley Power parcel.
- The LECEF Facility’s natural gas line located on the southern, undeveloped 13 acres of the LECEF Facility and runs parallel to Zanker Road.
- The LECEF Facility accepts recycled water from industrial purposes from the San Jose-Santa Clara Regional Wastewater Facility on Zanker Road located to the northwest of the LECEF Facility. Pipes connect the LECEF Facility through the City of San Jose parcel located to the west of the LECEF Facility.
- The LECEF Facility’s stormwater outfall utilizes the existing storm drain force main for discharge of storm water from non-process areas of the LECEF to Coyote Creek, and runs east from the site about 750 feet across the Cilker property to the creek levee. From there an existing gravity pipeline continues through the high-flow channel of Coyote Creek and ultimately drains into the low-flow channel of Coyote Creek (an additional 250 feet).

### **B. The EIR Should Identify and Account for Other Existing Uses in the Vicinity of the Cilker Project**

The vicinity of the Cilker Project has other existing uses that need to be accounted for in the EIR's description of the existing environmental setting. In addition to the LECEF Facility, the San Jose-Santa Clara Regional Wastewater Facility on Zanker Road should be considered in determining compatible future uses. There is also the Silicon Valley Advanced Water Purification Center located at 4190 Zanker Road. Coyote Creek and the related flood control facilities must also be identified and considered in the EIR. The Coyote Creek Trail system is also in the vicinity. There may also be open space or conservation easements or other programs for any special status species in the vicinity of Coyote Creek. These existing features should be described in the environmental setting and potential effects on these features analyzed in the EIR.

### **C. The EIR Should Identify with Specificity the Need for and Location of the Utilities Required for the Cilker Project**

The NOP states, "There are very few existing utilities on-site; therefore, water, sanitary sewer, stormwater, electrical, natural gas, and telecom facilities will be extended onto the site." The EIR should identify, with specificity, the types of services and utilities required for the Cilker Project. This is particularly important, given the substantial difference in densities and intensities of use for the Light Industrial option versus the Data Center option.

## **III. POTENTIALLY SIGNIFICANT EFFECTS**

LECEF offers the following comments on some potentially significant effects of the Cilker Project that should be analyzed in the EIR.

### **A. The EIR Should Identify and Analyze the Changes in Density and Intensity of Use Associated with the Proposed Rezone**

Density and intensity of use are important factors for the Cilker Project's EIR, given the proposed conversion from agricultural to high density and intensity uses.

Under the current agricultural-based zoning, densities and intensities of use are low in the existing A(PD) Planned Development Zoning District. The uses in the base Agricultural Zone are limited:

"A Agricultural District. The purpose of the A Agricultural District is to provide for areas where agricultural uses are desirable. The regulations contained in this district are intended to provide for a wide range of agricultural uses as well as implementing the goals and policies of the general plan." (San Jose Zoning Ordinance, Chapter 20.20; Section 20.20.010.)

Table 20-30, "OS Open Space and A Agricultural District Land Use Regulations," provides for low density and intensity Permitted uses. Representatives Permitted Uses include animal breeding, pastures, trails and paths including equestrian, pedestrian and bicycle trails, and wireless communication antennas (building mounted). With respect to the PD Zoning, "Unless and until a planned development permit has been issued and been effectuated, property in such territory may be used only as if it were in its base district alone." (San Jose Zoning Ordinance, Chapter 20.60; Section 20.60.030.) Thus, the current zoning provides for low-density, low-intensity, agricultural-related uses.

In contrast to these typical agricultural uses, the Cilker Project's proposed density and intensity of use are much greater under either Option. Option 1 may include approximately 1,197,700 square feet of Light Industrial development. Option 2 proposes an approximately 2.35 million square foot Data Center and up to four stories tall. (NOP, p. 1.) Option 1 envisions seven two-story Light Industrial buildings with a maximum height of 45 feet and approximately 2,621 parking spaces in impervious surface lots surrounding the buildings. Types of uses could include warehousing, wholesaling, light industrial manufacturing, and associated service establishments. (*Id.*)

Similarly, Option 2 envisions five Data Center buildings. The three main buildings would have a maximum height of 100 feet, and the two secondary structures would be a maximum of 30 feet tall. There would be approximately 350 parking spaces in three impervious surface lots. A new approximately 103,300 square foot electrical substation with a maximum height of 45 feet would be constructed along the northern boundary of the project site. (NOP, p. 5.)

Existing uses are agricultural and thus of low intensity and density. The EIR should evaluate the potential effects of such new, higher intensity and dense use facilities. Air Quality, Public Health, Traffic and Transportation, and other EIR subjects should be examined in light of the increased density and intensities of use for rezoning from agricultural uses to LI.

#### **B. The EIR Should Identify and Account for the Potentially Significant Air Quality and Public Health Associated with Generation of Dust and Particulate Matter**

LECEF has specific concerns about potential construction impacts of the Cilker Project, particularly the potential impacts associated with dust and particulate matter because the LECEF Facility is particularly sensitive to dust and particulate matter. Dust and particulate matter can degrade and potentially clog the air inlet filters of the LECEF Facility's combustion turbines. In addition to the turbines, additional dust and particulate matter have the potential to degrade or foul other important system components. The LECEF Facility's external systems and instrumentation are also susceptible to impacts from dust and particulate matter. The EIR should recognize the potential effects associated with dust and particulate matter generation and require appropriate mitigation and monitoring.

**C. The EIR Should Identify and Analyze the Potential Air Quality, Public Health and Public Safety Impacts Associated with Chlorine, Ammonia and other Industrial Materials on People and Facilities In the Vicinity of the Cilker Project**

There are several industrial facilities in the vicinity of the proposed Cilker Project. These industrial facilities should be identified and the materials used in industrial processes analyzed in the EIR.

For example, the San Jose-Santa Clara Regional Wastewater Facility on Zanker Road, uses chlorine and other chemical processes. Beginning March 2014, the treatment plant “supplied secondary wastewater to Silicon Valley Advanced Water Purification Center which in turn purifies the water with advanced technologies; this water blends with SBWR water to create a high quality recycled water for SBWR customers.” Similarly, the LECEF Facility also utilizes industrial materials and specific procedures to safely and reliably generate electricity for consumers.

Option 2 for the Cilker Project is a Data Center, which will likely require significant climate control equipment and substances, including ammonia for the air conditioning systems required to cool Data Centers, given the heat generated by electronic systems and their sensitivity to extreme temperatures. The environmental analysis for the Cilker Project should evaluate the design and safety measures in place to store and use hazardous materials, including the development of a Risk Management Plan as needed to identify any mitigation measures needed to reduce the accident potential from regulated substances delivered to and maintained on site. The environmental analysis should also address the transport of hazardous materials, and include measures as needed to ensure that there are no adverse traffic or safety impacts from the delivery and transport of hazardous materials needed for the Cilker Project. Moreover, the cumulative impacts analyses for the Cilker Project should examine the potential for combined effects with the existing surrounding uses.

**D. The EIR Should Identify and Analyze the Potential Air Quality and Public Health Impacts Associated with Backup Diesel Generation**

The NOP states that emergency back-up generators may also be necessary for the Cilker Project. Backup generation is a virtual certainty for the Data Center option.

It is anticipated that these backup generators will use diesel, which has a higher human health and environmental profile than natural gas fired emissions. Backup diesel generation tends to exhaust stack height, sometimes only eight to ten feet above ground level. The exhaust gas temperatures and the exit velocities for backup generation are low. These factors mean that generators’ may have the potential to cause localized air quality and public health impacts that should be analyzed in the EIR.

**IV. REQUEST TO BE ADDED TO LISTS FOR FUTURE NOTICES AND COMMUNICATIONS**

For all future notices and communications, please add the following individuals to the mailing and service lists for the Cilk Project:

Jill Van Dalen  
Senior Counsel  
CALPINE CORPORATION  
4160 Dublin Boulevard, Suite 100  
Dublin, CA 94568  
Phone: (925) 557-2224  
Fax: (847) 484-7799  
Email: [jill.vandalen@calpine.com](mailto:jill.vandalen@calpine.com)

Greggory L. Wheatland  
Partner  
Ellison, Schneider & Harris L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
Phone: (916) 447-2166  
Fax: (916) 447-3512  
Email: [glw@eslawfirm.com](mailto:glw@eslawfirm.com)

Thank you for the opportunity to make these comments.

Sincerely,

  
Jill Van Dalen  
Senior Counsel

## Pham, Kieulan

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**From:** Josh Scullen <jscullen@sfbbo.org>  
**Sent:** Monday, June 27, 2016 4:50 PM  
**To:** Pham, Kieulan; Tam, Tracy  
**Cc:** Yiwei Wang; Dan Wenny  
**Subject:** 237 Industrial Center - SFBBO Comments  
**Attachments:** SFBBO Comments - 237 Industrial Center C15-054.pdf; Coyote Creek Field Station Species List 1982-2015.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Kieulan Pham and Tracy Tam,

The San Francisco Bay Bird Observatory (SFBBO) is a 501(c)(3) non-profit organization based in Milpitas. Since 1981, we have been involved in bird research, conservation, and education in the South Bay Area. SFBBO operates the Coyote Creek Field Station (CCFS), a year-round bird banding station along Coyote Creek located approximately 1000 feet northwest of the proposed project boundary, to study how restoration, development, and climate change have impacted resident and migratory bird populations.

Please find attached SFBBO's comments in response to the Public Scoping Meeting from June 9, 2016, as well as the Coyote Creek Field Station Species List 1982-2015. Thank you for providing the opportunity to comment and for considering our input for the planned development rezoning and environmental impact report.

Sincerely,  
Josh Scullen  
Landbird Program Director  
San Francisco Bay Bird Observatory  
524 Valley Way, Milpitas CA 95035  
t 408.946.6548 x 16 | f 408.946.9279  
www.sfbbo.org



June 27, 2016

Kieulan Pham, Environmental Review Planner  
Tracy Tam, Project Manager  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113-1905

Subject: 237 Industrial Center Planned Development Rezoning & Environmental Impact Report  
File No. C15-054

Dear Kieulan Pham and Tracy Tam:

The San Francisco Bay Bird Observatory (SFBBO) is a 501(c)(3) non-profit organization based in Milpitas. Since 1981, we have been involved in bird research, conservation, and education in the South Bay Area. SFBBO operates the Coyote Creek Field Station (CCFS), a year-round bird banding station along Coyote Creek located approximately 1000 feet northwest of the proposed project boundary, to study how restoration, development, and climate change have impacted resident and migratory bird populations.

Representatives from SFBBO attended the Public Scoping Meeting on June 9, 2016, and prepared the following comments on the proposed planned development rezoning and environmental impact report.

#### Special Status Species at Coyote Creek

The Coyote Creek is one of the largest remaining riparian corridors in Santa Clara County, and is a major migratory flyway in San Jose. SFBBO and local birders have documented over 250 neotropical migrant, temperate migrant, and resident bird species and subspecies occupying habitat adjacent to the Coyote Creek from State Route 237 north to Dixon Landing Road (see attached document: Coyote Creek Field Station Species List 1982-2015). We have documented one Federally Protected Endangered species; five California State Fully Protected, Endangered, or Threatened species; and fifteen California State Species of Special Concern using the riparian corridor and adjacent habitat at CCFS. Breeding status at CCFS is noted in the following list of Special Status species:

#### Federally Protected Endangered or Threatened Species

1. Yellow-billed Cuckoo, *Coccyzus americanus occidentalis* (Endangered)

#### California State Fully Protected, Endangered, or Threatened Species

1. Peregrine Falcon, *Falco peregrinus* (Fully Protected)
2. White-tailed Kite, *Elanus leucurus* (Fully Protected; documented breeding at CCFS)
3. Willow Flycatcher, *Empidonax traillii* (Endangered)
4. Yellow-billed Cuckoo, *Coccyzus americanus occidentalis* (Endangered)
5. Swainson's Hawk, *Buteo swainsoni* (Threatened)

#### California State Species of Special Concern (Shuford and Gardali 2008)

1. Alameda Song Sparrow, *Melospiza melodia pusillula* (documented breeding at CCFS)
2. Bryant's Savannah Sparrow, *Passerculus sandwichensis alaudinus*
3. Burrowing Owl, *Athene cunicularia*



4. Grasshopper Sparrow, *Ammodramus savannarum*
5. Long-eared Owl, *Asio otus*
6. Loggerhead Shrike, *Lanius ludovicianus* (documented breeding at CCFS)
7. Northern Harrier, *Circus cyaneus*
8. Olive-sided Flycatcher, *Contopus cooperi*
9. San Francisco Common Yellowthroat, *Geothlypis trichas sinuosa* (documented breeding at CCFS)
10. Summer Tanager, *Piranga rubra*
11. Tricolored Blackbird, *Agelaius tricolor*
12. Vaux's Swift, *Chaetura vauxi*
13. Yellow-breasted Chat, *Icteria virens*
14. Yellow Warbler, *Setophaga petechia* (documented breeding at CCFS)
15. Yellow-headed Blackbird, *Xanthocephalus xanthocephalus*

#### Impacts to Migratory and Resident Bird Species

Due to the volume and variety of bird species in addition to the Special Status species that occupy this location year-round, and the proximity of the proposed development to the Coyote Creek riparian corridor, we recommend the City of San Jose hold any proposed development to the highest standards of bird safety as outlined in Envision San Jose 2040 General Plan for Environmental Resources Goals, particularly goals ER-2, and ER-4 through ER-7 (City of San Jose 2011), as well as requiring Bird-Friendly Building Design (San Francisco Planning Department 2011, City of Mountain View 2014, and Sheppard and Phillips 2015). In particular, we recommend that any development:

1. Minimize building height and employ bird-friendly window design to reduce mortality from bird collisions (Kahle 2016)
2. Reduce the amount of night-time lighting according to U.S. Department of Interior National Park Service guidelines (Longcore and Rich 2016) and Envision San Jose 2040 General Plan goal ER-6 (City of San Jose 2011).
3. Require bird-friendly flight diverters on any powerlines in the development area to reduce bird collision mortality, particularly for ducks and shorebirds that use the settling ponds immediately north of the project site (primarily during winter and migration, from approximately September to April).
4. Minimize and mitigate for impacts to Burrowing Owls, as fallow farmland provides breeding, foraging, and wintering habitat for this species.

#### Impacts of Construction in the Coyote Creek Riparian Corridor

SFBBO has an encroachment permit with the Santa Clara Valley Water District to use the levee roads east of the project site to access CCFS. If drainage pipes are installed from the project site to the Coyote Creek through the riparian corridor as was discussed during the Public Scoping Meeting, the construction of such drainage pipes will negatively impact SFBBO's ability to access CCFS. SFBBO requests that alternate drainage options are evaluated so as to not require construction that would prevent driving on the levee roads between Route 237 and Dixon Landing Road. If no such alternatives are viable, SFBBO requests advanced notification in the event of construction that will render the levee roads unusable between Route 237 and Dixon Landing Road.

Should construction into the riparian corridor be necessary, SFBBO recommends avoiding construction during the breeding season (February – August) and migratory periods (March – May and August –



October) to minimize impacts on the above listed Special Status species. Appropriate mitigation should be required for any riparian habitat destroyed due to construction activities. In addition, potential risks from runoff into the Coyote Creek should be evaluated, including changes to water quality variables (temperature, salinity, dissolved oxygen, etc.) and impacts to native fish species including the Federally Protected Threatened California Central Coast Steelhead.

#### Impacts of Increased Human Activity

Regardless of the type of development that ends up occurring as part of the 237 Industrial Center plan, increased human presence can lead to conditions that negatively impact bird populations. In particular, construction activities and post-development activities should:

1. Ensure garbage receptacles are properly secured to minimize attracting rats, cats, raccoons, and gulls to the area, as increased presence of those species will increase depredation rates of native bird populations.
2. Prohibit feral animal “feeding stations” that attract feral cats and other animals to the area to minimize negative impacts to bird population.

#### Impacts to Animal Movement and Connectivity

The 237 Industrial Center project site is 66.5 acres of land that connects the Coyote Creek riparian corridor with the Don Edwards San Francisco Bay National Wildlife Refuge (hereafter Don Edwards) along an undeveloped corridor of land north of Routh 237. Should development occur as indicated during the Public Scoping Meeting (involving completely fencing in the developed area), that connection between Don Edwards and the Coyote Creek will be severed, reducing the ability of native mammals such as Gray Foxes and Bobcats to safely migrate between the two protected habitats. SFBBO recommends requiring an unfenced wildlife corridor as part of development plans to ensure that native animals have continued unimpeded access between Don Edwards and the Coyote Creek.

Thank you for the opportunity to contribute to this process and for considering our comments. Please feel free to contact me with any questions about our dataset.

Sincerely,

Josh Scullen, [jscullen@sfbbo.org](mailto:jscullen@sfbbo.org)  
Landbird Program Director  
San Francisco Bay Bird Observatory  
524 Valley Way, Milpitas CA 95035  
t 408.946.6548 x 16 | f 408.946.9279  
[www.sfbbo.org](http://www.sfbbo.org)

References



SAN FRANCISCO BAY  
BIRD OBSERVATORY

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## Coyote Creek Field Station Species List

Compiled by the San Francisco Bay Bird Observatory, June 17 2016

For additional details, contact:

Josh Scullen, [jscullen@sfbbo.org](mailto:jscullen@sfbbo.org)

Dan Wenny, [dwenney@sfbbo.org](mailto:dwenney@sfbbo.org)



SAN FRANCISCO BAY  
BIRD OBSERVATORY

Data Notes

### Date Range

SFBBO data originate from mist-netting operations, point count surveys, and breeding bird surveys conducted between 1982 - 2015.

eBird data includes all recorded species entered for the Coyote Creek Field Station location and 3 adjacent hotspots along Coyote Creek, as of mid-June, 2016

### Status Codes

	<u>Description</u>
R	Resident: species are present at CCFS year-round
M	Migrant: species pass through CCFS during spring (March - June) and/or fall (August - October) migration.
W	Wintering: species are present at CCFS during winter months (approximately October - March)
E	Escaped: indicates species that are likely non-wild captive birds or escaped pets

### California Status Codes

	<u>Description</u>
1	Bird Species of Special Concern - First Priority
2	Bird Species of Special Concern - Second Priority
3	Bird Species of Special Concern - Third Priority
4	State Threatened
5	State Endangered
13	Fully Protected

### State of the Birds Watch List 2016

#### Status Codes

	<u>Description</u>
6	On the North American Bird Conservation Initiative Watch List for 2016

### Audubon Watch List 2007

#### Status Codes

	<u>Description</u>
7	Yellow List: rare and/or declining
8	Red List: highest conservation concern

US Fish and Wildlife Service

Status Codes

Description

9	Bird of Conservation Concern (BCC)
10	BCC Focal Species: Species for which USFWS is prioritizing research and planning for conservation
11	Threatened: the indicated population is on the Federal Threatened Species list
12	Endangered: the indicated population is on the Federal Endangered Species list

Common Name	Scientific Name	Status	Common Name	Scientific Name	Status
Acorn Woodpecker	<i>Melanerpes formicivorus</i>	R	Burrowing Owl	<i>Athene cunicularia</i>	R: 2, 10
Allen's Hummingbird	<i>Selasphorus sasin</i>	M: 6, 7, 9	Bushtit	<i>Psaltriparus minimus</i>	R
American Avocet	<i>Recurvirostra americana</i>	R	California Gull	<i>Larus californica</i>	W
American Coot	<i>Fulica americana</i>	W	California Quail	<i>Callipepla californica</i>	R
American Crow	<i>Corvus brachyrhynchos</i>	R	California Thrasher	<i>Toxostoma redivivum</i>	M: 6, 7
American Goldfinch	<i>Carduelis tristis</i>	R	California Towhee	<i>Melospiza crissalis</i>	R
American Kestrel	<i>Falco sparverius</i>	R	Calliope Hummingbird	<i>Stellula calliope</i>	M: 7, 9
American Pipit	<i>Anthus rubescens</i>	W	Canada Goose	<i>Branta canadensis</i>	R
American Redstart	<i>Setophaga ruticilla</i>	M	Canada Warbler	<i>Cardellina canadensis</i>	M: 9
American Robin	<i>Turdus migratorius</i>	R	Caspian Tern	<i>Hydroprogne caspia</i>	W
American White Pelican	<i>Pelecanus erythrorhynchus</i>	W	Cassin's Vireo	<i>Vireo cassinii</i>	M
American Wigeon	<i>Anas americana</i>	W	Cattle Egret	<i>Bubulcus ibis</i>	M
American Wigeon	<i>Anas americana</i>	W	Cedar Waxwing	<i>Bombus cedrorum</i>	W
Anna's Hummingbird	<i>Calypte anna</i>	R	Chestnut-backed Chickadee	<i>Poecile rufescens</i>	R
Ash-throated Flycatcher	<i>Myiarchus cinerascens</i>	M	Chestnut-sided Warbler	<i>Setophaga pensylvanica</i>	M
Barn Owl	<i>Tyto alba</i>	R	Chipping Sparrow	<i>Spizella passerina</i>	M
Barn Swallow	<i>Hirundo rustica</i>	M	Cinnamon Teal	<i>Anas cyanoptera</i>	R
Belted Kingfisher	<i>Ceryle alcyon</i>	R	Clay-colored Sparrow	<i>Spizella pallida</i>	M
Bewick's Wren	<i>Thryomanes bewickii</i>	R	Cliff Swallow	<i>Petrochelidon pyrrhonota</i>	M
Black Phoebe	<i>Sayornis nigricans</i>	R	Common Gallinule	<i>Gallinula chloropus</i>	R
Black-and-white Warbler	<i>Mniotilta varia</i>	M	Common Goldeneye	<i>Bucephala clangula</i>	W
Black-bellied Plover	<i>Pluvialis squatarola</i>	W	Common Merganser	<i>Mergus merganser</i>	W
Black-chinned Hummingbird	<i>Archilochus alexandri</i>	M	Common Poorwill	<i>Phalaenoptilus nuttallii</i>	M
Black-crowned Night-Heron	<i>Nycticorax nycticorax</i>	R	Common Raven	<i>Corvus corax</i>	R
Black-headed Grosbeak	<i>Pheucticus melanocephalus</i>	M	Common Tern	<i>Sterna hirundo</i>	M
Black-necked Stilt	<i>Himantopus mexicanus</i>	R	Connecticut Warbler	<i>Oporornis agilis</i>	M: 6
Blackpoll Warbler	<i>Setophaga striata</i>	M	Cooper's Hawk	<i>Accipiter cooperii</i>	R
Black-throated Gray Warbler	<i>Setophaga nigrescens</i>	M: 9	Costa's Hummingbird	<i>Calypte costae</i>	M: 6, 7, 9
Blue Grosbeak	<i>Passerina caerulea</i>	M	Dark-eyed Junco	<i>Junco hyemalis</i>	W
Blue-gray Gnatcatcher	<i>Poliophtila caerulea</i>	M	Dark-eyed Junco (Oregon)	<i>Junco hyemalis oregonus</i>	W
Bonaparte's Gull	<i>Chroicocephalus philadelphia</i>	W	Dark-eyed Junco (Slate-colored)	<i>Junco hyemalis hyemalis</i>	W
Brewer's Blackbird	<i>Euphagus cyanocephalus</i>	R	Double-crested Cormorant	<i>Phalacrocorax auritus</i>	R
Brewer's Sparrow	<i>Spizella breweri</i>	M	Downy Woodpecker	<i>Picoides pubescens</i>	R
Brown Creeper	<i>Certhia americana</i>	W	Dunlin	<i>Calidris alpina</i>	M
Brown Thrasher	<i>Toxostoma rufum</i>	M	Downy Woodpecker	<i>Picoides pubescens</i>	R
Brown-headed Cowbird	<i>Molothrus ater</i>	R	Dunlin	<i>Calidris alpina</i>	M
Bufflehead	<i>Bucephala albeola</i>	W	Dusky Flycatcher	<i>Empidonax oberholseri</i>	M
Bullock's Oriole	<i>Icterus bullockii</i>	M	Eastern Kingbird	<i>Tyrannus tyrannus</i>	M
			Eurasian Collared-Dove	<i>Streptopelia decaocto</i>	R

Common Name	Scientific Name	Status	Common Name	Scientific Name	Status
European Starling	<i>Sturnus vulgaris</i>	R	Lesser Goldfinch	<i>Carduelis psaltria</i>	R
Evening Grosbeak	<i>Coccothraustes vespertinus</i>	M	Lesser Yellowlegs	<i>Tringa flavipes</i>	M: 6, 9
Forster's Tern	<i>Sterna forsteri</i>	R	Lincoln's Sparrow	<i>Melospiza lincolni</i>	W
Fox Sparrow	<i>Passerella iliaca</i>	W	Loggerhead Shrike	<i>Lanius ludovicianus</i>	R: 2, 9
Franklin's Gull	<i>Leucophaeus pipixcan</i>	M	Long-billed Curlew	<i>Numenius americanus</i>	W: 6, 10
Gadwall	<i>Anas strepera</i>	R	Long-billed Dowitcher	<i>Limnodromus scolopaceus</i>	W: 6
Glaucous-winged Gull	<i>Larus glaucescens</i>	W	Long-eared Owl	<i>Asio otus</i>	M: 3, 6
Golden Eagle	<i>Aquila chrysaetos</i>	W: 10	MacGillivray's Warbler	<i>Oporornis tolmiei</i>	M
Golden-crowned Kinglet	<i>Regulus satrapa</i>	W	Magnolia Warbler	<i>Setophaga magnolia</i>	M
Golden-crowned Sparrow	<i>Zonotrichia atricapilla</i>	W	Mallard	<i>Anas platyrhynchos</i>	R
Grasshopper Sparrow	<i>Ammodramus savannarum</i>	M: 2	Marbled Godwit	<i>Limosa fedoa</i>	W: 7, 10
Gray Catbird	<i>Dumetella carolinensis</i>	M	Marsh Wren	<i>Cistothorus palustris</i>	R
Gray Flycatcher	<i>Empidonax wrightii</i>	M	Merlin	<i>Falco columbarius</i>	W
Great Blue Heron	<i>Ardea herodias</i>	R	Mew Gull	<i>Larus canus</i>	W
Great Egret	<i>Ardea alba</i>	R	Mountain Bluebird	<i>Sialia currucoides</i>	M
Great Horned Owl	<i>Bubo virginianus</i>	R	Mourning Dove	<i>Zenaida macroura</i>	R
Greater Yellowlegs	<i>Tringa melanoleuca</i>	W	Nashville Warbler	<i>Vermivora ruficapilla</i>	M
Great-tailed Grackle	<i>Quiscalus mexicanus</i>	M	Northern Flicker	<i>Colaptes auratus</i>	W
Green Heron	<i>Butorides virescens</i>	R	Northern Flicker (Intergrade)	<i>Colaptes auratus auratus x cafer</i>	W
Green-tailed Towhee	<i>Pipilo chlorurus</i>	M	Northern Flicker (Red-shafted)	<i>Colaptes auratus cafer</i>	W
Green-winged Teal	<i>Anas crecca</i>	W	Northern Flicker (Yellow-shafted)	<i>Colaptes auratus auratus</i>	W
Hairy Woodpecker	<i>Picoides villosus</i>	R	Northern Harrier	<i>Circus cyaneus</i>	R: 3
Hammond's Flycatcher	<i>Empidonax hammondii</i>	M	Northern Mockingbird	<i>Mimus polyglottos</i>	R
Hermit Thrush	<i>Catharus guttatus</i>	W	Northern Parula	<i>Setophaga americana</i>	M
Hermit Warbler	<i>Setophaga occidentalis</i>	M	Northern Pintail	<i>Anas acuta</i>	W
Herring Gull	<i>Larus argentatus</i>	W	Northern Rough-winged Swallow	<i>Stelgidopteryx serripennis</i>	M
Hooded Merganser	<i>Lophodytes cucullatus</i>	W	Northern Saw-whet Owl	<i>Aegolius acadicus</i>	W
Hooded Oriole	<i>Icterus cucullatus</i>	M	Northern Shoveler	<i>Anas clypeata</i>	W
Hooded Warbler	<i>Setophaga citrina</i>	M	Northern Waterthrush	<i>Parkesia noveboracensis</i>	M
House Finch	<i>Haemorhous mexicanus</i>	R	Nuttall's Woodpecker	<i>Picoides nuttallii</i>	R: 7, 9
House Sparrow	<i>Passer domesticus</i>	R	Oak Titmouse	<i>Baeolophus inornatus</i>	R: 6, 7, 9
House Wren	<i>Troglodytes aedon</i>	W	Olive-sided Flycatcher	<i>Contopus cooperi</i>	M: 2, 6, 7, 9
Hutton's Vireo	<i>Vireo huttoni</i>	M	Orange-crowned Warbler	<i>Vermivora celata</i>	M
Indigo Bunting	<i>Passerina cyanea</i>	M	Osprey	<i>Pandion haliaetus</i>	W
Kentucky Warbler	<i>Geothlypis formosa</i>	M: 6, 7, 9	Ovenbird	<i>Seiurus aurocapilla</i>	M
Killdeer	<i>Charadrius vociferus</i>	R	Pacific Wren	<i>Troglodytes pacificus</i>	W
Lawrence's Goldfinch	<i>Spinus lawrencei</i>	M: 6, 7, 9	Painted Bunting	<i>Passerina ciris</i>	M: 7, 10
Lazuli Bunting	<i>Passerina amoena</i>	M	Pectoral Sandpiper	<i>Calidris melanotos</i>	M: 6
Least Flycatcher	<i>Empidonax minimus</i>	M	Peregrine Falcon	<i>Falco peregrinus</i>	W: 9, 13
Least Sandpiper	<i>Calidris minutilla</i>	M			

Common Name	Scientific Name	Status	Common Name	Scientific Name	Status
Pied-billed Grebe	<i>Podilymbus podiceps</i>	R	Spotted Sandpiper	<i>Actitis macularius</i>	M
Pine Siskin	<i>Carduelis pinus</i>	W	Spotted Towhee	<i>Pipilo maculatus</i>	W
Prairie Falcon	<i>Falco mexicanus</i>	W: 9	Steller's Jay	<i>Cyanocitta stelleri</i>	R
Purple Finch	<i>Haemorhous purpureus</i>	W	Stilt Sandpiper	<i>Calidris himantopus</i>	W: 7
Red-breasted Sapsucker	<i>Sphyrapicus ruber</i>	W	Summer Tanager	<i>Piranga rubra</i>	M: 1
Red-eyed Vireo	<i>Vireo olivaceus</i>	M	Swainson's Hawk	<i>Buteo swainsoni</i>	W: 4, 7, 9
Redhead	<i>Aythya americana</i>	W	Swainson's Thrush	<i>Catharus ustulatus</i>	M
Red-necked Phalarope	<i>Phalaropus lobatus</i>	M	Swamp Sparrow	<i>Melospiza georgiana</i>	W
Red-shouldered Hawk	<i>Buteo lineatus</i>	R	Tennessee Warbler	<i>Oreothlypis peregrina</i>	M
Red-tailed Hawk	<i>Buteo jamaicensis</i>	R	Taylor's Gull	<i>Larus taylori</i>	W: 7
Red-winged Blackbird	<i>Agelaius phoeniceus</i>	R	Townsend's Warbler	<i>Setophaga townsendi</i>	M
Ring-billed Gull	<i>Larus delawarensis</i>	W	Townsend's x Hermit Warbler (hybrid)	<i>Setophaga townsendi x occidentalis</i>	M
Ringed Turtle-Dove	<i>Streptopelia roseogrisea</i>	E	Traill's Flycatcher (Willow or Alder)	<i>Empidonax alnorum/traillii</i>	M
Ring-necked Duck	<i>Aythya collaris</i>	W	Tree Swallow	<i>Tachycineta bicolor</i>	M
Ring-necked Pheasant	<i>Phasianus colchicus</i>	R	Tricolored Blackbird	<i>Agelaius tricolor</i>	R: 1, 6, 8, 10
Rock Pigeon	<i>Columba livia</i>	R	Turkey Vulture	<i>Cathartes aura</i>	R
Rock Wren	<i>Salpinctes obsoletus</i>	M	Varied Thrush	<i>Ixoreus naevius</i>	W
Rose-breasted Grosbeak	<i>Pheucticus ludovicianus</i>	M	Vaux's Swift	<i>Chaetura vauxi</i>	M: 2
Ruby-crowned Kinglet	<i>Regulus calendula</i>	W	Vesper Sparrow	<i>Pooecetes gramineus</i>	M
Ruddy Duck	<i>Oxyura jamaicensis</i>	W	Violet-green Swallow	<i>Tachycineta thalassina</i>	M
Ruff	<i>Philomachus pugnax</i>	M	Virginia Rail	<i>Rallus limicola</i>	W: 9
Rufous Hummingbird	<i>Selasphorus rufus</i>	M: 6, 9	Virginia's Warbler	<i>Oreothlypis virginiae</i>	M: 6, 7, 9
Sage Thrasher	<i>Oreoscoptes montanus</i>	M: 9	Warbling Vireo	<i>Vireo gilvus</i>	M
San Francisco Common Yellowthroat	<i>Geothlypis trichas sinuosa</i>	R: 3, 9	Western (Pacific Slope) Flycatcher	<i>Empidonax difficilis</i>	M
Savannah Sparrow (Bryant's)	<i>Passerculus sandwichensis alaudinus</i>	R: 3	Western Bluebird	<i>Sialia mexicana</i>	R
Say's Phoebe	<i>Sayornis saya</i>	W	Western Gull	<i>Larus occidentalis</i>	W
Scarlet Tanager	<i>Piranga olivacea</i>	M	Western Kingbird	<i>Tyrannus verticalis</i>	M
Semipalmated Plover	<i>Charadrius semipalmatus</i>	M	Western Meadowlark	<i>Sturnella neglecta</i>	W
Semipalmated Sandpiper	<i>Calidris pusilla</i>	M: 6, 7	Western Palm Warbler	<i>Setophaga palmarum palmarum</i>	M
Sharp-shinned Hawk	<i>Accipiter striatus</i>	W	Western Sandpiper	<i>Calidris mauri</i>	M: 7
Sharp-tailed Sandpiper	<i>Calidris acuminata</i>	W	Western Screech-Owl	<i>Megascops kennicotti</i>	R
Short-billed Dowitcher	<i>Limnodromus griseus</i>	M: 6, 9	Western Scrub-Jay	<i>Aphelocoma californica</i>	R
Snowy Egret	<i>Egretta thula</i>	R	Western Tanager	<i>Piranga ludoviciana</i>	M
Solitary Vireo	<i>Vireo (sp)</i>	M	Western Wood-pewee	<i>Contopus sordidulus</i>	M
Song Sparrow	<i>Melospiza melodia</i>	R	Western x Glaucous-winged Gull (hybrid)	<i>Larus occidentalis x glaucescens</i>	W
Song Sparrow (Alameda)	<i>Melospiza melodia pusillula</i>	R: 2, 9			
Song Sparrow (Marin)	<i>Melospiza melodia gouldii</i>	R			
Sora	<i>Porzana carolina</i>	W: 9			

<b>Common Name</b>	<b>Scientific Name</b>	<b>Status</b>
White-breasted Nuthatch	<i>Sitta carolinensis</i>	R
White-crowned Sparrow	<i>Zonotrichia leucophrys</i>	W
White-crowned Sparrow (Gambel's)	<i>Zonotrichia leucophrys gambelii</i>	W
White-crowned Sparrow (Puget Sound)	<i>Zonotrichia leucophrys pugetensis</i>	W
White-crowned x Golden-crowned Sparrow (hybrid)	<i>Zonotrichia leucophrys x atricapilla</i>	W
White-rumped Sandpiper	<i>Calidris fuscicollis</i>	W: 7
White-tailed Kite	<i>Elanus leucurus</i>	R: 13
White-throated Sparrow	<i>Zonotrichia albicollis</i>	W
White-throated Swift	<i>Aeronautes saxatalis</i>	R
Willet	<i>Tringa semipalmata</i>	W
Willow Flycatcher	<i>Empidonax traillii</i>	M: 5, 7, 12 (E. t. extimus)
Wilson's Phalarope	<i>Phalaropus tricolor</i>	W
Wilson's Snipe	<i>Gallinago delicata</i>	W: 9
Wilson's Warbler	<i>Wilsonia pusilla</i>	M
Wood Duck	<i>Aix sponsa</i>	W
Worm-eating Warbler	<i>Helmitheros vermivora</i>	M: 9
Wrentit	<i>Chamaea fasciata</i>	M: 6, 7
Yellow Warbler	<i>Setophaga petechia</i>	R: 2, 9
Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	M: 5, 11 (C. a. occidentalis)
Yellow-breasted Chat	<i>Icteria virens</i>	M: 3
Yellow-headed Blackbird	<i>Xanthocephalus xanthocephalus</i>	M: 3
Yellow-rumped Warbler	<i>Setophaga coronata</i>	W
Yellow-rumped Warbler (Audubon's)	<i>Setophaga coronata auduboni</i>	W
Yellow-rumped Warbler (Myrtle)	<i>Setophaga coronata coronata</i>	W



## CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane. Palo Alto. CA 94306

650.493.5540

[www.cccrrefuge.org](http://www.cccrrefuge.org)

[cccrrefuge@email.com](mailto:cccrrefuge@email.com)

June 27, 2016

*Via email*

Department of Planning, Building and Code Enforcement  
Attn: Kieulan Pham, Environmental Project Manager  
200 E. Santa Clara St, Tower, Third Floor  
San Jose, CA 95113-1905  
[kieulan.pham@sanjoseca.gov](mailto:kieulan.pham@sanjoseca.gov)

### **RE: The 237 Industrial Center Project, File #C15-054**

Dear Ms. Pham:

On behalf of the Citizens Committee to Complete the Refuge (CCCR), I am pleased to have the opportunity to submit comments regarding the scope and content of the 237 Industrial Center Project (Project). We have reviewed the information included in the May 27, 2016 Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) and gained additional information at the EIR Public Scoping Meeting held on June 9, 2016.

#### **AREAS OF INTEREST**

The cover memorandum of the NOP welcomes comment that is “relevant to your area of interest.” We provide information here that will demonstrate the breadth of topics relevant to CCCR’s interest: As part of its actions to expand and to protect the lands of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge), CCCR monitors, comments and otherwise participates in public contribution to projects along the San Jose shoreline and the surrounding southern San Francisco Bay, the lower extent of watersheds and transitional lands that can serve wildlife as upland refugia of wetland habitats and as migratory corridors. Importantly we also comment on projects that may impact water quality and hydrology of the interconnected creeks and Bay, introduce wildlife disturbance by noise, light and encroachment on corridors, increase risks of predation of native wildlife, impact native vegetation extent, composition and quality, and otherwise increase risks to local wildlife populations including fish. Given that the Refuge is a very special place meant to be enjoyed by the public, we comment when projects may interfere with public access to and enjoyment of Refuge lands and programs.

For decades we have participated as commenters and stakeholders in reviews of projects adjoining the Project lands including but not limited to the Regional Wastewater Facility Plant Master Plan (RWF), the Newby Island Expansion CEQA process, the South Bay Salt Pond Restoration Project, the South Bay Shoreline Feasibility Study of the US Army Corps of Engineers and various creek projects of the Santa Clara Valley Water District (SCVWD). Through this experience, it is clear that our actions on behalf of the Refuge, wildlife, habitats and native special status species would be incomplete without considering a wide range of topics and impacts of a project. Further, without comments, the Lead Agencies and proponents would lack substantive environmental information needed for CEQA analysis.

#### **PROJECT OVERVIEW**

The DEIR would review a proposed development of the Cilker Orchards Management Corporation on 66.5 acres of primarily fallow farmland that lies north of Highway 237. The property adjoins riparian areas along Coyote Creek, a power plant, biosolid drying beds and unused lands of the RWF. The 66.5 acres approximately form an L-shape, wrapping around the power plant on two sides. The southern section currently includes a single-family residence, accessory structures, limited paved areas, a water well and a septic tank system. The sole vehicle access is along the southern perimeter, fronting on Ranch Drive, a two-lane roadway. Along its Coyote Creek boundary, the acreage borders a utility road that parallels the creek and provides access to the biosolids drying beds and the Coyote Creek Field Station operated by the San Francisco Bay Bird Observatory (SFBBO).

Uses proposed for the site are consistent with the San Jose General Plan's designation of the land as light industrial. The NOP describes two potential scenarios presented as Option 1 and Option 2. Both projects would utilize the entire site.

Option 1 would construct seven two-story buildings with a maximum height of 45 feet, a FAR of 0.43 and approximately 2,621 parking spaces to serve uses like warehousing, wholesaling, light industrial manufacturing and associated services. Site access will be at both the southern and northern boundaries.

Option 2 would construct five buildings as data center facilities and a 103,300 square foot electrical substation with 350 parking spots adjacent to buildings. Three buildings would be a maximum of 100 feet, two would be a maximum of 30 feet, and the substation would be a maximum of 45 feet. For security, the property would be fully enclosed by substantial fencing and have a single point of access on the southern boundary.

## **COMMENTS ABOUT SCOPE AND CONTENT**

### **Project and Setting Descriptions and Project footprint**

To ensure that the DEIR serves as an adequate information document under CEQA, we recommend that Project and setting descriptions throughout the document include the following:

- A detailed discussion of the history of the site, its uses and specific activities that may have introduced materials that now are known as pollutants or other hazards.
- The landscape land use descriptions and maps include the length of lower Coyote Creek and the drying beds boundary northward from the Project site, identify the location of the SFBBO Field Station and the connection to the Bay. Doing so will inform impact analysis of the sensitive habitat and very significant migratory bird value of the lower Coyote Creek riparian area and of the biological data services provided by the Field Station. It will also demonstrate creek connectivity and exposure to flood-inducing conditions.
- Land use descriptions accurately represent the zoning and uses of the adjoining lands of the RWF.
- Project descriptions and maps include any lands, regardless of landowner, required for construction of access roads and of necessary utility infrastructure (water, sanitary sewer, stormwater systems, electrical, natural gas and telecom). As the project will be dependent on these services, this discussion must be detailed and inclusive of construction.

- Descriptions that accurately describe nearby Milpitas land uses and services inclusive of projects approved for development along McCarthy Boulevard.
- Descriptions that accurately and fully describe the proposed public streets connecting to Zanker Road.
- Construction descriptions include all aspects of the Project inclusive of development on lands of the Cilker Orchard Management Corporation and on any other lands that provide new access and utility services.
- The aerial map in the NOP shows two connections into the Riparian zone, possibly to the creek. The nature and use of those connections should be described.

### **Possible Required Project Approvals**

The NOP lists only City approvals and suggests no others. Approvals, as permits or agreements, that should also be listed and discussed in the DEIR include actions of the Regional Water Quality Control Board (stormwater), the Santa Clara Valley Water District (creek access), US Environmental Protection Agency (hazardous materials) and possibly actions of other agencies.

### **Potential Impacts of the Project (Numbered as in the NOP)**

1. Land use: For unknown reasons the NOP listed adjoining percolation ponds, an inaccurate description of the biosolid drying beds. The DEIR needs to strive for accurate and complete descriptions. It is important too to include a discussion of the land use by Coyote Creek Field Station and the dependency it has on the length of this minimally-disturbed riparian area to track and report the status of hundreds of migratory bird species. This data is a critical measure of the ecological health of the South Bay. The bird populations tracked are attracted to and use the entire length of the riparian area north of 237.

2. Aesthetics: The placement and architectural design of buildings and areas of outdoor activity should be evaluated in regards to minimizing impact on the riparian area. Lighting, noise and vertical encroachment on the riparian area should all be considered. Will there be any 24/7 type operations that require outdoor lighting and, if so, can those operations be placed well away from wildlife areas like the Riparian area and wildlife corridors?

3. Geology: The ABAG/USGS categorizes the lower Coyote as a Bay Area location of “very high” susceptibility to liquefaction (the most at-risk level) in major seismic events as the underlying lands are unstable alluvial soils. <http://earthquake.usgs.gov/regional/nca/qmap/> It is that condition that forced a million dollars of levee improvements to Newby Island when identified during its CEQA process for expansion. Thus it is important that geological studies assess the Project’s relative vulnerability to liquefaction in combination with consideration of known major faults. This risk level increases public safety concerns as being well above the risks of projects on lands of lesser or no liquefaction risk but with similar exposure to major faults. Soil testing to assess risk is needed all across the Project site.

4. Hydrology and Water Quality: The Project is in a location upslope from lands, structures, and open space to the northwest, naturally allowing stormwater runoff to flow in that direction, perhaps as far draining into New Chicago Marsh on the Refuge. The new stormwater systems will need to both control such directional flow and handle the volume of runoff of newly impervious surfaces. The site design should attempt to retain as much pervious surface as possible as part of stormwater management solution. The two options presented in the NOP provide very different levels of vehicle use and therefore different potential impact by vehicle-derived pollutants. Therefore, if these options become

alternatives, or as similar alternatives, analysis of different stormwater impacts will need to be presented. The NOP mentions that a new stormwater runoff access to the creek may be needed. The need, design and creek-protection quality of that access requires thorough analysis.

Certain sea level rise issues need to be analyzed as they are potential impacts of the Project on the environment. While the US Army Corps of Engineers will build a levee along the Alviso shoreline, it will have no effect on the lower Coyote Creek. Therefore the creek will have more frequent high water events of concurrence of high tides and extreme storms. The current creek levees were built before sea level rise was considered a design factor, a lack that is an existing condition for this Project. If the Project proposes to direct greatly increased stormwater runoff to the creek, what influence might that have on potential creek overflow on site property and elsewhere? If creek flow gets so high that Project runoff backs up, what local and downslope flooding might be produced by those flows? Would it impact roadways, preventing escape and/or rescue?

5. Biological Resources: Impact analysis must be inclusive of all lands used for any action of this Project, as will be mentioned here.

A special focus of the alternatives' impacts is the adjoining Riparian area. There are many questions to consider. Is building design "bird-safe" per the guidelines of the City of San Jose, required for Projects north of 237? Does the height or proximity of buildings or of other structures (fencing, poles, substation) provide perching for avian predators? If large-footprint, 100-foot height buildings are proposed, are the upper floors set back so as to be further away from the Riparian zone? Is proposed landscaping composed of native vegetation and suitable for this creekside location? Are all light sources designed and located such that no illumination goes toward the riparian zone, preventing exposure of prey species to night predators? If there will be regular night traffic on the Project lands, will there be a berm or other mitigation to prevent headlight beams from impacting wildlife (as the City required at the Zanker Materials Recycling Facility to protect the Refuge skies and habitats)? Will there be construction or ongoing noise that can be disruptive to nesting success of bird species?

Importantly, will there be disturbance that causes migratory birds to avoid the area, including species that have been using the Riparian area as a safe, healthy habitat for decades, possibly centuries. Riparian zones are so decimated in the Bay Area that every location is critical. This lower Coyote Creek zone has unusual value due to relatively good ecological conditions and size. Making any reduction in habitat conditions is significant. Further and for decades, the Coyote Creek Field Station has compiled an exceptional database of birds that use this Riparian corridor. How will the Project avoid disrupting the habitat conditions that sustain the bird biodiversity and populations here?

The bird studies for the DEIR should rely on the Field Station data that can be requested from SFBBO (the best available science) rather than base analysis on the very limited but commonly used State of California databases. SFBBO data can identify which special status bird species may be present and impacted by the Project.

With respect to migratory birds, will the Project ensure that all outdoor illumination, including from windows, avoids lighting the night skies, disrupting migrants using the Riparian corridor or that are headed to/from the Refuge or other locations around the Bay?

Under the Santa Clara Valley Habitat Conservation Plan (HCP), burrowing owls are a special consideration applying directly to the Project. Are there any instances of these owls present on any of the lands, foraging or otherwise? It is important to remember that the farmlands and lands that may be used for road access and utilities are all subject to the HCP's burrowing owl plan.

Creeks are wildlife corridors that intersect with other wildlife corridors. It is known that a wildlife corridor exists across Project lands where various native species (fox, raccoons, opossums, and others) traverse lands, the drying beds, and head toward open space across Zanker Road, to landfill operations on Los Esteros Road, and to habitats of the Refuge. Will placement of fencing obstruct this wildlife corridor? Will lighting be designed to avoid illumination of the corridor?

6. Hazardous materials: Hazardous materials used in former farming operations may be present e.g. pesticides or herbicides in soils or underground storage of fuel. Studies should be done to assess these conditions for potential impacts and to ensure any presence of hazards can be sufficiently mitigated.

8. Transportation and Circulation: We expect that the traffic studies will consider how the new volume of traffic would impact Zanker Road with the creation of road access for the Project. Given the great disparity in vehicle traffic between Option 1 and Option 2, it will be necessary to provide analysis that differentiates the impact levels, as it would be for other alternatives that may be considered.

It will be important too to analyze how the addition of new public roads connecting to Zanker Road produces regional circulation changes, that of vehicles that are not going to/from the Project site. What is the traffic potential if drivers, or the app WAZE, discover that there is new way to circumvent the 237/880 interchange between Zanker Road and McCarthy Blvd/Dixon Landing Road via Ranch Road? Around the Bay Area, such two-lane frontage roads are packed daily as alternate routes. How will that impact Zanker Road traffic for Project-related traffic added to trucks, buses and autos headed to the Green Waste operations, Refuge visits and homes or other destinations in Alviso? Should roadway restrictions be installed to prevent a Ranch Road abuse scenario?

10. Noise: We appreciate seeing that the NOP states potential noise impacts to wildlife will be identified. Please ensure that the analysis incorporates both construction and ongoing noise sources.

11. Utilities: In addition to assessing Project demand for water, electricity, natural gas, telecom, and sanitary sewer, it is necessary to analyze the impacts of all construction activities to connect the utilities to the site.

12. Public Services: In your analysis of access to public services, there is a need to recognize that this location has a greater likelihood in San Jose of impacts due to the extreme natural events of seismic liquefaction and flooding, conditions which may cut off escape and rescue routes.

15. Alternatives: We recommend that one or more alternatives include a road circulation plan that prevents through-traffic (Zanker <--> McCarthy) crossing the Ranch Road bridge over Coyote Creek. We also recommend that there be an alternative that shifts placement of buildings and other structures away from the Riparian zone.

16. Cumulative Impacts: Analysis of cumulative impacts of traffic and circulation as well as green house gases, need to include, as existing conditions, all approved projects in the region. These include projects

E. McLaughlin, CCCR, 6/27/16, 237 Industrial Center Project, #C15-054

that may or may not have begun development and those approved projects that are partially built and multi-phase, anticipating phased step-ups of impacts. Such projects locally include several along North First Street in Alviso, several Green Waste projects on Los Esteros Drive, and projects in the City of Milpitas along McCarthy Boulevard. There needs to be an assessment of, cumulatively, what these projects plus existing traffic conditions along the 237 Corridor do to circulation and public safety in Alviso from any roadway approach. Very similarly, the analysis needs to determine what the cumulative impact of GHG including nitrogen arising from all of these projects has locally and regionally.

Cumulative adverse impacts to wildlife, the riparian corridor, the wildlife corridor and the continued research viability of the Coyote Creek Field Station must also be identified, discussed and avoided or mitigated.

Significantly, cumulative impacts should include analysis of the impact of loss of open space adjoining or otherwise interconnected with the Bay to assess the value lost. This impact is spotlighted in the Baylands Ecosystem Habitat Goals Science Update 2015. <http://baylandsgoals.org/science-update-2015/> It's findings and goals identify protection of as much open, undeveloped space connection with the Bay as of critical importance. These "transitional zones" are intertwined ecosystems that will best secure our shoreline and lower creeks in this era of climate change. How much transitional land have projects consumed north of Highway 237, cumulatively? What are the losses as defined in the Goals document, of project by project consumption of irreplaceable lands?

We hope these comments contribute to the creation of an effective DEIR. If there any need for additional or clarifying information, contact the writer, Eileen McLaughlin at [wildlifestewards@aol.com](mailto:wildlifestewards@aol.com) or 408-257-7599. Please include this email address for all notifications about the Project.

CCCR is a 501(c)(3) nonprofit organization that is fully volunteer-run and arose from the citizens group that worked with Congressman Don Edwards to establish the Refuge in 1972. In the decades since it has led efforts to expand the Refuge, seeing it become the largest urban National Wildlife Refuge. CCCR continues to pursue the expansion and, while doing so, works to protect the biodiversity, integrity and environmental health of the Refuge and the public benefits it provides.

Respectfully submitted,



Eileen McLaughlin  
Board Member, CCCR

cc: Carin High, Co-Chair, CCCR  
Gail Raabe, Co-Chair, CCCR