

Responses to Focused Initial Study Comments
4590 Patrick Henry Drive Residential Project

File Nos. PLN23-00290/PLN24-00310



October 2024

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Attachment A: Draft IS/MND Comment Letters

Section 1.0 Introduction

The Initial Study/Mitigated Negative Declaration (IS/MND) for the 4590 Patrick Henry Drive Residential Project was prepared in compliance with the requirements of the California Environmental Quality Act (CEQA). The 30-day public circulation period for the Draft IS/MND started April 26, 2024 and ended May 26, 2024. The following pages contain responses to comments submitted by agencies, organizations, and individuals during the Draft IS/MND public review period. Copies of the comment letters are attached to this document in Attachment A.

Pursuant to CEQA Guidelines §15073.5, the recirculation of the MND is required when the document must be “substantially revised” after public notice of its availability. A “substantial revision” is defined as:

- (1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or
- (2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

CEQA does not require formal responses to comments on a Draft IS/MND and the decision-making body shall adopt the proposed MND only if it finds on the basis of the whole record before it, that there is no substantial evidence that the project will have a significant effect on the environment and the MND reflects the lead agency’s independent judgment and analysis [CEQA Guidelines §15074(b)].

Section 2.0 Responses to Comments Received on Draft IS/MND

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented, with each response to that specific comment directly following. Copies of the letters and emails received by the City of Santa Clara are included in their entirety in Attachment A of this document. Comments received on the Draft IS/MND are listed below.

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Regional and Local Agencies

A. City of Sunnyvale (May 16, 2024)

Comment A.1: Thank you for allowing the City of Sunnyvale to provide comments on the 4590 Patrick Henry Drive Residential Project Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration. Comments concerning Transportation related to the project are as follows:

- 1) Based on the existing and proposed land uses, we believe that this project will trigger a Congestion Management Program (CMP) requirement and a Traffic Impact Analysis (TIA) would be required. City of Sunnyvale would like to review the scope for the TIA.
- 2) Although intersection level of service is no longer a CEQA requirement, the City of Sunnyvale requests City of Santa Clara to evaluate intersections operationally in Sunnyvale using criteria per the VTA TIA Guidelines as a basis. Accordingly, City of Sunnyvale and CMP intersections with ten or more project trips per lane added to any intersection movement should be analyzed. Traffic conditions at the study intersections are typically conducted during the AM (7-10) and PM (4-7) peak hours under existing and future analysis scenarios.
- 3) Corridor analysis should include Tasman Drive and Lawrence Expressway. The Tasman corridor analysis should cover potential traffic congestion and associated impacts on emergency service access to Sunnyvale neighborhoods. For example, the mobile home park located to the west of Patrick Henry Drive has a single access off of Tasman Drive. Consequently, congestion on Tasman Drive could severely impact access to this mobile home park including access of emergency vehicles.
- 4) The project site is located near the easterly boundary of the City of Sunnyvale. Relevant approved projects within Sunnyvale and other neighboring jurisdictions need to be included in the study estimates of the Background traffic volumes. This is consistent with the CMP TIA Guidelines. Similarly, pending projects and/or the application of an annual growth rate need to be incorporated in the Cumulative traffic volume estimates in order to reflect the growth in both the local and regional traffic. A current list of approved and pending development projects in the City of Sunnyvale can be supplied upon request.
- 5) Since this project is just west of the Levi's Stadium, a game day scenario should be included in the analysis.
- 6) Evaluation of the alternative modes of transportation should be included in this project's traffic analysis. The VTA CMP Guidelines indicate that traffic analysis must include transit facilities in terms of transit service availability, transit capacity relative to the increased demand, impact of increased traffic delays on the service, and the need for transit access improvements. According to the CMP Guidelines, the traffic analysis must also evaluate bicycle and pedestrian facilities in terms of their availability, project effects on future bike/pedestrian plans, and

improvements proposed by the project. Maps and information on existing and planned bicycle facilities within Sunnyvale can be supplied upon request.

7) The TIA should identify the individual and cumulative project operational impacts on Sunnyvale facilities, along with associated feasible improvements. It is important to also include the project's full/pro-rata share financial contributions towards the implementation of these improvements to bring the roadways back to acceptable or no-project operational level of service.

8) The Valley Transportation Plan (VTP) on the VTA web site contains a list of regional improvements which shall be included in the cumulative conditions. Similarly, local improvements within the City of Sunnyvale that are already identified in the City's Capital Improvement Program (CIP) and/or in the Sunnyvale Traffic Impact Fee Study shall be included in the cumulative analysis. When utilizing regional and local road improvements as project mitigations, please clarify construction schedule of these improvements relative to the schedule of the development completion.

9) The proposed project is significant in size and is expected to affect the Sunnyvale street system. Following to the CMP guidelines, the City of Sunnyvale is requesting to review the draft TIA report.

Response A.1: The Patrick Henry Drive Specific Plan (PHDSP) provides a program-level environmental review for the PHDSP area, while allowing for specific development projects in the area to tier from the Final Environmental Impact Report (FEIR) and focus on issues that would be specific to a given project and site location. The Draft IS/MND tiers from the PHDSP FEIR and provides site specific analysis for the project. As discussed on page 15 of the Draft IS/MND, traffic generated by the project was already accounted for and would be similar to what was already analyzed in the PHDSP FEIR. Therefore, a Traffic Impact Analysis (TIA) was not prepared for the project. This comment does not raise any issues about the adequacy of the Draft IS/MND. Therefore, no further response is required.

Comment A.2:

10) We would like City of Santa Clara to implement improvements as described in the Tasman Corridor Streets study as prepared by VTA, Cities of Sunnyvale, Santa Clara, San Jose, and Milpitas as part of the 4590 Patrick Henry Drive Project.

11) Impacts to County of Santa Clara facilities should be improved based on projects listed in the County Expressway Planning Study.

Thank you for the opportunity to provide feedback on the NOI to Adopt a Mitigated Negative Declaration for this significant project. We look forward to personally discussing transportation

related matters in the near future, as well as other meeting opportunities at key points of the project planning.

Please do not hesitate to contact me if you have any questions regarding my comments. You can reach me by email at itsang@sunnyvale.ca.gov or by phone at 408-730-7556.

Response A.2: As discussed in the PHDSP, projects proposed under the PHDSP would be required to pay a PHDSP Infrastructure Impact Fee which will focus on infrastructure improvements including on-site roadway facilities. The City will design and construct projects in phases in the City of Santa Clara as described in the Tasman Corridor Complete Streets Study. Design for the first phase of projects will begin in fiscal year 2025-26. This comment does not raise any issues about the adequacy of the Draft IS/MND. No further response is required.

Organizations, Businesses, and Individuals

B. Lakewood Village Neighborhood Association (date May 4, 2024)

Comment B.1: We are writing to express our extreme displeasure with the prospect of an eight-story monstrosity of an apartment building to be build at 4590 Patrick Henry adjacent to our neighborhood, Lakewood Village, which predominantly is comprised of single-story single-family homes. In this project's own plans in section 4.2.1.3 Heights, Edges, and Transitions, they indicate they will "Use height restrictions and building setbacks along the Calabazas Creek to ensure a more gradual transition between the single-family residential neighborhoods in the City of Sunnyvale", however the proposed plans don't do that in the least. We are the President and Secretary of Lakewood Village Neighborhood Association representing over 1600 homes and have had a number of residents complain to us about this proposed project.

We request that this complex not be allowed to exceed four stories so as to make it a bit more palatable transition to our neighborhood and not have apartments towering over our neighborhood peering into our backyards and windows as much. Hopefully that would also decrease the effects on the wildlife that currently resides in our creek as well. It's bad enough that we have the bright lights of Levi's Stadium shining directly into our neighborhood on a regular basis and we ask that you consider how negatively this will impact our neighborhood and modify the height.

Response B.1: The section referenced in the comment is from the PHDSP. The project has two General Plan designations: *Urban Village* (UV) and *Parks and Open Space* (P/OS). As discussed on page 54 of the PHDSP, development in the UV would range from five to 12 stories with a residential density ranging from 100 to 149 dwelling units per acre (du/ac). The proposed project would be eight stories tall with a density of 127 du/ac which is consistent with the General Plan UV designation. The project would be subject to the PHDSP design standards and guidelines. This comment does not raise any issues about the adequacy of the Draft IS/MND. Therefore, no further response is required.

C. John C. Gordon (May 7, 2024)

Comment C.1: I am writing in regard to and in objection of the 4590 Patrick Henry Drive Residential Project. I believe that there should be no residences built on the Calabazas Creek side of Patrick Henry Drive, at all.

The City of Santa Clara has approved many residential projects along Tasman recently, many are under construction. We have seen multiple proposals for the old Rolm site, all which have thousands of new residents coming to the area. Your letter states that this project "will not have a significant effect on the environment", but I say that having more residents, more vehicles, more noise from the construction is definitely a "significant impact".

I live in the Adobe Wells Mobilehome Community, just across the creek in Sunnyvale. Even though the tower is not directly across the creek, no one here wants any eight-story buildings looming over the neighborhood. If the business buildings along the creek can be maintained however, they would prove as an “environmental buffer” off sorts from the unsightly towers that Santa Clara Planners seems to want to build again and again.

Santa Clara Planning relentlessly approves and builds projects that impact the surrounding cities such as Sunnyvale and San Jose, without regard. All of the new and proposed residences in the immediate area will overwhelm already overused streets such as Tasman and Great America, to feed into the extremely overused 101 and 237 freeways. I would be happy to propose to the City of Sunnyvale to permanently block Tasman Drive and Old Mountain View-Alviso Road at the Santa Clara border, to keep the impacts of their bad decisions out of our city.

I and my neighbors stand in opposition to the demolition of the existing industrial building and replacing it with any residential structures.

Response C.1: As discussed in Response A.1, the PHDSP provides a program-level environmental review for the PHDSP area, while allowing for specific development projects in the area, including the proposed project, to tier from the FEIR and focus on issues that would be specific to a given project and site location. As shown on Figure 4.3A of the PHDSP, residential development is allowed along Calabazas Creek.

As discussed on page 15 of the Draft IS/MND, traffic generated by the project was already accounted for in the PHDSP FEIR. Project construction would exceed the exterior threshold of 70 dBA Leq at the nearby commercial buildings and 60 dBA Leq at the nearest residences and the existing ambient noise levels would be exceeded by more than five dBA for more than one year. In addition to Mitigation Measures 13-1 (1 through 6), the project would be required to implement Mitigation Measures NOI-1.1 and NOI-1.2 to reduce project impacts from construction noise to a less than significant level. This comment does not raise any issues about the adequacy of the Draft IS/MND. Therefore, no further response is required.

D. Holland & Knight (May 26, 2024)

Comment D.1: This firm represents 4590 Patrick Henry LLC (the “Applicant”) in connection with its application to construct 284 multifamily residential units in a housing development project (the “Project”) at 4590 Patrick Henry Drive (the “Property”) within the Patrick Henry Drive Specific Plan (“PHDSP”) area in Santa Clara (the “City”). On March 22, 2022, to comply with the California Environmental Quality Act (“CEQA”), the City certified the PHDSP Final Environmental Impact Report (FEIR) and approved the PHDSP project. The intent and purpose of the PHDSP FEIR was to provide program-level environmental review for the PHDSP, while allowing for specific development projects that would implement the PHDSP to tier from the FEIR to avoid redundant environmental review, and focusing only on those issues that would be specific to a given project

and site location. Thus, the City prepared a “Focused Initial Study” to study the Project’s specific impacts, which the document also describes as an addendum to the FEIR (the “FIS/Addendum”).

The Applicant provides the following comments on the FIS/Addendum, which are divided into two sections. First, we provide documentation regarding the economic and practical infeasibility of Mitigation Measure Bio(C)-1.1, as well as its too-broad scope, and we make a request for the City to amend the mitigation measure and/or work with the Applicant to ensure the Project will maintain its park fee credit. Second, we request minor revisions to the FIS/Addendum.

Response D.1: The commenter has correctly summarized the intent of the PHDSP FEIR. As of August 2024, the City and applicant have agreed on revisions to the park to address mitigation measure BIO(C)-1.1 with consideration of the mitigation area, vegetation, lighting, and allowed activity. The applicant’s request related to how park fee credits are calculated under the City’s Parkland Dedication Ordinance is not a CEQA comment. Regarding the proposed mitigation, the applicant has been unable to secure mitigation off-site and the City has agreed to accept the applicant’s mitigation obligation in the public park. As noted by the commenter below (Comment D.3), the park will be encumbered with an ongoing mitigation obligation, which conflicts with the applicant’s obligation under the Parkland Dedication Ordinance to dedicate unencumbered park land. Given this concession, no additional park credit will be provided to the applicant under the Parkland Dedication Ordinance. Refer to Responses D.3 and D.4 for a response to Mitigation Measure BIO(C)-1.1.

The document is a Focused Initial Study and not an Addendum. Refer to Section 3.0 Draft IS/MND Text Revisions for the text edit. This text change does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts

Comment D.2: 1. Infeasibility and Too-Broad Scope of Mitigation Measure Bio(C)-1.1

Calabazas Creek is a concrete channel approximately 95 feet west of the Project site boundary. Under threshold b) of the Biological Resources analysis, the FIS/Addendum explains that in the PHDSP FEIR, the Creek was identified as only “marginally suitable” riparian habitat. Therefore, the FEIR did not address impacts such as shading or encroachment from future projects, which are permitted at up to 12 stories along the Creek. However, Project-specific site visits in August and September of 2023 detected more significant vegetation along the channel than had been there when the PHDSP FEIR was prepared in 2019.

A 0.14 acre portion of the Project building would encroach within 100 feet of the Creek. This 0.14 acre area is already occupied by concrete with parking spaces in the current condition. Further, the City does not have an applicable Creek buffer policy – rather, the FIS/Addendum assumes that a 100-foot setback is appropriate to study CEQA impacts, based on San Jose and Santa Clara Valley

Habitat Plan policies.¹ There is no detailed analysis of whether the Creek needs the same buffer to avoid CEQA impacts, or whether a lesser buffer could be appropriate for CEQA purposes.

Response D.2: As stated by the commenter, the project would encroach within 0.14 acres of the 100-foot setback area and the City of Santa Clara does not have a riparian buffer policy nor does the PHDSP include buffer standards and guidelines. Based on other riparian policies in the region, the moderate quality of riparian habitat, and native bird community presence at this location, H.T. Harvey & Associates (HTH) determined that a 100-foot setback is appropriate to maintain suitable riparian functions and values (refer to page 45 of the Draft IS/MND and page 27 of Appendix C of the Draft IS/MND).

Comment D.3: The FIS/Addendum concludes that some birds may collide with this portion of the building or may avoid the area. Further, the Project is 86 feet tall to the top of the parapet, and it would shade some riparian habitat during the early morning, but this “shading would not result in a substantial adverse effect on the health of the riparian vegetation.”² Rather, there will be “ample direct sunlight available to the riparian corridor throughout most of the day,” and none of the habitat would be lost.³ Further, the “existing riparian habitat adjacent to the project is of moderate quality (as opposed to high quality) and is not expected to attract a large number of birds”⁴ to begin with, making the potential impact on birds from the 0.14 acre encroachment into the 100-foot assumed-appropriate buffer area more remote.

Because of the moderate quality of the habitat, the already lowered potential for birds to use the area, and the fact that the Project would not harm the health of the vegetation with its shading effects, the FIS/Addendum concludes that the Project alone would not have a significant impact on riparian habitat, and no mitigation is required for the Project.⁵ However, the technical report and the FIS/Addendum then conclude that a potentially significant cumulative impact would occur, and that mitigation is necessary.

Mitigation Measure Bio(C)-1.1 requires that the Applicant provide a native habitat area either on-site or elsewhere on the Santa Clara Valley floor, at a minimum ratio of 1:1 to compensate for the entire 0.14 acre area that is within 100 feet of the creek (even though the FIS/Addendum concludes that none of the 0.14 acre within the Creek setback would be lost as habitat, and the vegetation would not be lost). The measure requires that this area be void of non-native trees, shrubs, and vines, as well as hardscape, and that native trees and shrubs be planted that are appropriate for streamside areas in Santa Clara. The area must also be either contiguous with riparian habitat, or separated from it only by a levee. No lighting is allowed within, or shining directly into the area.⁶

¹ FIS/Addendum Appendix C, page 27.

² FIS/Addendum, page 45.

³ FIS/Addendum Appendix C, page 26.

⁴ FIS/Addendum, page 46.

⁵ FIS/Addendum, pages 45-47.

⁶ FIS/Addendum Mitigation Monitoring and Reporting Program, pages 1-2.

The Applicant has investigated the offsite mitigation option extensively, and has not located any land that would qualify. There are no mitigation land banks in the Santa Clara Valley. The Applicant also does not control other qualifying land in the Santa Clara Valley, and it is not feasible to convince another private landowner to encumber their land with an ongoing mitigation obligation, particularly with the further limiting factor that the land must be contiguous with riparian habitat, or separated from it only by a levee.

Response D.3: The commenter is correct that the project, by itself, would have a less than significant impact on the riparian corridor. Appendix C of the Draft IS/MND, prepared by the City's biological consultant, concluded that encroachment of the project within the 100-foot riparian setback would result in a considerable contribution to significant cumulative impacts on the functions and values of remaining riparian habitat in the City and along streams on the Santa Clara Valley floor without mitigation. As a result, mitigation is required consistent with CEQA. If there is no feasible mitigation, then the Focused Initial Study is no longer a valid option for CEQA compliance, and a Supplemental Environmental Impact Report (EIR) would be required. A Supplemental EIR would provide the decision-makers with the option to adopt overriding considerations, should they make supportable findings that the benefits of the project outweigh the impacts.

Comment D.4: The Applicant has also explored the onsite mitigation option, and discussed it with City staff. The mitigation measure indicates that the portion of the Project site on the western edge of the proposed public park would be sufficient for this purpose, but that in order to qualify, the currently planned "high-human use areas (such as exercise equipment and picnic tables)" would need to be moved to the east, out of the 0.14 acre area.⁷ For reference, the current design is as follows:



The features of the 0.555 acre park include:

- A lawn area for frisbee, stretching, yoga or quiet enjoyment
- Table tennis
- A pedestrian pathway around the park for walking or jogging
- Bocce court
- Cornhole games

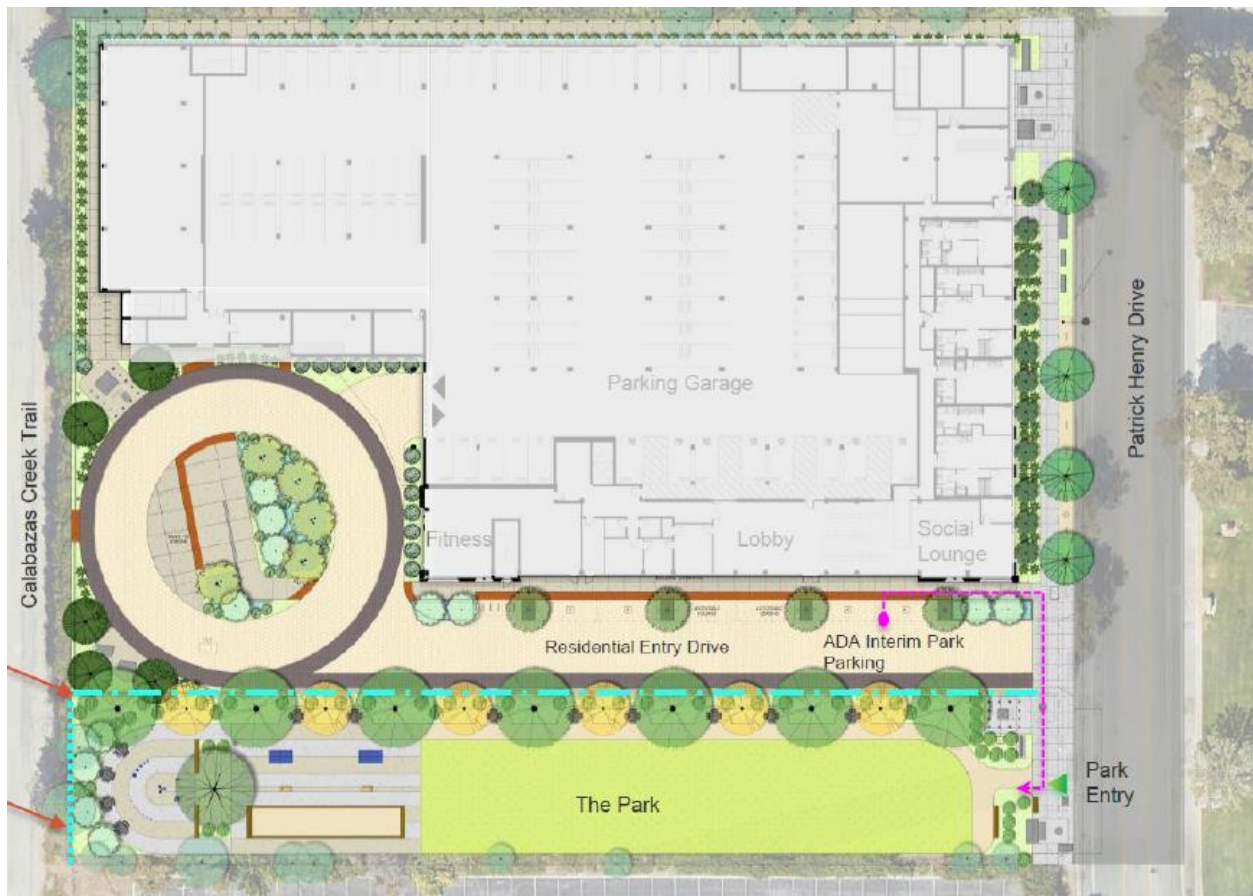
⁷ FIS/Addendum Mitigation Monitoring and Reporting Program, pages 2-3.

- Picnic and game tables (for chess etc.) around the lawn and pathways tucked under shade trees
- A musical instrument area designed as an activity that is accessible for "all ages and abilities"
- Shade trees
- Benches

The Applicant has determined that redesigning the park as described in the mitigation measure is feasible from a practical perspective. The active areas could be shifted further east while maintaining all of the park's above-described features, and the western portion planted as required by the measure. The proposed park would not be open at night, so the no-lighting requirement is likewise not an issue. However, the Parks Department in particular has expressed that if the active elements are moved into the planned "lawn" portion of the park on the eastern side, the lawn would likely no longer qualify as such and the Project may therefore lose its fee credit for dedicating the park to the public, either for the 0.14 acre area or for the entire park. The impact of losing park fee credit is as follows:

- Current Park Fee = \$8,240,564
- If no credit for 0.14 acre mitigation area = \$8,916,764 (\$676,200 added)
- If no credit for entire 0.555 park = \$10,680,956 (\$2.44 million added)

Because dedicating the park is a requirement of the PHDSP, these costs would not be offset by an ability to reabsorb the park area into the Project, but rather would be additive to the cost of providing a public park. The Applicant would be both paying to provide an on-site public park, and paying a full park fee, in addition to absorbing the loss of the development area taken up by the park. The Project site is also constrained by a turnaround for emergency vehicles, as follows:



Likewise, the Applicant has designed the Project to be as dense as possible given the high cost of construction, and cannot increase the height of the Project to offset any further costs because doing so would move the Project into a different and much costlier construction type. **The Project cannot sustain these additional costs in addition to these considerations, and the mitigation measure is therefore both practically infeasible (for the off-site option) and economically infeasible (for the on-site option) as written, unless the City and the Applicant can work further together to maintain the Project's park fee credit.**

Response D.4: The applicant's request for additional park fee credits under the City's Parkland Dedication Ordinance is not a CEQA comment. As of September 2024, the City of Santa Clara and the applicant have come to an agreement to accept the applicant's mitigation obligation in the public park because the applicant has been unable to secure mitigation off-site. As discussed in Mitigation Measure BIO(C)-1.1, on-site mitigation for the riparian encroachment can be achieved by revising the proposed public park design such that a 0.14-acre area (immediately adjacent to the western site boundary) incorporates native trees and shrubs, there is no night lighting, and high-human use areas are concentrated on the eastern portion of the proposed open space area (outside the 0.14-acre mitigation area). Refer to pages 130 to 132 of the Draft IS/MND for the full mitigation language. The applicant proposes to redesign the public park in compliance with Mitigation Measure BIO(C)-1.1. Redesign of the proposed public park would not require

additional analysis or result in new significant impacts.

If the mitigation measure is determined to be infeasible, as indicated by the commenter, then the project cannot proceed with the Initial Study and a Supplemental EIR must be prepared.

Comment D.5: In addition to the infeasibility of the mitigation measure, we question whether it is appropriate to conclude that the Project will cause a cumulatively considerable impact, and to require the entire 0.14 acre that is shaded be replaced, with the requirement for no active uses to be present in the mitigation area.

The biological resource technical report indicates that the cumulative impact rises “due to the link of impacts from past, current, and reasonably foreseeable future projects in the region.”⁸ However, it is not always appropriate to incorporate the impacts of past projects, which have already altered the environment, already been studied, and already had mitigation applied to them as appropriate. The condition of Calabazas Creek may be more appropriately understood as an existing environmental condition, which is necessarily already taken account of in the PHDSP FEIR and the Project’s FIS/Addendum, therefore obviating the need for a separate analysis of the effects of past projects. *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 CA4th 889. The impacts of past projects should only be considered to the extent such information is relevant to an understanding of the impacts of the Project considered cumulatively with other pending and future projects, and the discussion “should be guided by the standards of practicality and reasonableness.” *Environmental Protection Info Ctr. V. Dept. of Forestry & Fire Protection* (2008) 44 C4th 459, 525.

Response D.5: As discussed on page 39 of Appendix C of the Draft IS/MND, future development activities in the City will result in impacts on the same habitat types and species that would be affected by the proposed project. The proposed project, in combination with other projects in the area could contribute to cumulative effects on special-status species.

It is within the purview of the commenter to commission their own analysis by a qualified biological consultant that would either support or refute the conclusions of the City. If, however, there is a disagreement among experts, the Initial Study would no longer be the appropriate level of CEQA review due to the Fair Argument Standard. A Supplemental EIR would need to be prepared so both conclusions could be included in the public record and be given equal consideration by the decision-making body.

Comment D.6: Further, requiring the replacement of the entire 0.14 acre without allowing any active human uses in the area, does not take into account that the Project’s contribution to a regionally cumulative impact is incremental in nature, and that the riparian habitat’s existing

⁸ FIS/Addendum Appendix C, page 29.

condition is only moderate to begin with. Further, the FIS/Addendum concludes that the Project's shading impact would be *extremely limited*, and there is still "ample" sunlight during the remainder of the day such that the vegetation will not be damaged and the habitat will maintain its usefulness. Rather than requiring that the entire 0.14 acre be replaced at a 1:1 ratio, the mitigation measure could:

- Require a reduced ratio; and/or
- Allow active uses in the on-site mitigation area, which could be found to "achieve no net loss of habitat functions and values"⁹ due to the extremely limited impact the Project is having individually and the incremental nature of the Project's contribution to a regionally cumulative impact, and the already degraded quality of the habitat that would be shaded.

Response D.6: While the proposed project, by itself, would result in a less than significant impact on the riparian corridor, the proposed building would encroach within approximately 0.14 acres of the 100-foot riparian setback. HTH concluded that the project's contribution to cumulative impacts due to riparian encroachment would be considerable as it represents a new type of development that would have a greater impact on the riparian corridor compared to existing conditions.

As discussed in Response D.4, the City of Santa Clara and the applicant have come to an agreement to accept the applicant's mitigation obligation in the public park because the applicant has been unable to secure mitigation off-site. The proposed park would be redesigned to comply with Mitigation Measure BIO(C)-1.1. Redesign of the proposed park would not require additional analysis or result in new significant impacts.

Comment D.7: For all of the above reasons, the Applicant hereby requests that the City revise Mitigation Measure Bio(C)-1.1 in consultation with the Applicant and the City's environmental consultant, to ensure that the measure's scope is appropriate and that the requirements are feasible. With regard to feasibility, the Applicant hereby requests that the City work with the Applicant to revise the proposed public park to meet the Project's mitigation needs while maintaining park fee credit.

Response D.7: Refer to Responses D.3 and D.4.

Comment D.8: 2. Requests for Minor Revisions

In Section 2.4, page 3: The word "eastern" should be replaced with "western."

In Section 2.7, page 3: Given that this section indicates it will include all approvals and the relevant "agreements," we recommend adding the Vesting Tentative Map, the affordable housing regulatory agreement, and the park agreement

⁹ FIS/Addendum Mitigation Monitoring and Reporting Program, page 3.

Figures 3.04 and 3.0-5: There are more current versions to replace these with, which the Applicant is enclosing if needed. Please check other figures as well.

Section 4.2.2.1, page 21: The technical report in Appendix A indicates that the analysis relies on the 2022 updates, not the May 2017 guidelines. Update as needed to make correct/consistent (and if 2017 guidelines were relied on, explain why 2022 updates were not more appropriate).

Response D.8: The comment provides text corrections and current versions of the site plan and elevation to the Draft IS/MND. Refer to Section 3.0 Draft IS/MND Text Revisions. The requested text changes and updated graphics do not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft IS/MND and associated appendices, or present new information that would require recirculation of the Draft IS/MND.

Comment D.9: Section 4.4.2.2 significance threshold d, pages 61-62: This discussion indicates that the Applicant must contract with an archaeologist/Tamien Nation representative. However, it is not clear that this is required. Rather, FEIR Mitigation Measure 7-2 first requires contact with CHRIS. The Applicant would like to know whether the City's consultant has contacted CHRIS to determine whether the site is in a sensitive area, which is the only circumstance that requires a subsequent contract with an archeologist/Tamien Nation representative. The discussion on page 61-62 should be clarified to indicate whether the CHRIS contact has occurred, and if not the MMRP should be made more clear about when this must be conducted.

Section 4.9.2.2 significance threshold c, page 126: This analysis indicates that no project would be "approved" until the City determines that sufficient sewer capacity exists. It appears that this should be clarified to indicate that such determination must be made prior to issuance of a building permit, not the land use entitlement, as is indicated earlier in this chapter.

References: Please add the arborist report to the references section.

Thank you for your attention to this matter.

Response D.9: The mitigation mentioned above is mitigation included as part of the PHDSP FEIR. A record search was completed at the Northwest Information Center (NWIC) of the California Historical Resources Information System (CHRIS). The results of the search are included as part of the Archaeological Sensitivity Assessment and a copy of the assessment is on file with the City of Santa Clara, Community Development Department as mentioned on page 50 of the Draft IS/MND.

Pages 18-30 of the PHDSP FEIR states, “As standard conditions of approval, each individual project would need to provide sanitary sewer information to the City. No project would be approved by the City until the City determines that sufficient sewer capacity exists”. The Draft IS/MND is consistent with the PHDSP FEIR in stating that the project cannot be approved until sewer capacity is determined by the City. The PHDSP FEIR does not allow for alternative timing of compliance with this condition.

The Arborist Report reference is added to Section 3.0 Draft IS/MND Text Revisions. This comment does not raise any issues about the adequacy of the Draft IS/MND. Therefore, no further response is required.

E. Sarah Jackett (letter not dated)

Comment E.1: I am a Sunnyvale resident who lives in Lakewood Village, right behind Calabazas Creek, along the boundary between Sunnyvale and Santa Clara. I am writing on behalf of many of my neighbors, who have all signed the attached petition **requesting that the City of Santa Clara and project developers reduce the height of the proposed Patrick Henry Drive Project buildings along Calabazas Creek.** The buildings right in our backyards, along the creek, have unfortunately been zoned to be constructed as high as 12 stories.

The building proposed for 4590 Patrick Henry Drive is scheduled for 8 stories, an incredibly tall building considering the surrounding neighborhood.

Neighbors in Lakewood Village are concerned about the impact of heavy construction noise for several years, major traffic implications, buildings that will look down into our backyards, flooding implications, (Manzano Way regularly floods during storms), and the environmental impact to wildlife in the creek.

Response E.1: As discussed in Response B.1, parcels designated as UV are allowed to construct buildings ranging from five to 12 stories. The project would be eight stories tall which is consistent with the UV designation. Construction of the project would occur over a period of 27 months and the project includes mitigation to reduce construction noise (refer to pages 112 to 115 of the Draft IS/MND). As discussed in the Draft IS/MND on page 96, the site is located in Flood Zone X, an area that is not subject to a 100-year flood hazard. The PHDSP FEIR concluded that build out of the PHDSP could threaten or endanger habitat for special-status plants and species. A project-specific Biological Resources Report was prepared for the project site which describes the project’s impacts on sensitive biological resources (refer to Appendix C of the Draft IS/MND for more information). This comment does not raise any issues about the adequacy of the Draft IS/MND. Therefore, no further response is required.

Comment E.2: The plans for this development indicated that more would be done to respect the existing neighborhood, but that is clearly not the case:

“Ensure building heights respect and respond to the character of areas adjacent to the Patrick Henry Drive Specific Plan Area while accommodating high-density development. Locate the tallest buildings in the interior of the PHD Specific Plan Area so that the overall scale of the area decreases as it approaches the PHD Specific Plan Area edges.

Use height restrictions and building setbacks along the Calabazas Creek to ensure a more gradual transition between the single-family residential neighborhoods in the City of Sunnyvale.”

Response E.2: As discussed in Response B.1, the project is consistent with the General Plan UV designation and would be subject to the PHDSP design standards and guidelines. This comment does not raise any issues about the adequacy of the Draft IS/MND. Therefore, no further response is required.

Comment E.3: The impact of these proposed buildings is truly upsetting to the Lakewood Village neighborhood. Our neighborhood has already been generous to the City of Santa Clara, dealing with the increased traffic due to games and concerts at Levi’s Stadium (Manzano Way sees many cars parking up and down our street during those events, due to the footbridge that people cross to walk to the stadium). Folks in the neighborhood who have been here since the 1950s, and never protested anything, have signed their names to our petition. To be clear, we don’t want to stop the development, but it seems reasonable that the size of the buildings could be lowered considerably and still provide for plenty of increased housing.

We have several representatives who are willing to sit down with the City and developers to work out more reasonable plans that will benefit both the City of Santa Clara and its Sunnyvale neighbors.

- Some of our requests:
 - Lower the buildings along Calabazas Creek to a height of no more than 4 stories.
 - Position the park areas along the creek, behind the buildings, so as to provide more buffer between the neighborhood and the development.
 - Do not allow weekend construction on buildings along the creek.

We look forward to speaking with you on this matter. Thank you for your time!

Response E.3: As discussed in Responses A.1 and C.1, the PHDSP provides a program-level environmental review for the PHDSP area, while allowing for specific development projects in the area, including the proposed project, to tier from the PHDSP FEIR and focus on issues that would be specific to a given project and site location. As mentioned previously, the proposed project would be eight stories tall with a density of 127 du/ac which is consistent with the General Plan UV

designation. As stated on page 11, Section 3.1.6 of the Draft IS/MND, the proposed construction hours would be Monday to Friday, 7:00 AM to 5:00 PM. No weekend construction is proposed. This comment does not raise any issues about the adequacy of the Draft IS/MND. Therefore, no further response is required.

Section 3.0 Draft IS/MND Text Revisions

This section contains revisions to the text of the 4590 Patrick Henry Drive Residential Project Draft IS/MND dated April 2024. Revised or new language is underlined. All deletions are shown with a line through the text.

Section 1.1.1, Page 1

The last sentence of the second paragraph under Patrick Henry Drive Specific Plan will be **REVISED** as follows:

This ~~addendum~~ Focused Initial Study tiers from the PHDSP FEIR and provides site-specific analysis for the proposed project and assesses consistency of the project with the PHDSP.

Section 2.4, Page 3

The following sentence under Project Location will be **REVISED** as follows:

The 2.79-acre project site is located on the ~~eastern~~ western portion of the PHDSP area at 4590 Patrick Henry Drive in the City of Santa Clara.

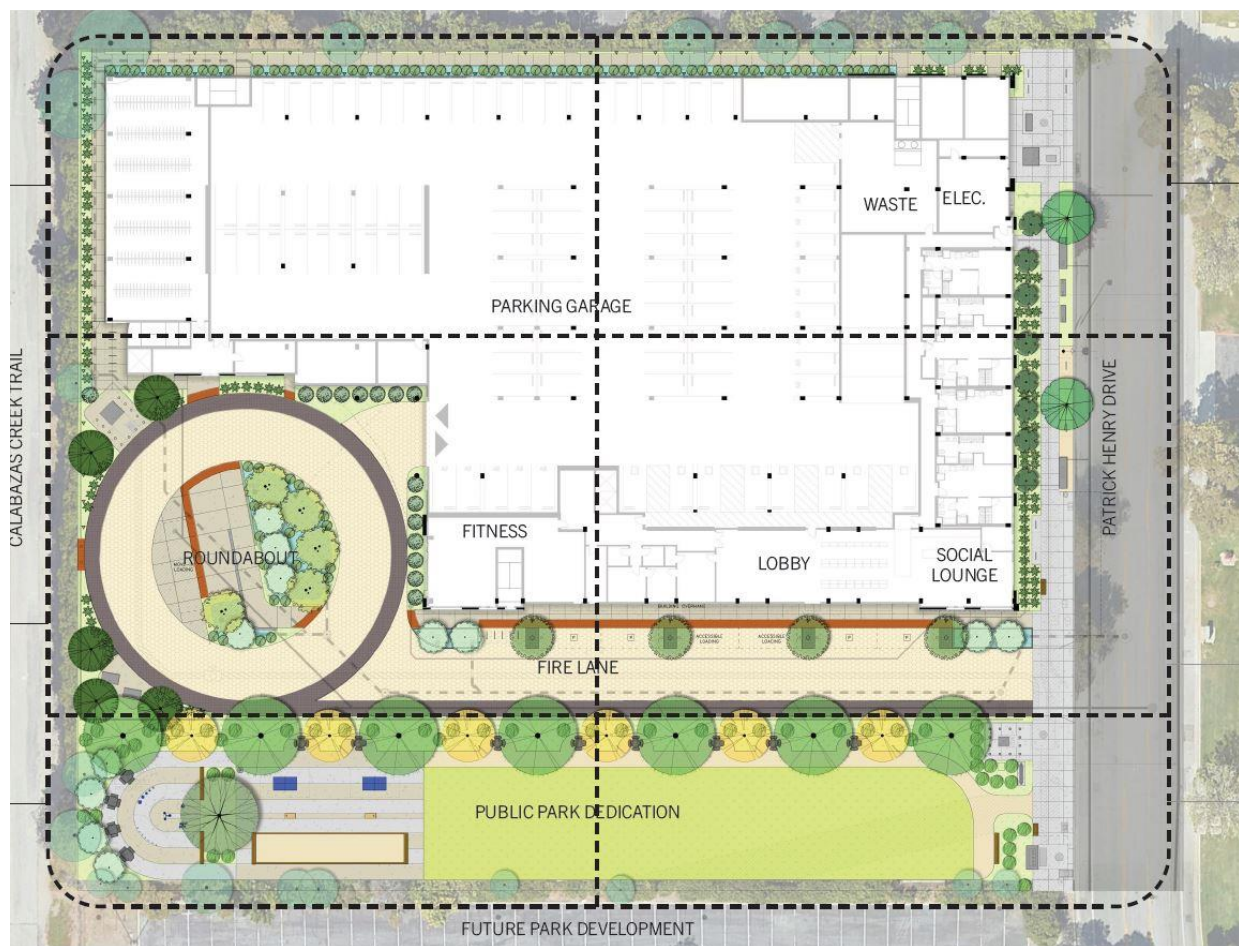
Section 2.7, Page 3

The following bullets will be **ADDED** under Project-Related Approvals, Agreements, and Permits:

- Demolition Permit
- Grading Permit
- Building Permit
- Site Development Permit
- Architectural Review
- Vesting Tentative Map
- Affordable Housing Regulatory Agreement
- Park Agreement

Section 3.0, Page 8

Figure 3.0-4, Site Plan – Ground Floor will be **REVISED** as follows:



Section 3.0, Page 9

Figure 3.0-5, Building Sections will be **REVISED** as follows:

The paragraph under Impacts from the Project will be **REVISED** as follows:

The following paragraph under Wildfire Hazards will be **REVISED** as follows:

The PHDSP FEIR found no impacts related to wildlife wildfire hazards since the PHDSP area is not within a

Very High Fire Hazard Severity Zone and there is no terrain or vegetation within the plan area that would be conducive to wildfires. For these reasons, the PHDSP FEIR concluded that no impacts related to wildfire hazards would occur.

Section 5.0, Page 135

The following reference will be **ADDED**:

HortScience | Bartlett Consulting. *Preliminary Arborist Report*. June 2023.

Section 4.0 Conclusion

The comments received on the Draft IS/MND did not raise any new issues about the project's environmental impacts or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the Draft IS/MND. Minor clarifications were added to the text of the Draft IS/MND (refer to Section 3.0 Draft IS/MND Text Revisions). The text revisions do not constitute a "substantial revision" pursuant to CEQA Guidelines §15073.5 and recirculation of the MND is not required.

Attachment A: IS/MND Comment Letters

May 16, 2024

Tiffany Vien, Associate Planner
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050

Re: Comments on the 4590 Patrick Henry Drive Residential Project Notice of Intent to Adopt a Mitigated Negative Declaration

Dear Ms. Vien,

Thank you for allowing the City of Sunnyvale to provide comments on the 4590 Patrick Henry Drive Residential Project Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration. Comments concerning Transportation related to the project are as follows:

1. Based on the existing and proposed land uses, we believe that this project will trigger a Congestion Management Program (CMP) requirement and a Traffic Impact Analysis (TIA) would be required. City of Sunnyvale would like to review the scope for the TIA.
2. Although intersection level of service is no longer a CEQA requirement, the City of Sunnyvale requests City of Santa Clara to evaluate intersections operationally in Sunnyvale using criteria per the VTA TIA Guidelines as a basis. Accordingly, City of Sunnyvale and CMP intersections with ten or more project trips per lane added to any intersection movement should be analyzed. Traffic conditions at the study intersections are typically conducted during the AM (7-10) and PM (4-7) peak hours under existing and future analysis scenarios.
3. Corridor analysis should include Tasman Drive and Lawrence Expressway. The Tasman corridor analysis should cover potential traffic congestion and associated impacts on emergency service access to Sunnyvale neighborhoods. For example, the mobile home park located to the west of Patrick Henry Drive has a single access off of Tasman Drive. Consequently, congestion on Tasman Drive could severely impact access to this mobile home park including access of emergency vehicles.
4. The project site is located near the easterly boundary of the City of Sunnyvale. Relevant approved projects within Sunnyvale and other neighboring jurisdictions need to be included in the study estimates of the Background traffic volumes. This is consistent with the CMP TIA Guidelines. Similarly, pending projects and/or the application of an annual growth rate need to be incorporated in the Cumulative traffic volume estimates in order to reflect the growth in both the local and regional traffic. A current list of approved and pending development projects in the City of Sunnyvale can be supplied upon request.

5. Since this project is just west of the Levi's Stadium, a game day scenario should be included in the analysis.
6. Evaluation of the alternative modes of transportation should be included in this project's traffic analysis. The VTA CMP Guidelines indicate that traffic analysis must include transit facilities in terms of transit service availability, transit capacity relative to the increased demand, impact of increased traffic delays on the service, and the need for transit access improvements. According to the CMP Guidelines, the traffic analysis must also evaluate bicycle and pedestrian facilities in terms of their availability, project effects on future bike/pedestrian plans, and improvements proposed by the project. Maps and information on existing and planned bicycle facilities within Sunnyvale can be supplied upon request.
7. The TIA should identify the individual and cumulative project operational impacts on Sunnyvale facilities, along with associated feasible improvements. It is important to also include the project's full/pro-rata share financial contributions towards the implementation of these improvements to bring the roadways back to acceptable or no-project operational level of service.
8. The Valley Transportation Plan (VTP) on the VTA web site contains a list of regional improvements which shall be included in the cumulative conditions. Similarly, local improvements within the City of Sunnyvale that are already identified in the City's Capital Improvement Program (CIP) and/or in the Sunnyvale Traffic Impact Fee Study shall be included in the cumulative analysis. When utilizing regional and local road improvements as project mitigations, please clarify construction schedule of these improvements relative to the schedule of the development completion.
9. The proposed project is significant in size and is expected to affect the Sunnyvale street system. Following to the CMP guidelines, the City of Sunnyvale is requesting to review the draft TIA report.
10. We would like City of Santa Clara to implement improvements as described in the Tasman Corridor Streets study as prepared by VTA, Cities of Sunnyvale, Santa Clara, San Jose, and Milpitas as part of the 4590 Patrick Henry Drive Project.
11. Impacts to County of Santa Clara facilities should be improved based on projects listed in the County Expressway Planning Study.

Thank you for the opportunity to provide feedback on the NOI to Adopt a Mitigated Negative Declaration for this significant project. We look forward to personally discussing transportation related matters in the near future, as well as other meeting opportunities at key points of the project planning.

Please do not hesitate to contact me if you have any questions regarding my comments. You can reach me by email at itsang@sunnyvale.ca.gov or by phone at 408-730-7556.

Sincerely,

Lillian Tsang, P.E.
Principal Transportation Engineer
Department of Public Works
Cc: Dennis Ng, Transportation and Traffic Manager

Lakewood Village Neighborhood Association

1293 Palamos Avenue

Sunnyvale CA 94089

City of Santa Clara Community Development Department, Planning Division

1500 Warburton Avenue

Santa Clara, CA 95050

ATTN: Tiffany Vien

RE: Notice of Intent to Adopt a Mitigated Negative Declaration

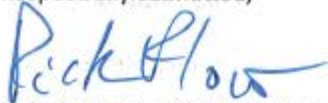
May 4, 2024

Dear Ms. Vien

We are writing to express our extreme displeasure with the prospect of an eight-story monstrosity of an apartment building to be build at 4590 Patrick Henry adjacent to our neighborhood, Lakewood Village, which predominantly is comprised of single-story single-family homes. In this project's own plans in section 4.2.1.3 Heights, Edges, and Transitions, they indicate they will "Use height restrictions and building setbacks along the Calabazas Creek to ensure a more gradual transition between the single-family residential neighborhoods in the City of Sunnyvale", however the proposed plans don't do that in the least. We are the President and Secretary of Lakewood Village Neighborhood Association representing over 1600 homes and have had a number of residents complain to us about this proposed project.

We request that this complex not be allowed to exceed four stories so as to make it a bit more palatable transition to our neighborhood and not have apartments towering over our neighborhood peering into our backyards and windows as much. Hopefully that would also decrease the effects on the wildlife that currently reside in our creek as well. It's bad enough that we have the bright lights of Levi's Stadium shining directly into our neighborhood on a regular basis and we ask that you consider how negatively this will impact our neighborhood and modify the height.

Respectfully submitted,



Rick Flovin, President Lakewood Village Neighborhood Association 650-465-9249 rickster.rf@gmail.com



Rena Flovin, Secretary Lakewood Village Neighborhood Association 408-655-8763 board@lvnasv.org

RECEIVED

MAY 08 2024

PLANNING DIVISION

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PLANNING DIVISION

JOHN C. GORDON

1220 Tasman Dr., SPC 444 Sunnyvale, CA 94089-2422

May 7th, 2024

Re: 4590 Patrick Henry Drive Residential Project

City of Santa Clara

Community Development Department, Planning Division

Attn: Tiffany Vien, Associate Planner; Sheldon S. Ah Sing, Development

Review Officer for Reena Brilliot, Acting Director of Community

Development, City of Santa Clara

Dear Tiffany/Sheldon:

I am writing in regard to and in objection of the 4590 Patrick Henry Drive Residential Project. I believe that there should be no residences built on the Calabazas Creek side of Patrick Henry Drive, at all.

The City of Santa Clara has approved many residential projects along Tasman recently, many are under construction. We have seen multiple proposals for the old Rolm site, all which have thousands of new residents coming to the area. Your letter states that this project "will not have a significant effect on the environment", but I say that having more residents, more vehicles, more noise from the construction is definitely a "significant impact".

I live in the Adobe Wells Mobilehome Community, just across the creek in Sunnyvale. Even though the tower is not directly across the creek, no one here wants any eight-story buildings looming over the neighborhood. If the business buildings along the creek can be maintained however, they would prove as an "environmental buffer" off sorts from the unsightly towers that Santa Clara Planners seems to want to build again and again.

Santa Clara Planning relentlessly approves and builds projects that impact the surrounding cities such as Sunnyvale and San Jose, without regard. All of the new and proposed residences in the immediate area will overwhelm already overused streets such as Tasman and Great America, to feed into the extremely overused 101 and 237 freeways. I would be happy to propose to the City of Sunnyvale to permanently block Tasman Drive and Old Mountain View-Alviso Road at the Santa Clara border, to keep the impacts of their bad decisions out of our city.

I and my neighbors stand in opposition to the demolition of the existing industrial building and replacing it with any residential structures.

Sincerely,
John C. Gordon



Holland & Knight

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Tamsen Plume
+1 415-743-6941
tamsen.plume@hklaw.com

Genna Yarkin
+1 415-743-6990
Genna.Yarkin@hklaw.com

May 26, 2024

Tiffany Vien - Associate Planner
1500 Warburton Avenue
Santa Clara, CA 95050

Re: **Applicant CEQA Comments - 4590 Patrick Henry Drive Project**

Dear Tiffany:

This firm represents 4590 Patrick Henry LLC (the “Applicant”) in connection with its application to construct 284 multifamily residential units in a housing development project (the “Project”) at 4590 Patrick Henry Drive (the “Property”) within the Patrick Henry Drive Specific Plan (“PHDSP”) area in Santa Clara (the “City”). On March 22, 2022, to comply with the California Environmental Quality Act (“CEQA”), the City certified the PHDSP Final Environmental Impact Report (FEIR) and approved the PHDSP project. The intent and purpose of the PHDSP FEIR was to provide program-level environmental review for the PHDSP, while allowing for specific development projects that would implement the PHDSP to tier from the FEIR to avoid redundant environmental review, and focusing only on those issues that would be specific to a given project and site location. Thus, the City prepared a “Focused Initial Study” to study the Project’s specific impacts, which the document also describes as an addendum to the FEIR (the “FIS/Addendum”).

The Applicant provides the following comments on the FIS/Addendum, which are divided into two sections. First, we provide documentation regarding the economic and practical infeasibility of Mitigation Measure Bio(C)-1.1, as well as its too-broad scope, and we make a request for the City to amend the mitigation measure and/or work with the Applicant to ensure the Project will maintain its park fee credit. Second, we request minor revisions to the FIS/Addendum.

1. Infeasibility and Too-Broad Scope of Mitigation Measure Bio(C)-1.1

Calabazas Creek is a concrete channel approximately 95 feet west of the Project site boundary. Under threshold b) of the Biological Resources analysis, the FIS/Addendum explains that in the PHDSP FEIR, the Creek was identified as only “marginally suitable” riparian habitat. Therefore, the FEIR did not address impacts such as shading or encroachment from future projects, which are permitted at up to 12 stories along the Creek. However, Project-specific site visits in August and

September of 2023 detected more significant vegetation along the channel than had been there when the PHDSP FEIR was prepared in 2019.

A 0.14 acre portion of the Project building would encroach within 100 feet of the Creek. This 0.14 acre area is already occupied by concrete with parking spaces in the current condition. Further, the City does not have an applicable Creek buffer policy – rather, the FIS/Addendum assumes that a 100-foot setback is appropriate to study CEQA impacts, based on San Jose and Santa Clara Valley Habitat Plan policies.¹ There is no detailed analysis of whether the Creek needs the same buffer to avoid CEQA impacts, or whether a lesser buffer could be appropriate for CEQA purposes.

The FIS/Addendum concludes that some birds may collide with this portion of the building or may avoid the area. Further, the Project is 86 feet tall to the top of the parapet, and it would shade some riparian habitat during the early morning, but this “shading would not result in a substantial adverse effect on the health of the riparian vegetation.”² Rather, there will be “ample direct sunlight available to the riparian corridor throughout most of the day,” and none of the habitat would be lost.³ Further, the “existing riparian habitat adjacent to the project is of moderate quality (as opposed to high quality) and is not expected to attract a large number of birds”⁴ to begin with, making the potential impact on birds from the 0.14 acre encroachment into the 100-foot assumed-appropriate buffer area more remote.

Because of the moderate quality of the habitat, the already lowered potential for birds to use the area, and the fact that the Project would not harm the health of the vegetation with its shading effects, the FIS/Addendum concludes that the Project alone would not have a significant impact on riparian habitat, and no mitigation is required for the Project.⁵ However, the technical report and the FIS/Addendum then conclude that a potentially significant cumulative impact would occur, and that mitigation is necessary.

Mitigation Measure Bio(C)-1.1 requires that the Applicant provide a native habitat area either on-site or elsewhere on the Santa Clara Valley floor, at a minimum ratio of 1:1 to compensate for the entire 0.14 acre area that is within 100 feet of the creek (even though the FIS/Addendum concludes that none of the 0.14 acre within the Creek setback would be lost as habitat, and the vegetation would not be lost). The measure requires that this area be void of non-native trees, shrubs, and vines, as well as hardscape, and that native trees and shrubs be planted that are appropriate for streamside areas in Santa Clara. The area must also be either contiguous with riparian habitat, or separated from it only by a levee. No lighting is allowed within, or shining directly into the area.⁶

¹ FIS/Addendum Appendix C, page 27.

² FIS/Addendum, page 45.

³ FIS/Addendum Appendix C, page 26.

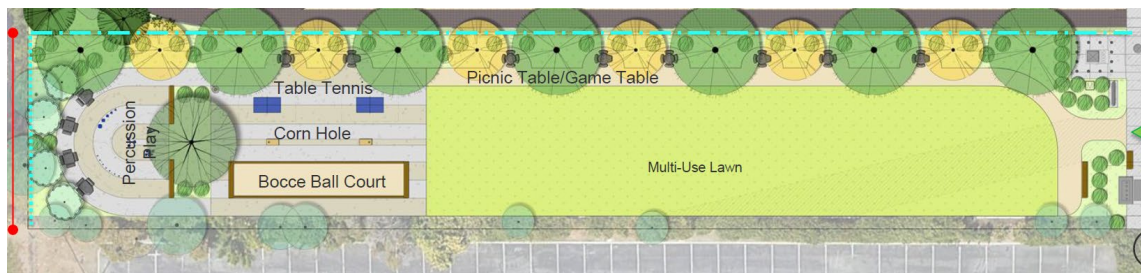
⁴ FIS/Addendum, page 46.

⁵ FIS/Addendum, pages 45-47.

⁶ FIS/Addendum Mitigation Monitoring and Reporting Program, pages 1-2.

The Applicant has investigated the offsite mitigation option extensively, and has not located any land that would qualify. There are no mitigation land banks in the Santa Clara Valley. The Applicant also does not control other qualifying land in the Santa Clara Valley, and it is not feasible to convince another private landowner to encumber their land with an ongoing mitigation obligation, particularly with the further limiting factor that the land must be contiguous with riparian habitat, or separated from it only by a levee.

The Applicant has also explored the onsite mitigation option, and discussed it with City staff. The mitigation measure indicates that the portion of the Project site on the western edge of the proposed public park would be sufficient for this purpose, but that in order to qualify, the currently planned “high-human use areas (such as exercise equipment and picnic tables)” would need to be moved to the east, out of the 0.14 acre area.⁷ For reference, the current design is as follows:



The features of the 0.555 acre park include:

- A lawn area for frisbee, stretching, yoga or quiet enjoyment
- Table tennis
- A pedestrian pathway around the park for walking or jogging
- Bocce court
- Cornhole games
- Picnic and game tables (for chess etc.) around the lawn and pathways tucked under shade trees
- A musical instrument area designed as an activity that is accessible for "all ages and abilities"
- Shade trees
- Benches

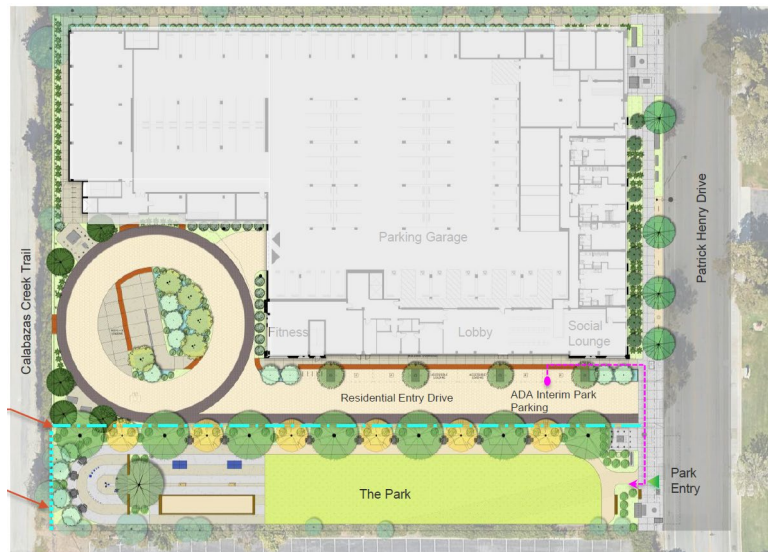
The Applicant has determined that redesigning the park as described in the mitigation measure is feasible from a practical perspective. The active areas could be shifted further east while maintaining all of the park’s above-described features, and the western portion planted as required by the measure. The proposed park would not be open at night, so the no-lighting requirement is likewise not an issue. However, the Parks Department in particular has expressed that if the active elements are moved into the planned “lawn” portion of the park on the eastern side, the lawn would

⁷ FIS/Addendum Mitigation Monitoring and Reporting Program, pages 2-3.

likely no longer qualify as such and the Project may therefore lose its fee credit for dedicating the park to the public, either for the 0.14 acre area or for the entire park. The impact of losing park fee credit is as follows:

- Current Park Fee = \$8,240,564
- If no credit for 0.14 acre mitigation area = \$8,916,764 (\$676,200 added)
- If no credit for entire 0.555 park = \$10,680,956 (\$2.44 million added)

Because dedicating the park is a requirement of the PHDSP, these costs would not be offset by an ability to reabsorb the park area into the Project, but rather would be additive to the cost of providing a public park. The Applicant would be both paying to provide an on-site public park, and paying a full park fee, in addition to absorbing the loss of the development area taken up by the park. The Project site is also constrained by a turnaround for emergency vehicles, as follows:



Likewise, the Applicant has designed the Project to be as dense as possible given the high cost of construction, and cannot increase the height of the Project to offset any further costs because doing so would move the Project into a different and much costlier construction type. **The Project cannot sustain these additional costs in addition to these considerations, and the mitigation measure is therefore both practically infeasible (for the off-site option) and economically infeasible (for the on-site option) as written, unless the City and the Applicant can work further together to maintain the Project's park fee credit.**

In addition to the infeasibility of the mitigation measure, we question whether it is appropriate to conclude that the Project will cause a cumulatively considerable impact, and to require the entire 0.14 acre that is shaded be replaced, with the requirement for no active uses to be present in the mitigation area.

The biological resource technical report indicates that the cumulative impact rises “due to the link of impacts from past, current, and reasonably foreseeable future projects in the region.”⁸ However, it is not always appropriate to incorporate the impacts of past projects, which have already altered the environment, already been studied, and already had mitigation applied to them as appropriate. The condition of Calabazas Creek may be more appropriately understood as an existing environmental condition, which is necessarily already taken account of in the PHDSP FEIR and the Project’s FIS/Addendum, therefore obviating the need for a separate analysis of the effects of past projects. *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 CA4th 889. The impacts of past projects should only be considered to the extent such information is relevant to an understanding of the impacts of the Project considered cumulatively with other pending and future projects, and the discussion “should be guided by the standards of practicality and reasonableness.” *Environmental Protection Info Ctr. V. Dept. of Forestry & Fire Protection* (2008) 44 C4th 459, 525.

Further, requiring the replacement of the entire 0.14 acre without allowing any active human uses in the area, does not take into account that the Project’s contribution to a regionally cumulative impact is incremental in nature, and that the riparian habitat’s existing condition is only moderate to begin with. Further, the FIS/Addendum concludes that the Project’s shading impact would be extremely limited, and there is still “ample” sunlight during the remainder of the day such that the vegetation will not be damaged and the habitat will maintain its usefulness. Rather than requiring that the entire 0.14 acre be replaced at a 1:1 ratio, the mitigation measure could:

- Require a reduced ratio; and/or
- Allow active uses in the on-site mitigation area, which could be found to “achieve no net loss of habitat functions and values”⁹ due to the extremely limited impact the Project is having individually and the incremental nature of the Project’s contribution to a regionally cumulative impact, and the already degraded quality of the habit that would be shaded.

For all of the above reasons, the Applicant hereby requests that the City revise Mitigation Measure Bio(C)-1.1 in consultation with the Applicant and the City’s environmental consultant, to ensure that the measure’s scope is appropriate and that the requirements are feasible. With regard to feasibility, the Applicant hereby requests that the City work with the Applicant to revise the proposed public park to meet the Project’s mitigation needs while maintaining park fee credit.

2. Requests for Minor Revisions

In Section 2.4, page 3: The word “eastern” should be replaced with “western.”

⁸ FIS/Addendum Appendix C, page 29.

⁹ FIS/Addendum Mitigation Monitoring and Reporting Program, page 3.

In Section 2.7, page 3: Given that this section indicates it will include all approvals and the relevant “agreements,” we recommend adding the Vesting Tentative Map, the affordable housing regulatory agreement, and the park agreement

Figures 3.04 and 3.0-5: There are more current versions to replace these with, which the Applicant is enclosing if needed. Please check other figures as well.

Section 4.2.2.1, page 21: The technical report in Appendix A indicates that the analysis relies on the 2022 updates, not the May 2017 guidelines. Update as needed to make correct/consistent (and if 2017 guidelines were relied on, explain why 2022 updates were not more appropriate).

Section 4.4.2.2 significance threshold d, pages 61-62: This discussion indicates that the Applicant must contract with an archaeologist/Tamien Nation representative. However, it is not clear that this is required. Rather, FEIR Mitigation Measure 7-2 first requires contact with CHRIS. The Applicant would like to know whether the City’s consultant has contacted CHRIS to determine whether the site is in a sensitive area, which is the only circumstance that requires a subsequent contract with an archeologist/Tamien Nation representative. The discussion on page 61-62 should be clarified to indicate whether the CHRIS contact has occurred, and if not the MMRP should be made more clear about when this must be conducted.

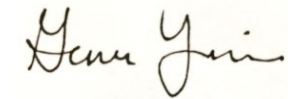
Section 4.9.2.2 significance threshold c, page 126: This analysis indicates that no project would be “approved” until the City determines that sufficient sewer capacity exists. It appears that this should be clarified to indicate that such determination must be made prior to issuance of a building permit, not the land use entitlement, as is indicated earlier in this chapter.

References: Please add the arborist report to the references section.

Thank you for your attention to this matter.

Sincerely,

HOLLAND & KNIGHT LLP

A handwritten signature in dark ink, appearing to read "Genna Yarkin", is written over a light blue horizontal line.

Tamsen Plume
Genna Yarkin

City of Santa Clara, Community Development Department, Planning Division
1500 Warburton Avenue
Santa Clara, CA 95050

Attn: Tiffany Vien

Dear Ms. Vien,

I am a Sunnyvale resident who lives in Lakewood Village, right behind Calabazas Creek, along the boundary between Sunnyvale and Santa Clara. I am writing on behalf of many of my neighbors, who have all signed the attached petition **requesting that the City of Santa Clara and project developers reduce the height of the proposed Patrick Henry Drive Project buildings along Calabazas Creek**. The buildings right in our backyards, along the creek, have unfortunately been zoned to be constructed as high as 12 stories.

The building proposed for 4590 Patrick Henry Drive is scheduled for 8 stories, an incredibly tall building considering the surrounding neighborhood. Neighbors in Lakewood Village are concerned about the impact of heavy construction noise for several years, major traffic implications, buildings that will look down into our backyards, flooding implications (Manzano Way regularly floods during storms), and the environmental impact to wildlife in the creek.

The plans for this development indicated that more would be done to respect the existing neighborhood, but that is clearly not the case:

"Ensure building heights respect and respond to the character of areas adjacent to the Patrick Henry Drive Specific Plan Area while accommodating high-density development.

Locate the tallest buildings in the interior of the PHD Specific Plan Area so that the overall scale of the area decreases as it approaches the PHD Specific Plan Area edges.

Use height restrictions and building setbacks along the Calabazas Creek to ensure a more gradual transition between the single- family residential neighborhoods in the City of Sunnyvale."

The impact of these proposed buildings is truly upsetting to the Lakewood Village neighborhood. Our neighborhood has already been generous to the City of Santa Clara, dealing with increased traffic due to games and concerts at Levi's Stadium (Manzano Way sees many cars parking up and down our street during those events, due to the footbridge that people cross to walk to the stadium). Folks in the neighborhood who have been here since the 1950s, and never protested anything, have signed their names to our petition. To be clear, we

don't want to stop the development, but it seems reasonable that the size of the buildings could be lowered considerably and still provide for plenty of increased housing.

We have several representatives who are willing to sit down with the City and developers to work out more reasonable plans that will benefit both the City of Santa Clara and its Sunnyvale neighbors.

- Some of our requests:
 - Lower the buildings along Calabazas Creek to a height of no more than 4 stories.
 - Position the park areas *along* the creek, behind the buildings, so as to provide more buffer between the neighborhood and the development.
 - Do not allow weekend construction on buildings along the creek.

We look forward to speaking with you on this matter. Thank you for your time!

Best,

A handwritten signature in black ink, appearing to read 'Sarah Jackett', with a stylized, flowing script.

Sarah Jackett

1213 Manzano Way, Sunnyvale CA 94089

sejackett@gmail.com


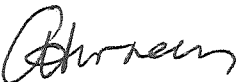
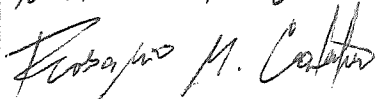

(408) 242-1044

Petition to Lower the Patrick Henry Drive Project Buildings Along Calabazas Creek

The below signatures ask that the buildings being developed along the Calabazas Creek, and closest to the Lakewood Village residential neighborhood, be considerably lowered in height from the proposed 8-12 stories, including the proposed project at 4590 Patrick Henry Drive.

Neighborhood Contacts:

Sarah Jackett sejackett@gmail.com ; (408)-242-1044; 1213 Manzano Way	Rick Flovin (President, Lakewood Village Neighborhood Association) & Rena Flovin president@lvnasv.org ; 1293 Palamos Ave
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Name & Signature	Address (house number and street)	E-mail address	Phone number	Are you willing to attend meetings (such as LVNA, City Council) to help?
Sarah Jackett 	1213 Manzano Way	sejackett@gmail.com	408-242-1044	yes
Christine Hernandez 	1211 Manzano Way	christinehernandez25@yahoo.com	415 860-0292	yes
Brandon Hernandez Brandon Hernandez	1211 Manzano way	blanhern92@gmail.com	408-242-2628	No
ROSARIO CATALAN 	1215 Manzano Way	rm-catalan@yahoo.com	408-242-1023	No
PATRICIA COFFEY 	1219 MANZANO WAY	coffey94089@yahoo.com	408-730-0906	No(?)

Name	Address	E-mail address	Phone number	Are you willing to attend meetings (such as LVNA, City Council) to help share our voices?
LEX WINTERS	1223 MANZANO Way		408 738 2992	NO
Annetta Winters	1223 Manzano way		408 738-2992	NO
BARBARA BROWN	1225 MANZANO Way		408-736-3889	NO
Raj Singh	1222 MANZANO Way		408-373-9945	NO
H. Guilkey	1227 MANZANO Way		408-561-4991	NO
David Ferguson	1227 MANZANO Way		408 736-2813	NO
Reggie Cruz	1253 MANZANO Way		408 712 4972	NO

Name	Address	E-mail address	Phone number	Are you willing to attend meetings (such as LVNA, City Council) to help share our voices? <i>nc</i>
May Thiers	1130 Manzano way Sunnyvale CA 94089	visualtarget@ hotmail.com		
Jean-Michel Thiers	1130 Manzano way Sunnyvale CA 94089	lejeanmi@ gmail.com		no
ALEX MOK	1224 MANZANO WAY SUNNYVALE, CA 94089	HRTABRZBC@ YAHU.COM		NO
CAROL MOK	1224 Manzano Way Sunnyvale, CA 94089	cys1783@yahoo.com		no
JOE DICKENS	1212 MANZANO SUNNYVALE 94089	joedickens@ comcast.net		NO
Roy Santana	1249 Manzano way Sunnyvale, CA 94089	roy.santana@gmail. com		maybe
Sulema Santana	1249 Manzano Way Sunnyvale CA 94089	sulema@ gmail.com		maybe
MANGLIO WALAS	1225 MANZANO WAY SUNNYVALE CA 940	(650) 771-7771		
Billie McNeill	1291 Manzano S'vale 94089	Billie-mcneil@ yahoo.com.		?

Name	Address	E-mail address	Phone number	Are you willing to attend meetings (such as LVNA, City Council) to help share our voices?
ANDREW MAGLIULO <i>Aug</i>	1199 FAIRWOOD AVE	andrew.magliulo@gmail.com	(408) 896-0344	Yes
Esther CHENG Q	1242 MANZANO WY	esc428@gmail.com	408-705-3650	Yes
Timothy Waldrop <i>Tim Waldrop</i>	1215 Oak Creek Way	waldroptim@gmail.com	402-429-7130	maybe
Rosa Waldrop	1215 Oak Creek Way	labellerosa-isela@hotmail.com	(402) 649-7797	maybe
Stanley Ma	1218 St Manzano way	sgma@hotmail.com	(626) 569-8168	maybe
Tao Zhang	1218 Manzano Way	taojms@hotmail.com	(626) 466-7385	Maybe
RATNA MIRCHANDANI	1220 Manzano Way	JAIDEEP@EPIMON.COM	1-919-728-0670	May be
JAIDEEP MIRCHANDANI	1220, MANZANO WAY	JAIDEEP@EPIMON.COM	1-919-728-0670	YES

Name	Address	E-mail address	Phone number	Are you willing to attend meetings (such as LVNA, City Council) to help share our voices?
MICHAEL GRENZ	1242 MANZANO WAY		408-644-3798	
Sarah G.	1242 Manzano			
Anita Cheng	1242 Manzano			
Michael Street	1210 Manzano Way	Michael Street 32@ Yahoo.com		Yes
Aaron Street	1210 Manzano	Michael Street 32@ Yahoo.com		Yes
Qwen Street	1210 Manzano	Michael Street 32@ Yahoo.com		
Gavin Hernandez	1211 Manzano	gavhern52 @gmail.com		
IRENE SZENTA	1146 MANZANO	I-SZENTA@ YAHOO.COM	408-718-7967	YES


Petition to Lower the *Patrick Henry Drive Project Buildings* Along Calabazas Creek

The below signatures ask that the buildings being developed along the Calabazas Creek, and closest to the Lakewood Village residential neighborhood, be considerably lowered in height from the proposed 8-12 stories, including the proposed project at 4590 Patrick Henry Drive.

Neighborhood Contacts:

Sarah Jackett
sejackett@gmail.com; (408)-242-1044; 1213 Manzano Way

Rick Flovin (President, Lakewood Village Neighborhood Association) & Rena Flovin
president@lvnasv.org; 1293 Palamos Ave

Name & Signature	Address (house number and street)	E-mail address	Phone number	Are you able to attend meetings (such as LVNA, City Council) to help?
Abel Hernandez 	1211 Manzano Way		408 408-830-0783	
MICHAEL REYES	1209 MANZANO WAY		408-306-1634	
Daengnuy Reyes	1209 Manzano way	tuky@comcast.net	(408) 306-6562	no
Raja	1166 Manzano way	d.rajarajan @gmail.com	408-839-5693	No.
Ellen Pritchard	1154 Manzano way	pritchardep@ gmail	619-530-2507	No
Russel Beninger	1154 Manzano Way	Pritchardep@ gmail.com	408-739-5855	NO

Name	Address	E-mail address	Phone number	Are you ^{available} to attend meetings (such as LVNA, City Council) to help share our voices?
IRMA Benings	1154 Manzano way	ritchardep@gmail.com	408-739-5855	NO
CELIA SZENTE	1250 SOCORRO		408-410-2340	NO
Jeanne Boudreau	1181 Manzano way	jeanneboudreau31@yahoo.com	(408) 498-2377	NO
Rommel Daw	1181 Manzano way	Rommel Daw SBC CIOBAC.NET	650-669-2600	NO
Teri Watkins	1283 Palamos Ave	watkins163@gmail.com	408-398-5941	NO
TOM Watkins	1283 Palamos	" "	408-398-1328	NO
KEN GREGORY	1271 Palamos	KGREG99@yahoo	408-829-1352	NO

