

**From:** [Hill, Shannon](#)  
**To:** [Colleen Haggerty](#)  
**Subject:** FW: Downtown West Mixed Use Plan Draft EIR (Google)  
**Date:** Monday, January 4, 2021 3:59:13 PM  
**Attachments:** [Downtown West Mixed-Use Plan \(Google\).pdf](#)

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Hi Colleen,

The attached comment letter references BMPs. However, we did not receive the attachment.

Is the appropriate document Attachment F to the "Stream Maintenance Program Update 2014–2023" at the following link? If not, could you please send the referenced attachment?

[https://www.valleywater.org/sites/default/files/2018-02/Att%20F%20BMPs\\_070214\\_CLEAN.PDF](https://www.valleywater.org/sites/default/files/2018-02/Att%20F%20BMPs_070214_CLEAN.PDF)

Thank you,

Shannon Hill, Planner  
Planning, Building & Code Enforcement | Environmental Review Section  
City of San José | 200 East Santa Clara Street  
[Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov) | (408) 535 - 7872

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**From:** Colleen Haggerty <CHaggerty@valleywater.org>  
**Sent:** Tuesday, December 8, 2020 5:04 PM  
**To:** Hill, Shannon <Shannon.Hill@sanjoseca.gov>  
**Subject:** Downtown West Mixed Use Plan Draft EIR (Google)

[External Email]

Hi Shannon,

Attached are Valley Water's comments on the DIEIR for the Downtown West Mixed Use Plan Draft EIR (Google).

Colleen Haggerty, PE  
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Community Projects Review Unit  
Santa Clara Valley Water District  
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File: 33664  
Los Gatos  
X-Fac: Guadalupe River

December 7, 2020

Ms. Shannon Hill  
Planning, Building & Code Enforcement  
200 East Santa Clara Street, T-3  
City of San Jose, CA 95113

Subject: Draft Environmental Impact Report for the Downtown West Mixed-Use Plan (Google Project)

Dear Ms. Hill:

The Santa Clara Valley Water District (Valley Water) has reviewed the Draft Environmental Impact Report (DEIR) for the Downtown West Mixed-Use Plan (Google Project), received by the Valley Water on October 7, 2020.

The Valley Water owns fee title property and easements along both Los Gatos Creek and the Guadalupe River within and adjacent to the project site. The DEIR notes work including, but not limited to outfall relocation, Los Gatos Creek enhancement, a new pedestrian bridge over Los Gatos Creek and replacement of the San Fernando Street bridge. Any work on Valley Water's easement or fee title property will require the issuance of a Valley Water encroachment permit as per Valley Water's Water Resources Protection Ordinance. Issuance of a Valley Water encroachment permit and any agreements with Valley Water, such as Joint Use Agreements, are discretionary acts and require Valley Water to be considered a responsible agency under CEQA.

Please contact me to set up a meeting in January to discuss the timing and approach to obtain required Valley Water permits and agreements as may be applicable. In this way, we can better serve the City and Google in making sure documentation is completed within the timeframes as needed for the project.

Based on Valley Water's review of the DEIR we have provided a comprehensive set of comments in response to the public review document as shown below. The comments address the scope and content of the environmental information relevant to our agency's statutory responsibilities in connection with the proposed project. This EIR will be used by Valley Water



when considering subsequent approvals related to the project. Based on our review of the DEIR we have the following comments:

1. As indicated on page S-68, dewatering is required during construction because shallow groundwater occurs in the project location. Valley Water recommends that the construction dewatering system be designed such that the volume and duration of dewatering are minimized to the greatest extent possible. Valley Water also recommends that a more detailed analysis of construction dewatering be conducted, including estimating dewatering volumes/durations and evaluating related impacts if volumes are expected to be significant. We also recommend that the geotechnical investigation identify the foundation design and waterproofing that will avoid the need for permanent dewatering after construction is complete. This comment also applies to other mention of dewatering activities in the DEIR, including but not limited to Section 3.8, page 3.8-28 and Mitigation Measure HA-3c that describes contractors developing a dewatering plan.
2. It is unclear why the project proposes both a trail along Los Gatos Creek, a minimum of 10 feet outside the riparian corridor, and a boardwalk that would be adjacent to and within the riparian corridor.
3. Figure 2-8 shows a new private roadway along the Guadalupe River. Valley Water has easement over and adjacent to the river in this area and the roadway may require a Valley Water permit, if the use is acceptable. Once more detailed information is available regarding the location of the roadway it should be provided to Valley Water for review.
4. The proposed pedestrian bridge over Los Gatos Creek appears to be located on Valley Water property. The bridge will require a permit and a Joint Use Agreement with the City of San Jose if it will be part of the City trail, otherwise the bridge will require a license agreement for long-term use of Valley Water property.
5. It appears a portion of the text for Footnote 58 on page 2-44 was cutoff. However, a portion of the text notes the City's proposed Los Gatos Creek Trail Reach 5 doesn't include an east side trail as proposed by the project. It is unclear if the multi-use trail and/or boardwalk will be part of the City's trail system or if they will be privately owned and maintained. Trails on Valley Water property need to be public trails owned and operated by the City and a Joint Use Agreement between the City and Valley Water is required.
6. Page 2-38 and other sections of the DEIR note the project includes undergrounding of utilities in addition to installation of new utilities some of which will cross the creeks. If such work occurs on Valley Water right of way a Valley Water permit is needed.
7. Page 2-62 notes the San Fernando Bridge is proposed to be replaced as part of proposed flood control improvements. The replacement bridge is to be a clear span bridge with the soffit no lower than the 100-year water surface elevation. The replacement bridge should also include freeboard as per Valley Water's Water Resources Protection Manual.
8. Page 3.2-3 notes that work is proposed in the upslope habitat adjacent to the Guadalupe River. It is not clear what work is proposed or exactly where the work is proposed; however, Valley Water has easements over the Guadalupe River within the project area and if the work will encroach into the easement a Valley Water permit is required.

9. Regarding the discussion on page 3.2-4, other common wildlife in the area include: *Sciurus carolinensis*, *S. griseus*, and *S. niger*. The following bat species *Tadarida brasiliensis*, *Eptesicus fuscus*, or *Myotis* spp. are more likely to occur in project area than *Corynorhinus townsendii* or *Antrozous pallidus*. Other birds commonly found in the area include: Brewer's blackbird, northern mockingbird, and mourning dove, rock dove. Additionally, *Falco peregrinus* have been known to nest on city hall, which is less than 1 miles from the project site.
10. In reference to the discussion on page 3.2-5, Valley Water began juvenile rearing monitoring on the mainstem Guadalupe River and Guadalupe Creek in 2004. In 2018 sampling expanded to include Los Gatos, Calero, and Alamitos Creeks. During Valley Water sampling from 2004 to present, species observed in the Guadalupe watershed include:

Native: prickly sculpin, riffle sculpin, *O. mykiss*, Sacramento sucker, California roach, Pacific lamprey

Non-native: sunfish (bluegill, green sunfish), common carp, goldfish, largemouth bass, spotted bass, mosquitofish, inland silverside, channel catfish, bigscale logperch, Chinook salmon\*, tule perch\*\* (\*while native to California, there is no data to suggest Chinook were historically present in Santa Clara County, and genetic analysis shows Chinook in Guadalupe watershed are hatchery strays. \*\*Tule perch are regionally native, but is not believed to have been historically present in the Guadalupe watershed).

Non-native pond loach were observed for the first time in Santa Clara County on Los Gatos Creek in 2019. In 2019, non-native fish on Guadalupe River totaled 4.8% and 16.5% on Los Gatos Creek.

11. In regards to the discussion on page 3.2-6, blue heron, great egret, snowy egret, black-crowned night heron, green heron, and mergansers are commonly observed wildlife. Under "mixed riparian woodland" black locust is not native to Santa Clara County. *Juglans hindsii* has been considered non-native by SCVWD in the past because it was believed to have been spread as an ornamental and rootstock for walnut orchards in the county; therefore, it has been classified as nonnative in Valley Water permits. However, recent studies suggest the non-hybridized, native *J. hindsii* is in fact widespread in Santa Clara County. For "other vegetation" this is a little confusing because boxelder is native and the other "other species" are not. Suggest clarifying if the list of native and non-native is a listing of dominant species within the project area and these are other mixed native/non-native species, or include these species with the lists in the previous couple sentences.

12. In regards to the discussion on page 3.2-7, Dave Johnston (H.T. Harvey) conducted a bat survey in the summer of 2008 on the Guadalupe River riparian area just upstream of the project area (from Highway 280 to the RR crossing). Potential habitat was present in large trees, W Virginia Street Bridge, UPRR, and Hwy 280/87 interchange. Only Mexican free-tailed bat and Yuma myotis were detected. It was determined the downtown riparian area is not optimal habitat and there have been a paucity of bat detections. Bats may travel through the area, but potential to roost and forage is very low. Under “special-status and protected species” it is unclear if the bats listed by the Western Bat Working Group (WBWG) are also considered. If they were, suggest including additional *Myotis* spp. under potential to occur. It is also unclear if species covered by the Valley Habitat Plan were considered.
13. On page 3.2-10, the way the special-status species potential to occur section is written, it appears that “low” implies “absent.” We suggest this be clarified in the discussion. If a species has low potential to occur it could still occur, and there is an expectation that the species would be discussed in more detail below. Many of the birds described as having low potential to occur definitely do occur in the area, while most of the other species are probably absent, or very unlikely to occur. Other fish with potential to occur - *Entosphenus tridentatus* and *Oncorhynchus tshawytscha* (pop. 13) are species of special concern (SSC) with potential to occur. *Cottus gulosus* is a SSC known to occur in the upper watershed but not expected to occur in the project area; prickly sculpin (not special-status) could occur in the project area. Under “*O. mykiss*” the DEIR states “historically present,” may want to consider rewording. *O. mykiss* are present in Guadalupe watershed and assume steelhead are still present (passive integrated transponder (PIT) studies show evidence of outmigration), but numbers are probably lower than they were historically. There is potential to occur in the project area in low numbers. Include a reference for the fish surveys referenced from 2014.
14. On pages 3.2-11 through 3.2-13 we have following comments on Table 3.2-1:
  - Birds: consider including *Elanus leucurus*, fully protected, and *Accipiter striatus*, watch list (WL)
  - DEIR states suitable habitat is present for great egret, great blue heron, snowy egret, and black-crowned night heron, but there is low potential to occur because there are no California Natural Diversity Database (CNDDB) records within 3 miles. This statement does not justify low potential for a nesting colony to occur if the habitat is present; egrets are highly mobile. All of these species regularly occur on the Guadalupe River, and there are records of great blue heron (GBHE) and snowy egret (SNEG) nesting colonies from the late 1990s and mid-2000s on Los Gatos Creek at the percolation ponds and Vasona Park.

- Burrowing owl: states "all sites approximately 2.5 miles north of project area." Instead of sites, clarify they are observations recorded in the CNDDDB.
  - Merlin: merlins are rated as moderate potential to occur while peregrine falcon (PEFA) are rated as low potential to occur. PEFA have a greater potential to occur in the project area than merlin. Peregrine falcon: states the species was known to nest 2.5 miles from the project area on a high rise from 2006 to 2015; however, they are also known to nest on City Hall, less than 1 mile from project area, from 2007-2020. The DEIR should justify why the buildings in the project area do not provide suitable nesting habitat for peregrine falcon.
  - Pallid bat: suggest to keep using the term "low" rather than switching to "unlikely"; they mean the same thing. If the intent is to say there is a lower potential for occurrence than "low" species, could use "absent" or "none." Same for Townsend's big-eared bat.
  - Townsend's big-eared bat: if there is suitable roosting habitat for Townsend's bat in the study area, it could be assumed this habitat would also be suitable for pallid bat or is level of disturbance sufficient to exclude both species?
  - Western red bat: it is not necessary to include that the species is "absent from desert areas," as the habitat is not available in the study area. Recommend deleting or clarifying the last sentence, which states "migrants can be found outside."
  - San Francisco dusky-footed woodrat: the species is described as "highly arboreal." Suggest clarifying that ground nests are more common than arboreal nests in Santa Clara County. While habitat seems suitable in the project area, the species is not observed in the area, presumably due to high flows regularly inundating the floodplain. Habitat is also described as being in areas "lacking understory, presence of human encampments, and proximity to roads and residential and commercial development," but the species will nest in shrubs near roads, understory species such as blackberry and poison oak, and frequently occur near trails in open space or near residential areas.
15. On page 3.2-16 under " (Central California Coast) CCC steelhead" barriers to anadromy or passage impediments may also include concrete channelization, high water temperature, and/or intermittent hydrology. Valley Water sampling does not have records for steelhead at four sampling stations in lower Los Gatos Creek in 2018, 2019, or 2020. The species probably has moderate potential to occur in the project area in low numbers.
16. On page 3.2-16 under "western pond turtle" (WPT) it states the habitat is present but low quality; however, non-native red-eared sliders have been observed on Guadalupe River just upstream of the confluence with Los Gatos Creek, suggesting other turtle species could occur where suitable habitat is present. WPT regularly occur on the Guadalupe River upstream of the Alamos drop structure, approximately 5 miles upstream of the project area.
17. On page 3.2-17, under western red bat" they tend to be associated with mature trees such as cottonwood/sycamore riparian, eucalyptus, orchards or other non-native trees, and in

the winter have been found on the ground in leaf litter. They are also more likely to be found in urban areas than other more sensitive species, such as pallid or Townsend's. They are more likely to use the riparian corridor for movement than to occur as a regular rooster or forager in the project area, and they generally have low roost site fidelity.

18. On page 3.2-17, under "hoary bat" this species has also been observed in the county in the spring, not just winter. They are more likely to use the riparian corridor for movement than to occur as a regular rooster or forager in the project area, and they generally have low roost site fidelity.
19. On page 3.2-18, under "Yuma myotis" they are frequently detected foraging over reservoirs in the county at night.
20. The discussion on page 3.2-25 regarding *The Guidelines and Standards for Land Use Near Streams*, notes that through the issuance of a Valley Water "encroachment permit that the guidelines and standards are enforced and tracked." Since Valley Water permits are issued only for work on Valley Water right of way, enforcement and tracking of *The Guidelines and Standards for Land Use Near Streams* is the responsibility of each public agency that has adopted them for work that does not require a Valley Water permit.
21. On page 3.2-33, under "impact analysis" consider including detailed information on additional species including Pacific lamprey, Chinook salmon, sharp-shinned hawk, white-tailed kite, herons/egrets, and peregrine falcon. Yellow warbler was ranked as moderate potential for occurrence in the potential to occur table, but is not listed in the impact analysis section.
22. On page 3.2-33 under "special-status fish" viewing platforms constructed over water could create habitat favorable for non-native fish and prevent use by special-status fish such as steelhead, and reduced light penetration can impact growth of aquatic plants, leading to reduced food availability. If constructed over water, at least 50% of the float surface should be composed of grating containing at least 60% open space surface. Ramps should be 100% grated to allow light penetration and not exceed 5 feet in width. Decks should not exceed 10% of the stream width from the ordinary high water mark. Pilings should consider deterring potential for roosting by piscivorous birds, which could increase predation on special-status fish. Materials used should not be known to release toxins into the aquatic environment (e.g., treated wood). Consider the potential for waterbirds (e.g., ducks, herons, egrets) and WPT to avoid these areas due to increased human presence.
23. On page 3.2-34 regarding the potential to release chemicals present in the sediment into the water column, legacy mercury from mining operations is an issue in Guadalupe River and sediment may contain high levels of mercury. Consider the potential for impacts to the food chain, as well as testing for removed sediment and/or a sediment management plan, as well as potential implications to human health and safety.



24. On page 3.2-34, consider the potential for effects due to vibration or noise on special-status fish, as well as the effects of dewatering and relocation to fish and their habitat (*e.g.*, stranding/injury/mortality, channel scour, reduced or diverted flows). Would any trees be removed for access and/or construction, and is there potential for slash *etc.* to enter creeks or a reduction in stream shading?
25. On page 3.2-34 to further minimize potential impacts as a result of the project, we recommend implementing the attached general Best Management Practices (BMPs), which are typically incorporated into Valley Water projects.
26. On pages 3.2-35 and 36, under "mitigation measures" we have the following comments:
  - Measure BI-1, in addition to the riparian corridor and in channel, special-status species could be present in or on buildings (*i.e.*, roosting bats, peregrine falcon) or in trees outside of the riparian area (*e.g.*, landscape trees or shrubs) if present (*i.e.*, nesting birds, roosting bats).
  - Define the term "qualified biologist" the first time it is used.
  - Regarding the need for a biological monitoring for all construction-related work within the riparian area or channel, full-time monitoring may not be necessary for all activities given the habitat quality in the project area (for both Los Gatos Creek and Guadalupe River). If dewatering, a biologist should survey the area before dewatering to ensure no special-status fish are in the area, and monitor while the dewatering system is installed. The biologist should check periodically to ensure no fish are stranded as the area dewater. If dewatering is not occurring, a biologist may be onsite to monitor, including monitor water quality downstream. If turbidity exceeds a certain percentage of baseline levels, the biologist has the authority to stop work until levels return to baseline. Work should occur outside the steelhead migration period. For riparian areas, a bio-clearance survey is probably sufficient before work occurs; a monitor may be required if there is a specific need (for example, an appropriate no-work buffer cannot be maintained around an active bird nest).
  - If the area can be marked off, a full-time bio-monitor should not be necessary for within 20' of the creeping wild rye area. If work is occurring in the creeping wild rye area, a biologist may be needed to ensure work stays in appropriate areas.
  - For ease of reporting, I would recommend recording compliance activities daily, but submitting weekly (or more frequently as requested). Valley Water requests a copy of compliance reports and construction activities occurring near creeks be submitted to Valley Water on a monthly basis.
  - The training should identify "types of sensitive biological resources with potential to occur in the project area." The examples include "salmonids," but recommend changing to "special-status fish."

- The mitigation measure states that the discharge of water from the construction site to Los Gatos Creek or the Guadalupe River is prohibited if the temperature of the discharged water exceeds 22.2°C, unless modeling and monitoring demonstrate discharge would not increase the maximum daily stream temperature above 24°C. However, Los Gatos Creek is on the 303d list for temperature impairment. Both Los Gatos Creek or the Guadalupe River exceed 22°C under existing conditions in normal years. We recommend that the discharge should not exceed some percentage of baseline.
27. On pages 3.36 to 39, Mitigation Measure BI-1b: for in-water work, clarify for which activities, if any, the channel will be dewatered (as opposed to work occurring in the flowing channel).
28. On pages 3.36 to 39, Mitigation Measure BI-1c: the fish relocation plan should be written by a qualified biologist and approved by CDFW and/or NMFS (as opposed to any contractor for any construction work).
29. On pages 3.2-39 to 40, under “western pond turtle” additionally the use of weed-whackers, mowers, *etc.* could cause injury or mortality to WPT in the upland areas and vehicle traffic could also crush individuals or nests if not kept on established roads.
30. Mitigation Measure BI-1d, page 3.2-39 to 40, to prevent entrapment of animals, we suggest all excavations, steep-walled holes or trenches more than 6-inches deep will be secured appropriately against animal entry at the close of each day.
31. Under “nesting birds,” page 3.2-41, impacts could result from the “removal of trees and vegetation and/or demolition of buildings,” as well as bridges. Additionally, operational/long-term activities that could indirectly impact nesting and the DEIR should clarify that the removal of trees/snags could reduce future potential nest sites. The increase in human activity could result in fewer nesting attempts, as well as and reduce the area suitable for birds to nest in, including raptors, which may be more sensitive to human disturbance. An increase in food-related trash could attract American crow, as well as predators such as raccoons, rats, or feral cats.
32. Mitigation Measure BI-1e, page 3.2-42, work should be scheduled, including vegetation removal, to avoid the nesting season when feasible.
- Note January 15 to September 1 is the standard nesting bird season in permits issued to Valley Water instead of February 1 through August 15 as noted in the DEIR; Anna’s hummingbird (ANHU), for example, tend to nest early.
  - Recommend nesting bird surveys occur no more than 14 days before work in a given area for the entirety of the breeding season. The biologist should inspect trees and other possible nesting habitats including buildings, bridges, shrubs, grass, and bare ground/gravel (vegetation, anthropogenic structures, and other habitats which could provide nesting substrate for birds).

- Clarify if the buffer zone will be marked in the field and by what methods.  
Recommend re-surveying if construction ceases for 14 days or more during nesting bird season.
33. Regarding the discussion on page 3.2-43, special-status bats could also be present in bridges (in addition to buildings or crevices).
- Removal or pruning would be impactful even if a bat was not in a "mature" tree; while mature trees may be preferred, bats will use what is available as needed including smaller stature trees, other vegetation (*e.g.*, cattails), snags, wood piles, or leaf litter.
  - Hoary bat and Yuma myotis are not listed species, but common bats are protected under Fish and Game code (non-game species).
  - In addition to road overcrossings, buildings, and mixed-riparian woodland, bats could also occur in landscape trees in the study area.
  - Clarify winter torpor (generally Oct 16 - Feb 28) and maternity (April 15 - Aug 31) seasons.
34. The discussion on page 3.2-44 should note that bats are active September 1 to October 15. We recommend coordinating with CDFW or a qualified bat biologist to determine an appropriate buffer in the event a roost is found rather than implementing a set buffer distance. Additionally noise attenuation and frequency may need to be considered.
35. In addition to replacing chain-link fencing with wildlife-friendly fencing, page 3.2-45, the project should consider completely removing fencing where it is not needed.
36. On page 3.2-45, under "Essential Fish Habitat" the DEIR states that increases in water temperature could result due to loss in riparian cover. Please clarify whether this impact would be temporary or permanent. Please note if the area would be large enough to have a significant impact on water temperatures and how much of an increase over what area is expected
37. On page 3.2-46 under "riparian habitat" the pedestrian-only paths also have potential to impact WPT basking or nesting birds. The first paragraph states "outside of the riparian setback, vertical and horizontal additional would be permitted..." in which "additional" is a typo. Please correct for clarity. The second paragraph states plantings will be "primarily" native; the project should use all native species consistent with existing native vegetation in the reach and the Guidelines and Standards Design Guides. Grasses, shrubs, and trees to improve habitat complexity, where feasible and appropriate should be considered.
38. Page 3.2-47 notes that overlook/viewing platforms are proposed within the riparian corridor, such improvements should be minimized and not over hang the creek bank.
39. Regarding the discussion of potential permanent or temporary impacts on pages 3.2-47 to 48, we have the following comments:

- For the multi-use trail please indicate if there is the potential to use permeable or semi-permeable surface materials (*e.g.*, decomposed granite).
  - Placement of the creek overlooks/viewing platforms have potential impacts to basking WPT or nesting/foraging birds, as well as shading of open water.
  - When reconstructing the storm drain outfall please clarify the need for a 20 foot buffer when wild rye will be directly impacted.
  - Removal of large woody debris has potential effects to special-status fish species and WPT (removal of habitat complexity features), and this is not discussed above. Removal of live trees and snags can have impacts to birds and bats (reduced nesting/roosting habitat).
  - Other potential impacts on riparian habitat include: potential to increase spread of invasive/non-native plant species through materials, equipment, or foot traffic (temporary during construction); trampling of vegetation outside of the defined project area (temporary); spread of non-native/invasive species by increasing human encroachment and traffic into the riparian area (permanent); spread of plant pathogens via nursery stock (permanent); potential for introgressive hybridization (*e.g.*, London plane tree and western sycamore) (permanent); reduction in nesting/roosting habitat through tree removal (permanent if trees are not mitigated for).
  - Elaborate on the potential impacts as a result of shading open water (*e.g.*, decreased food production, *etc.*). The discussion should note if there could potentially be some benefit such as cooling water temp.
  - Clarify whether there will be an increase or decrease in shading of 240 sf open water.
40. Page 3.2-49 notes an outfall on Los Gatos Creek will be relocated, but the DEIR is unclear about the current location and the proposed location. If the outfall is located on Valley Water fee title property or easement a permit will be required for the removal of the existing outfall and/or installation of the new outfall.
41. The discussion page 3.2-49 should state the options being considered for creek enhancement mitigation for shading impacts.
42. On page 3.2-49 under “lighting and noise” should also note that riparian corridors also provide a source of large wood to creeks.
43. Under “operational impacts” the discussion on page 3.2-49 should note the footbridge could also impact vegetation (reduce area where trees can grow, impact root system of existing vegetation, increase spread of non-native species, erosion, improved predator access, *etc.*).
44. Page 3.2-49 and 3.2-51 notes that 1:1 mitigation for permanent impacts to the riparian habitat due to the project is proposed. Typically, mitigation ratios of 3:1 are required and possibly higher if the mitigation cannot occur on-site. The proposed pedestrian bridge is

proposed on Valley Water property. Please note that Valley Water property is reserved for mitigation of Valley Water projects due to Valley Water's significant on-going mitigation needs.

45. The mitigation and monitoring plan described on page 3.2-51 should require the use of watershed specific plantings for plants used for mitigation of riparian impacts to protect the integrity of the existing local ecotypes. The District strongly recommends that project planting follow the *Guidelines and Standards for Land Use Near Streams* which was developed by Valley Water, cities (including San Jose) in Santa Clara County, and the County in collaboration. Design Guides #2 and #4 of the *Guidelines and Standards for Land Use Near Streams* promote use of local ecotypes of native species since they are best adapted to the project site. Local ecotypes are not sourced at conventional nurseries nor are they available in large container sizes. Local ecotypes for this project would be grown from propagules collected from parent plants growing in the Guadalupe watershed as close to the project site as possible. Because the site is adjacent to existing native vegetation and Valley Water has watershed specific mitigation sites are downstream of the project, we request that local ecotypes be specified for this project. Additionally, landscaping for aesthetic purposes should conform to Design Guide 3.
46. Page 3.2-51, staging of materials should only occur on areas which have already been disturbed to the extent feasible.
47. Page 3.2-51, notes the goals for restoration compensation sites include 70% of baseline native vegetation cover by year 5; however, the first goal is that temporarily affected areas are returned to pre-project conditions or better. It is not clear if these goals are consistent and if there monitoring after year 5 to ensure habitat quality goals are met.
48. The discussion on page 3.2-52 regarding the trail, boardwalk, viewing platforms, and fencing should note that species may avoid use of the area around the multi-use trail, pedestrian boardwalks, and viewing platforms or keep a wider buffer; there may be a reduction in nesting/roosting habitat due to tree removal as well as buffer distance from disturbance (avoiding trees near the pathway); disturbance to basking WPT (decreased basking time or potential decline in suitable habitat) may occur; and increased human traffic in riparian corridor increases risk for spread of invasive, non-native species.
49. Page 3.2-52, elevated boardwalks still reduce area where vegetation can establish and they can fragment habitat. Maintenance of vegetation along the boardwalks in or near riparian areas occur should be included in the discussion (long-term maintenance).
50. On page 3.2-52 under "lighting and noise" it states throughout document that work will occur from 7am to 7pm and therefore will be during daylight hours and there will be no impact on wildlife from nighttime lighting. In the winter it is dark before 7pm and much of the work is supposed to occur outside of nesting bird season. Where no nighttime lighting is stated, please indicate if seasonality in which the work will occur taken into consideration/ when daylight hours will actually occur.

51. The discussion on page 3.2-55 states that any temporarily impacted areas will be restored to pre-project conditions through revegetation and monitoring. There should be a detailed plan for revegetation. Impacts associated with removal of the existing bridge supports would include re-suspension of sediment. If work will occur in the active channel, the DEIR should note the work season and biomonitor requirements, and potentially water quality monitoring. Otherwise the methods that will be incorporated to reduce this potential impact (*e.g.*, dewatering or isolating the work area) should be described. To potentially reduce the stated impact to 0.07 acres of riparian vegetation for excavator and crew access during construction, there should be a discussion if there is the possibility to use existing paths (*e.g.*, related to homeless encampments) to reduce impacts to vegetation as a result of the project.
52. On page 3.2-61, the statement “would result in increased stormwater being discharged into Guadalupe Creek,” should reference the Guadalupe River, not Guadalupe Creek.
53. On page 3.2-62 under “lighting and noise” the DEIR states pile drivers will be used. If pile drivers will be used for the bridges, acoustic impacts on fish need to be discussed.
54. Regarding thermal radiation from proposed structures, the discussion on page 3.2-63, should include consideration for green roofs.
55. Page 3.2-64, additional impacts on instream habitat that may result from loss of riparian cover include decrease in woody vegetation input to creeks/reduction in habitat complexity (in addition to fish, this also impacts WPT).
56. On page 3.2-64 regarding aquatic insects which feed on leaves and woody material or terrestrial insects falling in the creek, there is some evidence that steelhead can tolerate higher temperatures in areas where they are adapted to those condition. However, this ability may be dependent on sufficient/increased prey availability. There could be potential that a decrease in prey availability could affect any of the few steelhead which do or could occur in Los Gatos Creek.
57. Page 3.2-67 should include a discussion of whether more than one temperature logger should be considered upstream and downstream of the project area in the event that conditions change at one of the sites over the course of 15 years (*e.g.*, new construction). There is also potential for loggers to be stolen, which happens often, or water levels to drop and loggers be out of water. Mitigation Measure B1-2c should specify how many years prior to project construction water and ambient air temperature will be collected.
58. Page 3.2-67 notes that Mitigation Measure B1-2c- Monitor Effects of Shading and Heat Island on Riparian Vegetation and Stream Temperature, includes development and implementation of a Habitat Enhancement Plan to plant within the creek is performance criteria are not met. Please note that mitigation on Valley Water property is reserved for Valley Water projects. However, if the work will occur on sections of the Guadalupe River

that are outside of Valley Water property, Valley Water as the local sponsor of the USACE improvements constructed on the river will still need to review the proposed work.

59. Mitigation Measure BI-2c, page 3.2-67 to 69, states “Loggers at these three locations shall record hourly water temperature values before, during, and after project construction. If the difference in water temperature between the upstream and downstream monitoring locations increases substantially over time, particularly above the threshold of concern (71.6 degrees F), then additional adaptive actions shall be implemented...” Please define “substantially” and at what temperature which actions are triggered. Specify if the triggers will be based on an instantaneous reading, or an average over some given time in a particular season (*e.g.*, migration season). Consideration should be given to adaptive action based on increases of a certain percentage above baseline conditions as opposed to the 22 degree C threshold, given existing conditions.

Under “riparian monitoring” include a discussion of whether the two criterion identified here are sufficient to determine that post-project conditions are similar to or better than existing conditions.

Valley Water will need to review and approve the 15-year Riparian Vegetation Monitoring Plan and reports, as well as the Habitat Enhancement Activities, for all areas on Valley Water right of way.

- Non-native species should be based on California Invasive Plant Council (Cal-IPC) and the Valley Water’s Invasive Plant Management Program list.
  - Shade-tolerant riparian vegetation selected for the planting palette should be based on nearby reference sites.
60. On page 3.2-70 under “impacts of creek/habitat flow conveyance enhancements, construction impacts” states removal of seven live trees, non-native and native, to occur. The analysis should discuss why it not possible to meet these goals strictly though the removal of non-native trees. It would be useful to have a table showing the measurements of each piece of wood (logs, logjams, *etc.*) and live and dead trees by species and the justification for removing each individual piece. The DEIR states “the removal of dead trees would be mitigated at a ratio of 1:1.” Removal of large, in-stream vegetation should be mitigated for as standing dead trees provide habitat for birds and bats. The project proposes to install approximately five engineered habitat enhancement log structures, but it is unclear if this is sufficient to mitigate for the structure currently provided by 15 in-channel logs and three logjams. Bio-engineering techniques should be considered.
61. On page 3.2-81 under “native wildlife nursery sites” states “birds such as herons and egrets that nest in groups are not documented to nest in the Los Gatos Creek riparian corridor.”

Great blue heron and snowy egrets were documented nesting in Los Gatos Creek County Park at the percolation ponds in the late 1990s, and GBHE in Vasona County Park in 2007.

62. On page 3.2-81 under “antennae, monopole structures, and rooftop elements” bridge design should also consider birds (*e.g.*, avoid wires or cables) to prevent collisions.
63. On page 3.2-89 under “nesting birds and special-status bats” the first sentence should include bridges, in addition to removing vegetation and demolishing buildings during construction.
  - Page 3.2-90 under “sensitive natural communities and state or federally protected wetlands”
  - The DEIR states temporary impacts could result from construction of the boardwalk within creeping wild rye habitat. Clarify why the boardwalk alignment cannot avoid the creeping wild rye habitat.
  - States permanent removal of riparian habitat for the new footbridge would increase shading. Consider strategically locating the bridge so that it is either going to be shaded anyway (*i.e.*, by new buildings), or in an area where removal of mature, native trees is either minimal or not required to minimize or eliminate impacts.
  - Avoid removal of native, especially mature, trees to the extent feasible, and protect standing snags to the extent feasible.
  - Under mitigation measures - WPT surveys should also be conducted in suitable habitat.
64. Page 3.2-87 notes the project proponent would request an exception from the City to the Habitat Conservation Plan 100-foot riparian setback. Page 3.2-34 notes the riparian setback is proposed to be 50--feet in most cases and 30-feet along the Guadalupe River. However, in the case where existing buildings are located within the setback area, the project proponent may replace those buildings in place. This large development provides a unique opportunity to give the creek additional space and provide the natural functions of a creek and Valley Water strongly supports maximizing the riparian setback to the greatest extent possible. Riparian corridors provide benefits such as flood risk reduction, ameliorate hydrologic impacts, provide stream maintenance access, provide space for natural riparian vegetation and buffers, and allow greater connectivity for residents to the natural environment.
65. On page 3.2-91, in addition to minimizing disturbance to wetlands, mitigate to ensure no net loss. Under “wildlife corridors” nighttime lighting and human disturbance can significantly reduce habitat quality for roosting bats, as well birds. Bats likely use the riparian corridor for migration/movement and potentially forage over water or at the forest edges. Lighting at forage edges can reduce use for movement or foraging, or effect emergence behavior. Predation on bats could increase in urban areas. Lighting could influence prey distribution of insectivorous bats. Consider education of occupants on night impacts on bats, in addition to birds.



66. Historically, subsidence occurred over large parts of the county, including San Jose, where 13 feet of subsidence was observed over several decades. This non-recoverable subsidence caused by the long-term overpumping of groundwater is very different than elastic land surface changes or localized settlement. Since many are familiar with permanent, historical subsidence, it may be helpful to instead use the term “settlement” on page 3.5-7, Geology, Soils and Paleontological Resources, for consistency with other sections of the DEIR. At a minimum, we suggest revising the following sentence: “Subsidence should be minimal and only occur during dewatering for construction.” As written, this sentence may imply a similar type or degree of subsidence may happen during the dewatering for construction.

We recommend the following replacement text:

“Subsidence is not likely because the dewatering for construction will occur in the shallow aquifer zone and for a short duration. Historical subsidence has occurred over broad areas of northern Santa Clara County including San Jose prior to the 1970s because of groundwater pumping largely from the principal aquifer zone, not the shallow aquifer zone. Temporary dewatering from the shallow aquifer zone for construction is not anticipated to cause subsidence.”

67. Section 3.7, Hazards and Hazardous Materials, Valley Water recommends Phase II investigations at 573 West Julian Street (auto repair and other industrial uses) and the Diridon Rail Station parking lots (former dry cleaner) to assess soil and groundwater conditions.

If not already completed, Valley Water recommends that all Phase II investigation results indicating the presence of contamination be shared with the San Francisco Bay Regional Water Board to determine if further investigation and/or clean-up is warranted to protect groundwater resources.

68. We suggest revising the following sentence on page 3.8-2, “In drought years, however, up to 90 percent of the water has been imported to serve municipal demand<sup>7</sup>.” The previous sentence was about the Santa Clara Valley and the entire county. This sentence in question is about municipal demand from the City of San Jose, not the entire county. We recommend the following replacement text: “In drought years, however, up to 90 percent of the water serving the City of San Jose’s municipal demand has been imported <sup>7</sup>.”
69. We suggest revising the following sentence on page 3.8-2 “Key issues of concern in the subbasin are land subsidence caused by past groundwater overdraft, and saline intrusion into groundwater through tidal channels near southern portions of San Francisco Bay”. We recommend the following replacement text: “Key issues of concern in the subbasin are land subsidence caused by historic groundwater overdraft prior to the 1970s. The subsided land surface contributed to the tidal incursion of salt water into the shallow groundwater zone near the southern portions of the San Francisco Bay”.

70. Page 3.8-19 notes that FEMA determines base flood elevations and floodplain boundaries based on USACE studies. While this is true for areas along the Guadalupe River where the USACE completed flood protection improvements, FEMA's determination of flood hazards is based on a variety of sources including FEMA studies, USACE studies, and Valley Water studies. Most of the FEMA mapping along Los Gatos Creek is not based on USACE studies.
71. Page 3.8-17 discusses Valley Water's Regional Water Quality Control Board Waste Discharge Requirements as it pertains to Valley Water's Stream Maintenance Program (SMP). The discussion notes the permit is up for renewal this year; however, please note that this permit was re-issued earlier this year and is currently in effect. It should also be noted that this is only one of many regulatory permits that Valley Water holds for its Stream Maintenance Program. The proposed channel maintenance proposed by the project, if agreed to by Valley Water, would be subject to all the appropriate regulatory permits not just this one.
72. In the Hydrology and Water Quality Regulatory Framework section 3.8.2, we suggest adding the following text about Valley Water's well ordinance to discussion of the local regulatory framework: "Permits for well construction and destruction work, including exploratory boring for groundwater exploration, and projects within Valley Water property or easements are required under Valley Water's Water Resources Protection Ordinance and District Well Ordinance."

In addition to Valley Water's Well Ordinance, we recommend adding the following text about abandoned wells. "Due to the long agricultural history of the Santa Clara Subbasin, and subsequent land development, there are likely many abandoned wells in the subbasin. While some of these abandoned wells may have been sealed prior to well permitting requirements, many have open casings and may be discovered during project construction. It is not uncommon for these wells to have significant artesian flow, which may impact dewatering and construction activities. If encountered during the proposed project, abandoned wells must be properly destroyed, with related work permitted by Valley Water."

73. On page 3.8-14, we suggest adding to the paragraph regarding the description of the Groundwater Management Plan the following sentence: "In July 2019, California Department of Water Resources approved Valley Water's Alternative GSP, confirming it satisfies SGMA objectives for sustainable groundwater management in both basins."
74. Page 8.2-26 notes that the replacement of the 18-inch diameter outfall with a 33-inch diameter outfall in Los Gatos Creek would include abandonment of the outfall in place. The outfall including any headwalls, pipe, bank protection, etc. need to be removed and the bank restored to its original condition. If the existing or replacement outfall is on Valley Water right of way a Valley Water permit will be required for the work.

75. The discussion on page 8.2-27 of the creek maintenance work notes that the project proponent would apply for coverage under Valley Water's water quality certification permit for the SMP. As noted above this is not the only permit that covers this type of work and as issued this permit does not provide coverage to any entity except Valley Water. Additionally, Valley Water has not made any determination whether this proposal is acceptable to Valley Water or what type of arrangement with the project proponent would be required if Valley Water were amendable to this proposal.
76. The DEIR includes two mitigation measures, HY-3a (flood risk analysis and modeling) and HY-3b (plan for on-going creek maintenance), for many of the impacts analyzed in the Hydrology and Water Quality section and in some instances they are the only mitigation measures proposed to reduce an impact to less than significant. However, there are elements of HY-3a that require Valley Water approval and HY-3b cannot occur without Valley Water approval as the work proposed for HY-3b would occur on Valley Water property.

MHY-3b proposes to remove various existing logjams, woody debris, and vegetation from Los Gatos Creek on Valley Water property to improve flood conveyance capacity and replace the logjams with engineered woody debris and include a plan for maintenance of the creek to maintain vegetation to a lower "n" values and keep the creek clear of logjams, woody debris, dead trees etc. Valley Water has significant mitigation obligations required by the various state and regulatory agencies in order to maintain existing flood protection improvements, protect property from flooding and bank failures, and for new capital improvements; therefore, Valley Water property is reserved for Valley Water mitigation needs/projects. Additionally, it is not clear that the proposed creek maintenance plan is sustainable as it appears to assume that maintaining the creek will require minimal mitigation; however, that may not be an appropriate assumption as Valley Water's current Stream Maintenance Program has a significant mitigation component for everything from bank repairs, removing wood debris to pruning and removal of vegetation, particularly in a relatively natural salmonoid creek such as Los Gatos Creek. Due to the permitting and mitigation requirements this may not a sustainable way to mitigate for flood impacts in perpetuity. It also does not take into account changes in regulatory requirements that may make continual creek maintenance more difficult in the future into account.

Additional discussions with Valley Water are required to determine if the proposed creek work can occur and additional studies to understand the hydraulic impacts will be required. The project proponent should look to complete creek restoration work and mitigation on property not owned by Valley Water.

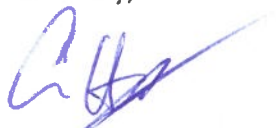
77. Page 3.8-37 notes that if the project includes channel rehabilitation then the project proponent will within 30 days of completion of the initial creek work submit a plan for the ongoing maintenance of the affected creek reach for Valley Water and City approval. If Valley Water allows the creek work, the plan for ongoing maintenance would be required to

be completed as part of the initial creek work, not after. If the creek work were allowed there would need to be a comprehensive review of all the work elements and permits and agreements from Valley Water and the regulatory agencies would need to be in place before any work could occur.

78. The Water Supply Assessment (WSA), Appendix H1, shows that a 40% demand reduction would be necessary in the third year of a multi-year drought. However, the WSA concludes that there would be adequate supplies available to serve the project through 2040 with no more than a 20% demand reduction during droughts. Please clarify the discrepancy between the need for a 40% reduction in the tables and the conclusion that adequate supplies will be available.
79. Page 3.14-46, Utilities and Service Systems, notes that a section of electrical lines to be placed underground will crossing the Guadalupe River. Work to place the lines under the river will require a permit from Valley Water if it is located on Valley Water right of way or if it is located within the limits of the Army Corps of Engineers Downtown Flood Protection Project.
80. Appendix D2, Creek Enhancement Report, only describes the one-time work to remove some vegetation, logjams, etc. and does not address the issue mitigation for on-going maintenance to maintain the "n" value for the creek to mitigate the flood impacts. The analysis. Current Valley Water permits to conduct creek maintenance require mitigation for more than removal of native vegetation, including work such as pruning, removal of dead trees, etc.; and therefore, this proposal may not be a sustainable mitigation measure.
81. Appendix H2, Hydrology and Flood Control Measures, notes that the proposed on-going creek maintenance would reduce the "n" value; however, it is not clear to what "n" value or range would be required to be maintained in perpetuity in order to mitigate flood impacts of the project.
82. Appendix H2, Hydrology and Flood Control Measures, page 8 notes that 14 parcels would be removed from the Special Flood Hazard Zone A, if no bridge or channel work is completed; however, page 6 states that 13 parcels would still remain in Zone A.
83. Appendix H2, notes that coordination has been occurring with Valley Water regarding the channel work; however, that coordination has been related to how such work would impact the flooding, not necessarily how this work could be accomplished or how it could impact Valley Water's existing and current mitigation obligations.

If you have any questions or need further information, you can reach me at [chaggerty@valleywater.org](mailto:chaggerty@valleywater.org) or at (408) 630-2322.

Sincerely,



Colleen Haggerty, P.E.  
Associate Civil Engineer

Ms. Shannon Hill  
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December 8, 2020

Community Projects Review Unit

Enclosure: Valley Water Standard Project BMPs

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