

April 14, 2026

Honorable Mayor and Members of the City Council
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086

Re: CalWater Well Reactivation Project — EIR Certification and Conditional Use Permit

Dear Honorable Mayor and Members of the City Council:

I write as a twenty-year resident of the Eichler neighborhood surrounding the California Water Service Company ("CalWater") property at 800 Carlisle Way in Sunnyvale, California. I have raised a family in my home on this street. By profession I am a Stanford-trained psychiatrist, which has developed my ability to identify logical inconsistencies and detect disingenuous statements.

These letters concern the pending Conditional Use Permit application and Environmental Impact Report ("EIR") certification before this Council. The Planning Commission certified the EIR *with several commissioners expressing doubts and hesitation*. I submit that the hesitation was well-founded, and that the record before this Council raises serious legal and factual concerns that must be addressed before any vote on certification or permit issuance.

This is the first of several letters I intend to submit. It addresses the documented history of the well's permanent destruction, the regulatory compliance obligations that arose from that destruction, the legal status of CalWater's subsequent use of the site, the character of the neighborhood, and the City's longstanding and reaffirmed land use preferences for this area.

I. The Well Was Permanently Destroyed on July 26, 2016

According to CalWater's records, the well at this property was permanently destroyed on **July 26, 2016** (note that some documents say July 27, 2016). The destruction involved the placement of 36 cubic yards of sack cement (the equivalent of eight to ten concrete mixer trucks), filling the well to a depth of **700 feet**. This volume and depth are consistent with a large-diameter deep production well penetrating multiple aquifer layers of the Santa Clara Valley groundwater basin. This was not a temporary shutdown, a maintenance closure, or a precautionary decommissioning. It was a permanent physical destruction of the well using a quantity of cement at a depth that renders any notion of reactivation physically impossible. If the well was irreparable, it is immaterial. Reaching

the same aquifer depth would require entirely new drilling, making any new well at this location new construction, not a reactivation of an existing facility.

The depth of the destroyed well, 700 feet, does not appear in the EIR. This omission is significant. The depth of the original well is directly material to multiple analyses the EIR is required to address, including groundwater impacts, the degree of aquifer penetration and potential inter-aquifer connectivity, compliance with the Sustainable Groundwater Management Act, and the alternatives analysis. An EIR that does not disclose the depth of the well being replaced cannot adequately analyze whether a new well of equivalent depth at this location is the least environmentally damaging alternative, or what its impacts on the deep confined aquifers of the Santa Clara Valley groundwater basin would be. The Council should treat this omission as an independent basis for finding the EIR inadequate.

The Council should also be aware of a representation CalWater made at the Planning Commission hearing that appears to be directly contradicted by the well completion report. Planning Commission Chair Iglesias asked CalWater whether the 2016 decommissioning had been temporary. CalWater replied that it had.

The well completion report tells a different story. A well cemented to a depth of **700 feet** with **36 cubic yards of cement** is not temporarily decommissioned. It is permanently destroyed. California DWR Well Standards (Bulletin 74-81, Part III, Section 21) define well destruction as the restoration of subsurface conditions as nearly as possible to those that existed before the well was constructed. The mandatory reporting instrument, DWR Form 188, is titled a *Well Completion Report* precisely because it documents the completion of destruction work, not a suspension of operations. CalWater filed that form.

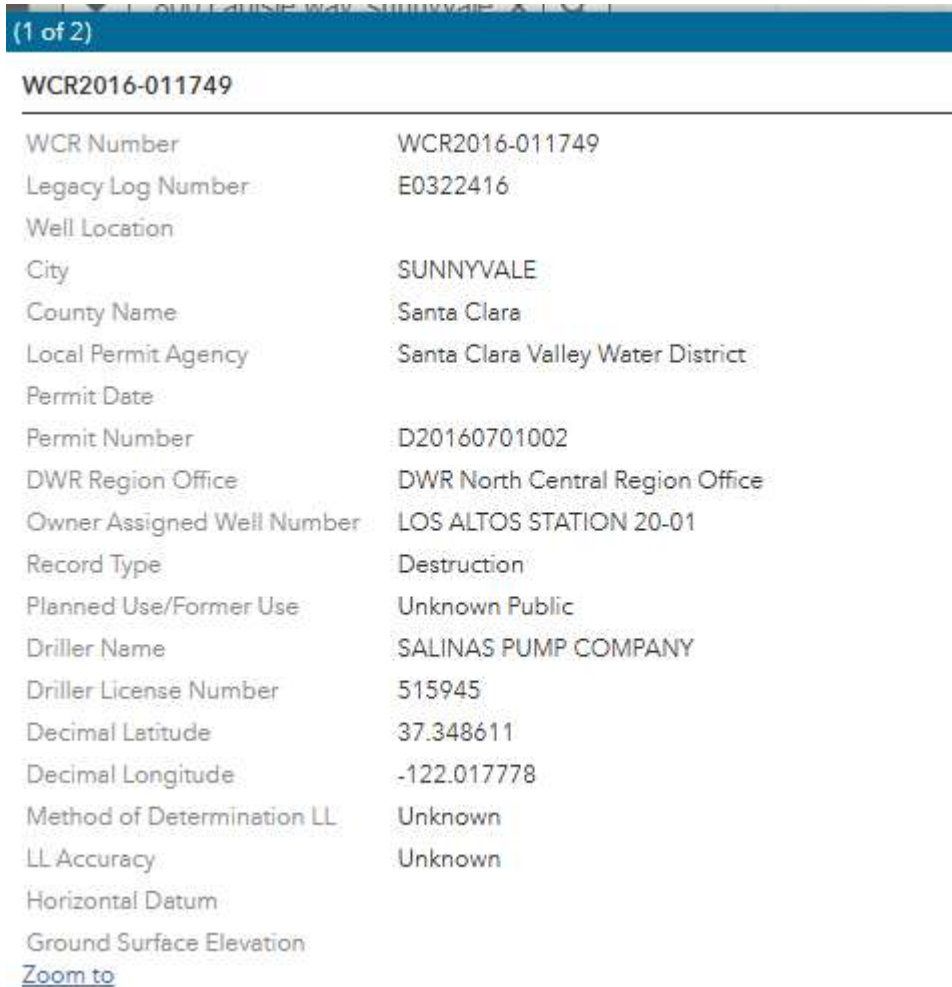
A temporary decommissioning, one that preserves the possibility of reactivation, involves capping, not cementation. It requires a Valley Water Standby Well Permit, *not* a destruction permit. It does not require filing DWR Form 188. CalWater did none of those things. What CalWater did in 2016, as its own documentation confirms, was fill the well with 700 feet of cement, submit the required DWR Form 188 to Santa Clara Valley Water District approximately 47 days after the destruction — 17 days past Ordinance 90-1's 30-day deadline — and then wait nearly nine years to file that same report with the California Department of Water Resources, as state law required within 60 days. Whether CalWater obtained the Valley Water well destruction permit required before that work could lawfully be performed has not been established in the record before this Council.

The Council is entitled to weigh CalWater's representation to Chair Iglesias against the physical and documentary record, and to draw its own conclusions about the reliability of CalWater's representations in this proceeding more broadly. At minimum, this inconsistency warrants a specific, documented response from CalWater before this Council votes on EIR certification or the Conditional Use Permit.

These facts are documented in two publicly accessible records. The well completion report (DWR Form 188) filed with the California Department of Water Resources is available through the DWR Well Completion Report database at:

<https://dwr.maps.arcgis.com/apps/webappviewer/index.html?id=181078580a214c0986e2da28f8623b37>

These are direct screenshots of the record (Screenshots taken on 14 April 2026. The UI requires scrolling to see the entire record, thus there are three screenshots):



(1 of 2)	
WCR2016-011749	
WCR Number	WCR2016-011749
Legacy Log Number	E0322416
Well Location	
City	SUNNYVALE
County Name	Santa Clara
Local Permit Agency	Santa Clara Valley Water District
Permit Date	
Permit Number	D20160701002
DWR Region Office	DWR North Central Region Office
Owner Assigned Well Number	LOS ALTOS STATION 20-01
Record Type	Destruction
Planned Use/Former Use	Unknown Public
Driller Name	SALINAS PUMP COMPANY
Driller License Number	515945
Decimal Latitude	37.348611
Decimal Longitude	-122.017778
Method of Determination LL	Unknown
LL Accuracy	Unknown
Horizontal Datum	
Ground Surface Elevation	
Zoom to	

(1 of 2)

Ground Surface Elevation	
Elevation Accuracy	
Elevation Determination Method	
Vertical Datum	
Township	07S
Range	01W
Section	06
Baseline Meridian	Mount Diablo
APN	
Date Work Ended	7/26/2016
Workflow Status	Completeness Review - Complete - 25-OCT-18
Received Date	5/13/2025 5:00 PM
Total Drill Depth	
Total Completed Depth	
Top Of Perforated Interval	0
Bottom of Perforated Interval	700
Casing Diameter	16
Drilling Method	
Fluid	
Static Water Level	
Total Draw Down	
Test Type	
Zoom to	

Test Type	
Pump Test Length	
Well Yield	
Well Yield Unit of Measure	GPM
Other Observations	
PLSS MTRS	M07S01W06
WCR Links	More info

Related tables:

PLSS Sections
Multipage WCR Links

[Zoom to](#)

These screenshots show that the Well Completion Report was not received by the state until May 13, 2025. The underlying well completion report document, which records the work completion date of July 27, 2016, is directly accessible at:

<https://cadwr.app.box.com/v/WellCompletionReports/file/463696309724>

The Council, City staff, and the public may access these records directly to verify.

The legal consequence under Sunnyvale Municipal Code § 19.50.100(a) is precise and automatic: *"In the event an unenclosed nonconforming use is abandoned or is discontinued for a period of six months or more, subsequent use of such land shall comply with the provisions of this title."* The well use was discontinued at the latest on July 27, 2016. The six-month period expired no later than **January 27, 2017**. The nonconforming use right was extinguished by operation of law on that date, nearly eight years before this application was filed.

II. CalWater Filed the Required Well Completion Report Nearly Nine Years Late

Under California Water Code § 13751 and the California Department of Water Resources ("DWR") Well Standards (Bulletin 74-90), the owner of a destroyed well is required to file a well completion report, DWR Form 188, documenting the destruction. That report is required to be filed within **60 days** of completion of the destruction work. For the July 26 or 27, 2016 cementation, the report was due by approximately **September 25, 2016**.

The well completion report was not received by DWR until **May 13, 2025**, approximately **eight years and eight months** after the legal deadline, as shown above. This is not a minor administrative irregularity. The mandatory DWR reporting requirement exists so that state and local agencies can accurately track groundwater resources, enforce Sustainable Groundwater Management Act (SGMA) compliance, and maintain public records of well status. A near nine-year reporting failure to DWR denies the state, and the public, information they are legally entitled to have. The delay cannot be attributed to oversight: the face of the Valley Water record establishes that CalWater submitted a copy of DWR Form 188 to Valley Water on September 12, 2016, some 47 days after the destruction and 17 days past Ordinance 90-1's 30-day local deadline. CalWater was weeks late to Valley Water and nearly nine years late to DWR.

The Council is entitled to note that the filing date of May 13, 2025 appears to coincide with CalWater's pursuit of the current permitting approvals from this City. The report that was required to be filed in 2016 was filed only when it became useful to CalWater's current application. The Council should weigh this timing in evaluating CalWater's representations about its regulatory compliance and good faith management of this site.

III. The Council Should Request the City's Permit Records for the 2016 Cementation Work

The permanent destruction of an operating water well involves significant physical work: the removal or demolition of above-grade equipment including pump housing, electrical service connections, pressure tanks, and associated piping; and the performance of

subsurface construction involving large volumes of cement. Under the Sunnyvale Municipal Code and California Building Standards Code, this work would ordinarily require one or more City permits, including potentially a building permit, a demolition permit, or an encroachment permit.

Additionally, under **Santa Clara Valley Water District Ordinance 90-1**, no person may destroy a well within Santa Clara County without first obtaining a well destruction permit from Valley Water. Valley Water further requires that DWR Form 188 be submitted to Valley Water within 30 days of completion, by approximately August 25, 2016 in this case.

I respectfully request that, before this Council votes on EIR certification or permit issuance, City staff be directed to:

- (1) Search the City's permit database for any building, demolition, or encroachment permits issued to CalWater at this address between 2015 and 2017, and report the results to Council;
- (2) Request from Valley Water confirmation of whether a well destruction permit was properly issued for the July 26, 2016 work, and whether the destruction was conducted in compliance with all permit conditions, noting that the DWR Form 188 bearing Valley Water's September 12, 2016 receipt stamp establishes that the local Ordinance 90-1 filing requirement was met; and
- (3) Report to Council whether any unresolved code violations or permit deficiencies exist at this property that predate the current application.

If CalWater performed the 2016 cementation work without required City or Valley Water permits, those are unresolved regulatory violations directly relevant to CalWater's fitness to receive new entitlements at this location, and to the Council's assessment of CalWater's representations in this proceeding.

IV. The Nonconforming Use Was Specific to Well Operations, Not General Utility Use

I have observed that CalWater has used the property since 2016 primarily as a staging area for equipment and piping materials. I wish to be clear about the legal significance of this use.

The nonconforming use right that existed before the well was destroyed was specific to the operation of a water supply well, not to general utility operations, equipment storage, or materials staging. California law is well established that a nonconforming use right attaches to the *specific use* that was lawfully established, not to a broader category that the owner may retrospectively construct around it. *County of San Diego v. McClurken* (1951) 37 Cal.2d 683 is the controlling California Supreme Court authority on this principle. In that case, a property owner sought to erect four large new permanent gasoline storage tanks in a residential zone, arguing that the tanks were a continuation

of a prior nonconforming industrial use. The court rejected that argument. The prior nonconforming use had consisted of intermittent storage of lumber, scrap metal, and movable tanks spread across the property. The new tanks were permanent, five times larger in capacity than the largest prior tank, and affixed on concrete bases. The court held that such a formidable expansion could not be characterized as a mere continuation of the prior nonconforming use. As subsequently quoted in *Sabek, Inc. v. County of Sonoma* (1987) 190 Cal.App.3d 163, the principle established in *McClurken* is that courts follow a strict policy against the extension or enlargement of nonconforming uses, because the object of zoning is their eventual elimination, not their perpetuation.

The situation here is almost the precise inverse of *McClurken*, and that inversion makes the legal conclusion even more pointed. In *McClurken*, the owner at least had a legitimate ongoing nonconforming use to work with — the court's objection was only that he tried to enlarge it beyond what the law permits. Here, CalWater destroyed the original nonconforming use entirely and replaced it with equipment staging and materials storage — a use that was never grandfathered, never established as a nonconforming use, and never authorized under R-0 zoning. The substituted use had no legal protection whatsoever. If the law in *McClurken* would not permit the expansion of a legitimate nonconforming use, it plainly does not permit the continuation of a use that was never lawful in the first place. CalWater's post-2016 equipment staging operation on this R-0 parcel was not a nonconforming use. It was an unauthorized use. And an unauthorized use cannot serve as the predicate for any nonconforming use argument.

Equipment staging and storage of piping materials is a fundamentally different use than operating a water supply well. The substitution of one use for another, even if both might be characterized broadly as "utility related", does not preserve the original nonconforming use right. To the contrary, substituting a different use and then seeking to resurrect the original use years later inverts the entire purpose of nonconforming use law, which exists to allow *existing* uses to continue with diminishing intensity over time, not to preserve a menu of potential uses the owner may activate at will.

Consequently, equipment staging and storage of utility materials in an R-0 single-story overlay zone is itself a use that requires independent zoning authorization. I am not aware of any such authorization having been obtained by CalWater for its post-2016 operations at this site.

V. CalWater's Post-2016 Operations Have Been a Source of Noise and Disruption to Neighbors

Whatever legal status may attach to CalWater's post-2016 use of this property as an equipment staging area, the neighbors of this site can speak to its practical impact: the operations conducted on this parcel since the well was destroyed have been significantly noisier and more disruptive to the surrounding residential neighborhood than the well operations that preceded them.

Equipment staging, vehicle traffic associated with materials delivery and retrieval, and related operational activity generate noise, vibration, and traffic impacts that are incompatible with the character of the surrounding R-0 neighborhood. This is not a theoretical concern. It is the lived experience of the residents who have endured these conditions for nearly nine years. The Council should consider that approving a new well at this location would add well operation impacts on top of an already disruptive staging use, rather than replacing it.

VI. This Neighborhood Has Been Zoned R-0 for Generations, and That Choice Has Been Reaffirmed

The subject property and the surrounding neighborhood have been designated R-0, one of Sunnyvale's most restrictive low-density residential zoning districts, equivalent in restrictiveness to R-1, for generations. The R-0 designation reflects a longstanding, deliberate policy choice by the City of Sunnyvale: that this area is reserved for low-density residential use, that it is not appropriate for industrial or infrastructure uses, and that the community deserves the protections that come with the most restrictive residential classification. The single-story overlay added in 2017 imposes an additional constraint specific to this neighborhood beyond what the base R-0 designation requires.

This neighborhood is not generic R-0. It is an **Eichler home community**, one of the distinctive mid-century modern neighborhoods that the City of Sunnyvale has recognized as deserving of special protection through dedicated Eichler design guidelines. Eichler homes are architecturally unique and, for purposes of this proceeding, share a characteristic that makes utility operations immediately adjacent to them particularly incompatible with residential privacy and enjoyment: **the rear walls of Eichler homes are primarily transparent glass**. Floor-to-ceiling glass walls facing the rear yard are a defining feature of the Eichler design. They are what give these homes their celebrated connection to the outdoors and their light-filled interiors.

The consequence for this neighborhood is direct and concrete. Residents of Eichler homes adjacent to the CalWater parcel have far less visual separation between their living spaces and the site than residents of conventionally designed homes would. While backyard fences provide some buffer, they do not change the fundamental orientation of these homes: the primary living spaces face the rear yard through glass walls, meaning that activity on the CalWater property, including equipment operations, vehicle traffic, lighting, and personnel, intrudes on the interior experience of these homes in a way that would not be true of homes with solid rear walls. This is a structural vulnerability of the Eichler design that the City has specifically chosen to protect and preserve through its dedicated design guidelines.

This choice was not made once and forgotten. The City Council affirmatively reaffirmed its preference for residential character in this neighborhood by adding the **single-story overlay** on **February 7, 2017**, approximately six months *after the well had already been permanently destroyed*. The Council looked at this neighborhood, with full

knowledge of what was on this parcel, and chose to impose additional protections to preserve its single-story residential character. The single-story restriction is particularly significant in an Eichler neighborhood: taller structures directly threaten the privacy, light, and outlook that Eichler residents depend upon and that the City's own design guidelines are intended to protect. That decision is a direct expression of the community's preference for housing and residential use on this site, not utility infrastructure.

Under California zoning law, the R-0 designation carries a clear implication: the City prefers that land in this district be used for low-density housing. The single-story overlay amplifies that preference by limiting building height in a manner that is most compatible with single-family residential development. Approving a water utility well, which is not a residential use, not compatible with single-story residential character, and not listed as a permitted or conditionally permitted use in R-0, would directly contradict the land use preferences this Council and its predecessors have expressed for generations.

I note that Sunnyvale, like all California cities, faces acute housing supply constraints. Every parcel zoned R-0 that is occupied by non-residential infrastructure is a parcel that cannot contribute to the housing supply the community needs. The Council's reaffirmation of R-0 and single-story overlay designations for this neighborhood reflects not only a preference for residential character but a commitment to protecting the opportunity for residential development on parcels like this one.

VII. Conclusion and Requests

For the reasons set forth above, I respectfully request that the City Council:

- (1) Direct City staff to research and report on the permit history for the 2016 well cementation work, including any City permits, Valley Water well destruction permits, and Valley Water Form 188 submission records, before any vote on EIR certification or the Conditional Use Permit;
- (2) Recognize that the nonconforming well use was extinguished by operation of law on January 26, 2017, and that the post-2016 equipment staging use does not preserve or revive that right;
- (3) Give full weight to the City's longstanding R-0 designation and the 2017 single-story overlay, both of which reflect an affirmative preference for residential use at this location, in evaluating whether to approve utility infrastructure that is not a permitted use under the applicable zoning; and
- (4) Decline to certify the EIR or issue the Conditional Use Permit until the legal and factual issues identified in this and subsequent letters have been fully addressed on the record.

Additional letters addressing the adequacy of the EIR's alternatives analysis, the requirements for utility preemption under California law, and related matters will follow. I appreciate the Council's careful consideration of these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'AB' or similar initials, written above the name Ann Bogan.

Ann Bogan, M.D.

May 6, 2026

Honorable Mayor and Members of the City Council
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086

Re: CalWater Well Project — Why the Required CUP Findings Cannot Be Made

Dear Honorable Mayor and Members of the City Council:

This is the second in a series of letters about the CalWater well project. My first letter described the permanent destruction of the well in 2016, the late regulatory filings, and the character of the residential neighborhood around the site. This letter focuses on the conditional use permit (CUP).

Utility service facilities are conditionally permitted in R-0 with a use permit, but conditional permission is discretionary, not mandatory. Before approving the CUP, the Council must make at least one of two findings under SMC § 19.88.060. On this record, neither finding can be made. I want to walk through why, and then state what discretion the Council has to act on what it has already decided about this neighborhood.

I. The Required Findings Cannot Be Made on This Record

The site is zoned R-0 with a single-story overlay. R-0 is Sunnyvale's most restrictive residential district. Under SMC § 19.18.030 and Table 19.18.030, utility service facilities (Item 7.G) are conditionally permitted in R-0 with a use permit — the pathway CalWater has pursued.

CalWater may argue that the well existed as a legal nonconforming use predating the zoning classification, and is therefore grandfathered. However, the nonconforming use no longer exists. As documented in my first letter and on the State of California Well Completion Report (DWR Form 188) on file with the City, CalWater permanently destroyed the well between July 25 and July 27, 2016, filling it with 36 cubic yards of cement to a depth of 700 feet. SMC § 19.50.100(a) provides:

“In the event an unenclosed nonconforming use is abandoned or is discontinued for a period of six months or more, subsequent use of such land shall comply with the provisions of this title.”

The destruction was completed July 27, 2016. The six-month clock expired January 27, 2017. The code uses the word “or,” which means discontinuance alone is sufficient regardless of intent. CalWater’s nonconforming use right was extinguished by operation of law on that date.

This is not a Sunnyvale idiosyncrasy. Los Altos extinguishes nonconforming uses after 120 days of discontinuance. Los Altos Hills uses 180 days within any 12-month period. Both thresholds are shorter than Sunnyvale’s. CalWater (NYSE: CWT) operates water systems in all three jurisdictions through its Los Altos Suburban service district and should be familiar with this area of California zoning law.

The legal consequence is straightforward: CalWater is not asking to continue or revive a grandfathered use. It is applying for a new use on a parcel where any prior nonconforming-use right has been extinguished. The CUP application must satisfy the requirements for approval as though no prior use existed, because for legal purposes, none does.

Compounding this, CalWater has used the site since 2016 as a storage and staging yard — storing pipes, traffic cones, and other materials, and parking utility vehicles. That use does not preserve the well nonconforming use right because it is a categorically different use — and it is itself expressly prohibited in R-0. Table 19.18.030 marks the following with “N” (not permitted, prohibited) in the R-0 column:

- Item 7.D — Storage or parking of commercial, industrial or public utility vehicles
- Item 7.I — Storage of materials, supplies or equipment used for nonresidential purposes
- Item 7.J — Storage of materials or equipment between the face of the main building and a street unless fully screened from view

CalWater has therefore been operating two successive unpermitted uses on this parcel: first a well whose nonconforming-use right was extinguished in January 2017, and then storage and parking activity that the table expressly prohibits. That is the baseline from which CalWater now asks the City to issue a CUP.

Under SMC § 19.88.060, the Council may approve a use permit only upon finding that the proposed use will either: **(1)** attain the objectives of the General Plan; or **(2)** ensure that the use will not impair either the orderly development of, or the existing uses being made of, adjacent properties. Only one finding must be satisfied, but at least one must be made. On this record, neither can be.

Finding 1 cannot be made. The controlling General Plan document is the Land Use and Transportation Element (LUTE), originally adopted in 2017 and most recently updated by the City in March 2024. As it stands today, the LUTE designates this parcel Low Density Residential. As Commissioner Pyne noted at the Planning Commission hearing, the LUTE clearly labels this parcel as low density residential. Approving utility infrastructure on a parcel the City’s own General Plan designates for residential use does not attain the General Plan’s

objectives — it contradicts them. Under Government Code § 65860, zoning must be consistent with the General Plan. A CUP approval that conflicts with the General Plan’s land use designation cannot be said to attain that document’s objectives.

The Statement of Overriding Considerations (SOC) as presented to the Planning Commission rests on a factual error about this designation. On page 28 of 45, the second bullet states:

“Reactivating the site for groundwater extraction is consistent with the City of Sunnyvale’s General Plan Land Use designation of ‘Water, Electric, Phone, Water Facility.’ The site would provide potable water to Cal Water’s Los Altos Suburban service district, which serves parts of Sunnyvale and surrounding cities, and supports the City’s water supply goals and policies outlined in the General Plan.”

The premise is wrong. The LUTE designates this parcel Low Density Residential, not “Water, Electric, Phone, Water Facility.” The consistency conclusion that follows from that premise — that reactivating the site is consistent with the General Plan — collapses when the premise is corrected. An accurate SOC will need to explain how approving utility infrastructure on a Low Density Residential parcel attains General Plan objectives, and that explanation is not available on this record.

Finding 2 cannot be made. The EIR’s own Mitigation Monitoring and Reporting Program acknowledges a significant and unavoidable noise impact on neighboring residents. That acknowledgment is the City’s own written finding, on the record before this Council. A significant and unavoidable impact on adjacent residents is the definition of impairing the existing uses being made of those properties. The City cannot simultaneously find under § 19.88.060 that the use will not impair existing uses, and acknowledge under CEQA that it will impose a significant and unavoidable impact on those same uses. The two findings directly contradict each other.

CalWater may argue that a Statement of Overriding Considerations under Public Resources Code § 21081(b) resolves this conflict. It does not. The zoning code and CEQA are independent legal frameworks that operate on different questions. CEQA asks whether environmental impacts have been adequately analyzed and disclosed, and whether project benefits override significant unavoidable impacts; the SOC is the instrument CEQA provides for that override. SMC § 19.88.060 asks a different question: whether the proposed use will impair existing uses of adjacent properties. The Sunnyvale Municipal Code contains no provision analogous to the SOC — no mechanism by which a finding of overriding considerations can substitute for the § 19.88.060 findings. The two frameworks are parallel, not interchangeable. The § 19.88.060 impairment finding must be made on its own terms, and on this record it cannot be.

Finally, if CalWater believes Sunnyvale’s zoning unlawfully prevents it from fulfilling its service obligations, California law provides remedies before the California Public Utilities

Commission. Absent a controlling determination of preemption, however, the Council should guard its discretion and responsibility for land use decisions in the city.

Required CUP Finding (SMC § 19.88.060)	Status on This Record
Finding 1: Use attains General Plan objectives	x Cannot be made. LUTE designates parcel Low Density Residential; approval would contradict, not attain, General Plan objectives.
Finding 2: Use will not impair existing uses of adjacent properties	x Cannot be made. The City’s own MMRP acknowledges a significant and unavoidable noise impact on adjacent residents. The SOC does not override the independent zoning code requirement.

At least one finding must be satisfied. Neither can be. The CUP cannot lawfully be issued on this record.

II. Discretion, and What This Neighborhood Has Earned

I want to step back from the legal argument, because it is not the one I most want the Council to hear. I have lived in this neighborhood, adjacent to the CalWater property, for twenty years and raised my family here. I know this neighborhood, and I care about this city.

Sunnyvale operates in daylight. Decisions about land use are made through open hearings, with notice, on the record. The record on this parcel is unambiguous, and it has been built in exactly that spirit. The R-0 designation reflects a judgment, made long before I moved here, that this area is reserved for low-density residential use.

Two facts on the public record speak to what the City has decided about this specific parcel, with full knowledge of CalWater’s ownership:

First, on February 7, 2017 — six months after CalWater destroyed the well — this Council added the single-story overlay to this zoning district. At the meeting, a CalWater spokesperson asked Council to remove this parcel from the overlay. Council declined. Looking at this specific neighborhood, with full knowledge of what sat on this parcel, Council said: residential, single-story, protected.

Second, the LUTE — most recently updated by the City in March 2024, well after CalWater’s CUP application was filed and well after the EIR process began — designates this parcel Low Density Residential. The City has not designated it for utility use; has not created a utility overlay; nor has it amended the land use map.

Granting this use permit would be a significant policy change, not a neutral application of the conditional permitting framework. It would mean deciding that a parcel the City has repeatedly designated for residential use should instead host industrial utility infrastructure for the next thirty to fifty years. That is not a small decision, and the record before the Council does not support it.

The Council has discretion here. That discretion is the authority to say, as a matter of policy, that this neighborhood is what the City has repeatedly said it is: a residential neighborhood deserving of the protections the City itself has placed around it. The Council does not need CalWater to fail every legal test to exercise that discretion. It needs only to act consistently with what it has already decided.

I am not opposed to CalWater serving its customers. I am asking this Council to require CalWater to meet the same legal and procedural standards every other applicant must meet, and to exercise its discretion the way it has exercised it before — in favor of this neighborhood, and in keeping with what the City has already decided this land should be.

My third letter, addressing the specific deficiencies in the EIR's alternatives analysis, will follow.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line.

Ann Bogan, M.D.
Sunnyvale Resident

June 23, 2026

Honorable Mayor and Members of the City Council
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086

**Re: CalWater Well Project: Deficiencies in the EIR and Planning Commission
Record Requiring Independent Council Review**

Dear Honorable Mayor and Members of the City Council:

This is the third in a series of letters addressing the CalWater 800 Carlisle Way project. A fourth letter will summarize conclusions from all three letters.

Recapping my other letters, the first letter documented the permanent destruction of the well in 2016, CalWater's late regulatory filings, and the character of the Eichler neighborhood surrounding the site. My second letter addressed why the required findings for a Conditional Use Permit cannot be made on this record, why the Council has full discretion to deny the CUP, and what legal remedies remain available to CalWater if it believes Sunnyvale's zoning is preempted. This letter addresses the Environmental Impact Report, the Mitigation Monitoring and Reporting Program, and the record that was before the Planning Commission when it voted to recommend certification of the EIR.

This letter is unfortunately long because the EIR has many defects. Therefore, the next few paragraphs will summarize my findings after close review of the EIR and supporting documents. The detailed analysis follows.

Sunnyvale conducts its public processes carefully. Environmental review in this City is taken seriously, and the documents that support discretionary approvals are expected to meet a high standard of accuracy and completeness. The EIR before this Council does not meet that standard.

It describes the project as the reactivation of a destroyed well, when the project is in fact new construction at a different location and depth, drilled by a different method, with a theoretical maximum yield roughly 75 percent greater. Because the alternatives analysis was built on that false premise, it dismisses all off-site alternatives in a single paragraph, with no documented examination of specific sites and no analysis of the alternative parcel raised in public comment. CEQA and decades of precedent prohibit this kind of circular reasoning.

The noise and vibration analysis is no stronger. It leaves two neighboring Eichler homes above the nighttime noise limit even after maximum mitigation, relies on proprietary drilling-equipment data that cannot be independently verified, omits the aeration noise source, and provides no interior analysis for homes with floor-to-ceiling glass walls. It

applies a vibration threshold without knowing the structural condition of the homes' unreinforced wire-mesh slabs, and it recommends no monitoring for the project's most impactful activity, continuous 24-hour drilling. In some of these cases, rigorous analysis might have worked in the applicant's favor. But the applicant did not do the work, and instead asks the Council to accept its conclusions without a basis for verification.

The Statement of Overriding Considerations adopted to approve the project despite its acknowledged significant and unavoidable impact does not satisfy the legal requirements for that instrument. It misidentifies the affected community, relies on an incorrect General Plan designation, mischaracterizes Executive Order N-10-21, asserts that no quieter equipment is feasible without any supporting analysis, and treats the absence of a city land exchange as proof that no alternative site exists.

Any one of these deficiencies would be sufficient grounds for the Council to withhold certification and direct that the record be corrected before any vote. Collectively, they are deficiencies that could expose the City to significant legal liability. Approving an SOC would transfer legal liability from CalWater to the City of Sunnyvale. These deficiencies reflect a document that does not meet the minimum standards the city deserves. The Council has two options consistent with its legal obligations:

- (1) Deny the Conditional Use Permit and decline to certify the EIR on the current record. The nonconforming use right was extinguished in January 2017. A water well is conditionally permitted in R-0 with a use permit, but the required findings for CUP approval cannot be made on a record acknowledging a significant and unavoidable impact on neighboring residents. Preemption of Sunnyvale's zoning has not been established through the CPUC process that California law requires. These are threshold legal deficiencies that an improved EIR cannot cure.
- (2) If the Council believes further review is warranted before acting, it may continue the item and direct staff to report on the permit history of the 2016 well cementation, the status of CalWater's CPUC compliance, and the General Plan designation applicable to this parcel under the current LUTE, questions whose answers bear directly on whether the threshold legal requirements for this project can be met.

I. The Planning Commission Record and the Council's Independent Obligation

While the Planning Commission recommended certification of this EIR, commissioners expressed doubt and hesitation in their comments. That hesitation was warranted. The record before the Commission included written comments from neighbors that identified specific, documented deficiencies in the EIR and the Mitigation Monitoring and Reporting Program. The staff response memo, dated March 9, 2026, addressed some of those comments but left others unresolved and, in several respects, confirmed the problems rather than answering them.

As the lead agency under CEQA, City Council independently reviews the EIR and makes its own certification findings. Those findings must be supported by substantial evidence in the record. The record before the Council now includes both the Planning Commission's action and the specific grounds on which residents argued that action was premature. Several of those grounds were not adequately addressed in the staff response.

This Council has exercised independent judgment on the character of this neighborhood before: it was the Council, not the Planning Commission, that added the single-story overlay to the R-0 district that includes 800 Carlisle Way in February 2017, a deliberate policy choice to protect the scale and character of this Eichler neighborhood that the Planning Commission had recommended against. The Council's authority to reach a different conclusion than the Commission on matters affecting this neighborhood is not in question.

II. The Statement of Overriding Considerations Does Not Provide Adequate Legal Protection for the City

I raise this section as a matter of genuine concern for the City of Sunnyvale's legal position. A Statement of Overriding Considerations is a formal legal finding, adopted by the Council, supported by evidence in the record, and subject to judicial review under the substantial evidence standard. When an SOC is challenged in court, it is the City, not CalWater, that must defend it. The Council should understand what it would be asked to defend before voting to certify.

Sunnyvale has a well-earned reputation for the quality and integrity of its discretionary approval processes. That reputation is built in part on the care with which the City documents its findings and ensures they are grounded in the actual record. The findings in this SOC do not reflect that standard. They contain a verifiable factual error on the General Plan designation, a mischaracterization of a source document on the executive order, a bare assertion where the law requires evidence on the equipment feasibility question, a redefinition of the alternatives question that forecloses the answer before analysis begins, and other equally concerning problems. These are not the kinds of findings that withstand judicial scrutiny, and they are not the kind of findings that reflect well on the City when a court is asked to review them.

I raise these concerns because the Council deserves to understand what it would be committing to defend before it votes. If the SOC cannot be defended, the project approval cannot be defended. The appropriate response is to correct the record before the vote, not to discover these deficiencies in a writ petition.

Courts reviewing an SOC apply substantial evidence review to factual findings and de novo review to questions of law. An SOC can be invalidated on many independent grounds. My reading finds nine vulnerabilities for the City of Sunnyvale in this case. Any of these vulnerabilities by themselves are sufficient to block adoption. Together, they would represent a concerning level of legal risk to the City.

A. Nine Legal Vulnerabilities in the SOC

First: The General Plan designation in the SOC fails the Laurel Heights substantive evidence test. The SOC states the project is consistent with a General Plan land use designation of "Water, Electric, Phone, Water Facility" (attachment 6, page 28 of 45). The current Land Use and Transportation Element, updated March 2024, designates this parcel Low Density Residential. This is a factual question, answerable by looking at Figure 3-10 of the controlling document. A petitioner challenging this finding would attach the LUTE page to their writ petition. The City's attorneys would then need to explain how a finding of General Plan consistency is supported by substantial evidence when the controlling General Plan document designates the parcel for a different use. That is a difficult position to defend, and courts have set aside project approvals on this basis. In fairness, a Planning Commissioner identified this discrepancy at the Planning Commission hearing, and it is likely that the General Plan designation finding will be corrected in the version of the SOC presented to the Council. If that correction is made, this particular defect will be resolved. I raise it here to ensure the correction is in fact made, and reflected in the record, before the Council relies on the finding.

Second: The Executive Order N-10-21 citation in the Statement of Overriding Considerations (SOC) fails the Laurel Heights substantive evidence test. The SOC asserts that Santa Clara County has been declared under a state of emergency by that order, making all existing and proposed water sources essential to address the emergency. This is factually untrue.

Executive Order N-10-21 is a conservation directive calling on Californians to voluntarily reduce water use by 15 percent, directing state agencies to track conservation progress, and referencing separate emergency proclamations issued in April and May 2021 as background. It is not an emergency declaration. The SOC conflates the executive order with the underlying emergency proclamations it references. The emergency proclamations referenced in that order were issued in 2021, and the SOC provides no showing that those emergency conditions persist today.

Also, the City's reliance on these historical directives ignores subsequent state actions that directly undercut the SOC's premise. In March 2023, Governor Newsom ended the statewide voluntary 15 percent conservation target that N-10-21 had established. More

significantly, in September 2024, the Governor terminated the drought state of emergency in Santa Clara County by name — finding that conditions no longer warranted emergency status, nearly two years before this Council hearing. Because the state has actively moved away from these 2021 directives, the SOC fails to show that these specific emergency conditions remain a valid justification for this project today. A petitioner would quote the order's text in their brief. The City would need to explain how a finding resting on a mischaracterized, outdated document constitutes substantial evidence under Laurel Heights.

There is a further dimension worth noting. The natural reading of an order calling on all Californians to voluntarily reduce water use by 15 percent from 2020 levels is that utilities and their customers should reduce consumption, not that utilities should expand groundwater extraction capacity. CalWater's Los Altos Suburban district uses approximately 58 gallons per capita per day, compared to 49.9 gallons per capita per day for the City of Sunnyvale's own municipal utility, which serves the residents of this neighborhood. CalWater's customers use roughly 16 percent more water per capita than their neighbors on the municipal system.

An executive order calling for a 15 percent voluntary reduction points, if anything, toward demand management in the Los Altos Suburban district, not toward expanding supply infrastructure. Crucially, this project places a disproportionate and unjust jurisdictional burden on the community: the significant, unavoidable negative impacts—such as localized construction noise and ongoing diesel backup generator testing right next to Panama Park—are borne entirely by Sunnyvale residents on the municipal system, while the benefits flow exclusively to CalWater's higher-consuming customers in the Los Altos Suburban district.

Third: The quieter equipment infeasibility finding is vulnerable under the controlling legal standard for infeasibility. The SOC states that "no quieter alternative equipment is feasible, as available options would be less effective or efficient than the proposed equipment." Under *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, greater expense or reduced efficiency does not make an alternative infeasible without evidence that the additional cost or performance reduction is sufficiently severe to render the alternative impractical. The SOC provides no such evidence. It does not identify what alternatives (such as electric-drive drill rigs or sound-attenuated hydraulic rigs) were considered, provide any comparative performance data, or explain the magnitude of the efficiency difference. Under *Laurel Heights*, a finding resting on a conclusory assertion of unrevealed facts is legally inadequate. If a petitioner can show, as industry literature establishes, that quieter drilling technologies exist and are used on comparable projects, the infeasibility finding is unsupported and falls. When a predicate infeasibility finding falls, the SOC built on it falls with it, as *City of San Diego* directly held.

Fourth: The alternative site infeasibility is another independent vulnerability. The SOC states that "Cal Water has no feasible alternative site because the City does not have any surplus land of comparable size for exchange." The concept of a city land swap, where the City trades surplus property to CalWater in exchange for this parcel, appears

in the EIR's site alternatives analysis. But the EIR offers no reasoning as to why the City would consider such a swap in the first place. A land exchange would transfer publicly owned property in one of the highest-value areas of the City to a private, publicly traded corporation. Such a transaction would be politically controversial and the City has given no indication it would entertain the prospect. The EIR treats the absence of available exchange land as though it were the dispositive obstacle, and the SOC elevates that observation into a formal legal finding of infeasibility. However, CEQA's guidance for alternatives analysis does not ask whether the City has surplus land available for exchange. It asks whether there are other locations where the project could feasibly be carried out with lesser environmental impact, through acquisition, lease, or any other means by which a regulated utility would normally site infrastructure. CalWater is a publicly traded company with a real estate portfolio and the legal authority to acquire property. The mechanism by which it would obtain an alternative site is acquisition, not a municipal land swap. By reframing the question as whether the City has surplus exchange land, which it obviously does not, the SOC guarantees the answer is no before the actual CEQA question is ever asked. This is the same logical defect the Court identified in *We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683: framing the inquiry to foreclose the answer ensures the alternatives analysis is a foregone conclusion. A court reviewing this finding would ask why the alternatives analysis is limited to parcels the City is willing to exchange rather than parcels CalWater could acquire or already owns. The record contains no answer.

Fifth: In accordance with CEQA Section 15093, the SOC must identify the specific community that will experience the significant and unavoidable noise impact. The adopted SOC identifies the affected residences only as 819 and 823 Coventry Court, the only two homes the EIR concludes will experience a significant and unavoidable impact. That conclusion rests on the same noise analysis this letter shows to be unreliable. The EIR analysis omits the aeration noise source, relies on proprietary data that cannot be independently verified, and includes no interior assessment of homes with floor-to-ceiling glass walls. An analysis that cannot be trusted to measure the impact at two homes cannot be trusted to establish that only two homes are affected. It does not identify the broader community of residents on Coventry Court and Kingfisher Way whose properties border the site on two sides. It does not acknowledge that these residents are not CalWater customers. It does not describe the specific character of their homes including the floor-to-ceiling glass walls that face the project site, nor the absence of air conditioning that makes closing those walls against nighttime noise a meaningful deprivation. The adopted SOC's identification of the affected community is limited to the two households that will receive vouchers, and it rests on an impact analysis too deficient to establish that the harm stops there. It does not constitute a reliable finding about the community bearing the harm.

Sixth: An SOC's benefits need not accrue to the same community that bears the harm; CEQA Section 15093(a) expressly allows region-wide benefits to be weighed against a localized impact. But Section 15093(b) requires that the balance rest on substantial evidence, which means weighing the asserted benefit against the specific harm actually imposed. The adopted SOC asserts that the project provides water supply reliability to CalWater's Los Altos Suburban service district, which serves parts of Sunnyvale and

surrounding cities. It does not address the fact that the residents bearing the harm are not CalWater customers. They receive their water from the City of Sunnyvale's own municipal utility. The benefit of water supply reliability accrues to CalWater's customers elsewhere in the district, most of whom are not Sunnyvale residents, not to the community experiencing the significant and unavoidable noise. An SOC that lists water supply reliability as an overriding benefit without acknowledging that the residents bearing the noise harm receive none of it has not actually weighed that benefit against this harm. By leaving the asymmetry between who benefits and who is harmed unaddressed, the SOC asserts a benefit without making the comparison Section 15093(b) requires, and the balancing it purports to perform is unsupported by substantial evidence.

Seventh: The adopted SOC does not address the growth justification CalWater offered to the Planning Commission failing the Laurel Heights substantive evidence test. My second letter examined that claim against the City's own Housing Element. Of the roughly 11,000 potential housing units in Sunnyvale's planning pipeline, fewer than 300, less than three percent, are located within the CalWater service area. The overwhelming majority of Sunnyvale's planned growth will be served by other water providers. A growth benefit that flows almost entirely to other cities is not a benefit that overrides a noise harm imposed on this neighborhood.

Eighth: The SOC must demonstrate that all feasible mitigation has been exhausted before the overriding considerations are invoked. Public Resources Code § 21002 provides that an agency should not approve a project if feasible mitigation measures would substantially lessen its significant effects. Beyond the quieter-equipment finding addressed in vulnerability Three, two feasible mitigation measures were left unanalyzed.

The first is drilling-phase noise monitoring. The complete absence of any real-time noise monitoring during the project's most noise-intensive activity means that barriers which fail, shift, or are improperly installed cannot be detected, and the impact cannot be verified against the threshold. If monitoring is feasible for demolition, grading, and excavation phases under MM NOI-1.3, the record contains no explanation for why it is not feasible for drilling. The adopted SOC does not address this gap.

The second is the use of lower-noise drilling equipment. Industry technical literature on well drilling noise, including analyses prepared for CEQA-governed geothermal projects in California, identifies quieter drilling technologies as a recognized mitigation approach: rigs with noise enclosures or vibration isolators at the source, rotary rigs that are typically less noisy than alternative methods, and drill bits that generate lower noise levels. The EIR's ten equipment noise inputs are all listed as proprietary BAENC file data for similar equipment, with no comparative analysis of equipment types. A finding that no feasible quieter equipment exists cannot be supported by a record that never asked the question.

Finally, CEQA Guidelines § 15370 defines a mitigation measure as an action that avoids, minimizes, rectifies, reduces, or eliminates a significant effect. The adopted Findings state explicitly that the hotel vouchers give residents "the option to relocate during the significant and unavoidable noise activity" and that "this measure does not

actually reduce the significant, unavoidable noise levels." A measure the City's own Findings acknowledge does not reduce noise is not mitigation under § 15370. It is accommodation. The record therefore cannot support a finding that the impact has been mitigated to the fullest extent feasible.

Ninth: The SOC must demonstrate that the alternatives analysis does not reveal a less harmful way to achieve the project's objectives before overriding considerations may be invoked. For the reasons set out in vulnerability Four, the adopted SOC does not do this. It recasts the absence of a city land exchange as a finding that no alternative site exists, without evaluating whether CalWater could acquire a different site, upgrade existing infrastructure, implement demand-side measures, or interconnect with other providers. As established in my second letter, the EIR's single-paragraph alternatives dismissal lacks the economic data that *Citizens of Goleta Valley* and *SPRAWLDEF* require to support infeasibility findings. Without that analysis, the SOC cannot satisfy the predicate that § 21002 requires before overriding considerations may be invoked.

III. The Station List Appeared for the First Time After the Comment Period Closed

The staff memo dated March 9, 2026 includes, for the first time in any public document, a list of CalWater's six Sunnyvale-area properties: Stations 1, 21, 25, 27, 30, and 31. Staff dismisses each as lacking sufficient space or having separation conflicts. This dismissal may or may not be accurate. But the public never had the opportunity to evaluate it. The list does not appear in the Draft EIR, the Final EIR, or any document circulated during the 45-day comment period that closed June 30, 2025. It was presented for the first time in a staff memo nine months after that period closed, as a post-hoc justification for the EIR's single-paragraph alternatives analysis. This staff memo cannot serve as a replacement for the sites analysis in the EIR. Furthermore, it is unclear why only CalWater properties located in Sunnyvale would be listed. CalWater should want to avoid the appearance that it is concentrating impacts on Sunnyvale residents to support benefits for its customers in other cities.

The staff memo also does not address the property at 781 South Wolfe Road, a CalWater Sunnyvale parcel that previously housed a decommissioned well, booster pump, and chemical storage buildings before CalWater divested it for residential redevelopment. A utility that recently sold a property on a major arterial corridor while simultaneously seeking approval for this facility in the heart of an R-0 Eichler neighborhood presents precisely the kind of alternatives analysis question that CEQA requires the EIR to address. The EIR does not address it because it was never asked to. The Station list, the 781 South Wolfe Road disposition, and the basis for each dismissal should have been in the EIR during public comment, not in a staff memo after the fact.

IV. The MMRP's Prospective Certification Date

The MMRP's Preface states: "On April 7, 2026, the City Council certified the Environmental Impact Report for the 800 Carlisle Way Well and Water Tank project." At the time the MMRP was submitted (prior to March 9, 2026), April 7, 2026 was still a

future date. As of the date of the Planning Commission hearing on March 9, 2026, the EIR had not been certified. The document states a Council certification as an accomplished fact before the Council has voted. Whether this reflects routine template drafting or something more, it is a factual error that should be corrected before any certification vote, so that the record does not memorialize an approval the Council has not yet granted.

V. The EIR Project Description is Materially Incorrect

An EIR's project description is an especially important part of the EIR. Forty nine years ago in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, the California Court of Appeal held that an accurate project description is the foundation on which every other element of CEQA review rests. The court stated that a project description that omits or mischaracterizes material facts "precludes informed decision making" and renders the EIR inadequate as a matter of law. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 reinforced this principle, holding that CEQA requires "an interactive process of assessment of environmental impacts which must be genuine and open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect" of the project. Where the project description is inaccurate, the entire EIR is built on a false foundation and cannot be certified.

The EIR before this Council contains three material omissions from its project description, each of which independently renders the document legally inadequate.

A. The EIR Misdescribes the Well's Status and the Nature of the Proposed Work

The EIR uses the phrase "reactivate the site as a groundwater extraction site" in its project overview. It also describes the 2016 closure as a "decommissioning" and refers to the original well as having been "capped." These characterizations are inconsistent with the EIR's own project objectives section, which states that the purpose of the project is to "replace a critical Cal Water supply well that was *previously destroyed* on-site due to its age." The EIR uses the word "destroyed" in the project objectives and "reactivation" in the project overview. These sections appear within pages of each other in the same document. A reader who proceeds from the objectives section to the project overview will encounter two irreconcilable descriptions of the same event without explanation or acknowledgment of the conflict.

A destroyed well cannot be reactivated. The EIR's failure to reconcile these two characterizations has direct legal consequences that the document never confronts, and that the Council cannot resolve by simply accepting whichever characterization is more convenient.

The public record establishes that the original well was not merely destroyed in the colloquial sense. CalWater's own DWR Form 188, filed with the California Department of Water Resources on May 13, 2025 and available in the DWR well completion report database, documents the placement of 36 cubic yards of sack cement to a depth of 700

feet on July 26, 2016. Under California DWR Well Standards (Bulletin 74-90), this constitutes permanent well destruction: the objective of destruction is "to restore as nearly as possible those subsurface conditions which existed before the well was constructed." A "capping" is a reversible protective measure applied to an inactive well. Placing 36 cubic yards of cement to a depth of 700 feet is permanent destruction, as the EIR's own project objectives acknowledge. The EIR's use of "capped" in the project description, without disclosing the nature, extent, or regulatory classification of that work, is inconsistent with both its own objectives section and the public regulatory record.

The EIR's own project description further confirms this is new construction, not reactivation. Section 2.2.3 states that the proposed new well would be located on the *southwest portion of the site*, while the original well is located on the *north side*. These are different locations. The proposed well would reach a depth of approximately 1,000 feet below ground surface, compared to the original well's depth of 700 feet. It would use a new borehole drilled with borehole drilling equipment and a flooded-reverse mud rotary drilling technique. It is, by every physical measure, a new well at a new location drilled to a new depth. The EIR itself acknowledges this throughout, referring to "the new well," "the replacement well," and "new groundwater well" dozens of times. The phrase "reactivate the site" is irreconcilable with the EIR's own factual description of what the project involves. One further detail is worth noting. According to CalWater's own hydrogeological consultant EKI Environment & Water, the destroyed Well 20-01 pumped up to 1,100 acre-feet per year during its operational period, while the proposed Well 20-02 is designed for a theoretical maximum annual yield of 1,935 acre-feet, approximately 75 percent greater capacity than the well it purports to replace. CalWater has not drawn attention to this figure in its presentations to this Council. A reactivation that produces 75 percent more water at a different location to a different depth by a different method is, by any ordinary use of language, not a reactivation.

The legal significance of this inconsistency is substantial. "Reactivating a site" implies continuity with a prior authorized use. It implies no new land use authorization is needed beyond what existed before. It implies the nonconforming use right survived the 2016 destruction. It implies any prior CPUC authorization for the original well carries forward. None of these implications are legally supportable, as my prior letters have established. The EIR's reactivation framing invites the Council to assume a legal continuity that does not exist, rather than confronting the question of what legal basis authorizes this new facility at this new location.

B. The EIR Omits the Nature and Extent of the 2016 Well Destruction

The EIR states that the original well was "capped in 2016" but provides no further detail about what that capping involved. This is untrue. The well was destroyed by placing 36 cubic yards of sack cement to a depth of 700 feet. CalWater filed a well completion report with DWR documenting permanent destruction. Valley Water's Ordinance 90-1 requires a destruction permit before any well in Santa Clara County may be destroyed, and the EIR does not address whether that permit was obtained. The word "cement" appears nowhere in the EIR's project description.

These omissions are material on multiple grounds.

Construction impacts. The EIR describes the new well as being drilled at a different location from the original, on the southwest portion of the site rather than the north side. It does not address what, if anything, must be done with the 36 cubic yards of cement occupying the original borehole on the north side of the site in connection with the proposed project. Whether the original cemented borehole poses any constraint on the new drilling location, requires any remediation, or has any interaction with the new well's construction is simply not addressed. A construction impact analysis that ignores a significant subsurface condition at the project site is not complete.

Groundwater impacts. The cement column in the original borehole extends through 700 feet of geologic formation, intersecting multiple aquifer layers. The EIR contains no analysis of the long-term groundwater implications of this cement column, its interaction with the proposed new well at depth, or its effects on aquifer integrity in the Santa Clara Valley basin.

This is not a speculative concern. California Water Code § 231, enacted in 1949, expressly directed DWR to investigate conditions of damage to groundwater quality caused by improperly constructed, abandoned, or defective wells "through the interconnection of strata." The Legislature recognized more than seventy-five years ago that subsurface well conditions create the potential for aquifer contamination through strata interconnection. DWR Bulletin 74, the controlling California Well Standards, specifically requires precautions during new well drilling when geologic units that may contain poor-quality water or contaminants are penetrated, recognizing that a borehole can become a preferential pathway for movement of water between aquifer layers. The 700-foot cement column from a well that operated from 1959 to 2016 intersects multiple geologic strata and occupies subsurface space adjacent to the proposed 1,000-foot new borehole. Whether drilling a new well in proximity to this cemented column raises strata interconnection concerns, the precise issue Water Code § 231 was enacted to address, is not analyzed in the EIR. DWR's March 2024 groundwater well permitting guidance explicitly identifies "potential interference with nearby, existing wells" as an effect that must be evaluated for new wells. The cemented borehole is not an active well, but it is a known subsurface condition at the same depth and in proximity to the proposed new well. Its potential interaction with the new drilling was never examined. It is worth noting that CalWater is the water provider for the Town of Atherton, whose municipal code explicitly requires a well interference test when a new well is drilled within a defined separation distance of an existing subsurface structure. CalWater operates under that standard in Atherton. If CalWater routinely operates under strict well-interference testing standards in nearby towns like Atherton; it is irregular that they would omit that standard of care here in Sunnyvale. The EIR does not explain why a comparable analysis is not required here.

Regulatory compliance. The EIR does not address whether the 2016 destruction complied with all applicable regulatory requirements. As my first letter established, the DWR Form 188 was filed nearly nine years late. Whether Valley Water issued a destruction permit, and whether that permit was complied with, does not appear in the EIR. For a project whose entire justification rests on CalWater's status as a responsible

regulated utility, the EIR's silence on the regulatory history of the 2016 destruction is notable.

C. The Project Description's Internal Inconsistency Infects the Legal Analysis

Under *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 and *Laurel Heights*, an EIR that fails to provide a complete and accurate project description cannot support the findings required for approval. The remedy is not piecemeal correction at the certification stage. The project description must accurately characterize what the project is, so that the public and responsible agencies can evaluate its true legal and environmental implications.

The EIR's project description is internally inconsistent in a way that has direct legal consequences. It describes the project as reactivating the site while simultaneously confirming that what is being built is a new well at a new location drilled to a new depth by a new drilling method. These characterizations are not reconcilable. A new well at a different location is new construction, and the EIR's own factual description confirms it.

Under California zoning law, the distinction between reactivating an existing use and establishing a new one determines whether a nonconforming use right survives, whether new entitlements are required, and whether prior regulatory authorizations continue to apply. By describing the project as a reactivation while its own facts demonstrate new construction, the EIR obscures each of these legal questions rather than informing the Council's analysis of them.

VI. The Alternatives Analysis Is Legally Inadequate

A. The Off-site Alternatives Analysis Lacks Substantive Merit

My second letter quoted the complete text of the EIR's off-site alternatives analysis. Given its brevity, it bears repeating here in full:

"An alternative site may be considered when impacts of the project might be avoided or substantially lessened, and the project proponent can feasibly attain control of the site. Only alternative locations that would avoid or substantially lessen any of the significant effects of the project and meet most of the basic project objectives need to be considered for inclusion in the EIR (CEQA Guidelines Sections 15126.6(f) and 15126.6(f)(2)(A)). Cal Water does not currently have any alternative off-site properties that are viable for a new groundwater extraction well within the Los Altos Suburban service district, and the City does not have any similarly sized parcels of surplus land that could be used in exchange for the project site. For these reasons, an alternative off-site location was considered but rejected for further analysis."

This analysis is 131 words, with 68 words of legal boilerplate. Before we discuss the sufficiency of the analysis, City Council should ask what relevance properties owned by the city of Sunnyvale have to a proposed project by a NYSE listed corporation. It would be appropriate for city staff to participate in such discussions, but its non-viability is not supporting evidence in this section of the EIR. CalWater has shared and it is common

knowledge that they own multiple well sites throughout their service area. Yet, this catalog is neither shared nor analyzed in this EIR.

The four independent grounds on which this paragraph fails were identified in my second letter. In brief, they are: (1) the EIR frames the selection of this site as a matter of preference rather than necessity; (2) the project objectives are framed at a county-wide and area-wide scale that does not require this specific location; (3) the EIR evaluates alternatives to a reactivation when the project is in fact new construction; and (4) a specific off-site alternative was raised in public comment but never analyzed. As before, the description of the inadequacy of the analysis will be significantly longer than the actual section in the EIR. To make this discussion coherent, we have to refer back to the Project Objectives repeatedly.

First: The EIR's stated rationale for selecting this site explicitly frames the choice as a matter of preference, not necessity. Project Objective 1 states that "land acquisition... is difficult, therefore, constructing the replacement well on a property that Cal Water already owns is *preferable*." It further states that drilling on this site is "an expeditious and cost-effective solution." Preferable, expeditious, and cost-effective are the words of preference, not necessity. CEQA's alternatives analysis exists precisely to require evaluation of alternatives even when the applicant prefers its proposed site. An EIR that converts the applicant's site preference into a finding that no viable alternatives exist has not conducted an alternatives analysis. It represents a preference as a conclusion.

Second: Objectives 3 and 4 state that the project aims to address drought emergency in Santa Clara County and fire risk in the area by generating additional groundwater. These are county-wide and area-wide objectives, not site-specific ones. A well that addresses drought emergency in Santa Clara County could, by definition, be located at any number of sites within the county that meet technical requirements. A well that addresses fire risk in the area is not uniquely required at this specific Sunnyvale R-0 parcel. Where project objectives are framed at a scale that does not require a specific location, the alternatives analysis must evaluate other locations that could achieve those objectives. The EIR's single-paragraph dismissal of all off-site alternatives does not do that.

Third: The project objectives section uses the word "destroyed" to describe what happened to the original well in 2016. Having acknowledged that the well was destroyed, the EIR's alternatives analysis evaluates alternatives to a reactivation rather than alternatives to new construction. These are fundamentally different analytical exercises, and the distinction is grounded in statute and case law.

CEQA Guidelines § 15126.6(a) requires the EIR to describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic project objectives while avoiding or substantially lessening significant effects. The range of alternatives that is reasonable and required is determined by the nature of the project as accurately described. It follows directly from the requirement in CEQA Guidelines § 15124 that the project description must contain enough detail to allow assessment of environmental effects. A project description that mischaracterizes what is being built necessarily distorts the scope of alternatives that must be evaluated.

California courts have consistently held that the project description is the "sine qua non" of an adequate EIR. As the court stated in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, an inaccurate project description "precludes informed decision making" and renders the EIR inadequate as a matter of law.

In *We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, the Third District Court of Appeal reversed the County's certification of an EIR for a water bottling plant whose project objectives were written around the applicant's existing facility. Crystal Geyser had purchased a defunct plant and sought to reopen it. The EIR's objectives included siting the facility at the existing plant location "to take advantage of the existing building, production well, and availability and high quality of existing spring water on the property," objectives that described the project's purpose as operating the facility as proposed. The court found the lead agency had "largely defined the project objectives as operating the project as proposed" and thereby "ensured that the results of its alternatives analysis would be a foregone conclusion" because all alternatives other than the project itself "would simply be defined out of consideration." The court held that taking an "artificially narrow approach for describing the project objectives" rendered the alternatives section of the EIR an empty formality, legally deficient under CEQA.

The parallel to this project is direct. CalWater's Project Objective 1 states that constructing the replacement well on property CalWater already owns is "*preferable*" and "*an expeditious and cost-effective solution.*" These objectives are written to require this specific parcel, just as Crystal Geyser's objectives were written to require its existing plant. Under the court's holding in *We Advocate*, project objectives that define the project's purpose as pursuing the proposed project on the proposed site ensure that the alternatives analysis will be a foregone conclusion: any off-site alternative is defined out of consideration before analysis begins. That is precisely what happened here. The EIR's one-paragraph off-site alternatives dismissal is the direct product of objectives written to foreclose the inquiry.

The difference between a reactivation analysis and a new construction analysis is material. A reactivation analysis asks: are there other decommissioned wells in the service territory that could be reactivated instead? A new construction analysis asks a broader set of questions: are there other locations where a new well could be drilled? Could existing operational wells be upgraded or expanded to meet system capacity needs without new construction in a residential neighborhood? Could demand-side measures reduce the need for additional capacity? Could CalWater's system be interconnected with other providers to meet peak demand without new groundwater extraction in this neighborhood? The EIR asks only the first, narrower question, and answers it in one sentence. It never asks the broader questions that an accurate new construction analysis would require. Because the project is in fact new construction, the failure to ask those questions is a failure to conduct the alternatives analysis that CEQA requires.

Fourth: A specific alternative site was raised in public comments before the Planning Commission that the EIR never analyzed: the property at 781 South Wolfe Road, a CalWater Sunnyvale parcel that previously housed a decommissioned well, booster

pump, and chemical storage buildings. The fact that CalWater recently sold a commercially accessible property while simultaneously proposing this facility in the middle of an R-0 Eichler neighborhood is the siting decision that CEQA's alternatives analysis exists to scrutinize. The staff response memo did not address 781 South Wolfe Road.

B. The Alternatives Analysis Is Built on the Same False Premise as the Project Description

The failure to ask the four broader questions that a new construction alternatives analysis required is the direct consequence of the project description error identified in Section II of this letter. A project description that mischaracterizes new construction as a reactivation produces an alternatives analysis calibrated to the wrong project. Those four questions are not peripheral inquiries. They are the core of what CEQA's alternatives requirement exists to compel: a genuine, open examination of whether a project with significant and unavoidable impacts could be replaced by one that achieves the same objectives with less harm to the surrounding community.

C. The Justification for Rejection of the No Project / Redevelopment and Shallower Well Depth Alternatives are Circular and / or Pre-Ordained

CEQA Guidelines § 15126.6(e) requires every EIR to evaluate a no-project alternative. The EIR does evaluate two no-project alternatives and one design alternative: No Project/No Redevelopment, No Project/Redevelopment, and a Shallower Well Depth alternative at 600 feet. Each of these reveals something the EIR does not acknowledge.

The EIR identifies the No Project/Redevelopment alternative, selling the site for four single-family residences, as the environmentally superior alternative precisely because it is the only alternative that avoids the project's significant and unavoidable noise impact entirely. The EIR then dismisses it on the grounds that it does not meet the project objectives. But as the court held in *We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, project objectives that define the project's purpose as operating the proposed project at the proposed location ensure that the alternatives analysis will be a foregone conclusion. All alternatives are defined out of consideration before analysis begins. The EIR's dismissal of its own environmentally superior alternative illustrates that deficiency with precision: objectives written to require this site are then invoked to reject the only alternative that eliminates the significant and unavoidable harm to this neighborhood. That is the circularity the case law prohibits.

The no-project analyses also acknowledge, without quantifying, that CalWater would need to secure groundwater elsewhere if this project is not approved. The EIR speculates that alternative sites would likely be in similar residential neighborhoods and produce similar impacts. That speculation is presented as a reason the no-project alternative does not avoid the project's impacts. But speculation about hypothetical future impacts at unidentified locations does not substitute for the analysis of actual identified alternatives that CEQA requires. If CalWater has other candidate sites, those sites should be in the EIR. The analysis, at a minimum, would need to show that

identical impacts would be present at other potential sites. If it does not, that too is information the public and this Council were entitled to evaluate.

The Shallower Well Depth alternative is also instructive. The EIR considers drilling to 600 feet instead of 1,000 feet to reduce drilling time and therefore noise duration. Its own analysis concludes that this alternative would reduce drilling by "several days" but would still require continuous 24-hour operation over several weeks and would still result in a significant and unavoidable noise impact. The EIR thus acknowledges that no on-site design variation eliminates the significant and unavoidable noise impact. It can only be shortened, not avoided. That finding reinforces the importance of a genuine off-site alternatives analysis. If the impact cannot be mitigated on this site regardless of well depth, the question of whether a different site could avoid the impact entirely becomes more urgent. The EIR's one-paragraph dismissal of off-site alternatives is therefore the critical gap and it remains entirely unanswered.

VII. The Primary Urgency Justification Requires a Current Factual Showing

Project Objective 1 states that CalWater anticipates interruptions to its supply system "between 2023 to 2026" due to Valley Water's Pipeline Inspection and Rehabilitation project, and that these interruptions motivated the need for an expeditious solution at a site CalWater already owns. This Council is being asked to certify this EIR and approve this project in June 2026. The anticipated supply interruption window described in the EIR has effectively elapsed, rendering the EIR's primary justification for site selection temporally moot.

This timing matters for several reasons. First, the urgency rationale that the EIR offered for selecting this specific site over alternatives, rather than conducting a more deliberate search for a better-suited location, was premised on supply interruptions occurring between 2023 and 2026. If that window has now passed and CalWater has navigated it without this well, the factual basis for the expeditious site selection rationale no longer exists as described. The time that was characterized as too short to permit a proper alternatives analysis has already elapsed. Because this "emergency" timeline is no longer constrained to the 2023–2026 window, CalWater now has the time it had lacked to conduct a thorough, legally compliant off-site alternatives analysis.

Second, under Public Resources Code § 21166 and CEQA Guidelines § 15162, a lead agency must prepare a subsequent or supplemental EIR when substantial changes have occurred with respect to the project's circumstances or new information of substantial importance has become available that was not known and could not have been known at the time the EIR was certified. Whether the Valley Water supply interruption window materialized as anticipated, was extended, was modified, or has now concluded is material information that bears directly on the project's stated primary objective. The Council should not certify an EIR whose primary urgency justification rests on factual predicates that may no longer be current.

I recognize that CalWater may argue the Valley Water project has extended beyond 2026, or that the risk of supply shortfalls continues independent of the specific

interruption window. That may or may not be accurate. The point is that the Council should require a current factual showing from CalWater on the status of Valley Water's pipeline project and the current state of supply reliability in the Los Altos Suburban service district before voting on certification. If the primary stated emergency has passed, the alternatives analysis must be revisited in light of a less urgent timeline. If the emergency continues in a different form, that new information belongs in the EIR, not in representations made at the Council hearing. Any oral assurances provided by CalWater at the next Council hearing regarding modified timelines cannot substitute for formal environmental review. The Council cannot use post-hoc rationalizations at the podium to cure a legally obsolete EIR document.

VIII. The Noise and Vibration Assessment Contains Material Deficiencies

The EIR's noise and vibration impact analysis was prepared by Behrens and Associates, Inc. ("BAENC") and peer reviewed for noise only by Illingworth & Rodkin, Inc. The neighboring properties are Eichler homes built in 1961 and 1962. The assessment contains deficiencies in both its noise and vibration analyses that the Council must evaluate before relying on it to support a finding of less-than-significant impact.

A. Noise Analysis: Drilling Operations Exceed Nighttime Limits at Every Receptor, and Mitigation Fails to Achieve Compliance at Two Homes

The assessment's own modeling demonstrates that unmitigated nighttime drilling noise will exceed the City's 50 dBA residential nighttime limit at every single receptor surrounding the site, by margins ranging from 12.8 dBA to 24.1 dBA. At NSR 7 and NSR 8, the two closest residential receptors to the proposed well location, unmitigated noise levels reach 68.7 dBA and 74.1 dBA respectively, against the 50 dBA limit. The park receptor at NSR 9 reaches 79.8 dBA against a 60 dBA limit.

CalWater proposes to address these exceedances with an elaborate temporary barrier system: 600 linear feet of 32-foot-high acoustic barrier walls encircling the property perimeter, supplemented by 190 linear feet of 20-foot-high dual K-rail mounted barriers around the drilling equipment, 72 linear feet of 12-foot-high barrier walls around the mud pump and air compressor, and 96 linear feet of acoustic blankets on the rig floor. The proposal is to essentially encase the drilling operation in a temporary acoustic fortress. The scale of this mitigation is itself an indication of the magnitude of the noise impact this project will generate in a quiet R-0 residential neighborhood in the middle of the night.

Even with this extensive mitigation fully implemented, the assessment's own Table 7-3 shows that NSR 7 remains at 52.2 dBA and NSR 8 remains at 57.7 dBA, both above the 50 dBA nighttime limit. The assessment acknowledges these results and recommends no further mitigation. It does not explain why additional reduction is not feasible, does not identify what further measures could achieve compliance, and does

not assess whether the nighttime limit can be met at these two homes at all. The EIR contains no finding that the nighttime noise impact at NSR 7 and NSR 8 is mitigated to a less-than-significant level, because the assessment's own data show it is not. Because decibels are measured on a logarithmic scale, an increase of just 3 dBA represents a doubling of sound energy. The 57.7 dBA level modeled at NSR 8 represents a near-doubling of perceived loudness to the human ear over the City's legal limit—a severe disruption that cannot be hand-waved away as a minor technical variance.

A finding under Public Resources Code § 21081(a)(1) that noise impacts have been mitigated to a less-than-significant level cannot be made when the assessment demonstrates that two occupied residences will remain above the applicable nighttime noise standard after all proposed mitigation has been applied. The Council would instead be required to make a statement of overriding considerations under Public Resources Code § 21081(b), finding that specific economic, legal, social, technological, or other benefits of the project outweigh the significant and unavoidable impact. The EIR does not prepare the record for that finding, and the Council should not be asked to make it without a full accounting of the impact and the weight of the benefits asserted.

B. All Drilling Equipment Noise Data Is Proprietary and Cannot Be Independently Verified

Table 7-1 of the assessment lists ten pieces of drilling equipment included in the noise model: the rig engine, exhaust, cooling fan, drawworks, rotary table, mud pump shaker, mud pump motor, mud pump engine and fan, air compressor, and genset. The sound level data reference for every single piece of equipment is listed as "BAENC File Data for similar equipment." Not one of the ten input values used to model the dominant noise source during the project's most impactful phase comes from a publicly available, independently verifiable source. The public, the City, and any independent acoustical consultant have no way to examine, test, or verify the foundational data on which the entire drilling noise analysis rests.

The staff memo states that the City reviewed the EIR and determined it reflects the City's independent judgment. That is a defense of the City's review process, not of the underlying data. The peer review by Illingworth & Rodkin, Inc., presented as independent confirmation that the noise analysis is adequate, addressed only the anomalous ambient readings at 10:00 p.m. and 11:00 p.m. on July 19, 2022. It does not address the BAENC proprietary drilling equipment data at all. Neither the staff memo nor the peer review establishes that the ten input values are accurate, appropriate for the equipment that will actually be deployed, or representative of conditions at this site. The City's review of a document whose foundational inputs cannot be independently verified does not transform those inputs into substantial evidence. The applicant is in effect asking the City to accept its conclusions while providing no pathway to verification.

C. The MMRP's Proposed Hotel Vouchers Do Not Constitute CEQA Mitigation

Mitigation Measure MM NOI-1.2 proposes to address the residual nighttime noise exceedance at 819 and 823 Coventry Court by offering hotel vouchers at \$300 per night per room for the duration of nighttime drilling. The City's staff memo acknowledges explicitly: "Since the provision of the hotel vouchers does not reduce the noise level to below the threshold at these two residences, the impact is concluded to be significant and unavoidable."

Offering residents money to leave their homes is not mitigation under CEQA. Under CEQA Guidelines § 15370, mitigation measures must avoid, minimize, rectify, reduce, eliminate, or compensate for significant effects. Compensation for a significant effect is permissible in narrow circumstances, but it does not transform a significant impact into a less-than-significant one. The adopted Findings acknowledge this explicitly: the vouchers give residents the option to relocate but do not reduce the noise levels to an acceptable level. That acknowledgment triggers the Statement of Overriding Considerations requirement under Public Resources Code § 21081(b). A Statement of Overriding Considerations has been proposed, and its adequacy is analyzed in Section V of this letter. This Council is being asked to vote for a Statement of Overriding Considerations asserting that CalWater's corporate expedience outweighs the basic sleep, health, and property rights of your constituents. However, because the underlying noise data is entirely proprietary and unverified, this Council lacks the legally required, verifiable facts to perform that balancing test accurately. You cannot legally weigh a benefit against a harm when the scale of the harm has been hidden in a black box.

The voucher measure also raises practical questions the MMRP does not answer. Residents who cannot use a hotel voucher, perhaps because they have pets, children in school, medical conditions, or work-from-home obligations, receive no effective mitigation at all. The measure provides no remedy if CalWater's drilling schedule changes. It covers only nighttime sleep; it does not address the same residents' experience during the same drilling activity at all other hours. And it is limited to two households, even though the assessment's own noise contours show elevated levels at multiple surrounding properties.

D. The Drilling Phase Has No Ongoing Noise Monitoring

Mitigation Measure MM NOI-1.3 requires ongoing noise monitoring during demolition, grading, excavation, trenching, and tank construction. It does not apply to drilling. The drilling phase which is the project's most noise-intensive activity, occurring 24 hours per day for up to 27 days has acoustic barriers but no monitoring requirement. If the barriers are incorrectly installed, shift, deteriorate, or are otherwise ineffective, there is no monitoring mechanism that would detect the problem and no automatic work-stoppage protocol. The staff memo confirmed this structure without explanation: the most impactful activity in the project operates with no real-time compliance verification.

E. The Aeration Noise from the Steel Tank Was Omitted from the Operational Noise Analysis

The EIR's project description states that groundwater pumped from the new well must be aerated by discharging it near the top of the steel tank to splash and agitate. The

tank is 17 feet tall in the modified design and is constructed of uninsulated steel. A large volume of water splashing into a steel tank from height generates a persistent, high-frequency sound that carries well beyond the property boundary. The operational noise analysis covers the booster pump, the well pump motor, and the emergency generator. It does not include the aeration process. The prior tank at this site was a steel tank clad in redwood, and neighbors have reported that the sound of water splashing in that tank was the predominant audible noise from the site during operation. The current analysis omits this source entirely, meaning the operational noise finding is based on an incomplete inventory of the noise-generating equipment the project will actually operate. The Council should also confirm whether the noise analysis was updated to reflect the modified 17-foot tank height, or whether it was conducted against the originally proposed 24-foot design. This design modification is structurally significant: lowering the tank height fundamentally changes the gravity-fed fall distance, splash velocity, and acoustic resonance of the uninsulated steel shell, potentially altering both the pitch and proximity of operational noise to the property line. The Council cannot certify an operational noise finding based on an obsolete tank configuration.

F. Interior Noise Levels Inside Eichler Homes Were Never Analyzed

The EIR's entire noise analysis is conducted at exterior property lines. It contains no analysis of interior noise levels inside the adjacent homes. For most residential construction, exterior-to-interior attenuation assumptions are reasonable as standard wood-frame walls and insulated windows provide meaningful sound reduction. These homes are not standard.

The neighboring homes are Eichler homes built in 1961 and 1962. Their defining architectural characteristic, documented in the City of Sunnyvale's own Eichler Design Guidelines, adopted July 28, 2009, is post-and-beam construction with floor-to-ceiling glass wall panels facing private yard areas. Many of these rear walls face the CalWater property directly. Original single-pane glass provides approximately 18 to 22 decibels of sound attenuation, compared to 25 to 35 decibels for modern insulated glass. The practical consequence: interior noise levels inside these homes will be materially higher relative to the exterior measurements than the EIR implies.

This is not a condition residents can freely remedy. The City's own Eichler Design Guidelines govern exterior modifications to these homes, including window and glass panel replacement. The guidelines explicitly discourage changes that would alter the characteristic panel-and-glass organization of the facade, and design review is triggered for any exterior change that significantly alters the home's appearance. Residents of these homes cannot simply replace floor-to-ceiling glass walls with acoustically protective solid panels without city oversight and potential denial. The acoustic vulnerability created by large areas of glass facing the project site is therefore a permanent structural characteristic of these homes and the EIR was required to analyze its implications. It did not. There is a further dimension the EIR does not address: Eichler homes of this era were designed for passive ventilation and the overwhelming majority lack central air conditioning. Residents rely on opening the sliding doors to cool their homes during warm weather. During drilling operations residents face a choice between enduring interior heat or opening their homes to construction noise that already

exceeds the nighttime limit at the property line. This is not a theoretical trade-off. It is a predictable consequence of the project's design that the EIR's noise analysis never acknowledges.

G. Eichler Slab Construction Creates Specific Vibration Vulnerability Not Analyzed

Public comments before the Planning Commission established a specific structural fact about these homes that the vibration assessment does not acknowledge: the Eichler homes surrounding this site were built on unreinforced concrete slabs with only wire mesh and copper radiant heating pipes embedded within those slabs. This construction detail is directly relevant to the vibration threshold analysis.

Standard concrete slab construction uses steel reinforcing bar to distribute tensile stress and resist cracking from external forces including vibration. Wire mesh provides significantly less resistance to differential movement. Copper radiant heating pipes embedded in an unreinforced slab are vulnerable to shearing if the slab cracks or shifts; repairs require jackhammer demolition, and full system replacement costs tens of thousands of dollars. The vibration assessment applies a threshold of 0.25 ips for "Historic and some old buildings" while acknowledging the structural condition of the nearest buildings is unknown. The unreinforced wire-mesh slab construction of these specific homes is precisely the kind of site-specific structural information that a competent vibration assessment would obtain and evaluate before selecting a threshold. The assessment does not acknowledge this construction type, does not evaluate whether the 0.25 ips threshold is appropriate for it, and recommends no monitoring or pre/post-construction surveys that would establish a baseline or detect damage. The staff memo's response to vibration concerns, that no significant impact was found and therefore no monitoring can be required, is circular: the methodology determines the outcome, and the outcome forecloses scrutiny of the methodology.

H. The Permanent Diesel Generator Creates an Unanalyzed Long-Term Air Quality Impact

The EIR's air quality analysis addresses construction-phase diesel particulate matter. It does not analyze the long-term operational air quality impact of the permanent emergency backup generator. Under NFPA 110, the National Fire Protection Association standard governing emergency standby power systems whose compliance is legally mandatory, diesel generators must be tested monthly under load for a minimum of 30 continuous minutes, with annual extended tests and periodic full-load tests. These are mandatory legal requirements that will produce scheduled diesel combustion events in this quiet residential neighborhood throughout the 30 to 50 year operational life of the facility.

Under *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, the California Supreme Court held that an EIR must make a reasonable effort to connect a project's air quality impacts to likely health consequences for neighboring residents. The EIR's health risk assessment is limited to construction-phase emissions. It provides no estimate of cumulative exposure to diesel particulate matter from mandatory operational test cycles,

and no analysis of health consequences at those exposure levels. Labeling this equipment an "emergency" generator does not eliminate the legal obligation to analyze its recurring, mandated operational emissions. Emergency equipment must be periodically operated to ensure it will work during an actual emergency. Emissions from such operations is not a speculative future impact. It is an identified, legally mandated, quantifiable operational activity that the EIR was required to analyze and did not.

I. Vibration Analysis: The Nearest Receptor Appears to Be Misidentified

The well drilling vibration analysis identifies the closest receptor as 17 feet from the drilling source and calculates a vibration level of 0.03 ips at that distance. The project site is surrounded by a chain link fence and is not accessible to the public. Based on review of publicly available mapping, the nearest Eichler homes appear to be located approximately 90 feet from the proposed well location on the southwest portion of the site. The assessment's 17-foot receptor is not a neighboring occupied residential structure. It is almost certainly a structure on or immediately adjacent to the CalWater property itself, such as a fence line or on-site equipment structure.

Using the inverse distance relationship the assessment itself applies, the calculated vibration level at approximately 90 feet would be in the range of 0.0025 ips, substantially below both the 0.25 ips structural threshold and the 0.04 ips human annoyance threshold. In this respect, the receptor misidentification does not understate the risk to neighboring homes the corrected calculation at the actual distance would show lower vibration levels than reported. I note this in the interest of accuracy.

However, the receptor misidentification is not inconsequential. It raises a fundamental question about the care with which the assessment was prepared. If the basic geometry of the nearest receptor was not accurately established, the assessment's other methodological choices deserve equal scrutiny. An accurate distance measurement would require access to both properties and survey-level precision, which the assessment does not appear to have employed. The Council should require the assessment to identify the nearest occupied residential structure with specificity and confirm the distance used in the analysis reflects actual site conditions. The remaining deficiencies identified below are not resolved by this clarification.

J. The Structural Threshold Applied to Eichler Homes Is Not Justified

The assessment applies a vibration threshold of 0.25 ips, which it describes as the limit for "Historic and some old buildings." The staff memo defends this choice, noting the City selected this threshold as more conservative than the standard 0.3 ips for older residential structures. That defense addresses the choice between available categories. It does not address the more fundamental question the assessment itself raises: whether any of those categories is appropriate for these specific homes when the assessment explicitly acknowledges that "the condition of the nearest structures to the Project Site is unknown."

The neighboring structures are Eichler homes constructed in 1961 and 1962, built on unreinforced concrete slabs with wire mesh only, no rebar, and with copper radiant heating pipes embedded within those slabs. This is a fundamentally different structural

system from the conventional wood-frame or masonry construction that the Caltrans vibration guidelines were developed to categorize. The FTA guidelines referenced in the assessment categorize buildings by construction type and condition. Selecting a threshold category without examining the actual construction type of these specific homes, and without acknowledging the wire-mesh slab characteristic that makes them particularly susceptible to vibration-induced cracking, is not a conservative methodological choice. It is an unsupported one. The staff memo's defense of the threshold selection does not engage with this gap.

Choosing an appropriate structural threshold would not be a particularly laborious act. The City's Eichler Design Guidelines contain many details on the architecture and design of Eichler homes. Reviewing the design guidelines and then selecting a threshold based on this information is something we should expect of qualified professionals. It may be that the proper threshold is actually much higher .25 ips. The interest is in ensuring that the analysis is done with all due care and is not a pro forma form filling exercise.

K. The Well Drilling Vibration Reference Data Is Proprietary and Cannot Be Independently Verified

The well drilling vibration analysis states that reference vibration levels are "derived from collected vibration levels of a similarly sized water well drilling equipment obtained from a field vibration measurement survey conducted by Behrens and Associated Environmental Noise Control (BAENC)." BAENC is the same firm that prepared this assessment. The reference data is the firm's own proprietary, unpublished field measurements. There is no citation to a specific survey, no date, no location, no description of what equipment was measured, no explanation of what "similarly sized" means in quantitative terms, and no way for the public, the City, or an independent reviewer to examine the underlying data.

The staff memo states that the City reviewed the EIR and found it reflects the City's independent judgment, and that the technical expert confirmed the methodology is appropriate. That is the same process defense discussed in subsection B above in the context of the noise data. It is a defense of the review, not of the data. CEQA requires that impact analyses be based on substantial evidence in the record. Data that cannot be independently examined, tested, or verified is not substantial evidence, regardless of whether a lead agency has reviewed and accepted the conclusions drawn from it. The vibration peer review, unlike the noise peer review, was not performed by an independent firm at all. The vibration analysis was reviewed only as part of the City's general EIR review, not by a specialist who examined the underlying vibration data. The methodology question raised here, whether BAENC's proprietary reference measurements are applicable to this specific equipment at this specific site, remains unaddressed.

L. The Demolition Phase Analysis Relies on 30-Year-Old Reference Data

The demolition vibration analysis relies on data from the Federal Transportation Authority (1995), a source that is now more than 30 years old. Construction equipment,

drilling rigs, and vibration measurement methodologies have changed significantly since 1995. The assessment provides no explanation of why 1995 data remains appropriate for a 2025 construction project, no discussion of whether modern equipment generates different vibration characteristics than the equipment surveyed in 1995, and no acknowledgment of the data's age as a limitation. Using three-decade-old reference data without justification does not constitute a current, site-specific vibration analysis.

I raise this not to obstruct the project but to identify a gap in the analysis that cuts in both directions. It is entirely possible that modern demolition and drilling equipment produces lower vibration levels than the 1995 data reflects. Advances in rig design, dampening systems, and operational controls over three decades may well mean the actual impact on neighboring structures is less than the assessment implies. But that determination cannot be made from 1995 data. If current equipment data would demonstrate a lower vibration impact, CalWater and the City should welcome the opportunity to establish that on the record. If it would demonstrate a higher one, the public and this Council are entitled to know. The point is not that the outcome is predetermined. It is that an assessment founded on current, verifiable data is the minimum that a legally adequate environmental review requires, and that standard has not been met here.

M. Continuous 24-Hour Drilling Is Not Addressed

The EIR project description states that drilling will occur continuously, 24 hours per day, for up to 27 days across two phases. The vibration assessment evaluates "typical" vibration levels without addressing whether continuous 24-hour operation changes the analysis for neighboring residents and structures. Vibration effects on structures and human occupants are not simply a function of peak levels. Cumulative exposure over extended periods, including nighttime hours, is a distinct concern that the assessment does not address. A finding of less-than-significant impact based on peak vibration levels during daytime operation does not establish that continuous 24-hour vibration over 27 days is below significance thresholds for human annoyance or structural effects.

N. Glass Panel Vulnerability Specific to Eichler Construction Is Not Assessed

Eichler homes are characterized by floor-to-ceiling glass wall panels as a defining architectural feature. Glass panels are particularly susceptible to vibration-induced stress cracking under conditions that would not affect solid wood-frame or masonry walls. The vibration assessment contains no analysis of glass panel vulnerability, no reference to any vibration threshold guidance applicable to large glass structures, and no recommendation for vibration monitoring during drilling to detect early signs of glass stress. The assessment's conclusion that no mitigation measures are warranted is made without any analysis of the specific structural vulnerability most likely to affect the neighboring properties.

O. The Combined Effect

Taken together, these deficiencies reflect an assessment performed as a pro forma exercise rather than the careful, site-specific inquiry CEQA requires. The nearest

receptor is misidentified, the structural threshold is unjustified, the well drilling reference data cannot be independently verified, the demolition data is 30 years old, continuous 24-hour operation is not analyzed, and the specific vulnerability of glass-panel construction is not addressed. We do not contend that every one of these errors inflates the project's impact. As explained in subsections I and L above, the misidentified receptor likely overstates vibration at the actual distance, and modern equipment may well generate lower vibration than reflected in the 1995 reference data. We identify these defects because an analysis riddled with error in both directions cannot be relied upon either way. The assessment as written supplies no reliable basis for concluding that vibration impacts are insignificant, even if a properly conducted analysis ultimately might.

This distinction is dispositive under CEQA's substantial-evidence standard. A finding that an environmental impact is less than significant must be supported by substantial evidence in the record. (Pub. Resources Code, §§ 21081.5, 21168.5.) "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion," and consists of "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (CEQA Guidelines, § 15384.) It expressly does not include "argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous." (Id.; Pub. Resources Code, § 21082.2, subd. (c).) The vibration assessment fails this standard on its own terms. Proprietary reference data that no member of the public, the City, or an independent reviewer can examine is not a verifiable fact. A threshold selected without examining the construction of the very homes to which it is applied is not expert opinion supported by facts. And a nearest-receptor distance that the assessment itself appears to have gotten wrong is the "clearly inaccurate" evidence the standard excludes. An expert's conclusions command deference only when grounded in facts in the record; a lead agency cannot transmute unverifiable inputs and unexamined assumptions into substantial evidence merely by reviewing and adopting them.

For these reasons, the Council cannot rely on this assessment to support a finding under Public Resources Code section 21081 that vibration impacts on the neighboring Eichler homes are less than significant. The record lacks the substantial evidence that such a finding requires.

IX. The Combined Effect: Certification Is Not Legally Supportable

The EIR and SOC before this Council contain a list of problems too long to list here. Both would present the city with significant legal exposure if certified by the City Council. This letter became long because the analysis in too many parts of the EIR was cursory and pro forma. Perfection is not the goal because it is unachievable. Nonetheless, it is perfectly reasonable for the city to apply a standard of all due care. The applicant has not met that standard and that failure would impart unacceptable risk onto the city if the EIR and SOC were to be certified.

As set out at the opening of this letter, the Council has two options consistent with its legal obligations: deny the Conditional Use Permit and decline to certify the EIR on the current record, given the threshold legal deficiencies in the nonconforming use right and CPUC preemption that an improved EIR cannot cure; or continue the item and direct staff to report back on the open questions identified above before any vote is taken.

What the Council cannot do, consistent with its legal obligations as lead agency under CEQA, is certify an EIR that it knows to be materially inaccurate. The Planning Commission recommended certification, but Commissioners expressed doubt and hesitation in doing so. I submit that the hesitation was warranted, and that the record now before the Council provides specific, documented, and legally grounded reasons why certification should not proceed.

Respectfully submitted,



Ann Bogan, M.D.
Sunnyvale Resident

6/29/26

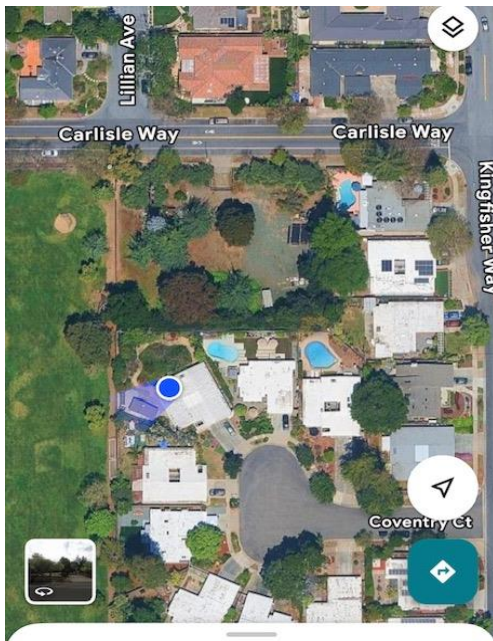
Honorable Mayor and Members of the City Council
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 9408

Re: **CalWater 800 Carlisle Way Well Project**

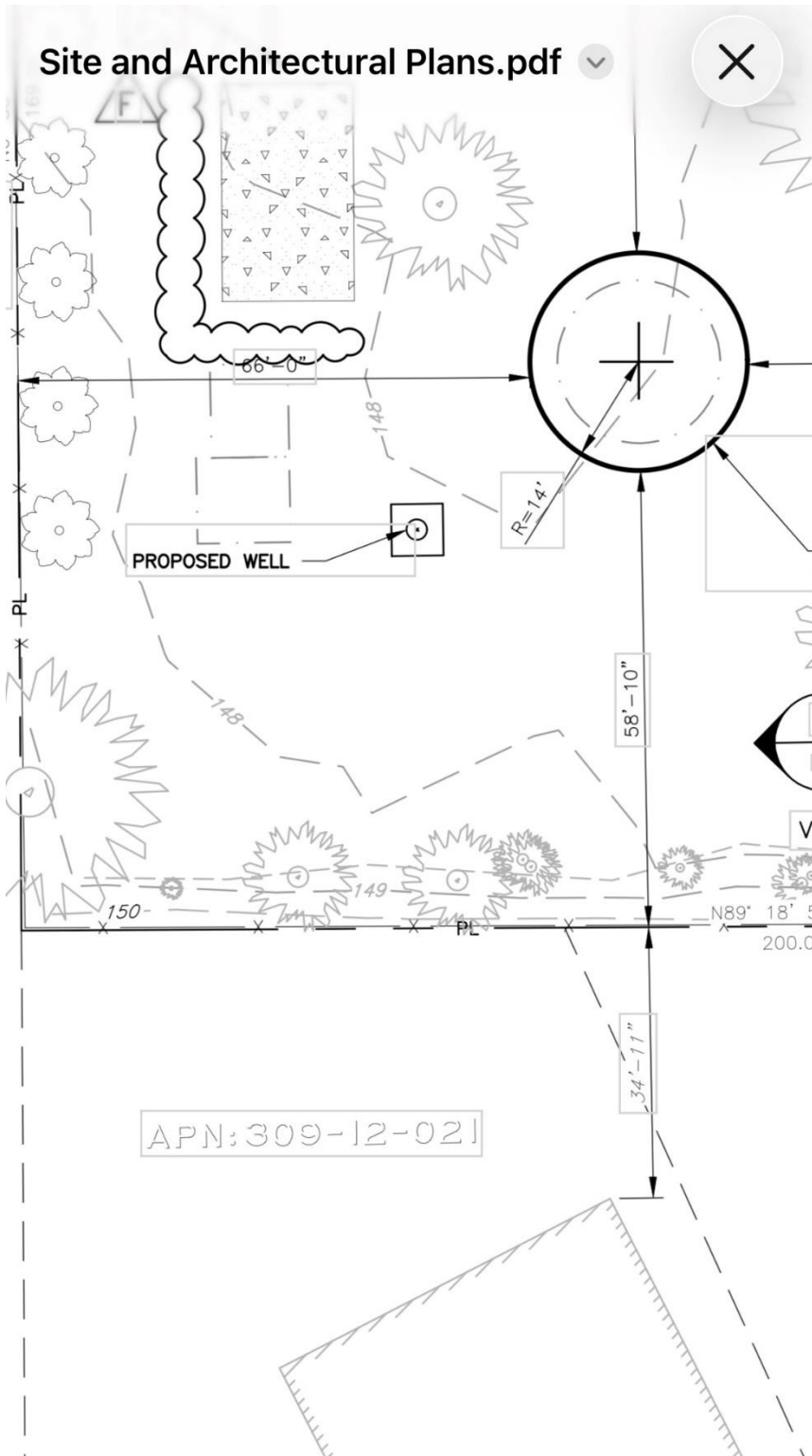
Dear Honorable Mayor and Members of the City Council:

Who Am I?

My name is Susan Charbonneau. I have lived at [REDACTED] since 1980. I wish to comment on the EIR especially in regards to noise both during construction of the new well and the noise after the well is constructed. Also how fumes of a previous diesel generator on the property affected my health.



I live in the house with the blue dot in the image on the left. We re-landscaped in 2013 and added the garden walkway. Note that the image posted on the well property fence does not show that new landscaping so it is at least 13 years old.



This figure shows my property line. As you can see, I am at ground zero for noise during and after construction.

I urge you to read the document submitted by Ann Bogan whose property is also adjacent to the well property

If you haven't already I suggest you read the document submitted by Ann Bogan. The PDF is titled:
[AnnBoganResidentComment20260623.pdf](#)

She has meticulously researched the EIR and has succinctly pointed out its omissions, inaccuracies and misrepresentations in plain English.

Reading it would actually save you time sorting out issues. It also identifies areas in which the City of Sunnyvale could face legal liabilities. I support all of her conclusions.

Noise issues during construction

The EIR suggests that I would receive a stipend for a hotel for the duration of the drilling. Unless I stay at a hotel for 24 hours a day, that offer is meaningless. Also to pack a suitcase and go in the night to a hotel by myself compromises my physical safety. I would also be separated from any physical needs available in my own home.

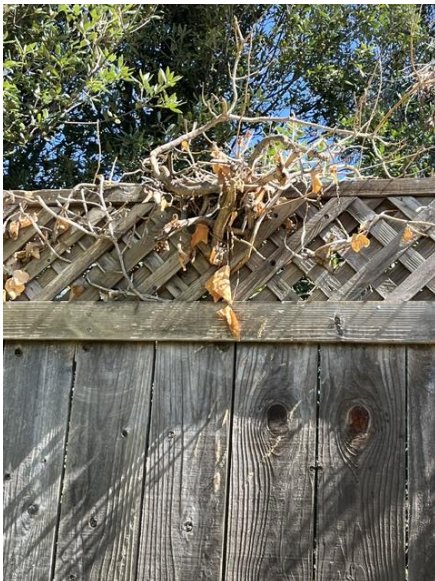
The suggested noise I would encounter somehow indicates that my neighbor and I would be the only ones subjected to that level of noise. That is about as realistic as a smoking area on a commercial airplane. The onus should be on Cal Water to get the right equipment to control the noise levels.

Current condition of the property line fence

Instead of a stipend, spend the money on replacing the decrepit, ill constructed fence. I see they put up supports for the fence. These just prop up a shoddy ill-constructed fence with rotting wood.



Instead of overlapping for privacy and noise reduction, there are literally inches between the upright boards. We can see the workers through the fence. Our back windows are visible through to Carlisle at night. The wood in contact with the ground and elsewhere is deteriorating.



The crosshatch panel added to the top still has weeds that were never cleaned up when they removed the ivy. It is also in poor condition.

Build a higher fence of better quality

The fence should be higher with no gaps to keep out noise and, heaven forbid, fumes that occurred when Sprint put in a generator.

For additional noise reduction, Cal Water should be required to build a taller fence with better quality wood that overlaps with no gaps. Also a more knowledgeable contractor might be in order.

History of a diesel generator on the property

When Sprint added a diesel generator surreptitiously, the fumes made it impossible to breathe in my house no matter whether the windows/doors were opened or closed. Also I was not even able to go into my backyard. I became physically ill and had to go to the doctor for treatment.

I have never had nor needed an air conditioner. Opening screen doors to let cool air in the house is critical as it has been for the last 46 years.

Can the generator be run by electricity instead?

The EIR is not ready as is

I urge the Council to decline the EIR currently on record.

Respectfully submitted,

Susan Charbonneau

Sunnyvale resident for 46 years.

July 1, 2026

Honorable Mayor and Members of the City Council
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086

Re: CalWater Well Project: Deficiencies in the EIR and Planning Commission Record Requiring Independent Council Review

Dear Honorable Mayor and Members of the City Council:

Thank you for the care this Council and City staff have already shown this neighborhood. I write in that same spirit. This is the fourth and final letter in a series regarding the proposed well at 800 Carlisle Way. Each addresses a distinct question, and together they assemble a single record — one written not only for this Council, but to stand as the administrative record any court would review should an approval of this project be challenged. That record establishes that the project fails on every dimension California law requires before a Conditional Use Permit may issue or an EIR may be certified for a project carrying a significant and unavoidable environmental impact.

I attach my previous letters so the Council and staff have the complete record in one place. I also need to correct an error in my letter dated June 23, 2026, at page 8 of 26. I incorrectly identified 781 South Wolfe Road as a CalWater-owned parcel. I have since confirmed the property was *not* owned by CalWater, and that paragraph should be disregarded. I apologize to the City and to CalWater for the error and for not verifying ownership before submission.

A Resident's Perspective on This Neighborhood's Zoning History

I have lived adjacent to 800 Carlisle Way for twenty years. I raised a family in this City. I have watched this neighborhood, cared about it, and participated in the civic processes that shape it. I have also watched this City make deliberate, considered decisions about what this parcel should be — not once, but repeatedly, each time reaffirming the same answer.

When CalWater permanently destroyed its well in July 2016 and the nonconforming use right was extinguished in January 2017, the City had a clean opportunity to reconsider what this parcel should become. Six months after the well was destroyed, this Council added the single-story overlay to this zoning district on February 7, 2017 — a decision made after CalWater gave public comment asking for

the parcel to be excluded from the overlay. The Council looked at this specific neighborhood, with full knowledge of what sat on this parcel, and said: residential, single-story, protected. Then, two years ago, the City updated the Land Use and Transportation Element. That document was adopted in March 2024, well after CalWater filed its CUP application and the EIR process began. There was opportunity to reexamine the zoning of the parcel. The City declined and maintained 800 Carlisle Way as Low Density Residential. Once again the City said: residential, single-story, protected.

Granting this use permit would therefore be a significant policy change, not a neutral application of the zoning code's conditional permitting framework. It would reverse three separate policy actions taken over the last decade. The residents of Coventry Court and Kingfisher Way would live with that reversal for the rest of their time in these homes.

The City has discretion here. This is not a ministerial process of applying a checklist of legal requirements. The Council has the authority to say, as a matter of policy, that this neighborhood is what the City has repeatedly said it is: a residential neighborhood deserving of the protections the City itself has placed around it. The Council does not need CalWater to fail every legal test in order to exercise that discretion. It needs only to act consistently with what it has already decided.

I am not opposed to CalWater serving its customers. I am opposed to CalWater treating this neighborhood as a site of convenience while the City's own policies say it should be something else. I ask only that this Council exercise its discretion the way it has exercised it before: in favor of this neighborhood, and in keeping with what the City has already decided this land should be.

Synthesis of the Legal Argument

Letter 1 — Physical and legal history. CalWater permanently destroyed the well on July 26, 2016 (note that some records say July 27, 2016 — a one-day discrepancy that does not affect the analysis below), filling it with 36 cubic yards of sack cement to 700 feet, yet filed its DWR Form 188 with Valley Water 17 days past Ordinance 90-1's 30-day deadline, and with the state nearly nine years later, possibly in connection with this permitting effort. The nonconforming use right on this R-0 parcel was extinguished by operation of law in January 2017, after which this Council, overruling the Planning Commission, added a single-story overlay protecting this Eichler neighborhood. CalWater called the decommissioning temporary; the physical record, regulatory filings, and the City's zoning history contradict that.

Letter 2 — The required CUP findings cannot be made. Under SMC § 19.88.060, the Council must find either that the proposed use attains the General Plan's objectives for this parcel or that it will not impair the existing uses of adjacent properties. Neither is available. The controlling Land Use and Transportation Element, updated March 2024, designates this parcel Low Density Residential — as Commissioner Pyne noted — so approving utility infrastructure contradicts the General Plan's objectives; and the MMRP's own acknowledgment of a significant and unavoidable noise impact makes the impairment finding impossible to make honestly. Sunnyvale's zoning code and CEQA are independent frameworks: the SOC operates at the CEQA level and does not satisfy the zoning code's

findings requirement. If CalWater believes its zoning is preempted, it has avenues to pursue that question in the proper forum.

Letter 3 — The certified EIR is inadequate. The project description contradicts itself by calling the well "destroyed" in the objectives and "reactivated" in the overview, while the physical facts — different location, depth, and method, and a theoretical maximum yield roughly 75 percent greater than the well it replaces — confirm brand-new construction. The alternatives analysis is calibrated to a reactivation, foreclosing the broader questions new construction would raise, and the off-site analysis is a single paragraph with no site examination, no hydrogeological assessment, and no definition of "viable." The noise analysis relies on proprietary, unverifiable equipment data, omits the aeration source, leaves at least two homes above the nighttime limit after maximum mitigation, and includes no interior analysis for homes defined by floor-to-ceiling glass. The Statement of Overriding Considerations misidentifies the affected community, relies on an incorrect General Plan designation, mischaracterizes Executive Order N-10-21, asserts the infeasibility of quieter equipment without supporting analysis, and conflates the absence of a land exchange with a finding that no feasible alternative site exists. This is a truncated summary.

An Evaluation of the Record

Reviewing all the project submissions together, a pattern emerges. CalWater has treated its regulatory obligations selectively: late to Valley Water on its DWR filing and nearly nine years late to the state; describing a permanent destruction as a temporary decommissioning; writing project objectives designed to foreclose alternatives; and submitting an EIR whose noise analysis rests on data no one outside the consultant's firm can examine or verify. Any one of these might be dismissed as an isolated technical deficiency. Taken together, they reflect a consistent absence of the care this kind of application requires. This points to a practical conclusion: the Council should not take CalWater's representations at face value. Where the record rests on CalWater's own characterizations (of the well's history, of the noise data, of the alternatives), the Council is entitled to verify those representations independently before relying on them.

I do not ask this Council to deny CalWater everything, forever. I ask the Council to insist that CalWater meet the legal standards that exist for good reasons: to protect neighborhoods, to ensure genuine necessity before local zoning is overridden, and to require honest environmental analysis before permits are issued. I also ask the Council to consider that a project rendering our homes unlivable 24 hours a day, 7 days a week, for 27 days in the best-case construction scenario is, on its own terms, asking too much of the neighbors.

The Conflict in the Findings

Before the Council votes, there is a conflict in the findings before it that deserves explicit acknowledgment. Under SMC § 19.88, the Council must find that this use will not impair the existing uses being made of adjacent properties. Under CEQA, the Council must simultaneously acknowledge, through the Statement of Overriding Considerations, that this project will impose a significant and

unavoidable noise impact on those same adjacent properties. These two findings are in direct logical conflict. A significant and unavoidable noise impact on adjacent residential properties is the definition of impairing the existing uses being made of those properties. The Council should explain, before it votes, how it can honestly make both findings simultaneously. I do not believe it can.

The Path Forward

I want to be equally clear about what would resolve these objections, because they are not objections to CalWater or to a well. They are objections to this project, as presented, arriving by this process. If CalWater believes it is entitled to build here notwithstanding the City's zoning, it has due process options available to it as an investor-owned, state-regulated utility, and it is free to pursue them through the CPUC. If it intends to build a new well, it can describe the project accurately as new construction, conduct the genuine alternatives analysis CEQA requires, and prepare an environmental review whose data the public can actually examine.

The remedy is not for this Council to have the City absorb the resulting legal risk on CalWater's behalf. It is for CalWater to do the work that California law requires of any applicant seeking to place industrial infrastructure in a residential neighborhood.

Conclusion and Available Actions

The Council has two options consistent with its legal obligations as lead agency under CEQA and as the zoning authority for the City of Sunnyvale:

(1) Deny the Conditional Use Permit and decline to certify the EIR on the current record. The nonconforming use right was extinguished by operation of law in January 2017. A water well is conditionally permitted in R-0 with a use permit, but the required findings for CUP approval cannot be made on a record acknowledging a significant and unavoidable impact on neighboring residents. Preemption of Sunnyvale's zoning has not been established through the process California law requires. These are threshold legal deficiencies that an improved EIR cannot cure.

(2) Continue the item and direct staff to resolve the open questions in the record. If the Council believes further review is warranted before acting, it may direct staff to report on the permit history of the 2016 well cementation, the status of CalWater's CPUC compliance, and the General Plan designation applicable to this parcel under the current LUTE — questions whose answers bear directly on whether the threshold legal requirements for this project can be met.

Respectfully submitted,



Ann Bogan, M.D.
Sunnyvale Resident

Honorable Sunnyvale Council Members and Mayor:

This letter addresses agenda item 26-0484: Consider applications on a 0.77-acre site at Carlisle Way.

My name is Liam Davis, and I live at [REDACTED], one of the neighboring properties to the applicant's parcel. I've lived there since I was six months old and went to [REDACTED] and graduated from [REDACTED] in 2023. I will start my senior year at [REDACTED] this fall.

I want to address the alternative sites analysis in the EIR. The section, less than 150 words in its entirety, only tells us that CalWater possesses no other viable properties. The section is included below.

An alternative site may be considered when impacts of the project might be avoided or substantially lessened, and the project proponent can feasibly attain control of the site. Only alternative locations that would avoid or substantially lessen any of the significant effects of the project and meet most of the basic project objectives need to be considered for inclusion in the EIR (CEQA Guidelines Sections 15126.6(f) and 15126.6(f)(2)(A)). Cal Water does not currently have any alternative off-site properties that are viable for a new groundwater extraction well within the Los Altos Suburban service district, and the City does not have any similarly sized parcels of surplus land that could be used in exchange for the project site. For these reasons, an alternative off-site location was considered but rejected for further analysis.

— Draft EIR, Section 7.2.1.6, "Alternative Off-Site Well Location," p. 40

www.sunnyvale.ca.gov/home/showpublisheddocument/5931/638832590419700000

The section simply states that no alternative off-site properties are viable within the service district, without providing any rationale or evidence for why off-site properties are not viable. [REDACTED] would have failed a submission of this quality, and a parent teacher conference would have been scheduled immediately. Moreover, public data shows that CalWater has at least 22 active well sites and 52 abandoned or destroyed sites in its service area. The EIR should have, at the bare minimum, included an inventory with a description of why each site is inappropriate.

Wells are regulated by Valley Water, who conveniently have a website with all their well permits.¹ I narrowed the dataset to only include well with the purpose of Municipal. Limiting the selection to Municipal effectively limits the data to wells controlled by utilities, which I then combined with geographic data from the California Department of Water to determine CalWater's boundaries. I've made public an interactive map of all of the well permits in CalWater's service area here: liamjdavis.github.io/calwater/. All my code is available in this GitHub repository: github.com/liamjdavis/calwater.

¹data-valleywater.opendata.arcgis.com/datasets/43743ae1dbfa4172a3c4a0d6481093b7_0/explore?location=37.168288%2C-121.852326%2C10

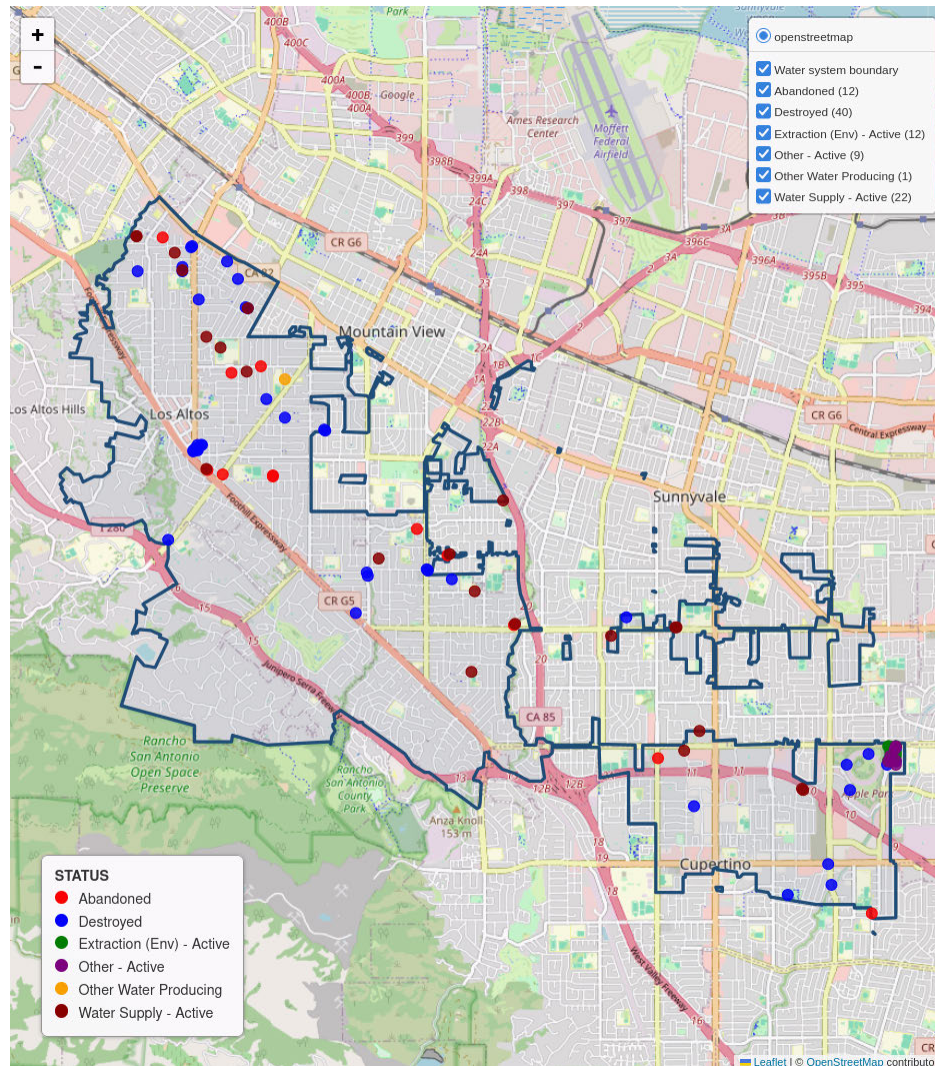


Figure 1: Wells with Purpose: Municipal in CalWater Service Area

Figure 1 presents the overall map of the CalWater district. The service area is centered in Los Altos, with disconnected pockets extending into Mountain View, Cupertino and Sunnyvale. Every region of the service area within Sunnyvale is non-contiguous with the rest of the district, and together those regions make up a small fraction of both the district and the city. The district map looks more gerrymandered than a congressional district in Mississippi. Notably, the Carlisle parcel lies outside of CalWater's service boundary. The well would be drilled in a neighborhood CalWater does not serve, and as a result, the negative externalities of construction, nighttime drilling and the permanent industrial use of a residential parcel would fall completely on Sunnyvale residents who are not served by CalWater. I recognize that utility boundaries are historical and slow to change, but the City should ask whether a project that burdens residents who receive no benefits should be allowed in Sunnyvale.

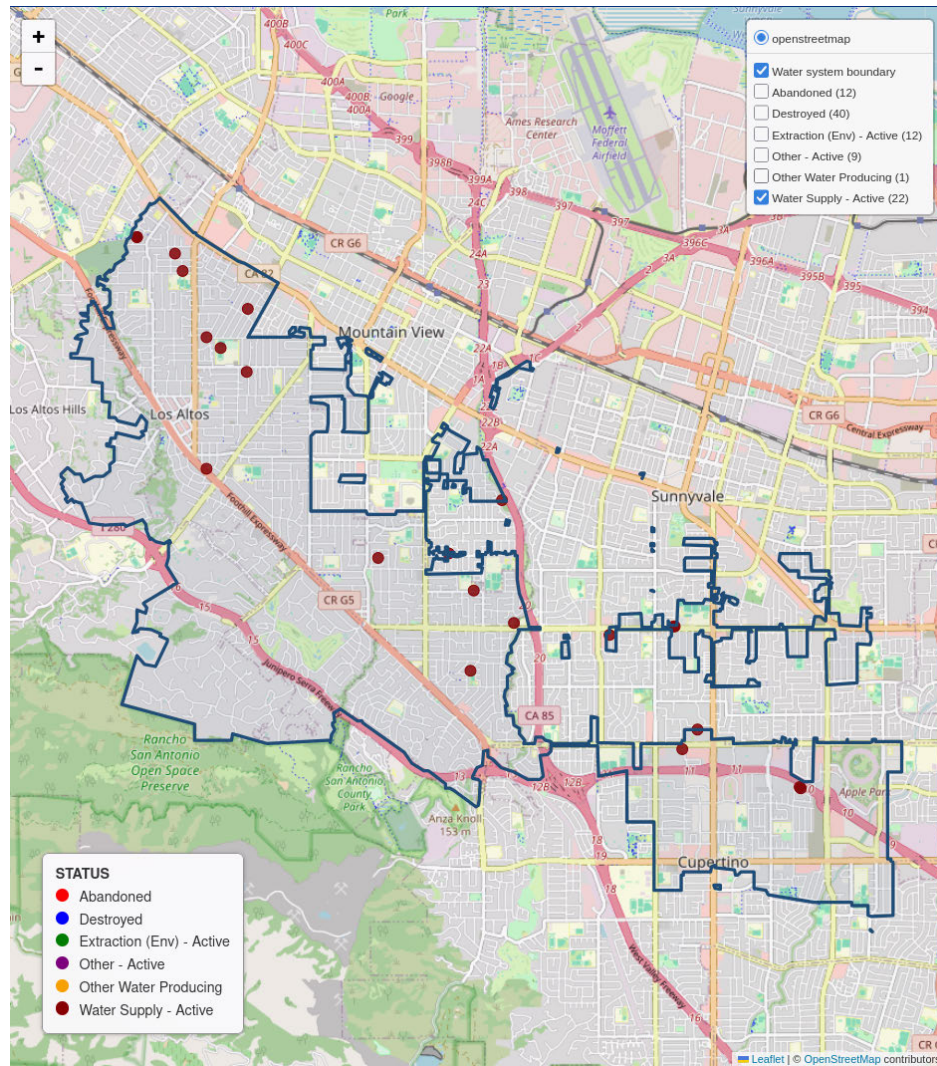


Figure 2: Active Drinking Water Wells in the CalWater Service Area

Figure 2 narrows the map to CalWater's 22 active water supply wells. The full inventory within the service area contains 96 municipal well permits, of which 22 are active water supply wells, 12 are abandoned sites, 40 are destroyed sites and 22 wells serve other purposes. Each of these current and former well sites is a location the alternatives analysis could and should have evaluated, but did not. Compared to other sites, the Carlisle parcel directly neighbors seven residential properties, while nearly every active CalWater site has fewer residential neighbors. For example, the site near Fremont Avenue just west of Sunnyvale borders two homes, and the two sites on or near Fremont Avenue within Sunnyvale are similarly situated. A site-by-site suitability analysis across all sites in the district is precisely what CEQA asks of an applicant. Such analysis is completely absent from the EIR. Below are the standards CEQA sets: the guidelines require the lead agency to disclose its reasons when it concludes that no feasible alternative locations exist, the courts require an EIR to demonstrate a good faith effort at full disclosure and state law establishes that an agency that falls short has failed to proceed in the manner required by law. A single conclusory sentence satisfies none of these requirements, but is a shallow attempt at following proper

procedure, not a good faith effort at full disclosure.

If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR.

— CEQA Guidelines, 14 Cal. Code Regs. §15126.6(f)(2)(B)

www.law.cornell.edu/regulations/california/14-CCR-15126.6

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. [...] The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

— CEQA Guidelines, 14 Cal. Code Regs. §15151

www.law.cornell.edu/regulations/california/14-CCR-15151

Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

— California Public Resources Code §21168.5

leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=21168.5

I leave the map and code to city staff, city council and the public. A cursory look shows beyond any doubt that the EIR analysis on alternative sites is effectively missing. It leaves me questioning the good faith of the applicant, and I am sure most citizens would agree with me. It would be highly inappropriate and expose the city to legal liability if the city were to certify the EIR.

Sincerely,

Liam Davis

July 15, 2026

TO: Sunnyvale City Council

RE: Comments on the 800 Carlisle Way Well & Water Tank Project

To the Members of the Planning Commission and City Council,

I'm writing again to express my concerns about the proposed well project at 800 Carlisle Way, the property behind my Eichler home.

My neighbor, Ann Bogan, has written extensively about the possible illegality of this project. I **urge you to read her letters and answer her questions about whether CalWater even has the right to drill a new well.** If you determine that the project is legal, please take these concerns into account.

Property Damage

CalWater has provided extensive data, but I'm not reassured about the safety of my property which includes a newly-refinished in-ground pool and a 60+ year old home on a concrete slab foundation. I'm concerned that vibrations from the 24/7 drilling for nearly a month will crack the pool and the floors, in which my radiant heat is embedded. **Please require that CalWater provides real-time measurements for noise and ground vibration, as well as a \$500,000 bond for each adjacent property, to cover potential damage to these properties.** If CalWater is confident that the drilling doesn't pose a risk, they shouldn't hesitate to agree to this stipulation.

Loss of Use of Property

While I appreciate CalWater's offer to extend hotel vouchers to all adjacent neighbors, this is insufficient for my needs. I can't spend a month in a one-room hotel room with a family of four. **Please require that CalWater covers the cost of a local apartment rental to all adjacent property owners.** That seems like a small concession for the loss of use of our properties for nearly a month.

Perimeter Fence

The existing fence around the perimeter of CalWater's property, installed after their last major project there, was poorly constructed and we now see gaps both under the fence and between the boards. **Please require that CalWater removes the current fence and replaces it with a better quality product.** Committing to this request would be a show of good faith to the neighborhood.

I recognize that this project may be inevitable. Please fulfill your duty to your constituents and protect our neighborhood.

Respectfully,
Joni Lindenstruth

[REDACTED]

From: [Terry Grossman](#)
To: [Council AnswerPoint](#)
Subject: Subject: CalWater Property at 800 Carlisle Way
Date: Tuesday, July 14, 2026 7:09:48 PM

WARNING - This email came from an EXTERNAL source. Confirm the sender and its contents are safe before responding, opening attachment or links.

Dear Honorable Mayor and Members of the City Council

My name is Terry Grossman. I have lived on [REDACTED] for over 40 years, across from the CalWater property at 800 Carlisle Way. I am 86 years old, and this is my home for the rest of my life. I am not a lawyer, and I will keep this brief. I only want the Council to hear from someone who will actually live with this project.

My first concern is sleep. The plan calls for drilling around the clock — 24 hours a day, for up to 27 days — a few hundred feet from my bedroom. Even after all the proposed sound barriers, the applicant's own analysis leaves neighboring homes above the City's nighttime noise limit. At 86, sleep is not a luxury; it is part of how I stay healthy. Weeks of broken nights are not a minor inconvenience for someone my age — they take a real toll on the body and the mind.

I understand the applicant has offered hotel vouchers, but I am not among them, even though I am close enough to hear all of it. And I want to be honest with the Council: even if I was offered a voucher, at 86, I cannot reasonably be expected to leave my home for weeks at a time, whether someone else pays for it or not. Living out of a hotel for a month is simply not an option at my age. This is where my life is — my doctors, my routines, my sense of safety. So I would be left with the disturbance and no way to escape it.

My second concern is longer-term. I understand a diesel backup generator would remain on the site and be run and tested regularly for the next thirty to fifty years, right beside Panama Park where neighbors walk. I expect to spend my remaining years in this home, and I would be breathing that air long after the drilling ends.

I am not against CalWater serving its customers. I am asking the Council to remember that the people who will bear this — around the clock, and for years — include quiet, elderly residents for whom leaving is not a real choice. Please do not certify this project as it stands.

Respectfully submitted

Terry Grossman



Sunnyvale, July 11, 2026

Honorable Mayor and Members of the City Council
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086

Re: CalWater Well Project, Concerns and Requests

Dear Honorable Mayor and Members of the City Council:

I am writing to you today to express my concerns about the CalWater Well Project on Carlisle Way and to ask you to ensure that Sunnyvale residents in our quiet, residential neighborhood are protected.

There are many concerns that were comprehensively laid out in the letters our neighbor Ann Bogan sent to you and I won't restate them in this letter but instead point out those that are most concerning from the perspective of myself and my family.

We have been living on Coventry Court for more than 25 years. We do not border directly on the site of the planned construction but are across the Court and with that still very close.

My main concern is with the short- and long-term consequences of drilling for 27 days 24/7. Our house, just like the majority of houses in this neighborhood, is an Eichler and was built in the early 1960s. It is characterized by large fronts of glass and is built on a raised pad on an unreinforced, wire-mesh only slab.

In other words: our house is old, of vulnerable construction, sitting on a raised bed nobody knows what it consists of with 60+ year old pipes running through the slab that are liable to cracking when shears and cracks in the slab occur. Yet the current EIR treats our house like a standard old building and bases its finding that vibrations are not a problem on standard data that may or may not be relevant to the situation here. At no point was the situation here assessed, no measurements during drilling are planned and our concerns are dismissed with reference to the standard old buildings under standard conditions measured somewhere else that suggest that everything will be just fine.

If our foundation or walls crack, if we have water damage due to broken pipes the burden will be on us to show that the drilling caused these damages. This is an impossible burden for one or

even several neighbors up against the army of lawyers and experts a company with approx. \$3B market cap and \$1B in annual revenues.

We therefore ask the city to take out a bond in the amount of \$500,000 for every home in a half mile radius of the drilling site to restore damage due to construction of this well. If there is indeed no risk to our homes as the EIR states, this should be an easy request to grant because nothing will get damaged and the money will never be used.

In addition to vibration, the noise we are going to be subjected to 24-hours a day for weeks is a significant burden even on the neighbors like us that are not directly adjacent. My husband and I work from home and will be subjected to weeks of loud noise around the clock which we can't escape. As per the current plan, noise levels are not being measured so we'll never know whether the allowable threshold is exceeded. There is currently also no way to report noise exceeding the maximum and no path for mitigation.

We therefore ask the City to ensure the following:

- Ongoing noise measurements during the entire construction, not just during the drilling phase, and making the measurements available in real-time publicly for all neighbors to monitor. Again an easy ask given modern technology and necessary because how else will CalWater and we know if and when noise levels are above the threshold?
- A clear path to mitigating noise that exceeds thresholds, including a 24/7 hotline to report excessive noise, and a commitment to reduce noise to allowed levels within a short period of time.
- Extending the vouchers for alternative housing, that is a rental apartment/AirBnB, not a hotel room, to more neighbors who, will be impacted by the noise even if it – at least in theory – stays below the limit.

Thirdly, I'd like Council to consider whom this drill benefits and whom it will burden. The water will be going mostly to Los Altos, not Sunnyvale, but all the harm is subjected to a quiet, R-0 zoned neighborhood in Sunnyvale that isn't even on the CalWater system. Why does CalWater not drill a well for their Los Altos customers in Los Altos, why come to Sunnyvale and then pump the water – a very energy-intensive undertaking – to Los Altos.

And there is a deeper unfairness buried in that question. Los Altos protects its own residents from exactly this kind of disturbance more carefully than Sunnyvale is being asked to protect ours. Under Los Altos's own municipal code — which names "drilling" specifically — this work may only take place on weekdays until 5:30 in the evening, and on Saturdays only between 9:00 and 3:00, never on Sundays or holidays, and, where feasible, never above 75 decibels at a neighboring home. The round-the-clock drilling proposed here — 24 hours a day, for weeks — could not happen under Los Altos's ordinary rules at all. Yet CalWater proposes to bring that

around-the-clock operation here, into a Sunnyvale neighborhood, to serve a district whose own communities hold this kind of work to a stricter standard than Sunnyvale is now being asked to accept.

And the households that will actually lose their sleep — and then live beside a diesel backup generator, run and tested month after month for the next thirty to fifty years — are not even CalWater customers. They are served by Sunnyvale's own municipal water utility. The benefit of this well flows to CalWater's Los Altos Suburban customers elsewhere in the district; the harm stays entirely here. CEQA asks this Council to weigh a project's benefit against the specific harm it imposes. But when the people who bear the harm receive none of the benefit, and the people who receive the benefit bear none of the harm, there is nothing to balance. There is only a burden shifted onto a neighborhood that had no part in creating this need and will get nothing in return.

I am not asking the Council to redesign CalWater's water system. I am asking a simpler question, and asking that it be answered on the record before any vote is taken: if this water is for CalWater's Los Altos district, why is the well not in that district — and why must a quiet, single-story Eichler neighborhood in Sunnyvale, one this Council itself chose to protect, absorb every consequence so that customers in another community can turn on their taps?

I urge you to take our concerns seriously. This construction as proposed isn't a minor inconvenience we should all bear for the greater good. This project will disrupt our lives for months and has the very real potential to damage our most valuable assets, namely our homes and will continue to negatively impact us for decades. Our concerns have not been taken seriously by CalWater, real issues are dismissed in the EIR, and the burden falls entirely on us while the benefit flows to someone else. You added the single-story overlay to protect this neighborhood once before. I'm asking you to protect it again. Don't certify a document this flawed, and don't sign the City's name to a project its own record cannot defend. The people who live here are counting on you to say no.

Best regards,



Tina Baumgartner

