



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Loesch
John Ristow

SUBJECT: SEE BELOW

DATE: May 20, 2024

Approved

Date

5/30/24

COUNCIL DISTRICT: 6

SUBJECT: ACTIONS RELATED TO THE 8820 – MILLIGAN PARKING LOT PROJECT

RECOMMENDATION

- a) Adopt a resolution certifying the Milligan Parking Lot Project Supplemental Environmental Impact Report and making certain findings concerning significant impacts, mitigation measures, and alternatives and adopting a statement of overriding considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act.
- b) Adopt a resolution approving an exception to Condition 11 of the Santa Clara Valley Habitat Conservation Plan to allow a reduced riparian setback from 100 feet to 35 feet along the Guadalupe River riparian edge for the 8820-Milligan Parking Lot Project on a 2.5-acre site located on five parcels at the northeast corner of North Autumn Street and West St John Street in Downtown San José (APNs; 259-59-032, -033, -072, and -102).
- c) Report on bids and take appropriate action based on evaluation of bids for the 8820 – Milligan Parking Lot Project.
- d) Approve a 15% contingency if City Council awards a construction contract.

SUMMARY AND OUTCOME

The proposed interim parking lot, located at 150 North Autumn Street (**Attachment A - Location Map – 8820 – Milligan Parking Lot Project**), offers numerous benefits, including easing traffic congestion by providing convenient parking options for stadium events and commuters utilizing public transportation as Park and Ride.

A supplemental memorandum will be posted during the week of June 4, 2024, and will summarize the bids received for the 8820 – Milligan Parking Lot Project (Project) and make a recommendation for award of the contract.

Award of the contract will enable the Project to proceed with construction of the new parking lot. Approval of a 15% contingency will provide funding for any unanticipated work necessary for the proper completion or construction of the Project.

BACKGROUND

The City of San José's City Manager's Office of Economic Development and Cultural Affairs, in collaboration with Santa Clara Valley Transportation Authority, Caltrain, California High Speed Rail, and Sharks Sports and Entertainment identified eight to 10 potential sites for interim parking solutions to help mitigate loss of public parking during construction of Diridon Station transit improvements, Bay Area Rapid Transit Phase 2 project, and Trammel Crow's project within the Diridon Station area.

The Project includes development of an interim parking lot on a 2.5-acre site. The Project offers numerous benefits, including easing traffic congestion by providing convenient parking options for stadium events and commuters utilizing public transportation as a Park and Ride facility. The scope of work for this Project consists of the demolition of existing buildings, structures, and pavement and the construction of a parking lot with permeable pavers. The Project will provide approximately 300 parking spaces, including seven accessible parking stalls and two van accessible stalls. In addition, the Project will provide 33 electric vehicle charging stalls and up to 120 electric vehicle capable parking stalls.

The Project links with the Autumn Parkway extension, a neighboring project planned by the City of San José that will connect Autumn Parkway to North Barack Obama Boulevard. Construction of the Autumn Parkway extension is tentatively scheduled to commence around 2030, aligning with the temporary lifespan of the surface parking lot constructed by the Project.

In compliance with the City's Downtown Strategy Plan of 2040, California Environmental Quality Act (CEQA), and City requirements, a Supplemental Environmental Impact Report (SEIR) has been prepared for the Project to finalize the Mitigation Monitoring and Reporting Program. The SEIR also recognizes that a Lake and Streambed Alteration Agreement with California Department of Fish and Wildlife is required upon finalization of the SEIR and prior to construction.

The Project was advertised on March 13, 2024. The bid opening date is May 16, 2024. The Engineer's Estimate for the Project is \$2,552,000. Construction is tentatively scheduled to begin in late July 2024, with an anticipated completion in December 2024.

Consistent with City policies and CEQA, an environmental analysis was completed for the Project. The City of San José, as the lead agency, prepared a draft SEIR (DSEIR) for the Project. The DSEIR analyzed environmental impacts related to the proposed Project.

The Project is located west of the Guadalupe River along a reach that is designated as a Category 1 stream inside the urban service area with a slope of less than 30%. Existing buildings and

pavement encroach into the 100-foot setback from the edge of the riparian corridor. There is a 0.17-acre portion of the site in the northeast corner that is undeveloped.

Condition 11 of the Santa Clara Valley Habitat Agency's plan (Habitat Plan) requires new projects to adhere to setbacks from creeks and streams and to avoid impacts to aquatic and riparian land cover types, covered species, and wildlife corridors. The standard required setback for new development along a Category 1 Stream, such as the Guadalupe River, is 100-feet from top of bank. Exceptions are permitted and require approval by the local jurisdiction. City Council is the local jurisdiction for San José. Prior to granting the exception, the proposed decision is required to be presented to the wildlife agencies. The City presented the Riparian Stream Setback exception to the Habitat Plan on April 20, 2023, and received a recommendation of approval from the Santa Clara Valley Habitat Agency and wildlife agencies on June 21, 2023. (**Attachment B** – Habitat Agency Exception Request Memorandum and Response)

ANALYSIS

A supplemental memorandum will be posted during the week of June 4, 2024, after the public bid opening on May 16, 2024, and will include a report on bids, recommendation on award of the contract, and the award amount.

Contingency

San José Municipal Code Section 27.04.050 provides for a standard contingency of 10% on public works contracts except those involving the renovation of a building or buildings. However, on this Project, a contingency of 15% is being requested because of the higher potential to encounter unforeseen conditions during the demolition and construction. Staff will ensure the funds budgeted for this Project are sufficient to provide for the recommended contingency.

Wage Theft Prevention Policy Check

The Office of Equality Assurance will review bidders for compliance with the City's Wage Theft Prevention Policy. The findings will be reported in the supplemental memorandum.

Project Labor Agreement Applicability

The City's Project Labor Agreement is applicable to this Project because the Engineer's Estimate is over \$1.22 million.

Habitat Plan Condition 11 Exception Findings

Condition 11 of the Habitat Plan generally requires a 100-foot riparian setback unless certain findings are made by the City Council authorizing a reduced setback necessary to allow

reasonable use and development of a property. The City Council must consider the following issues, outlined below, in consideration of the reduced riparian setback.

- a. The existence of legal uses within the setback.
- b. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of their land or adversely affects recognized real property interests) for the applicant.
- c. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
- d. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

The final Supplemental Environmental Impact Report (FSEIR) and Appendix C Biological Resource Report prepared by H.T. Harvey and Associates, an environmental consultant firm, on March 7, 2023, analyzed the Project's impact on the riparian species and habitat. Most of the existing site is paved or developed up to the edge of the site and within the minimum 100-foot setback. The Project would remove all developments within the 100-foot setback and the proposed surface parking lot would be permeable, which would meet stormwater requirements and enhance the current site drainage and drainage impacts on the river. However, a portion of the site's riparian setback will be reduced (relative to baseline conditions) as a result of construction of hardscape and installation of landscape vegetation in the 0.17-acre northeast area that is currently unpaved and occupied by California annual grassland. This encroachment of hardscape and landscaping may result in indirect adverse effects on a portion of the Guadalupe River corridor by removing habitat that could be used by riparian-associated species and introducing vehicular traffic closer to the riparian corridor than currently exists within that portion of the site. The encroachment by the hardscape areas and landscaping in areas with existing hardscape will not result in any direct loss of riparian habitat, so the riparian habitat itself will not be reduced by the proposed activities for which a setback reduction is necessary. Furthermore, the landscape mitigation measures identified in the FSEIR include nonnative species which would have some minimal benefit to riparian animals. The Project would be required to provide 1:1 compensation for the degradation of setback functions in the 100-foot setback within existing California annual grassland (0.17 acre) and conduct monitoring of the compensation habitat for at least 10 years after project completion.

City Council is therefore recommended to approve the exception to Condition 11 of the Habitat Plan as the Project, given the consideration of the findings including the limitations the 100-foot setback would place on the site. Given the moderate to poor habitat value of the site, the Project would not preclude the achievement of biological goals and objectives of the Habitat Plan and could result in some site riparian benefits to the area as the existing development within 35 feet of the river would be removed as part of this Project.

EVALUATION AND FOLLOW-UP

A supplemental memorandum will be issued the week of June 4, 2024, after the public bid opening on May 16, 2024. No additional follow up action with City Council is expected.

COST SUMMARY/IMPLICATIONS

Construction of the interim parking lot is anticipated to generate additional revenue for the City through parking fees. The total contract award for the Project will be included in the supplemental memorandum. The construction of this Project will not result in additional operation and maintenance costs to the City of San José. The Project is funded from the General-Purpose Parking Fund.

1. TOTAL COST OF PROJECT:

Project Delivery*	\$1,564,165
Construction (Engineer’s Estimate)	2,552,000
Contingency	382,800
TOTAL PROJECT COSTS	\$4,498,965
Prior Years’ Expenditures and Encumbrances	\$814,404
TOTAL REMAINING PROJECT COSTS	\$3,684,561

* Project delivery includes \$1,197,208 for design services and bidding and \$366,957 for construction management and inspection services, survey, materials lab services, utilities, and project closeout costs.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum and remaining Project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2023-2024 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
559	7885	Greater Downtown Parking Inventory	\$9,365,000	\$2,552,000 (Estimated)	917	30966, 10/17/2023

COORDINATION

This memorandum has been coordinated with the City Attorney’s Office, the City Manager’s Budget Office, and Planning, Building and Code Enforcement Department.

PUBLIC OUTREACH

This memorandum will be posted on City’s Council Agenda website for the June 11, 2024 City Council meeting and the supplemental memorandum will be posted during the week of June 4, 2024.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Milligan Parking Lot Project Supplemental Environmental Impact Report to the Coleman Avenue/Autumn Street Improvement Project Environmental Impact Report (File No. PP06-166) and the Downtown Strategy 2040 Environmental Impact Report, as addended (File No. PP15-102) (Planning File No. ER20-049).

The CEQA analysis completed for this project is a SEIR to the Coleman Avenue/Autumn Street Environmental Impact Report (EIR) and the Downtown Strategy 2040 EIR, as addended. The City of San José, as the lead agency, prepared a DSEIR for the proposed Project. The DSEIR analyzed the environmental impacts and discussed alternatives to the proposed Project. The SEIR found that the Project would result in significant and unavoidable impacts related to cultural resources due to the demolition of the Forman’s Arena located at 447 West St John Street. The 2007 Basin Research Associates’ Cultural Resources Assessment prepared, as a part of the Coleman/Autumn Street EIR, evaluated Forman’s Arena and determined the building should be eligible for listing in the National Register of Historic Places, California Register of Historical Resources, and the San José Historic Resources Inventory as a candidate City landmark. Furthermore, the SEIR identified less than significant impacts with mitigations for biological resources, archaeological cultural resources, and hazards and hazardous materials. Approval of the environmental resolution would include adoption of the Mitigation and Monitoring Reporting Program for the implementation of the Project.

The City circulated the DSEIR for public review from June 2, 2023 to July 18, 2023. A first amendment to the DSEIR provided responses to public comments submitted during the public circulation period and revisions to the text of the DSEIR was prepared and posted to the City’s website on April 19, 2024. The first amendment, together with the DSEIR, constitute the FSEIR for the Project. These documents in their entirety can be viewed on the City’s website at: <http://www.sanjoseca.gov/ActiveEIRs>.

The impact of the Project to the riparian corridor was analyzed in the FSEIR. The FSEIR concludes that, although the construction and operation of the new parking lot would be 35 feet from the riparian edge, the Project would have a less than significant project-level environmental impact from the individual project-specific level. The Project would be required to implement mitigation measures that would reduce impact on riparian birds and habitat and would not result

in a substantial adverse effect on any riparian habitat or other sensitive natural community. The Project is also in compliance with Habitat Plan as discussed in the DSEIR.

Summary of Alternatives

CEQA Alternatives Considered, But Rejected

Based on the public concerns and as a good faith effort, the DSEIR considered certain alternatives and these alternatives were determined to be infeasible or unable to avoid or reduce environmental impacts to a less than significant level. These alternatives are described below.

1. Relocation of Forman's Arena Alternative

The San José History Park, the previous City Hall "E" parking lot, the site of the San José Fire Department Training Center (1591 Senter Road), the former FMC site, and the Guadalupe Gardens (behind the Master Metal Products building on 495 Emory Street) were areas of the City identified in the Coleman Avenue/Autumn Street Improvement EIR that could potentially accommodate the Forman's Arena. However, the abovementioned sites can no longer accommodate the historic building. Guadalupe Gardens is not feasible because it is within Airport safety zones encumbered by Airport Land Use Compatibility restrictions limiting height, safety, and noise and under strict oversight by the Federal Aviation Administration. The former FMC site, the San José Fire Department's Training Center, and the City Hall "E" parking lot are no longer feasible since they are either developed or designated for future development by the City or private property owners. San José History Park is currently limited due to funding in accepting new buildings and relocation would require approval through the City Manager's Office of Economic Development and Cultural Affairs with evidence of funding. Given the sites are no longer feasible, this alternative was rejected from further consideration.

2. Location Alternative

In order to identify an alternative site for the parking lot that would meet the purposes of the Project, and reduce significant impacts, it was assumed an ideal site would be approximately 2.5-acres in size, located within 1/3 mile of the SAP Center in accordance with the Arena Management Agreement, located near freeways or major roads, served by infrastructure, and available for development. Development of a new parking lot of any size in downtown San José would have similar impacts associated with project construction, but likely would not have a significant and unavoidable impact to cultural resources due to demolition of a historic resource assuming no historic resource is located on the alternative site. However, this alternative was rejected because the City does not own or have control over any alternative site within 1/3 mile of SAP Center that is available for redevelopment. The three City-owned properties within 1/3 mile of the SAP Center are already set aside for other development. The properties at 456 Autumn Court and 406 Autumn Court (APNs 259-29-041, 984-22-019, and 259-29-098) are identified for the Autumn Street realignment and the properties at 240 and 260 North Montgomery and 255 North Autumn Street (APNs 259-29-011, 259-29-012, and 259-29-020) were deeded to the City by Google as part of its community benefits to be used for affordable

housing. Given there are no City-owned sites available that would meet the Project's objectives, this alternative is rejected from further consideration.

3. Multi-Level Parking Structure with Retail Alternative

The City considered a two- to three-story parking structure with 300 parking spaces, open space, and retail space to increase pedestrian activity on surrounding streets. The Project site was evaluated as a part of the Coleman Avenue/Autumn Street EIR Improvement project as part of the site of the extended Autumn Street. The site was considered as a possible interim use for surface parking until completion of the Autumn Street extension. Additionally, the intent of the Project is to provide an interim surface parking during the development of other projects in the vicinity. Once these developments are complete, they will include sufficient parking in garages for the SAP Center and the proposed interim surface parking lot would no longer be needed, as identified in the Project objectives. A surface parking lot is easier to redevelop into a future use than a structure. Therefore, this alternative is rejected from further consideration.

CEQA Alternatives

As required under CEQA, the DSEIR evaluated the No-Project alternative and a Forman's Arena Building Retention Alternative. These alternatives are summarized below.

1. No Project Alternative

The No Project Alternative would retain the existing uses and buildings on-site, including 118 existing surface parking spaces. Because the No Project Alternative would not result in any development on the site, this alternative would avoid all of the environmental impacts of the Project. This alternative would also only partially meet the Project objectives with regards to providing parking for the SAP Center. This alternative would not meet the Project objectives to maximize parking in accordance with the Arena Management Agreement, reduce impervious surface, or improve the site's circulation design.

2. Forman's Arena Building Retention Alternative

The Forman's Arena Building Retention Alternative would demolish all structures on site with the exception of the Forman's Arena building. This alternative would also propose a surface parking lot but would retain the Forman's Arena and allow parking inside the Forman's Arena building. This re-design would require the relocation of the American with Disabilities Act compliant stalls and would eliminate some of the spaces available for surface parking. This alternative would provide an estimated 233 outdoor surface parking spaces and up to 27 parking spaces inside the Forman's Arena building for a total of 250 parking spaces. Driveway locations would remain the same as the proposed Project and one additional driveway along West St John Street would be added for entry into the indoor parking. Protective bollards would shield parking spaces from the historic building and parking on the exterior of the building would be setback a minimum of 15 feet to reduce driving accidents impacting the historic building. Any structural repairs needed for the Forman's Arena would be completed for the building consistent with the

Secretary of the Interior Standards. The Forman’s Arena Building Retention Alternative would reduce the significant and unavoidable impact to the historic Forman’s Arena building to a less than significant level since the building would be retained and repaired in accordance with the Secretary of the Interior Standards. The impacts to biological resources and mitigation required would be similar for this alternative and the proposed Project. This alternative would have the same footprint as the proposed Project; therefore, impacts to construction air quality, archaeological resources, tribal cultural resources, and hazards and hazardous materials impacts would also be similar to the Project. This alternative would meet all Project objectives except the objective to maximize surface parking within 1/3 mile of the SAP Center. This alternative would only provide up to 250 parking spaces (net 132 new spaces above the existing 118 spaces) compared to the Project that would provide 300 parking spaces (net 182 new spaces).

Circulation, Public Comments, and Responses to Comments

The City circulated the DSEIR for public review for 45-days from June 2, 2023 to July 18, 2023. The City published a Notification of Availability in the Mercury News on June 2, 2023 and sent notice to the state agencies via the State Clearinghouse. The Notification of Availability was mailed and emailed to adjacent jurisdictions and individuals/organizations that requested notices. All commissioners for the City’s Historic Landmarks Commission received the Notification of Availability during Project circulation. The City also sent e-mail notification to people who commented on the Notification of Availability or expressed interest in the Project, as well as people who requested to receive notification of Planning, Building, and Code Enforcement Department projects.

In response to comments received during the circulation of the DSEIR, the Project was brought to the Historic Landmarks Commission September 6, 2023 hearing for consideration. The City received five comment letters during the public comment period. Issues raised in these comment letters include, but are not limited to, the following:

1. Concerns about potential impacts of the Project to adjacent Santa Clara Valley Water District easements and ensuring any mitigation would not be the responsibility of Santa Clara Valley Water District;
2. Opposition to a surface parking lot adjacent to the Guadalupe River;
3. Questions about the need for the parking lot and the planned operations of the Project;
4. Concerns regarding the application and feasibility of biological resources mitigation and the proposed encroachment into the Habitat Plan’s 50-foot riparian setback for portion of the site currently covered by annual grassland;
5. Opposition to the demolition of the Forman’s Arena and other old (non-historic) buildings on the site for the purpose of building a surface parking lot;
6. Concerns that the Historic Landmarks Commission did not review and comment on the DSEIR during public circulation;
7. Questions regarding the scope of the historic analysis conducted for 407 West St John Street;
8. Concerns regarding cumulative impacts to historic resources; and

9. Concerns and questions regarding the Project’s objectives being minimal and alternatives analysis not considering enough possibilities.

The City responded to all comments received on the DSEIR and incorporated them into the first amendment to the DSEIR, which the City posted to the environmental review documents website on April 19, 2024. The first amendment, taken together with the DSEIR, constitutes the FSEIR. The DSEIR and first amendment to the DSEIR are available for review on the City’s active EIRs website at: <http://www.sanjoseca.gov/activeeirs>.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the DSEIR or new previously unidentified significant impacts that require recirculation. Recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review but before certification. Information can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not significant unless the EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the first amendment to the DSEIR for the Project includes written responses to all comments received during the public review period for the DSEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the first amendment to the DSEIR address environmental points and comments raised on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the DSEIR and, in some cases, correct or update information in the DSEIR. No significant new information has been added to the SEIR since publication of the DSEIR; therefore, the SEIR does not need to be recirculated.

Statement of Overriding Considerations

Staff recommends the City Council approve a Statement of Overriding Considerations due to the identified significant and unavoidable impact resulting from the demolition of Forman’s Arena building, a historic resource pursuant to CEQA Guidelines Section 15064.5. The draft CEQA resolution (DSEIR Resolution and Mitigation and Monitoring Report, Exhibit I) includes a Statement of Overriding Considerations and sets forth how the benefits of the Project outweigh its significant adverse environmental impact. These matters are supported by the administrative record that includes, but is not limited to, consistency with the Arena Management Agreement, Envision San José 2040 General Plan, and consistency with the Diridon Station Area Plan.

In summary, benefits of the Project include the following.

- a. Compliance with the Arena Management Agreement. Meeting the Arena Management Agreement obligations is beneficial to the City because the agreement supports the management and operation of the SAP Center which brings significant benefits to the

City and downtown economy, including national recognition by being the home venue for the San José Sharks and a financial benefit as the Arena Management Agreement benefits the City through Capital Reserve Fund annual fees, Community and City Events Fund fees, District Funds fees, and maintenance of the City Hall of Fame. The rent and sources of shared revenue provided through operation of the San José Sharks and facility average approximately \$6 million annually with an additional approximately \$5 million dollars in sales tax and transient occupancy tax generated by events held at the SAP Center. Events at the SAP Center attract visitors to the downtown area and support local businesses.

- b. Furtherance of Envision 2040 General Plan. The Project furthers the following goals and policies of the Envision San José 2040 General Plan.
 - i. IE-5.-5: Attract and retain professional and amateur sports teams and events in San José and identify and support opportunities for growth of related businesses and retail markets.
 - ii. AC-1.1 Continue to support downtown entertainment, arts, and cultural activities and pursue opportunities to enhance or expand offerings there.
 - iii. FS-5.11 Identify the most efficient use of available resources to maintain the City’s infrastructure and to minimize the need to replace this infrastructure.
 - iv. EC-5.11 Where possible, reduce the amount of impervious surface as a part of redevelopment and roadway improvements through the selection of materials site planning and street design.
- c. Furtherance of the Diridon Station Area Plan. The Project furthers the following goals and policies of the Diridon Station Area Plan, specifically:
 - i. Guiding Principal M6. Ensure the continued vitality of the SAP Center, recognizing that it is a major anchor for both Downtown San José and the Diridon Station area, and pursue best efforts to maintain a sufficient supply of parking and efficient vehicular and pedestrian access for SAP Center customers, compliant with the standards set forth in the Arena Management Agreement.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City’s Open Government Resolution.

/s/
MATT LOESCH
Director of Public Works

/s/
JOHN RISTOW
Director of Transportation

HONORABLE MAYOR AND CITY COUNCIL

May 20, 2024

Subject: Actions Related to the 8820 – Milligan Parking Lot Project

Page 12

For questions, please contact Sal Kumar, Deputy Director of Public Works, at sal.kumar@sanjoseca.gov.

ATTACHMENTS:

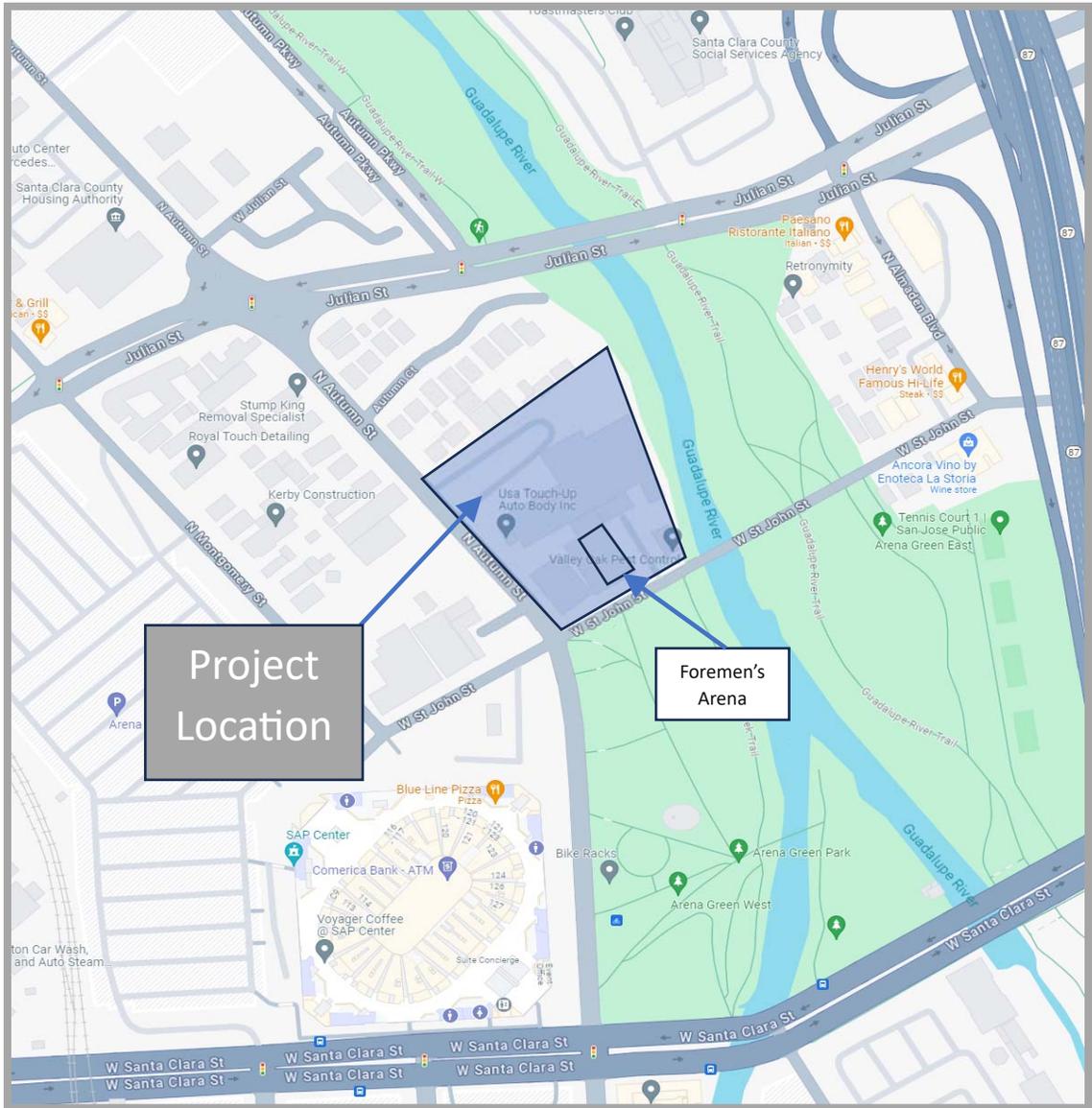
Attachment A- Location Map – 8820 – Milligan Parking Lot Project

Attachment B- Habitat Agency Exception Request Memorandum and Response

Attachment A:

Location Map

8820 – Milligan Parking Lot Project



Attachment B

Habitat Agency Exception
Request Memorandum and
Response

Memorandum

Date: April 20, 2023
To: Habitat Plan Agency
From: Cassandra van der Zweep, Planning Division, City of San José
Subject: Milligan Parking Lot Project Riparian and Stream Setback Condition (Condition 11)
Exception request

REQUEST

Accept the exception request per the procedures of the Santa Clara Valley Habitat Plan Clarification and Interpretation (#2014-003), Riparian and Stream Setback Condition (Condition 11) Exceptions.

SETBACK CONDITION

The Guadalupe River is considered a Category 1 stream. Per Condition 11 of the Habitat Plan, Riparian and Stream Setbacks, the required setback is 100 feet from Category 1 Streams within the urban growth boundary.

PROJECT LOCATION AND EXISTING CONDITIONS

The proposed project is in the City of San José (City). The proposed project is on a 2.5-acre site within the City of San José Urban Service Area. The reconnaissance-level field survey conducted by H.T. Harvey & Associates identified three general land cover types:

- urban-suburban(2.26 acre),
- California annual grassland (0.23 acre),
- mixed riparian forest and woodland (0.01 acre).

The majority of the site is developed and paved; however, a small portion of the northeastern corner of the project site adjacent to the Guadalupe River contains California annual grassland habitat. A small portion of the riparian canopy extends over the fence line in the northeast portion of the site providing 0.01 acre of Mixed Riparian Woodland and Forest Habitat. See Figure 1, Land Cover Map and Riparian Setbacks.

The site is occupied with an automobile repair shop with an attached warehouse, a vacant commercial building with additions, and a single-family residential structure and grate. It currently also contains a 118-space surface parking lot used for San José SAP Center events. Existing development is located within the 100-foot riparian setback all the way up to the riparian edge.

Residential uses are to the project's north, North Autumn Street is to the west, West St. John Street is to the south, the SAP Center is 300 feet southwest of the site, and the Guadalupe River is to the east of the site. The Guadalupe Freeway (SR-87) is approximately 650 feet east of the site. See Figure 2, Location Map.

PROJECT DESCRIPTION

The City would re-develop the project site with a 300-space parking lot to serve the San Jose SAP Event Center. The project includes the demolition of all existing buildings on the site and the construction of a 300-space parking lot with permeable pavers. The parking lot is anticipated to only be in use for up to 10 years and then it is anticipated to be used for the Autumn roadway extension and realignment as reviewed under the [Coleman/Autumn Street Improvement EIR](#). The project would include a 6-foot-high wall along the northern property line shared with the residential units and parking lot lighting. The project would remove 28 trees including 20 ordinance-size trees. No riparian trees are proposed for removal. See Figure 3, Proposed Site Plan.

Although demolition of existing improvements would occur within all portions of the site up to the edge of the Guadalupe River riparian corridor, all proposed parking improvements would be set back a minimum of 35 feet from the riparian corridor. The EIR for the project identifies a future Class I paved bicycle and pedestrian trail would be constructed within the 35-foot setback and would be approximately 12-feet wide with 2-foot-wide shoulders. No structures or lighting are proposed along the trail. The future trail's final design has not been finalized.

Santa Clara Valley Habitat Plan

The reconnaissance-level field survey conducted by H.T. Harvey & Associates identified three general land cover types: urban-suburban (2.26 acre), California annual grassland (0.23 acre), and mixed riparian forest and woodland (0.01 acre). See Figure 2.

The project is a "covered project" under the Habitat Plan. Conditions applicable to the project include Condition 1, 3 and 11. The site is adjacent to the Guadalupe River a Category 1 Stream. A Category 1 Stream requires a 150-foot setback outside the urban service area and 100 feet within the urban service area.

FINDINGS

The following factors have been considered in the City's determination that the setback exception request complies with the Santa Clara valley Habitat Plan.

1. The existence of legal uses within the setback.

Except for the 0.17-acre (7,405-square foot) northeast corner portion of the site, the rest of the site is occupied with existing buildings and pavement up to the riparian edge. The project would demolish and remove buildings and pavement within the 35-foot setback along the entire riparian corridor resulting in a minor improvement in conditions along the urban-suburban portion of the site.

2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.

The City of San José has committed through the Arena Management Agreement (AMA) to provide parking for the ongoing operations of the SAP Event Center as an arena for the benefit of

the community which also require a minimum number of public parking spaces be available within a 1/3- and 1/2 – mile radius to support on-going operations. As a part of that long-term planning for substantial infill development around the SAP Center that would eliminate surface parking, the City envisioned public parking on properties immediately north of the SAP Center.

On August 15, 2018, the City and the San Jose Arena Management LLC executed an agreement that extended the term of the AMA until 2040. Consequently, the City's obligation to assure a supply of parking within 1/3- and 1/2-mile of the SAP Center remains in effect. In light of the fact that many surface parking lots will be closed to make way for redevelopment but these redevelopment will ultimately provide the needed parking once constructed, and in order to meet its obligations, the City proposes the 300-space parking lot to be in operation temporarily while the redevelopment is under construction and parking for the event center is constrained.

Finding locations not slated for redevelopment and within 1/3 mile of the event center is a challenge. This site was originally envisioned an acquired by the City to be used for the Autumn Street right of way re-alignment and was interim parking until the project was constructed, as identified in the Coleman Avenue/ Autumn Street EIR.

If the project were to provide the full riparian setback, it would not be able to provide the parking needed to help achieve the AMA.

- 3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.**

The project site General Plan designation is Downtown Commercial and the site is Downtown Primary Commercial. The proposed use would support the SAP Event Center and would be permitted.

The project will provide permeable pavers to meet stormwater requirements. The project would be subject to all the City's applicable codes, policies and standards. Under the required riparian setback in Condition 11, it would not be feasible for the project to provide 300 parking spaces in support of the AMA agreement.

- 4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.**

Since the existing riparian habitat immediately adjacent to the site is fragmented and of moderate quality (as opposed to high quality) and is not expected to attract a large number of birds, these impacts would not affect regional populations of bird species that use the site nor would it result in a substantial degradation of riparian bird communities in the segment of the Guadalupe River adjacent to the site. Although the identified impacts would reduce the quality of the riparian habitat, the Biological Resources Report concluded that implementation of the

project, by itself, would not result in a substantial degradation of riparian bird communities in this portion of the Guadalupe River. T

To compensate for the degradation of setback functions in the 100-foot setback within existing California annual grassland (0.17 acre) due to the construction of a new parking lot and landscape areas, the project will be required to restore native riparian tree and shrub habitat at a 1:1 (restored area: impacted area) ratio, on an acreage basis, on-site or off-site. The project team is still weighing whether to provide the 1:1 restoration within the new 35-foot buffer for the site or at an off-site location along the Guadalupe River. One factor in this decision is the temporary nature of the parking lot and the potential that future reuse of the site for the street realignment or other use could impact the restoration actions made for the site. The project will also be subject to and pay Habitat Plan fees.

Benefits of the Project

The development of the project site would remove current pavement and structures existing in the 35-foot setback along the entire length of the site (except for the small grassland portion). The project would also mitigate the impact of the loss of grassland through on or off-site restoration. If on-site restoration was selected, the project would restore the habitat within the currently disturbed 35-foot buffer along the Guadalupe River.

Project Impacts

The project proposes to convert the Grassland Habitat up to the 35-foot setback line into paved parking. Therefore, the contribution to cumulative impacts due to encroachment into the riparian buffer would be considerable for the removal of grassland habitat, as it represents a new type of development that would have a greater impact on the adjacent riparian corridor (due to the removal of existing undeveloped habitat, as discussed above) compared to existing conditions.

Activity during operation of the project may discourage birds and bats from nesting or roosting in the trees along the Guadalupe River. However, there will be no structure and this area is not a high-quality riparian habitat, it is not expected to affect regional populations of bird species that may use the area.

Furthermore, the City will comply with all required Migratory Bird surveys, Conditions 1 and 3 of the Habitat Plan and pay all required Habitat Plan fees.

Conclusion

Based on the above, the proposed Project does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

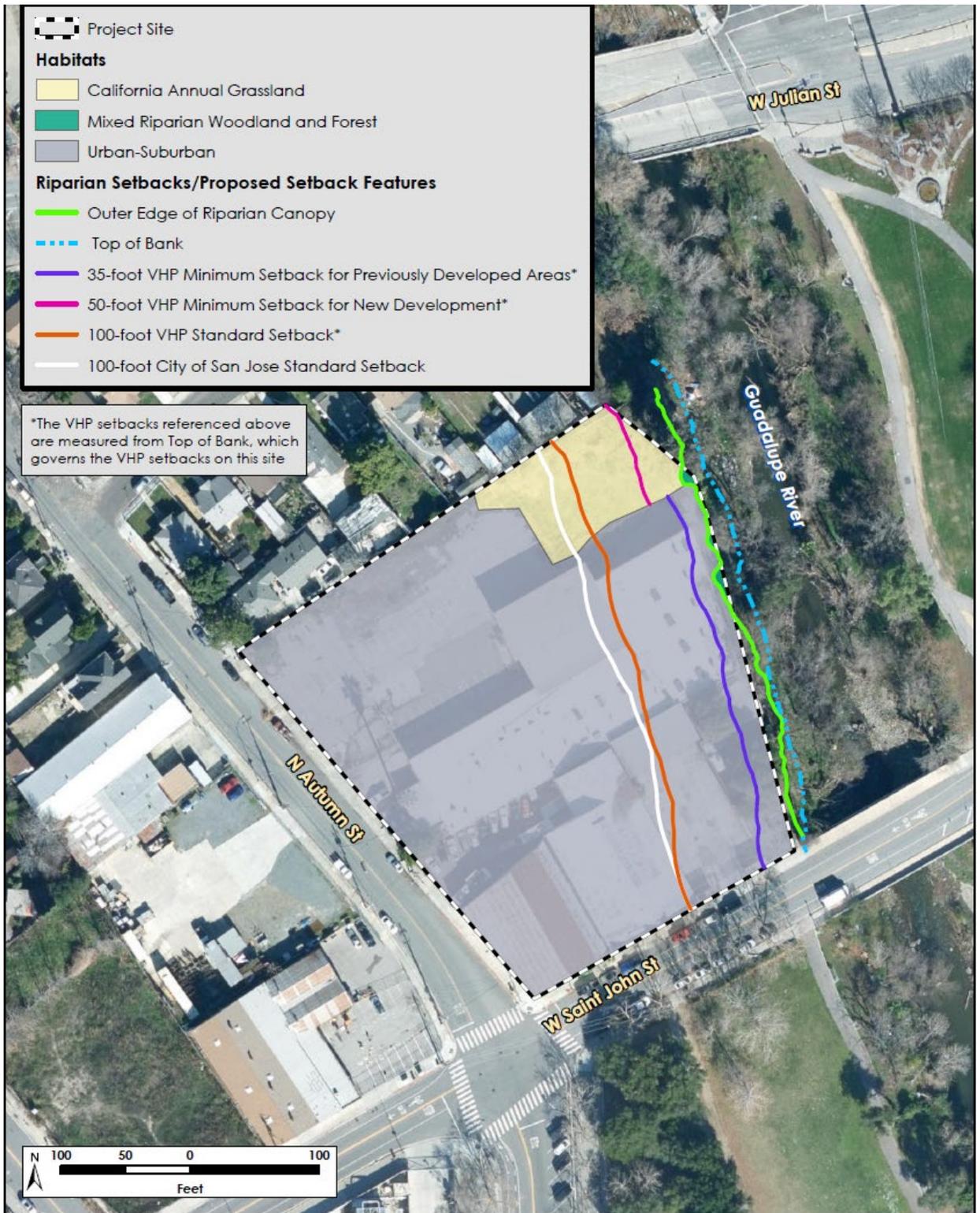


Figure 1: Land Cover Map and Riparian Setbacks

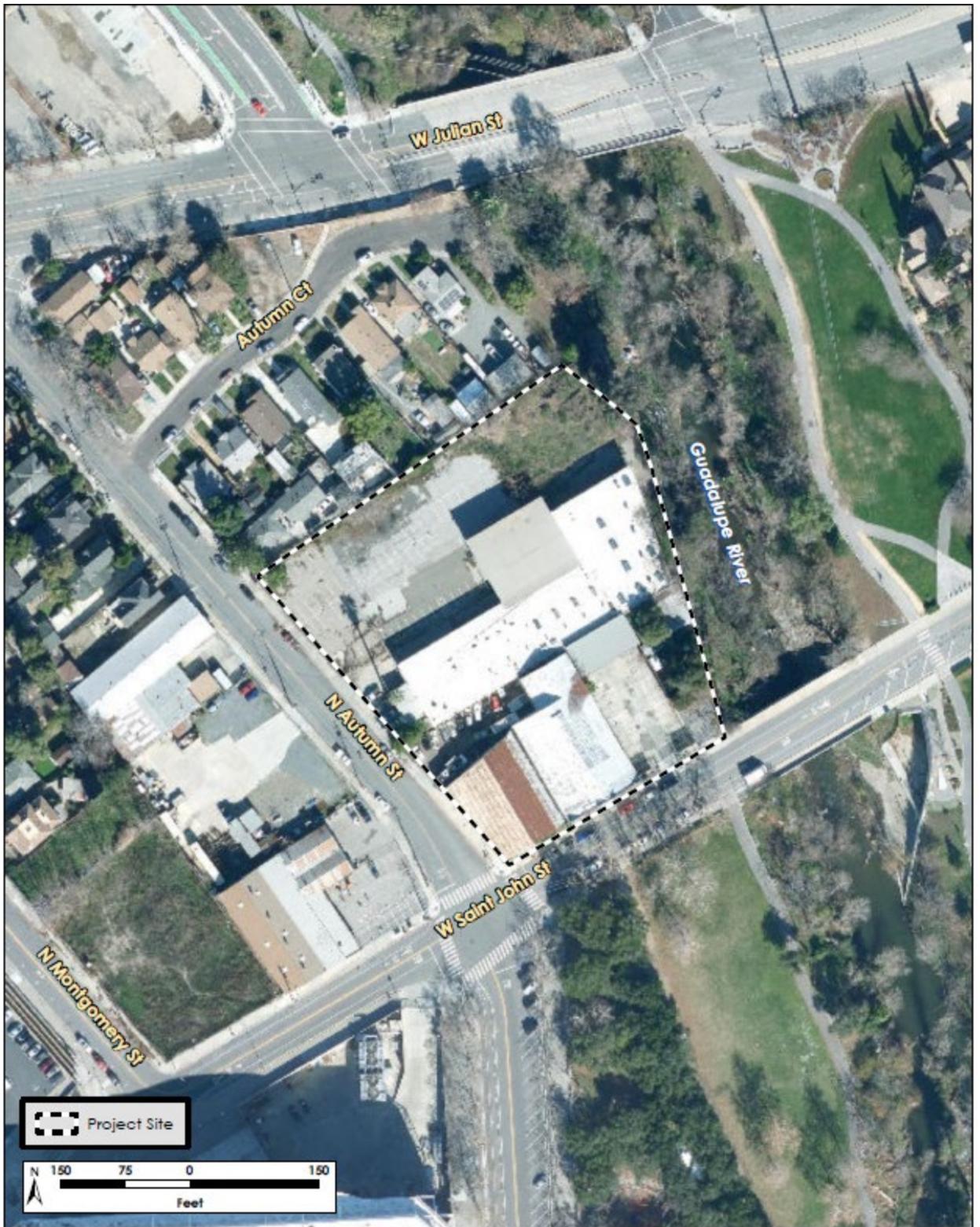
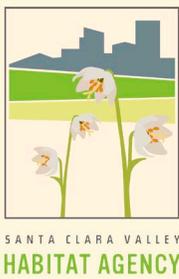


Figure 2: Location Map



Santa Clara Valley Habitat Plan CONDITION 11 EXCEPTION REQUEST

Date	June 21, 2023
Subject	Stream and Riparian Setback Condition (Condition 11) Exception for Milligan Parking Lot
Recommendation	Approve exception to 100-foot setback to not less than thirty-five (35) feet from the edge of riparian
Reviewed by	Don Arnold, Planner

The City of San Jose is requesting an exception from Condition 11, Stream and Riparian Setback Condition in the Santa Clara Valley Habitat Plan (“Plan”) for the Milligan Parking Lot Project (“Project”). The Project is a 2.5 acre commercially developed site at the northeast corner of N. Autumn St and W. St John St in San Jose’s Urban Service Area (Figure 1. Project Site Map).

The Project site is currently occupied by an automobile repair shop with attached warehouse, a vacant commercial building with additions and a single-family residential structure. On the north side is a 118-space surface parking lot used for SAP Center events. There is also 0.23 acres of CA annual grassland on the northeast corner and adjacent to Guadalupe River (Figure 1. Project Site Map).

The Project is located on a reach of Guadalupe River that is designated a Category 1 Stream, inside the Urban Service Area, with a slope of less than 30%, thus requiring a 100-foot stream setback from top of bank. According to the request, the stream setback exception is for encroachment into the 100-foot setback along the Guadalupe River. This developed site currently encroaches on the 100-foot setback along most of the site, with some development within the minimum setback of 35 feet from top of bank.

The Project proposes to redevelop the site into a 300-space parking lot for the SAP event center. The project includes demolition of all existing buildings on the site and the construction of a 300-space parking lot with permeable pavers. 28 trees will be removed from the site however none are considered riparian species. To compensate for degradation of the setback functions in the 100-foot setback within CA annual grassland, the Project is required by the City of San Jose to perform some restoration with native riparian trees and shrubs. This may occur on or off site.

The Project proposes removing all existing development from within the 35-foot minimum setback from top of bank, and if on site mitigation is chosen, the Project could help restore the riparian corridor within the 35-foot setback

Condition 11 Exception Criteria

For all proposed exceptions to the stream setbacks (inside or outside the urban service area), exceptions will be considered based on the following factors:

1. The existence of legal uses within the setback.
2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Other considerations may be made based on:

- the implications of a reduced setback on the riparian system and covered species, progress toward the biological goals and objectives of the Plan, and potential effects on adjacent properties; and
- if the exception would allow the project to avoid and minimize impacts on covered species and natural land cover types to the maximum extent practicable.

Exception Applicability and Evaluation

For all proposed exceptions to the stream setbacks (inside or outside the urban service area), exceptions will be considered based on the following findings. Habitat Agency staff responses to the findings are included below.

1. *The existence of legal uses within the setback.*

The current development and legal uses on site exist within the 100-foot setback from top of bank. Portions of a parking lot, auto repair shop, vacant buildings, and a residential structure all exist within the 100-foot setback. Only the northeast corner of the property (0.17 acres), bordered by development on three sides, is relatively undisturbed currently.

- 2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.*

Meeting the 100-foot setback would result in a portion of the site being unavailable for economic use by the applicant. The applicant demonstrates a need for the site to occupy most of the existing development footprint.

- 3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.*

Habitat Agency staff are not aware of any deviations from established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards, which would be required if the setback was met.

- 4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.*

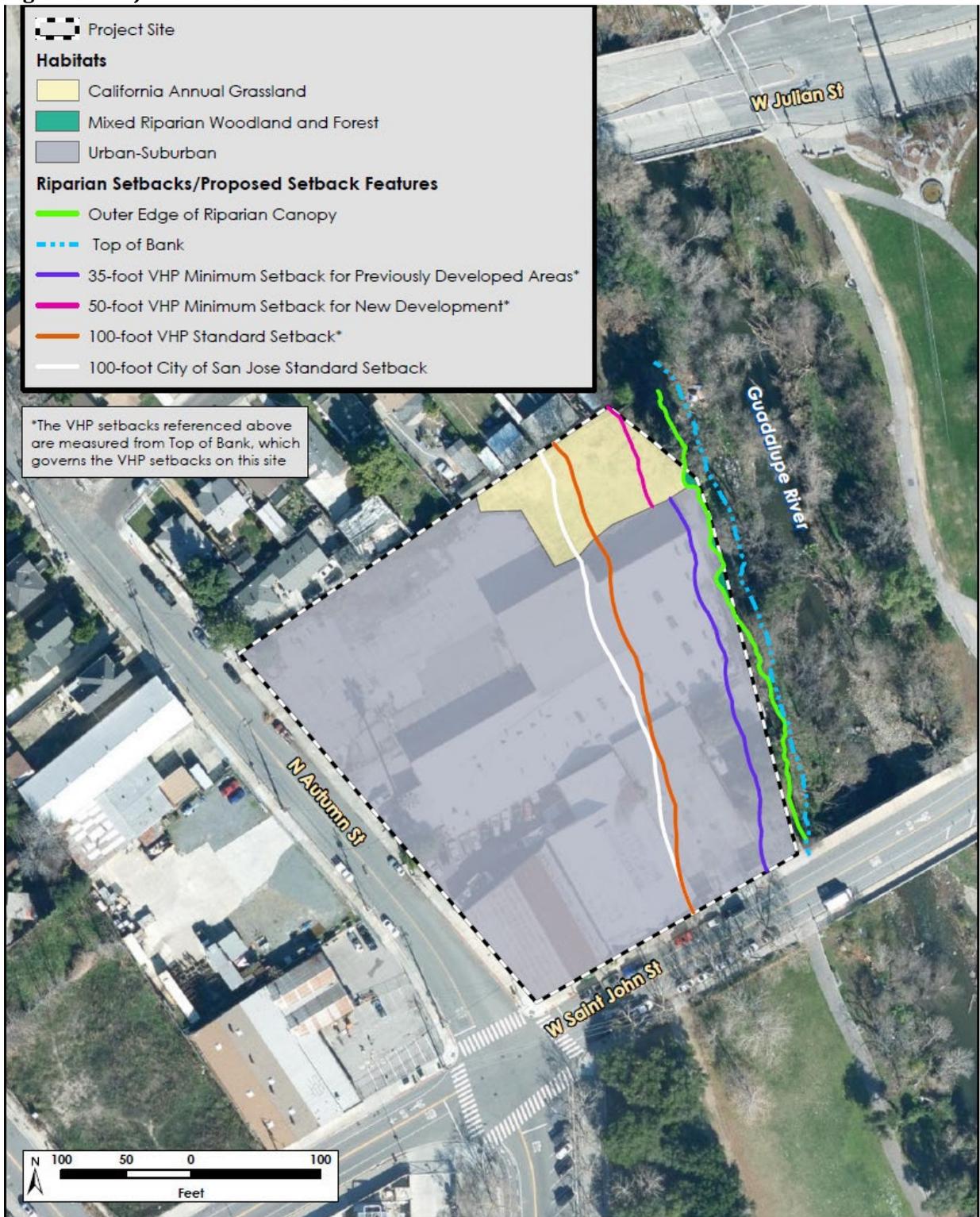
The existing development on site within the stream setback already reduces the depth and quality of the riparian habitat along the Guadalupe River. There are a variety of legal uses that exist on site that have the potential to negatively impact the riparian habitat adjacent to these uses. The Project proposes to remove these varied uses, construct a permeable paver parking lot, remove existing pavement and structures from inside the minimum 35-foot setback, and mitigate vegetation loss. These wildlife-friendly site improvements help offset impacts from the Project. While the Project does propose to replace some hardscape within the 100-foot setback, the degraded conditions on the site will be improved under the proposed Project. Therefore, approving this stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan.

Determination

Based on the justification provided by the City, in consultation with USFWS and CDFW, the Santa Clara Valley Habitat Agency recommends approval of a reduced stream setback of up to 35 feet from the edge of riparian for the parking lot redevelopment.

All applicable fees must be paid for areas granted an exception.

Figure 1. Project site with Setbacks



Attachment 1: Wildlife Agency Comments

Below are the comments from the U.S. Fish and Wildlife Service concerning the stream setback exception request for the Milligan Parking Lot Project

1. The parking lot lighting should be shielded and directed away from the riparian corridor and include wildlife friendly lighting such as long wavelength (greater than 560 nm AND absent wavelengths below 560 nm) light sources such as amber, orange, or red LEDs without the use of filters, gels, or lenses. See more information on wildlife friendly lighting criteria at: [https://myfwc.com/conservation/you-protect/lighting/criteria/#:~:text=Use%20long%20wavelength%20\(greater%20than,filters%2C%20gels%2C%20or%20lenses](https://myfwc.com/conservation/you-protect/lighting/criteria/#:~:text=Use%20long%20wavelength%20(greater%20than,filters%2C%20gels%2C%20or%20lenses)
2. The future bike and pedestrian trail constructed within the 35-foot setback should also be made of permeable material.
3. Should adhere to the required 50-foot minimum setback for new development in the grassland areas in the northeastern corner of the project. What is the need for the large "landscaped" or "striped out" polygon in the grasslands within the required setback in the northeastern corner of the parking lot? Does "landscaped" mean planting of nonnative plants or retaining the existing vegetation? Why not keep it as natural land covers and maintain the required 50-foot setback (this area is not being used for parking and is thus unnecessary for the project).
4. Should mitigate onsite for the loss of monarch butterfly foraging habitat next to the riparian corridor by planting suitable pesticide-free native milkweed and native nectar plants (with a focus on early-emerging milkweed plants (e.g. *Asclepias californica*), and planting native nectar plants that are available to monarchs in late winter, spring, and fall (January- April, August-October)) in portions of the site that will not be disturbed or will be restored to grassland. Should implement USFWS's conservation recommendations for the western monarch butterfly for early breeding and migratory habitat which are available at: <https://xerces.org/publications/planning-management/western-monarch-butterfly-conservation-recommendations>
5. Should consult with NMFS, SFRWQCB, CDFW, and the Fish and Aquatic Habitat Collaborative Effort (FAHCE) Initialing Parties and implement any recommended measures to protect steelhead, Chinook salmon, and water quality in Guadalupe Creek.
6. Tree replacement onsite should focus on riparian birds and bats, but should not replace too many trees onsite to the point that it degrades grassland breeding and nectar habitat for monarch butterfly and nesting, basking, and dispersal habitat for western pond turtle adjacent to the riparian corridor. Need to also consider that the proposed future trail within the stream setback will also result in the loss of suitable grassland foraging habitat for monarch butterfly and nesting, basking, and dispersal

habitat for western pond turtle when considering onsite riparian mitigation plantings.

7. *"Landscape vegetation may be planted along the trail, but no structures or lighting are planned within this area."* **Comment:** Any landscaping along the trail or project site should focus on suitable pesticide-free, native milkweed and pesticide-free, native nectar plants for monarch butterfly. See the link in #4 below for examples of suitable milkweed and native nectar plants for monarch butterfly which also links to Xerces nectar planting list at: https://xerces.org/sites/default/files/publications/18-003_02_Monarch-Nectar-Plant-Lists-FS_web%20-%20Jessa%20Kay%20Cruz.pdf and Milkweed Seed Finder at: <https://www.xerces.org/milkweed/milkweed-seed-finder>
8. Should fund a long-term trash cleanup program with an endowment for the riparian area near the project site to address trash accumulation from the proposed parking lot and the nearby unhoused encampment.
9. Any undeveloped portions of the property should be placed under conservation easement to preserve wildlife corridors along the Guadalupe River and protect steelhead habitat and water quality.
10. The project should pay SCVHP mitigation fees for all riparian habitat adjacent to areas where a riparian setback exception is granted.
11. Preconstruction surveys should be conducted by a qualified biologist and any western pond turtles safely removed from the project area. If any milkweed plants are observed within the project area that would be disturbed, they should be removed when monarchs are unlikely to be present (November 15 - March 15) and then replaced elsewhere onsite at a 3:1 ratio in suitable grassland habitat near the riparian corridor.
12. *"The project's traffic study determined that no new vehicle trips would be generated as part of the project. Thus, no increase in NOx emissions will occur as a result of the project to contribute to the effects of nitrogen deposition on the serpentine grassland ecosystem. As a result, this impact is less than significant."* **Comment:** I find it hard to believe that the addition of >300 parking spaces would not result in an increase in vehicle trips or N deposition. The project should pay N deposition fees consistent with the SCVHP's requirements based on the number of new parking spaces.
13. *"However, a portion of the new parking lot is proposed within 50 feet of top of bank where existing grassland vegetation is present (i.e., in the portion of the site that is not yet developed), and thus encroaches into the VHP's 50-foot minimum setback area (Figure 7). The Habitat Agency will review the project's plans and make a recommendation regarding whether or not the project should be approved as designed; because the proposed design encroaches into the 50-foot minimum setback, it is possible that the Habitat Agency may recommend against approval of this encroachment. . . . Because the project would result in encroachment within the standard VHP stream setback and minimum setback, and it is unknown whether the City will grant an exception for the proposed project design, this encroachment would potentially result in a conflict with the provisions of Condition 11*

of the VHP." Comment: I don't know why we would grant this exception to the VHP's 50-foot minimum setback area. I doubt cutting out a few parking spaces would kill the project. NMFS, SFRWQCB, and the NGOs raised concerns about all the stream setback exceptions being granted for all the FAHCE steelhead streams (e.g. Coyote and Guadalupe creeks), and there have been a lot lately. The area will already be affected again by a proposed trail within the 35-foot stream setback.

14. *"Many projects in the region that impact resources similar to those impacted by the proposed project will be covered activities under the VHP and will mitigate impacts on sensitive habitats and many special-status species, through that program, which will require payment of fees for habitat restoration."* Comment: Since steelhead is not a VHP covered species, the VHP does not necessarily mitigate for impacts to steelhead except to some limited extent through stream restoration projects conducted through the In Lieu Fee Program (but this is only for mitigation for direct impacts to streams). Many of the VHP covered activities requesting stream setback exceptions do not have a Federal nexus (i.e. do not require a permit from U.S. Army Corps of Engineers for impacts to Waters of the U.S.); therefore, NMFS is never consulted for the impacts of the stream setback exceptions to steelhead and its critical habitat unless there is a federal nexus with the U.S. Army Corps of Engineers.

Joseph Terry (he/him)
Senior Fish and Wildlife Biologist
Coast Bay Division
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Suite W-2605
Sacramento, CA 95825

Work cell phone (916)943-6721
email address: joseph.terry@fws.gov