

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AN EXCEPTION TO CONDITION 11 OF THE SANTA CLARA VALLEY HABITAT CONSERVATION PLAN TO ALLOW A REDUCTION OF THE RIPARIAN SETBACK FROM 100 FEET TO 35 FEET ALONG THE GUADALUPE RIVER RIPARIAN EDGE FOR THE MILLIGAN PARKING LOT PROJECT LOCATED ON A 2.5-ACRE SITE AT THE NORTHEAST CORNER OF NORTH AUTUMN STREET AND WEST ST. JOHN STREET IN DOWNTOWN SAN JOSE (APNS 259-59-032, 033, 071, 072 & 102)**

**WHEREAS**, on February 12, 2013, City Council adopted Ordinance Number 29203 which added Chapter 18.40 to the San José Municipal Code to adopt by reference and implement the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (the “Habitat Plan”); and

**WHEREAS**, Condition 11 of the Habitat Plan requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land covers; and

**WHEREAS**, the required riparian setback for development for the reach of the Guadalupe River adjacent to the project site is 100 feet; and

**WHEREAS**, Condition 11 of the Habitat Plan permits local jurisdictions to consider exceptions to allow reductions in mandated setback distances necessary to allow reasonable use and development of a property based on a variety of constraints and factors that may affect a property; and

**WHEREAS**, pursuant to and in accordance with Condition 11 of the Habitat Plan, projects implemented by a local jurisdiction shall request exceptions through the Santa Clara

Valley Habitat Agency and the findings required to approve the stream setback exception must be supported by factual information and judgments in the administrative record; and

**WHEREAS**, prior to granting the exception, the local jurisdiction will provide the exception request and proposed decision to the Santa Clara Valley Habitat Agency and Wildlife Agencies<sup>1</sup> for review and comment; and

**WHEREAS**, the proposed project, the Milligan Parking Lot Project, includes the demolition of all existing structures on the 2.5-acre site and the construction of an approximate 300-space surface parking lot (the “Project”) set back 35 feet from the riparian edge of the Guadalupe River east of the site located on five parcels on the northeast corner of North Autumn Street and West St. John Street in downtown San José (APNs 259-29-032, 033,-071, 072 & 102) in the City of San José (the “subject property”); and

**WHEREAS**, the exception request and proposed decision for the Milligan Parking Lot Project were submitted Santa Clara Valley Habitat Agency and Wildlife Agencies on April 20, 2023; and

**WHEREAS**, the Santa Clara Valley Habitat and Wildlife Agencies recommended approval of a reduced stream setback of up to 35 feet from the edge of the riparian for the Milligan Parking Lot Project on June 21, 2023; and

**WHEREAS**, the City Council conducted this hearing on the Milligan Parking Lot Project Supplemental Environmental Impact Report, construction contract award, and Condition 11 exception; and

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<sup>1</sup> Wildlife Agencies are defined in the Santa Clara Valley Habitat Plan as U.S. Fish and Wildlife Service and California Department of Fish and Wildlife.

**WHEREAS**, this City Council has heard and considered the entirety of the administrative record including the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

**WHEREAS**, said public hearing before the City Council was conducted in all respects as required the rules of this City Council;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering the entirety of the administrative record, the City Council finds that the following are the relevant facts and findings regarding this proposed Project:

1. **Site Description and Surrounding Uses.** The 2.5-acre Project site is located easterly of North Autumn Street, northerly of West St John Street, westerly of the Guadalupe River, and southerly of residences on Autumn Court. The Project's addresses include 405, 407, and 447 West St. John Street and 130 and 150 North Autumn Street in downtown San José (APNs 259-29-032, 033, 071, 072, and 102).

The site is occupied by an automobile repair shop with an attached warehouse, a vacant commercial building and additions, and a vacant single-family residence and detached garage. The Project site also has 118 surface parking spaces used for SAP Center events. The SAP Center at San José is located approximately 300 feet southwesterly of the project site, and the Guadalupe Freeway (SR-87) is located approximately 650 feet easterly of the site. The site is owned by the City of San José.

2. **Project Description.** The Department of Public Works-City Facilities Architectural Services and Department of Transportation, jointly propose the Project. The City of San José, as the owner of the subject property, will demolish all existing buildings on the site and construct an approximate 300-space surface parking lot. The new parking lot will replace existing parking within a 0.3-mile radius of the SAP Center that serves events at the SAP Center but will be demolished during construction of future planned development within downtown San José (e.g., the Diridon Station area) and the Bay Area Rapid Transit ("BART") extension into downtown San José, in accordance with the Arena Management Agreement ("AMA"). Parking locations within 1/3-mile of the SAP Center will be lost due to future anticipated development in the vicinity. The project's parking lot will be a temporary interim surface parking lot (in use for

approximately 15 years). The City's obligation to provide parking at this location would cease once the BART service to Diridon Station area is operational or a minimum of 500 new parking spaces have been constructed as part of new development projects in the Diridon Station area. When the project's surface parking is no longer needed, the project site is intended to be redeveloped with the roadway alignment and extension envisioned in the Coleman Avenue and Autumn Street Improvements Project or will be developed consistent with the Amended Diridon Station Area Plan adopted in May 2021.

The Project will be setback a minimum of 35 feet from the Guadalupe River riparian corridor on the eastern side of the property. The Project includes a six-foot tall masonry screen wall along the northerly property line. The Project includes the removal of 28 trees, including 20 ordinance-sized trees. The removed trees will be replaced with 26, 24-inch-box replacement trees. The Project will utilize permeable pavements for on-site stormwater treatment. Project construction is anticipated to take four months and would include the export of 3,400 cubic yards and import of 5,000 cubic yards of soil during Project construction.

#### *Future Guadalupe River Trail Extension*

The City plans to construct a 600-foot-long future pedestrian trail or Class 1 paved bicycle and pedestrian trail within the 35-foot setback area located between the proposed parking lot and the Guadalupe River. The trail will be approximately 12 feet wide, with two-foot-wide shoulders. The trail will be permanent and would connect to trail segments located adjacent to the Guadalupe River immediately north and south of the Project site.

While the trail is currently in the design stage, it will require detailed plans and additional environmental analysis prior to final approval and construction of the trail. A feasibility study for the trail, which includes an analysis of sound wall impacts and Americans with Disability Act accessibility, will be completed and available for review in early summer 2024 on the City's website. With completion of the feasibility study, City staff will begin the Master Planning and environmental review for the entirety of the trail, including the portion on the Project site. The timing of the final design and construction of this trail is unknown and will include community involvement and coordination with advocates during the master planning process.

- 3. Biological Resources.** The Project site is located west of the Guadalupe River along a reach that is designated by the Habitat Plan as a Category 1 stream inside the Urban Service Area with a slope of less than 30%. A Category 1 stream is defined by the Habitat Plan as a stream type with sufficiently flow to support covered species and riparian habitat 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 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 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 submitted the Riparian Stream Setback exception to the Santa Clara Valley Habitat Agency on April 20, 2023, and received a recommendation of approval from the Santa Clara Valley Habitat and Wildlife Agencies on June 21, 2023. The City Council, as the local jurisdiction for this project, will issue the final decision on the setback exception.

#### 4. Environmental Review.

The City of San José, as the lead agency for the proposed Project, prepared the Draft Supplemental Environmental Impact Report to the Coleman Avenue/Autumn Street Improvement Project Final Focused Environmental Impact Report and the Downtown Strategy 2040 Final Environmental Impact Report for the proposed Milligan Parking Lot Project (File No. ER20-049) (“Draft SEIR”). The Notice of Preparation (NOP) for the SEIR was circulated from August 24, 2021 to September 24, 2021, and the Draft SEIR was circulated for public review and comment from June 2, 2023, to July 18, 2023.

The Draft SEIR analyzed the environmental impacts and discussed alternatives to the proposed Project. A First Amendment to the Draft SEIR has been prepared that provides responses to public comments submitted during the public circulation period and revisions to the text of the Draft SEIR. The First Amendment together with the Draft SEIR constitute the Final Supplemental Environmental Impact Report (“FSEIR”) for the proposed Project. These entire documents can be viewed on the City’s website at: <http://www.sanjoseca.gov/ActiveEIRs>.

#### Summary of Environmental Impacts Reduced to Less than Significant with Mitigation

The FSEIR identified potential environmental impacts related to migratory nesting birds, archaeological and cultural resources, historic landmarks, and hazards and hazardous materials. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program (MMRP) and prepared for the Project, these impacts are reduced to less than significant levels. The impact to the riparian corridor was analyzed in the FSEIR and Appendix C Biological Resource Report prepared by H.T. Harvey and Associates dated March 7, 2023. The FSEIR concludes that although the construction and operation of the new building will be 35 feet from the riparian edge, the Project would have a less than significant project-level environmental impact with mitigation implemented. The Project will 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 FSEIR.

### Significant and Unavoidable Impacts and Statement of Overriding Considerations

The analysis in the Draft SEIR found that the Project would result in significant and unavoidable impacts related to historical resources due to the demolition of the Forman's Arena located at 447 West St. John Street. Forman's arena is eligible for listing on the National Register of Historic Places (NRHP) and the California Register of Historic Resources (CRHR). The building is also listed on the City of San José's Historic Resources Inventory as a Candidate City Landmark. The mitigation measures to be adopted for the proposed Project would not reduce this impact to below the significance threshold.

CEQA Guidelines Section 15093 requires that a Statement of Overriding Considerations be adopted with findings that the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed Project outweigh the unavoidable adverse environmental effects if an environmentally superior alternative is not chosen.

On June 11, 2024, the City Council adopted, by resolution (Resolution No. RES2024-XXX), a Statement of Overriding Considerations stating that the significant, unavoidable impact of the Project is acceptable in light of the economic, legal, environmental, social, technological or other considerations because the benefits of the Project outweigh the significant and adverse impacts of the Project. In summary, benefits of the Project include its compliance with the Arena Management Agreement which provides economic and recognition benefits to the City, the Project's furtherance of the Envision San José 2040 General Plan, and the furtherance of the Diridon Station Area Plan's Guiding Principal to ensure the vitality of the SAP Center.

### Project Alternatives

The FSEIR analyzed two project alternatives, including a No Project – No Development Alternative and the Forman's Arena Building Retention Alternative. These alternatives are summarized as follows:

#### 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 at 447 West St John Street. 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 ADA 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 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).

The environmentally superior alternative would be the No Project/No Development Alternative, which would avoid the identified significant impacts of the proposed Project; however, CEQA requires that another alternative be chosen when the No Project Alternative is environmentally superior. The Forman's Arena Building Retention Alternative is therefore the environmentally superior alternative. This alternative would demolish all structures on the site with the exception of the Forman's Arena building at 447 West St. John Street and would allow parking inside the Forman's Arena building. This re-design would require the relocation of the ADA 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, slightly less than the Project's 300-space surface parking lot. This 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, archaeological resources, tribal cultural resources, and hazards and hazardous materials impacts would also be similar to the Project.

### Summary of Comments Received

The City received five comment letters during the public comment period. The main concerns raised by the commenters are as follows:

Concerns about potential impacts of the Project to adjacent Valley Water easements and ensuring any mitigation would not be the responsibility of Valley Water;

1. Opposition to a surface parking lot adjacent to the Guadalupe River;
2. Questions about the need for the parking lot and the planned operations of the Project;
3. Concerns regarding the application and feasibility of biological resources mitigation and the proposed encroachment into the Santa Clara Valley Habitat Plan's 50-foot riparian setback for portion of the site currently covered by Annual Grassland;
4. 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;
5. Concerns that the Historic Landmarks Commission did not review and comment on the Draft SEIR during public circulation;
6. Questions regarding the scope of the historic analysis conducted for 407 West St John Street;
7. Concerns regarding cumulative impacts to historic resources; and
8. Concerns and questions regarding the Project's objectives being minimal and alternatives analysis not considering enough possibilities.

None of the comments received address an issue of deficiency or adequacy of the Draft SEIR, or the mitigation measures to be adopted as part of the FSEIR.

The City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. SEIR text revisions were included in the First Amendment to address clarifications to the text of the Draft SEIR and other suggested text revisions from the commenter[s]. The Draft SEIR and First Amendment to the Draft SEIR (Final SEIR) are available for review on the project page on the City's Active EIR website at: <http://www.sanjoseca.gov/ActiveEIRs>. A copy of the MMRP is included with Resolution No. RES2024-XXX.

### EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or present new previously unidentified significant impacts that require recirculation. The 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 a Draft EIR is not significant unless the Draft 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, including a feasible project alternative that the project's proponents have declined to implement (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information requiring recirculation has been added to the SEIR since publication of the Draft SEIR, and the mitigation measures to be adopted with the Final SEIR would not result in a new significant environmental impact and feasible mitigation measures requested by commenters would be adopted as part of project approval. Therefore, the Draft SEIR does not need to be recirculated.

**5. Habitat Plan Condition 11 Exception Findings:**

Condition 11 of the Habitat Plan permits exceptions which are allowances for reductions in the mandated riparian setback of 100 feet to allow reasonable use and development of a property. The City Council hereby approves the reduction of the 100 feet riparian setback to 35 feet along Guadalupe River for the Milligan Parking Lot Project based on the following:

- a. The existence of legal uses within the setback.

*Analysis: The Project site is developed with a paved parking lot, auto repair and warehouse buildings and only a 0.17-acre portion of the northeast corner of the site is undeveloped. The existing development on the site already reduces the depth and quality of the riparian habitat along the Guadalupe River. The Milligan Parking Lot project would replace the existing pavement and buildings with a surface parking lot constructed of permeable pavers and would remove existing pavement and buildings that encroach within the minimum 35-foot riparian setback. Furthermore, the Project will be required to implement mitigation measures that would reduce impacts from encroachment on riparian habitat and*

*would not result in a substantial adverse effect on any riparian habitat or other sensitive natural community.*

- 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 his land or adversely affects recognized real property interests) for the applicant.

*Analysis: The City's obligation under the AMA to assure a certain number of parking spaces within 0.3 and 0.5 mile from the SAP Center places limitations on where new parking spaces can be located. Finding suitable parking locations on public or private sites with approved plans for redevelopment and within a minimum 0.3 mile of the SAP Center is a challenge due to lack of available sites.*

*Additionally, limiting the new surface parking lot development on this site to be outside of the 100-foot riparian setback would significantly decrease the number of parking spaces that could be provided as nearly one-third of the site is within the 100-foot setback. Designing the parking to fit on the remaining approximately two-thirds of the site outside the 100-foot setback would significantly reduce the number of parking spaces by at least 100 spaces and would require the relocation of proposed driveways into the site. This reduction in parking spaces would not meet the AMA agreement.*

- 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.

*Analysis: The Milligan Parking Lot Project site is within the Downtown Primary Commercial Zoning District which has the most flexible development standards among all Zoning Districts in the City. No deviations from, exception to, or variances from other established policies, legal requirements, or standards will be required.*

*Meeting the required setback would not result in the need for any deviations from required standards or policies. However as noted above, the reduction in parking would limit the City's ability to comply with the AMA.*

- 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.

*Analysis: The FSEIR and Appendix C Biological Resource Report prepared by H.T. Harvey and Associates on March 7, 2023, analyzed the Milligan Parking Lot project's impact on the riparian species and habitat. The Biological Resource Report identified that the riparian habitat in the vicinity is moderate to low quality due to debris, disturbance and litter associated in the urban setting and the presence of the unhoused community encampments and non-native trees. Most*

*of the existing site is paved or developed up to the edge of the site and within the minimum 100-foot setback except for a 0.17-acre portion of the site located at the northeast corner of the site. The 0.17-acre portion is currently unpaved and occupied by California annual grassland.*

*The Project would remove all existing development within the 100-foot setback and would repave the site with a permeable parking lot which would meet stormwater requirements and enhance the current site drainage and would reduce drainage impacts on the river. The Biological Resource Report determined the encroachment by the hardscape areas and landscaping in areas with existing hardscape would 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, under Mitigation Measure BIO-3.1, the project's landscape vegetation shall include nonnative species which would have some minimal benefit to riparian animals (e.g., many bird species will still forage, nest, and/or roost in nonnative vegetation).*

*However, a portion of the site's riparian setback would 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. noted the encroachment of development on this portion of the site could result in indirect adverse effects on a portion of the Guadalupe River corridor by removing habitat that could be used by riparian-associated species (predominantly birds) and introducing vehicular traffic closer to the riparian corridor than currently exists within that portion of the site. 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 FSEIR identified mitigation measures MM BIO-C-4.1 through 4.3. These mitigation measures require restoration of native riparian tree and shrub habitat at a 1:1 ratio (restored area: impacted area) on-site or off-site and monitoring the restored habitat for at least 10 years after Project completion.*

*Overall, it was concluded in the FSEIR and Biological Resource Report that the Project would result in increased and enhanced setbacks along the majority of the site as compared to current conditions. Restoration of native habitat combined with the compensatory mitigation described in Mitigation Measures BIO-C4.1 through 4.3, could offset the encroachment in the undeveloped northeast portion of the Project site. Given the moderate to poor habitat value of the site, the Milligan Parking Lot Project would not preclude the achieving of biological goals and objectives of the Habitat Plan and could result in some site riparian benefits.*

In accordance with the findings set forth above, a riparian setback exception to permit the Milligan Parking Lot Project 35 feet from the Riparian Corridor for the Guadalupe River in lieu of the required 100-foot setback for said purpose specified above is hereby **approved**.

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

*NOTICE TO PARTIES*

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*