



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **FROM:** Councilmember Sergio Jimenez
Councilmember Omar Torres
Councilmember David Cohen

SUBJECT: SEE BELOW

DATE: June 14, 2024

Approved:

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Subject: Potential Supportive Outdoor Sleeping/Temporary Alternative Sleeping Sites

RECOMMENDATION

Approve the Memo from the Mayor and Councilmembers Jimenez, Torres, Cohen, and Davis with the following modification:

Remove the South Coyote Valley site (Parcel Number 725-01-023) from the list of Potential Sites for Further Evaluation.

BACKGROUND

We recognize the immense challenge of identifying locations for the unhoused members of our community to sleep safely and appreciate staff's initial efforts to produce a list of potential sites. However, the South Coyote Valley location presents a unique set of legal challenges and additional costs that make the location unsuitable for this purpose.

Urban Service Area (USA) and the Urban Growth Boundary (UGB)

The City's laws and policies do not allow a Supportive Outdoor Sleeping site to be located on the site staff has identified on Monterey Road in South Coyote Valley (APN 725-01-023). This parcel is outside both the Urban Service Area (USA) and the Urban Growth Boundary (UGB), which means that according to the Envision 2040 General Plan, it must remain rural in character and cannot be provided with any urban services. Furthermore, the UGB cannot be modified without a vote of the people, since the UGB was first established in 2000 by a ballot initiative.

A Supportive Outdoor Sleeping site is a land use that is urban in nature and scale. The proposal from City staff refers to adding "infrastructure" to the sites in question to provide a supportive

environment for individuals living in encampments, including toilets, showers, and waste disposal. These are the very definition of "urban services" no matter whether they are provided via permanent pipelines or temporary infrastructure.

The General Plan states that land outside the UGB can only be used for very low-intensity rural uses such as agriculture, open space, or habitat. A Supportive Outdoor Sleeping site is not "very low-intensity."

Furthermore, the parcel in question is zoned Agriculture. According to both the General Plan and the City's Zoning Ordinance, only agricultural uses are allowed on agricultural land.

Settlement Agreement and Judgement

In October 2000, Morgan Hill Unified School District (MHUSD) approved the construction of the second comprehensive high school for their district. As part of CEQA, the District was required to identify the significant impacts of the proposed project and to avoid those impacts if feasible. The MHUSD Board of Education approved the Revised Final EIR for the project. The EIR specifically stated that "the track and football field would not be lighted and nighttime home games would be played at Live Oak High School." Shortly after the MHUSD approved the project, the City of San Jose sued MHUSD, and the City of Morgan Hill challenged the approval of the second high school and the impact the school would have on the property located in the City of San Jose Greenbelt. In August 2001, MHUSD and City of San Jose settled the lawsuit and entered into a Settlement Agreement. The parties agreed that MHUSD would modify the location of certain portions of the high school in order to preserve open space within the City of San Jose Greenbelt in perpetuity. Although CEQA does not prevent MHUSD from constructing field improvements, the Settlement Agreement with the City of San Jose does. The Settlement Agreement was substantiated by City Attorney Rick Doyle in 2018 when Sobrato High School staff and Athletic boosters reopened the conversation about installing lighted playing fields with our office.

It is important to consider that the impact of lighted sports fields is almost certainly not greater than the impact of Supportive Outdoor Sleeping. 24/7 inhabitation of this site would present far greater impact than periodic use of lighted sports fields, and this use consequently could risk violation of the Settlement Agreement.

Other considerations

As a practical matter, we question how we can direct an undetermined but potentially significant number of unhoused individuals to this site, which is unserved by transit and lacks access to meaningful amenities, and more importantly ensure that the individuals directed to this site will actually choose to remain here given the undesirable location.

This location is not currently serviced by public transit, and we have been told that a shuttle service would be required to move people to and from the site. This is an additional expense that the City cannot afford and is unsustainable even in the short term. The remoteness of this location will undoubtedly impact the ability of those staying here to access employment

opportunities, attend medical appointments, and participate fully in programs intended to lead to self-sufficiency.

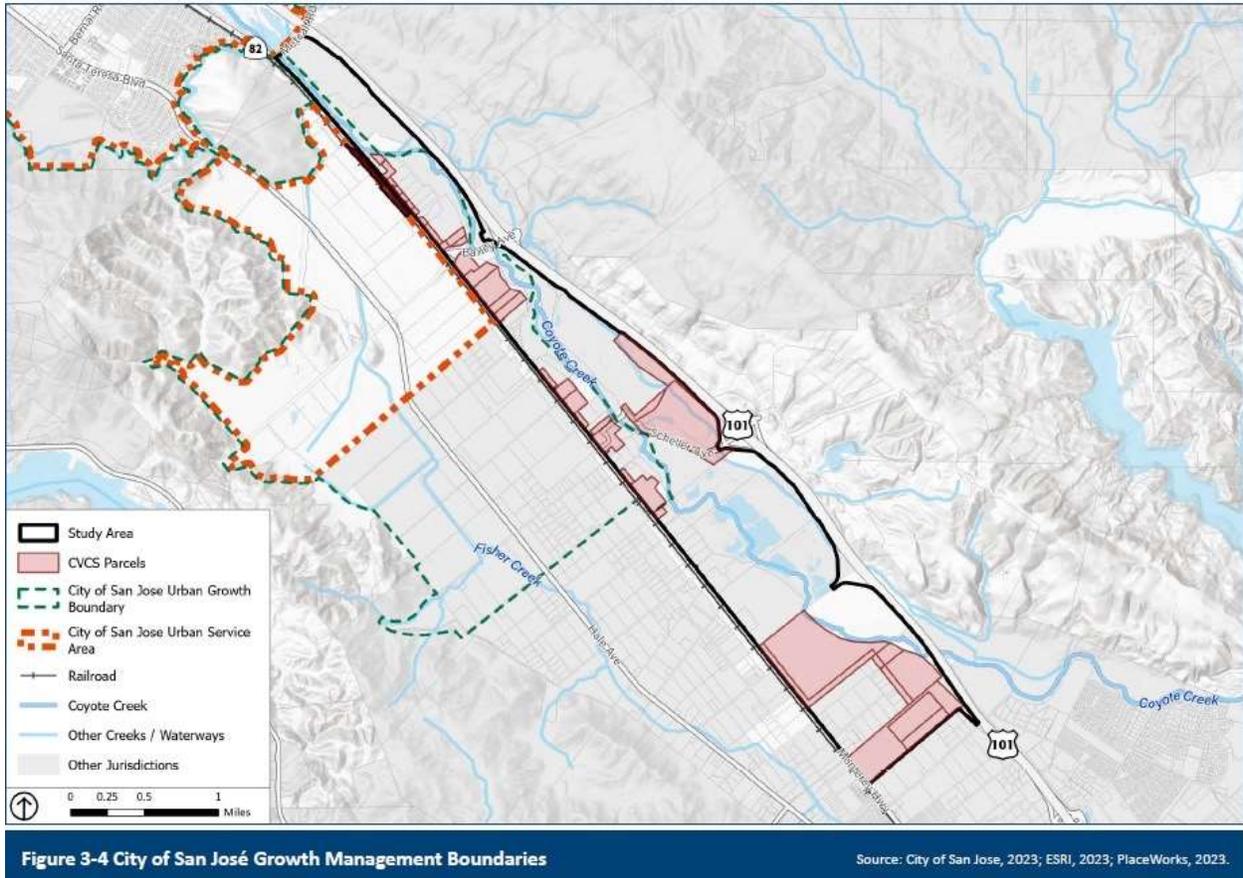
We have heard from our Fire Department that responding to calls for service at EIHC's in South San Jose has become increasingly burdensome and has negatively impacted response times to emergency calls for service across the city. Placing our most vulnerable residents at the far outskirts of the city will only exacerbate this problem.

Lastly, the site's proximity to Morgan Hill suggests that we should at the very least engage the City of Morgan of Hill in a meaningful way to understand impacts and concerns. I know that we would not be amenable to a neighboring city establishing a SOS at our border without any input or consideration for our residents and communities.

We urge our colleagues to eliminate this site from the list and focus the City's efforts and attention on sites that are viable and consistent with our General Plan, and which are not burdened by legal constraints or risks associated with settlement agreements or similar legal restrictions or prohibitions.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.

Attachment A - map from the City's [Coyote Valley Corridor Study Baseline Assessment](#) that shows the boundaries of the USA (the orange dotted line) and the UGB (the green dotted line). The entirety of South Coyote Valley, including the subject parcel, is outside both of these areas.



Source: Coyote Valley Corridor Study Baseline Assessment, p. 25 (City of San Jose, January 2024)

Attachment B – Relevant Envision 2040 General Plan policies:

LU-19.1 Maintain the Greenline/Urban Growth Boundary to delineate the extent of existing and future urban activity and to reinforce fundamental policies concerning the appropriate location of urban development.

LU-19.2 Prohibit significant modifications of the Greenline/Urban Growth Boundary (UGB), as defined by Title 18 of the municipal code, except through a Major General Plan Update process. Any modifications to the UGB must be consistent with the City's fiscal goals, applicable LAFCO policies and all applicable provisions of both the City and County General Plans and the City's municipal code (i.e., Title 18).

LU-19.4 Reserve areas outside the Greenline/Urban Growth Boundary (UGB) for rural, agricultural, open space, habitat, or other very low-intensity uses. Prohibit new urban development outside of the Greenline/Urban Growth Boundary (UGB). Appropriate land use designations for areas outside of the UGB include Agriculture; Open Hillside; Open Space, Parklands and Habitat; Urban Reserve; and the Open Hillside Golf Course Site Overlay. Other designations may not be applied to lands outside of the UGB.

LU-19.6 Use the Urban Service Area (USA) boundary as a tool to preserve the non-urban character of development on lands outside of the Urban Growth Boundary. To this end, limit all new development on lands outside of the USA as follows.

1. Do not provide urban services to new development outside of the USA.
2. Require that new development projects cause no significant increase in public services or infrastructure and are non-urban in terms of
 - a. Waste water generation rates.
 - b. Traffic generation rates.
 - c. Extent of grading, vegetation removal, drainage modifications or other alteration of the natural environment.
 - d. Noise or other nuisance potential.
 - e. Growth inducing potential.
 - f. Water consumption, excluding the environmentally beneficial use of recycled water.