

COUNCIL AGENDA: 12/19/2017
ITEM: 4.1 (17-455)

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: December 7, 2017

**SUBJECT: OFF-SITE ADVERTISING AND DOWNTOWN SIGN
INTENSIFICATION.**

RECOMMENDATION: As recommended by the Community and Economic Development Committee on November 27, 2017, accept a status report on implementing the work plan to investigate removing existing barriers to off-premise (off-site) commercial advertising on City-owned and non-City-owned sites in the City of San José, and recommend that the City Council direct staff to implement a phased work plan which could allow:

- (a) New off-site advertising on City-owned sites throughout the City, including exchange of existing legal static billboards on other sites for new electronic billboards on city-owned sites;
- (b) Exchange of existing legal static to electronic billboards on non-City-owned existing freeway facing sites and new freeway facing sites in the North San José Development Policy Area;
- (c) New offsite advertising on non-City-owned sites in the Downtown Sign Zone, including exchange of existing legal static billboards on other sites for new electronic billboards in the Downtown Sign Zone.



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Rosalynn Hughey
Nanci Klein

SUBJECT: SEE BELOW

DATE: November 15, 2017

Approved

Date

Nov. 16, 2017

**SUBJECT: OFF-PREMISE COMMERCIAL ADVERTISING ON CITY-OWNED SITES
AND NON-CITY-OWNED SITES**

RECOMMENDATION

Accept a status report on implementing the work plan to investigate removing existing barriers to off-premise (off-site) commercial advertising on City-owned and non-City-owned sites in the City of San José, and recommend that the City Council direct staff to implement a phased work plan which could allow:

1. New off-site advertising on City-owned sites throughout the City, including exchange of existing legal static billboards on other sites for new electronic billboards on city-owned sites;
2. Exchange of existing legal static to electronic billboards on non-City-owned existing freeway facing sites and new freeway facing sites in the North San José Development Policy Area;
3. New offsite advertising on non-City-owned sites in the Downtown Sign Zone, including exchange of existing legal static billboards on other sites for new electronic billboards in the Downtown Sign Zone.

OUTCOME

Provide the Committee with a status report on staff's efforts to respond to prior Council direction in implementing a work plan, and provide additional City Council direction, for the following actions:

1. Update existing billboard provisions in the Envision San José 2040 General Plan "(General Plan), the San José Municipal Code, and City Council Policies to address electronic programmable billboards on City-owned and non-City-owned sites in the City.

2. Create discretionary approval processes for off-site advertising on City-owned and non-City owned sites in the Downtown Sign Zone and for replacement of existing static billboards with electronic programmable billboards and
3. Consider revising provisions for regulation of off-site signage in the public right-of-way.

(Note: For purposes of this memo, “non-City-owned sites” means sites that are privately-owned, as well as sites owned by other public entities.)

BACKGROUND

Billboards are attached or freestanding signs that can display advertising for any commercial activity, product, good or service that is not conducted, manufactured or offered on the site that contains the sign (off-site advertising). Electronic billboards use programmable electronic display screens to produce changeable messages. In 1985, the City Council adopted a citywide ban on new off-site signs including billboards in response to community concerns about visual clutter, blight and message content. Electronic signage in San José is currently limited to on-site advertising. Exploring opportunities for electronic billboards has been a City Council priority in the top ten ranking since March 2017.

On April 24, 2017, City staff presented to the Community and Economic Development (CED) Committee a phased work plan. This phased work plan focused initially on City owned/controlled sites, and secondarily on off-site signage on private property. Staff recommended a sequential rather than simultaneous approach to maintain better control over aesthetics, content, and compatibility with surrounding land uses and to allow lessons learned from implementing electronic off-site advertising on City-owned sites to be used to develop a regulatory program for non-City-owned sites. The phased work plan included CEQA clearance for each phase, General Plan text amendments for each phase, and Municipal Code changes for each phase. The Committee requested that staff present its proposed work plan to the full City Council for Council direction.

At the City Council hearing on May 16, 2017, Council directed staff to include exploring the potential for off-site signage on non-City-owned properties within the Downtown Sign Intensification Zone and to report back to the CED Committee in November 2017 with an update on work plan implementation and any additional staff recommendations related to off-site signage opportunities.

ANALYSIS

- 1) **Update the existing billboard provisions in the General Plan, Sign Code, and Council Policies to address electronic programmable billboards, including identification of potential sites for relocation**

Revisions to the General Plan, Title 23 of the San José Municipal Code (the Sign Code), and Council Policies 6-4 and 6-16 could expedite removal of existing static billboards by allowing them to be replaced with a new electronic programmable billboard at a pre-determined ratio.

Existing Policies and Regulations

- City Policies and Regulations – Existing provisions for static billboard relocation are in Section 23.04.400 of the City’s Sign Code. These provisions are intended “to enable the removal of billboards from over-impacted areas by allowing the use of alternative sites, and to enable the substitution of billboards meeting modern standards for non-conforming billboards.” Existing City Council Policy 6-4 precludes the siting of billboards on City-owned property. Existing City Council Policy 6-16 specifies the process to be followed for approval of private use of City owned property.
- State and Federal Regulations – The State of California Outdoor Advertising Act (Business and Professions Code Section 5200 *et seq*) governs the placement and type of off-site commercial advertising along State- and federally-designated highways including freeways and principal arterials. Examples of State regulated highways in Downtown San José include portions of Santa Clara Street, San Carlos Street, Market Street and First Street. See Attachment A for a map showing all State regulated highways in San José. Under the California Outdoor Advertising Act, the siting of any new highway off-site signage, including size and spacing of signs, is subject to Caltrans review and approval. This legislation pertains to City-owned and non-City-owned sites located within six hundred and sixty (660) linear feet from the edge of the right-of-way of an interstate or primary highway that are visible from that highway. Off-site signage is prohibited within 660 feet of State-designated landscaped freeways in San José, with the exception of sponsorship advertising by a large arena, if authorized by the City before January 1, 2019. For non-landscaped freeways and other highways, State regulations require at least a 1000-foot separation distance from any one programmable electronic sign to another, and depending on the highway category at least a 100-foot to 300-foot separation distance from one static billboard sign to another. These State regulations further stipulate that new off-site signage must be located in areas zoned and used for commercial or industrial purposes and specifically state that any use that is principally residential is not a commercial or industrial use.

Billboard Exchange and Relocation Opportunities and Limitations

The City currently has a number of existing non-conforming static billboards, installed prior to the 1985 ban. These are typically located along business corridors and arterial streets in older neighborhoods. Staff has mapped the locations of many of these existing billboards and also mapped locations where there may be opportunities under State law for billboard exchange and relocation from static to electronic billboards.

Expanding the billboard relocation provisions in the Sign Code to include the exchange of static for electronic billboards provides the following potential benefits: removal of existing static billboards from residential areas; decluttering of neighborhoods; replacement of existing static signs using newer and more efficient technology for illuminated advertising; and beautification of boulevards and primary arterial streets.

The Sign Code currently allows large freeway-facing onsite signage in North San José. Adding the allowance of offsite freeway-facing signage located and operated in a manner to minimize impacts to riparian corridors, open space, and migratory bird flyways could be compatible with the existing freeway signage in the North San José Development Policy Area.

Sharks Sports & Entertainment

On May 8, 2015 the City Council approved a Term Sheet with Sharks Sports & Entertainment (SSE) to guide discussion to allow the Sharks to remain in San José. Terms included Council support for two digital freeway signs to assist with marketing and promotion for the SAP Arena, which could include sponsored arena signs consistent with Section 5272 (b) of the Outdoor Advertising Act.

City Staff and SSE staff continue to work toward completing the updated Arena Management Agreement. As mentioned previously in this memorandum, State and Federal regulations restrict the placement of new billboard signs. Two SAP Arena-related digital freeway signs may impact where other digital billboards can be located and, if allowed on City-owned property will impact the number of City-owned sites available for billboard exchange or other opportunities.

Stakeholder Feedback

Input from media company representatives indicates they are interested in maximum visibility to vehicular traffic. They prefer locations for new programmable billboards along freeways throughout the City. Although staff suggests initially limiting the locations of new electronic programmable billboards on non-City owned property to North San José and Downtown, representatives of the billboard industry have expressed a desire that Council consider allowing a reasonable number of electronic billboards throughout the City.

Input from residents, as well as from environmental and historic preservation advocates, indicates a desire to discourage electronic signs near riparian corridors, open spaces, areas where migratory birds fly, historic structures, freeways and residential areas, due to lighting and safety concerns.

A more comprehensive summary of stakeholder feedback received at community meetings in September and October 2017 can be found in the Public Outreach section of this memorandum.

Recommended Next Steps

Staff continues to recommend that a phased approach be taken so that new signage on City-owned sites is initiated first to evaluate and inform the effectiveness of the new provisions for off-site signs. Through General Plan amendments, Municipal Code changes, and revisions to Council Policies, staff suggests exploring the following provisions for allowing off-site signage in the City:

- a. Allow replacement of existing traditional static billboards with a new electronic programmable billboard, at a ratio of 10:1, similar to other comparable cities in California.
- b. Allow replacement with a new electronic digital billboard at an existing freeway-facing static billboard location, where the existing billboard is proven to be legal, or allow relocation in the following areas where in compliance with State and Federal regulations:
 - o City-owned sites throughout the City
 - o The Downtown Sign Intensification Zone
 - o Freeway-facing sites in the North San José Development Policy Area
- c. Establish criteria for the selection of eligible freeway-facing non-City-owned sites through the City's policy and environmental review processes.
- d. Address operational and maintenance parameters for programmable signs, including lumens, timing of transitions between advertisements, dimming controls, etc., through the City's policy and environmental review processes.

2) Create provisions in the Municipal Code and Council Policies to allow off-site advertising in the Downtown Sign Zone through discretionary review and approval processes by the City

New Code provisions and new Council Policies could allow off-site signage on City-owned and non-City-owned sites in the Downtown Sign Zone.

Existing Policies and Regulations

San José City Charter provisions governing City-owned sites, such as including parkland use restrictions, private-activity constraints associated with bond-funding on some properties, and various contractual obligations with third party operators, may limit or preclude off-site advertising on specific City-owned sites. Further, a large majority of City-owned sites are smaller remnant parcels that resulted from right-of-way activity. Many are not on highways, and they may not be suitable for billboards. As indicated on the attached maps, the State and Federal regulations not only limit signage on freeways, but also on several principal arterial streets in the City that are classified as highways in federal legislation.

Downtown Signage Opportunities and Limitations

As initially presented to CED in October 2016 the intention behind exploring large format off-site signage was to create a more vibrant and aesthetically-enhanced environment Downtown. Additional objectives for the initiative include generating revenue for downtown amenities and arts and culture place making, as well as creating a civic asset that could support City initiatives.

Any new large format off-site signage in the core will be highly scrutinized. Enhanced aesthetic standards will create media platforms that represent what is most cutting-edge in the outdoor industry, which fits well with San José's development goals for Downtown. Signage standards will include a focus on signage quality, architectural compatibility with the surrounding neighborhood and buildings, street orientation of enlivened building facades and appropriate scale and placement related to the underlying building.

The existing regulated highway configuration in Downtown currently limits signage possibilities, since any off-site signage in the core must be in accordance with State and Federal regulations outlined earlier in this memorandum.

Staff has identified eight City-owned sites that may be eligible for programmable or non-programmable off-site signage in Downtown, based on location and visibility parameters, as well as commercial viability. Limitations are based on buffer radii and visibility from primary arterials. Two of these sites —the Market/San Pedro and Third Street garages – possess no financing or State Outdoor Advertising restrictions. The City-owned Center for the Performing Arts is not subject to financing constraints but is subject to State Outdoor Advertising constraints. The City-owned Hammer Theatre should no longer be subject to financing constraints after December 21, and is probably not subject to State Outdoor Advertising constraints. Four other potential City-owned sites; the McEnery Convention Center, Second and San Carlos Street Garage, Tech Museum of Innovation and San José Museum of Art are subject to financing and State Outdoor Advertising constraints. The eligibility of the latter sites, with respect to financing restrictions, will likely be determined by the end of this year. Signage on all buildings must also conform to the City's Building and Fire codes.

Revenue on City-owned buildings could be generated through site-specific lease agreements between the City and one or multiple media companies. Staff previously presented the idea that revenue generated from off-site signage on City-owned sites should be utilized for public benefit and place making initiatives Downtown and should also cover the cost of administering the program. Preliminary estimates of potential gross revenue from off-site advertising on City-owned buildings Downtown is approximately \$200,000 annually.

Non-City-Owned Sites in Downtown

Over the last six months, staff has developed preliminary criteria for non-City-owned sites that might be eligible for off-site signage. These preliminary criteria include parameters such as percentage building occupancy, proximity to public spaces, minimum building height, proximity to heavily trafficked pedestrian corridors and consideration of the City Council's Riparian Corridor and Bird-safe Policy No. 6-34. Based on these preliminary criteria, as well as visibility

and siting parameters, fewer than 20 examples of potential non-City-owned sites in Downtown have been identified. It is currently unknown whether these sites are located within the signage buffer radii of existing sign sites or potential City-owned sites for the type and size of new programmable electronic signs. Additional refinement of eligibility criteria and mapping of non-City-owned sites relative to City-owned sites are required.

There are significant limitations under State and Federal law to procuring any revenue beyond cost recovery from off-site signage on non-City-owned property. However, if directed to pursue this option, staff will continue to investigate potential mechanisms to generate revenue to support the intended goals of the program.

Stakeholder Feedback

Sign industry stakeholders who attended community meetings held in October were from companies whose business model is predicated on the sale of advertising along freeways. They expressed views that primary arterials did not provide optimal billboard opportunities and that billboard visibility to pedestrian traffic was less desirable. They indicated that although their companies were not interested in pedestrian-oriented signage, there could be other niche advertising-driven media companies interested in this type of signage. These smaller niche media companies are the ones that currently operate in the media districts established in Denver and Atlanta and referenced in staff's previous presentations to the CED Committee and Council.

Recommended Next Steps

Staff suggests the following measures:

- a. Implement a phased approach to allow new off-site signage on City-owned sites immediately following necessary General Plan, Code and Policy changes.
- b. Finalize criteria and develop use permit approval process for non-City-owned sites in the Downtown Sign Zone after signs have been installed on City-owned sites.
- c. Initiate the necessary General Plan, Code and Policy changes for off-site signage on non-City-owned sites six months after installation of off-site signage on City-owned sites.

Concurrent with the California Environmental Quality Act (CEQA), General Plan, and Policy and Code changes for off-site advertising on City-owned sites, staff will:

- Work through agreements with operators of City-owned facilities
- Determine the appropriate program management structure and roles and responsibilities of City staff in different departments
- Develop a recommendation for how revenue generated from off-site advertising on City-owned sites will be expended
- Prepare an RFP for media companies for City-owned sites

3) Revise City regulations for public right-of-way offsite advertising

Public Right-of-Way Off-site Advertising Opportunities and Limitations

Revising City regulations could enable off-site commercial signage on street furniture such as light poles, wayfinding kiosks, news rack condos, bike racks, benches and public restrooms. However, opportunities for this are limited in the locations where it might be most desirable or likely to generate revenue because State law prohibits any signage in right-of-way on State highways, including many principal arterials in San José. In these State-regulated rights-of-way advertising is only allowed on bus shelters and bus benches.

Since 1995, the City has been a party to an agreement with the Santa Clara Valley Transportation Authority (VTA), other cities in the County and a media company (now Clear Channel) related to bus shelter advertising. The agreement expired in October 2017. Staff anticipates participating in negotiations with VTA to update the agreement in the near future.

In addition to State law limitations on advertising in State highway right-of-way, there are other constraints on signage in the right-of-way. For example, signage in right-of-way is an encroachment and can adversely affect primary use of right-of-way for pedestrian and vehicular access. Further, adjacent property owners may have an interest in the right-of-way that must be taken into consideration. Finally, the First Amendment of the United States and State Constitution may limit the City's ability to exercise content control on signage in public right-of-way.

Staff will continue to explore installation of street furniture in the Downtown Sign Intensification Zone with off-site signage, where possible (e.g., on sections of non-arterial streets, such as San Fernando Street). This work will be prioritized after billboard relocation and exchange and Downtown sign intensification and will include assessing what opportunities are available.

PROPOSED TIMELINE

Removing existing barriers to new off-site commercial advertising on City-owned sites and non-City-owned sites, will require amendments to the General Plan, changes to the Municipal Code, changes to City Council Policies, and environmental clearance under CEQA. Depending on the scope and phasing of changes, CEQA review may be completed by Summer of 2018 or Fall 2019. As outlined in the Council memo dated April 12, 2017, the work plan tasks for *only* City-owned sites may be completed by mid- 2018, depending on the City's other intervening priorities that require staff and budget resources. However, if Council directs that the work plan be concurrent for City-owned and non-City owned sites, the earliest CEQA completion would be Fall 2019.

Scheduling public hearings for General Plan amendments will be coordinated within one of the four General Plan Amendment hearing cycles that the City holds each year. Ongoing tasks

include mapping various governmental parameters to identify areas that might be eligible for new off-premise signage in the City.

<i>Work plan Timeline</i>	City-Owned sites ¹	City-Owned and Non-City-Owned sites
CEQA	Summer 2018	Fall 2019
General Plan Amendment	Summer 2018	Fall 2019
Zoning Code Updates and changes to City Council Policies	Fall 2018	Fall 2019
RFI, RFP	Fall 2018	N/A
Implementation	Spring 2019	Fall 2019

FOLLOW UP

If the Committee approves staff’s recommendation, staff will proceed with the work plan and timeline for off-site signage on City-owned sites as summarized above.

PUBLIC OUTREACH

Staff facilitated two city-wide community meetings and three focus group meetings with environmental, historic preservation, business, and sign industry stakeholders. Staff requested input related to considerations for billboards and programmable electronic displays, including brightness, dimming possibilities, hours of operation and preferred areas along freeways and major streets for new billboard installations. Stakeholder input is summarized below:

a. Environmental Focus Group

This group indicated that new programmable billboard locations should not be encouraged along fast-moving traffic and rail corridors, freeways and primary arterials, near residential neighborhoods and in close proximity to parks or riparian corridors, including North San José. Bright signage could potentially impact birds and wildlife behavior and influence sleep cycles around habitats. The group noted that minimum distance requirements could be reduced if the display does not exceed the minimum illumination radius, or if it faces away from riparian corridors, is dimmed early in the evening, is turned off by 10 pm, and is turned off August-November and March-May during bird migration season. There were fewer objections to siting billboards next to regional shopping centers to enhance the visitor experience, or in Downtown on high-rises to enhance building facades and potentially provide an enhanced aesthetic

¹ Timeline for each is for sites for billboard relocation and exchange to electronic programmable billboard citywide and Downtown Sign Zone for all billboards and other forms of off-site advertising.

environment. There was no specific concern related to street furniture or public information signs.

The following specific recommendations were made:

- Require the installation of billboards that does not result in the removal of trees, unless they are identified as invasive species.
- Billboards must not be located adjacent to sensitive areas, such as the Water Pollution Control Plant lands or within 1000 feet of any riparian corridor.

b. Historic Preservation Focus Group

This group indicated that they believed billboards would impact the character and spirit of a neighborhood, particularly in Downtown's Historic District; however, they were open to discussing specific proposal on a case-by-case basis. The group was not in favor of new programmable electronic billboards along freeways and primary arterials due to traffic safety concerns, in that electronic billboards would distract viewers and adversely impact the existing and new residential areas within Downtown. The siting of electronic billboards was less objectionable next to regional shopping centers. There was no distinction in allowing off-site signage or public information signs as long as the scale of the display was minimized. The following recommendations were made by preservation stakeholders:

- Create a neon boulevard/sign district to accommodate existing historic signs with the potential for possible relocation.
- Reduce in the scale of signage and if designed to emulate vintage signs, the siting of new billboards may be more compatible in Downtown, but not recommended within the Historic Landmark District boundary or in the immediate vicinity.

c. Businesses, Property Owners, Valley Transportation Agency, and Sign Industry

This group indicated that the location of billboards is primarily driven by maximum visibility. New programmable billboard locations are desired along freeways because of the volume of vehicular traffic. The primary arterials did not provide desired exposure or visibility for major sign companies. Nevertheless, areas with heavy pedestrian traffic could be desirable to some sign companies. Examples of such areas include Union Square in San Francisco, which includes a high volume of pedestrian traffic. The potential benefits of the billboard exchange provisions were identified as the removal of existing static billboards from residential areas, decluttering of neighborhoods, replacement of existing static signs using newer and more efficient technology, community messaging including translation/subtitles and City beautification programs on boulevards and primary arterial streets. The group supported the replacement of existing static billboards with better quality billboard structures and equipment at either a new location or at the same location, and with remote handling of dimming/ switching off through automatic light sensors. The group also reiterated that the content regulation was restricted in accordance with Federal and State requirements. Stakeholders said approximately three quarters of the billboards within the City are owned by two entities.

Recommendations by stakeholders are as follows:

- VTA suggested exploring possibilities for advertising along transit facilities (Light Rail platforms and bus shelters), and including public right-of-way.
- Community messaging, including water conservation or civic events can be incorporated on the programmable signage.
- Locations along freeways city-wide were preferred over restricting electronic billboards to only North San José and Downtown San José.

d. Community Meetings

Staff facilitated two community meetings on this issue in October 2017 at City Hall and the Bascom Community Center. Stakeholders at these meetings emphasized the need for improved signage within the City, particularly Downtown. Electronic programmable signage is not desirable facing residential areas and along traffic corridors due to brightness concerns. A sign company representative who attended the meeting noted that the location of new billboards for potential exchange should be considered throughout the City, and that the potential locations for non-City-owned sites should not be pre-identified but possibly evaluated individually during project review of individual development proposals.

In addition to these community meetings, focus group meetings with the following stakeholders were conducted to specifically discuss the concept of off-site signage on City-owned and non-City-owned buildings Downtown:

SJ Museum of Art, Hammer Theatre, Tech Museum of Innovation, Broadway San José
Team San José
San José Downtown Association and the Silicon Valley Organization
San José State University

This memorandum will be posted on the City's website for the November 27, 2017, Community and Economic Development Committee meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

CEQA

PP17-010 City Administrative Activities. This memorandum is an information report that is not a project pursuant to the California Environmental Quality Act.

COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

November 13, 2017

Subject: Off-Premise Commercial Advertising

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/s/

ROSALYNN HUGHEY

Interim Director of Planning, Building and
Code Enforcement

/s/

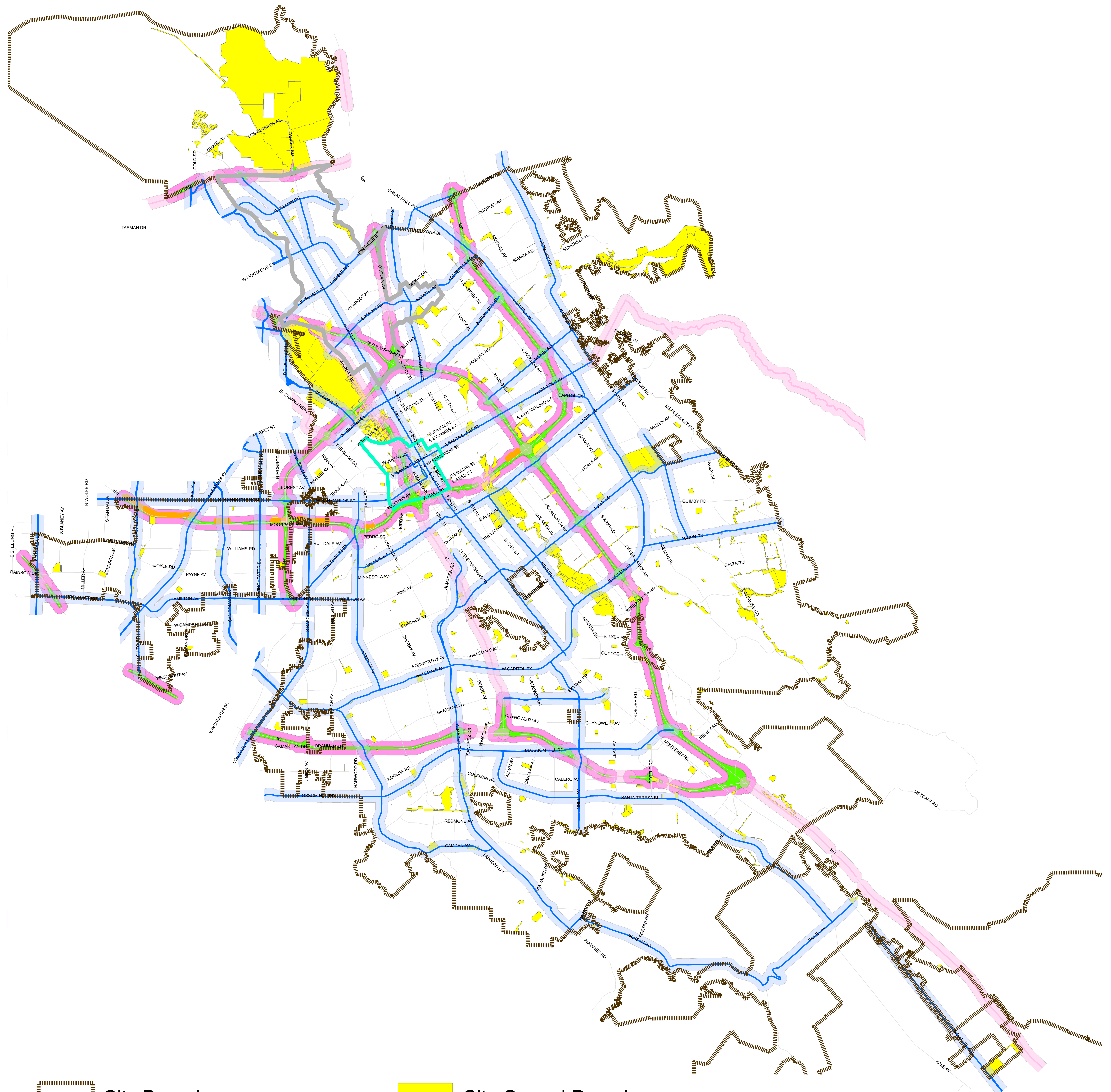
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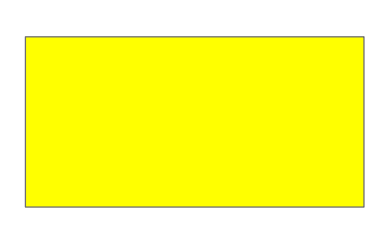





Assistant Director of
Economic Development

For general questions, please contact Jenny Nusbaum, Principal Planner, at (408) 535-7872.
For questions about the Downtown Sign Intensification Program, please contact Blage Zelalich,
Downtown Manager, at (408) 535-8172.

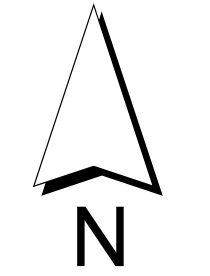
Attachment: Maps showing City-owned sites and State regulated-highway areas in San José

Regulated Highway Areas for Signs

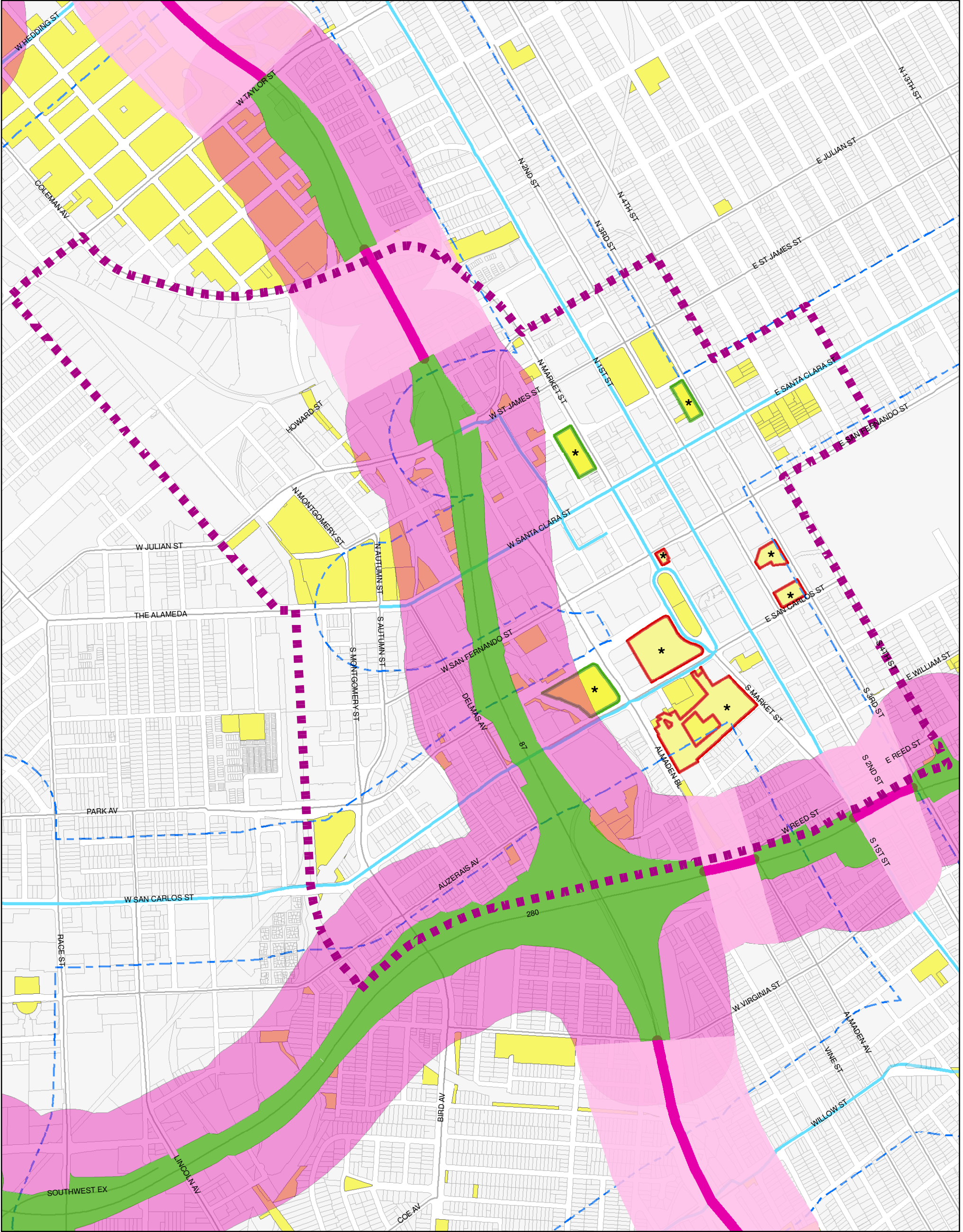


-  City Boundary
-  Downtown Boundary
-  North San Jose Dev Policy Area
-  Principal Arterials
-  Principal Arterials Buffered
-  City Owned Parcels
-  Freeway Landscaped Area
-  Freeway Landscaped Buffered
-  Freeway Non-Landscaped Area Penalty Buffered
-  Freeway Non-Landscaped Area Penalty
-  Bonus Segments

ILLUSTRATIVE ONLY
NOT TO BE USED FOR ANY LEGAL PURPOSE
 Map is a snapshot in time that reflects best available data as of April 7, 2017.



Regulated Highway Areas for Signs in Downtown



- City Owned Parcels
- Parcels
- Principal Arterials
- Principal Arterials Buffered
- Eligible City Owned Parcels
- Potential City Owned Parcels
- Freeway Landscaped Area
- Freeway Non-Landscaped Area Penalty Buffered
- Freeway Landscaped Buffered
- Downtown Boundary

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