



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: September 1, 2021

COUNCIL DISTRICT: 3

**SUBJECT: SP20-005 & T21-015: SPECIAL USE PERMIT AND VESTING TENTATIVE
MAP FOR PROPERTY LOCATED AT THE NORTHWEST CORNER OF
SOUTH ALMADEN BOULEVARD AND WOZ WAY**

RECOMMENDATION

The Planning Commission voted 6-3-2 (Cantrell, Montañez, and Young opposed; Caballero and Oliverio absent) to recommend that the City Council take all of the following actions:

1. Adopt a resolution certifying the Supplemental Environmental Impact Report (SCH No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), and making certain findings concerning significant impacts, mitigation measures, alternatives, Statement of Overriding Considerations, and adopting a related Mitigation Monitoring and Reporting Plan, all in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a resolution approving, subject to conditions, a Vesting Tentative Map to merge existing five parcels into one parcel and re-subdivide the single parcel into up to 15-commercial condominium units on this 3.57-gross acre site.
3. Adopt a resolution approving, subject to conditions, a Special Use Permit to allow the construction of a 16-story office building with two towers totaling approximately 2.05 million square feet, including 37,603 gross square feet of ground floor retail and amenity space, and 1,416,717 gross square feet of commercial office space with an alternative parking design (three levels of underground parking including stackers, tandem and valet parking) on a 3.57-gross acre site; and to allow up to 15 commercial condominium units and extended construction hours to include Saturday work from 7:00 a.m. to 7:00 p.m., and 24-hour concrete pours for up to 12 days per year over the course of construction (approximately 51 months).

OUTCOME

If the City Council approves all the actions listed above as recommended by the Planning Commission, the applicant will be able to move forward to the final map stage to merge all existing parcels into one parcel and re-subdivide the single parcel into up to 15 commercial condominium units, and move forward to the building permit phase to construct a 16-story office building with two towers totaling approximately 2.05 million square feet, including 37,603 gross square feet of ground floor retail and amenity space, and 1,416,717 gross square feet of commercial office space on this 3.57-acre site.

If the City Council denies all the actions listed above, the proposed project as described in this memorandum could not proceed.

BACKGROUND

On August 25, 2021, the Planning Commission held a Public Hearing to consider the resolution certifying the Supplemental Environmental Impact Report (SEIR), the Vesting Tentative Map, and the Special Use Permit. The Planning Commission recommended that the City Council adopt the resolution certifying the Almaden Office Supplemental Environmental Impact Report, and the Mitigation Monitoring and Reporting Plan, and approve the Vesting Tentative Map and the Special Use Permit.

Staff Presentation

Staff provided an oral presentation on the project. Staff's presentation included an overview of the project's conformance with the General Plan, San José Zoning Code, City Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design Policy, Santa Clara Valley Habitat Conservation Plan, and the California Environmental Quality Act, as described in the attached staff report.

Public Hearing

The applicant, Aaron Felton and Christina Bernadine on behalf of BXP Almaden Associates LP, briefly described the economic and community benefits of the project and introduced the architect from KPF to present the project details. The architect presented the overall project design and how the project would engage and vitalize the area and the sustainability of the design.

Chair Bonilla then opened public comments. Nineteen members of the public spoke on the project.

Thirteen members of the public spoke in favor of the project. Those members of the public include one community member who lives nearby the project site, seven San José residents, local labor union members and representatives from the San José Downtown Association, Santa Clara

and San Benito Counties Building and Construction Trades Council, Commercial Real Estate Services Inc. (CBRE), Guadalupe River Park Conservancy, and the Children's Discovery Museum. Their reasons for supporting the project include; that the project would provide construction jobs and employment opportunities; provide amenities to the community; activate the existing parking lot; enhance the connection of the Guadalupe River Trail; and the project would be a great asset to Downtown San José and benefit the city. The CBRE representative pointed out that the existing building supply in Downtown does not support the demand for large office floor plates and that the proposed project would attract large tech companies to Downtown. The Guadalupe River Park Conservancy representative stated that the project has the potential to bring new visitors to the Guadalupe River Park and Trail and will enhance the trail connection, and the ground floor would create public space that connects people to the river.

Six members of the public spoke in opposition of the project, including one District 3 resident, two Sierra Club representatives, two Santa Clara Valley Audubon Society representatives, and one California Native Plant Society representative. The major concerns are project scale, the impact to riparian corridor trees during site excavation for construction, flooding, and changes in hydrological conditions due to construction of the project, the extension of bird-safe design measures to all facades of the building, the proposed riparian setback reduction and related impacts to the riparian corridor and the river, and the precedent set by granting a riparian setback reduction to almost zero feet. Another reason for opposing the project is that the Downtown Google Project was revised to address the environmental groups' concerns and provide a larger riparian setback and that this project should also provide a larger setback. They urged the Planning Commission to recommend one of the reduced project-scale options analyzed in the SEIR because those options provide larger riparian setbacks (at least 35 feet).

The project applicant responded to the public comments by stating that the project design would improve the environment near the river by providing native vegetation along the project's river frontage, treating stormwater on site to avoid runoff, and applying mitigation measures. The applicant described how the project evolved to reduce the building footprint, thereby increasing the setback to the property line from zero feet to 14 feet and avoiding encroachment into the riparian driplines underground to address the community/environmental concerns. The applicant also explained how the project design would incorporate bird-safe design measures and tree protection measures during construction, and how the project eliminated vehicular access along the riparian corridor and created a pedestrian realm by directing vehicular traffic to underground parking. The applicant stated that the current iteration of the project is a collaboration between the City, Boston Properties, and the community partners.

Commissioner Discussion

Commissioner Oliverio commented that the development of this site was planned more than 30 years ago, and there were numerous discussions regarding the site when the City Council considered adoption of the current Riparian Corridor Policy in 2016. Staff at the time confirmed that the Riparian Policy would not affect potential development of the subject site. Commissioner Oliverio concluded that the project meets Downtown development goals to provide jobs adjacent to transit and provide benefits to the City. Commissioner Oliverio made a

motion to recommend that the Planning Commission approve staff's recommendation that the City Council certify the EIR and approve the project.

Commissioner Young stated that the project design is beautiful but questioned the project's scale. He asked staff to clarify the different types of riparian setbacks mentioned in the staff report (measured from top of bank, property line, and edge of riparian vegetation).

Staff responded that, consistent with the City Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design Policy, staff evaluated the setback as measured from the edge of the riparian corridor. The edge of the riparian corridor is defined by top of bank or edge of vegetation, whichever is more conservative and protective. For this project site, the edge of the vegetation is the edge of the riparian corridor. The Riparian Setback Diagram is attached to this memorandum for reference and shows the project's setback from the edge of vegetation (the project's riparian corridor setback), the top of bank and the project site's property line.

Staff also clarified that for the alternative studies in the SEIR, the reduced-scale alternatives refer to the setback to the property lines, not the edge of the riparian corridor. The SEIR alternatives analyzed both a 35-foot setback from the property line, as well as a 100-foot setback from the property line to provide more conservative estimates of potential reductions in environmental impacts that were identified to be "Significant Unavoidable".

Commissioner Young then asked the applicant about the setback in the original design. The applicant responded that the original design had zero setback to the property line and encroached into the riparian corridor.

Commissioner Young asked for clarity about the two letters issued by the Santa Clara Valley Habitat Agency (Habitat Agency) dated April 7, 2020 and April 5, 2021, and the Habitat Agency's change in position about the project's conformance with the Santa Clara Valley Habitat Conservation Plan's (Habitat Plan) riparian setback requirements under Habitat Plan Condition 11, Riparian Setback Exception. The April 7, 2020 letter states that a 35-foot setback would be required from the riparian edge of vegetation in order to comply with Condition 11 of the Habitat Plan, while the April 5, 2021 letter states that Condition 11 of the Habitat Plan does not apply because the entire site has already been disturbed through its existing use as a parking lot. Therefore, the Habitat Agency determined that the project is not subject to a minimum 35-foot setback requirement.

Commissioner Young asked if the applicant approached the Habitat Agency to request reconsideration of the setback requirement. The applicant's representative responded "no."

Commissioner Young then asked staff how and why the Habitat Agency changed their opinion expressed in the first letter. Staff explained that it is not unusual for agencies, including the City, to reconsider certain determinations when new information becomes available. Staff also explained that the reconsideration was triggered by discussions between City staff and the Habitat Agency at various meetings pertaining to implementation of the Habitat Plan and its

conditions, including at a monthly meeting with the Habitat Agency and other agencies for clarification on the Habitat Plan. Staff also reiterated that as part of the City's process for certain riparian projects, City staff would request for consultation with Habitat Agency on compliance with Condition 11, Riparian Setback Exception. This is to obtain the Agency's early input on potential conflicts or inconsistencies with the Habitat Plan which would help City staff determine consistency with the Municipal Code and General Plan policies requiring conformance with the Habitat Plan. Staff explained that the Habitat Agency advises on Habitat Plan compliance but does not have the authority to approve or deny the project as implementation of the Habitat Plan is delegated to the co-permittees, including the City of San José.

Commissioner Young stated that the afternoon prior to the Planning Commission meeting, he requested that Habitat Agency representatives attend the Planning Commission meeting that evening and asked if the Habitat Agency representatives were present. Staff responded that staff sent a request to a Habitat Agency contact; however, they were not available to attend.

Commissioner Young made a motion to defer the item to the next hearing to have Habitat Agency representatives attend to answer questions.

Chair Bonilla stated that there was already a motion by Commissioner Oliverio and asked whether there was a second on the motion. Commissioner Torrens seconded the motion.

The City Attorney stated that if the second motion was seconded, this motion would substitute the other motion and would be voted on first. Commissioner Cantrell seconded Commissioner Young's motion to continue the project to the next hearing.

Commissioner Torrens stated that the proposed project would be the highest and the best use of the property and supported the project.

Commissioner Montañez suggested that the proposed building may be pushed to encroach into South Almaden Boulevard so as to provide a greater riparian setback. Commissioner Montañez agreed that the project design is excellent; however, she supported Commissioner Young's motion.

Commissioner Lardinois asked if continuing the project to the next hearing would impact the City Council hearing timeline.

Staff responded that the hearing notice has been mailed for the September 14, 2021 City Council hearing. Continuing the project in two weeks to a September 8 Planning Commission hearing would not give staff much time to prepare a thorough summary of the Planning Commission's discussion for the September 14 City Council hearing. Staff also stated that staff can send the request to Habitat Agency; however, the City cannot compel Habitat Agency staff to attend the Planning Commission meeting.

Commissioner Ornelas-Wise asked if the project meets the 35-foot riparian setback. Staff responded that the project does not provide 35 feet to the edge of the riparian corridor. Above-ground, the building has a minimum 4-foot riparian setback. Commissioner Ornelas-Wise then asked if the project provides a 35-foot setback to the top of bank. Staff responded that the portion of the building above-ground provides a 35-foot setback to the top of the bank. Commissioner Ornelas-Wise also asked about the setbacks of surrounding buildings measured to the top of bank, as well as how the project incorporates amenities and public art.

The applicant responded that the adjacent building to the north has a 40-foot setback from the top of bank and other buildings in the area have setbacks ranging from 40 to 46 feet from top of bank, which is consistent with the proposed project. The applicant also responded that public art is 1% of the development cost. They will partner with potential groups, such as the Children's Discovery Museum, to provide public art within the project or near the project site, and they are willing to work with the community to develop this idea. This public art agreement is included in the Amended and Restated Disposition and Development Agreement with BXP Almaden Associates, LP, which will be considered as a separate item on the September 14, 2021 City Council agenda.

Commissioner Garcia asked staff to confirm that the Habitat Agency's second letter stated that there is no riparian setback requirement if the site has been developed (i.e., parking lot).

Staff confirmed that if a project is not considered a "Covered Project" under the Habitat Plan, then Condition 11 of the Plan does not apply, which means that riparian setback is not required under the Plan. Staff also asked the Planning Commission to clarify the intent to have Habitat Agency representatives join the meeting. Commissioner Young stated that the intent is not just for Habitat Agency representatives to join the meeting, but also for staff and the Planning Commission to have more time to consider the project.

Staff explained that the Habitat Agency provides guidance on how to interpret the Habitat Plan, and the City is the implementing entity of the Habitat Plan. The second letter from the Habitat Agency was a result of the further discussion and clarification about the interpretation of the Habitat Plan.

City Attorney Vera Todorov, who participated in working on the Habitat Plan since 2004, stated that the manner in which the Habitat Agency interprets the Habitat Plan is completely expected because it is not possible for a large plan like the Habitat Plan to anticipate every question that may come up during implementation.

Chair Bonilla stated that he would not support the motion to defer the project because he believed that the issue regarding why the Habitat Agency changed the position of the setback requirement is not a critical issue for the project. The project site has been designated for development for decades and the project would help boost the economy. Chair Bonilla also stated that the project would help address the current safety and hazard issues existing near the Children's Discovery Museum.

The Planning Commission voted 3-6-2 (Bonilla, Casey, Garcia, Lardinois, Ornelas-Wise, and Torrens opposed; Caballero and Oliverio absent) to deny the substitute motion to continue the project to the next meeting.

The Planning Commission voted 6-3-2 (Cantrell, Montañez, and Young opposed; Caballero and Oliverio absent) to approve the motion to recommend Council certification of the SEIR and approval of the project.

ANALYSIS

Analysis of the proposed project, including CEQA compliance, the Vesting Tentative Map and a Special Use Permit, in addition to conformance with the General Plan, Zoning Ordinance, City Council Policies, and the 2004 Downtown Design Guidelines are contained in the attached staff report.

CONCLUSION

The project was heard at the August 25, 2021 Planning Commission meeting. The motion to recommend Council approval of the project passed (6-3-2). As discussed in the attached staff report, the project is consistent with the Envision San José 2040 General Plan, the Zoning Code, applicable City Council Policies, and the requirements of CEQA and is consistent with the Downtown Design Guidelines. Should the City Council adopt the resolutions certifying the Supplemental Environmental Impact Report, and approve the Vesting Tentative Map and the Special Use Permit, the project would be implemented to merge all existing parcels to one parcel and the re-subdivision of the single parcel into up to 15 commercial condominium units, and to construct a 16-story office building with two towers totaling approximately 2.05 million square feet, including 37,603 gross square feet of ground floor retail and amenity space, and 1,416,717 gross square feet of commercial office space on this 3.57-acre site. The applicant could proceed with applications to obtain a Building Permit and a Final Map.

EVALUATION AND FOLLOW-UP

Should the City Council adopt the resolution certifying the Final Environmental Impact Report, and approve the Vesting Tentative Map and the Special Use Permit, the project would be approved to allow the merger of the existing parcels into one parcel and the re-subdivision of the single parcel into up to 15 commercial condominium units, and to allow the construction of a 16-story office building with two towers totaling approximately 2.05 million square feet, including 37,603 gross square feet of ground floor retail and amenity space, and 1,416,717 gross square feet of commercial office space.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, whereby the project is considered a large development proposal. Following City Council Policy 6-30, the applicant posted the on-site signs to inform the neighborhood of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City website. Staff has also been available to respond to questions from the public.

A formally noticed joint community and environmental scoping meeting was held on June 10, 2019, to introduce the proposed project to the community. Approximately 14 community members joined the meeting with comments relating to riparian setback and impacts, and comments regarding the building's ground floor design and parking. A second community meeting was held on June 3, 2021, via Zoom, to provide project updates to community members. Seventeen members of the public joined the meeting. Concerns were about the riparian setback and the project's shade impact to the river, the excavation of the underground parking, the consistency with the City's Riparian Policy and bird-safe design. Five community members spoke in favor of the project design and support the project as it would bring jobs to Downtown and provide amenity space to the community.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would increase the intensity (jobs/acre) of the downtown site in close proximity to high-quality transit services and would implement design features for a high-performing, energy-efficient development. The project facilitates job creation within City limits and, due to its accessible location, facilitates mobility choices other than single-occupancy, gas-powered vehicles.

CEQA

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Draft SEIR was circulated for public review and comment from July 31, 2020 through September 14, 2020.

The City received 12 written comment letters during the public circulation period. All comments have been fully responded to in the Final Supplemental Environmental Impact Report (Final SEIR). A summary of the public comments received on the EIR is provided in the Planning Commission staff report, as well as information on responses to the comments.

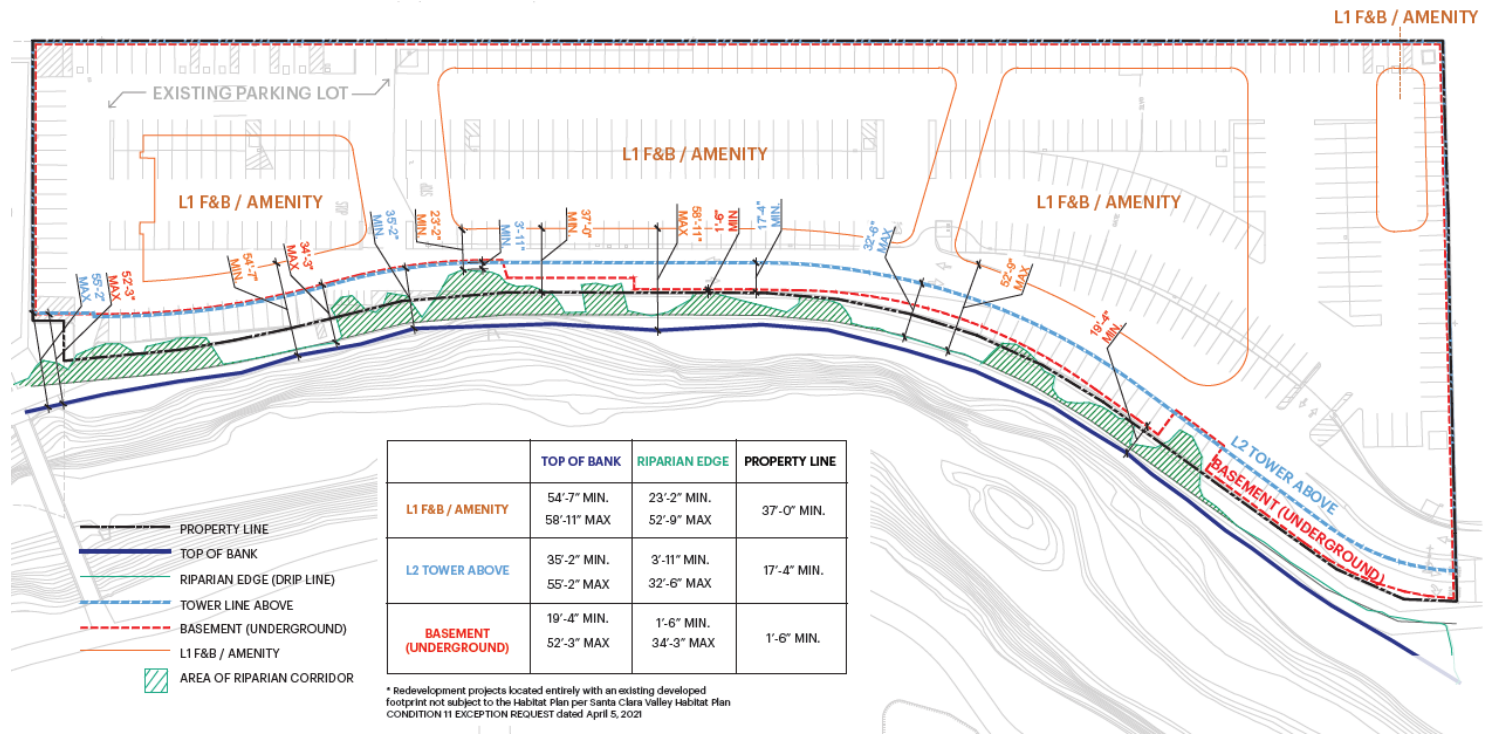
The Draft SEIR and Final SEIR are available for review on the project page on the City's Active EIR website at: <https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/almaden-office-project>. A copy of the signed MMRP is attached to the proposed CEQA resolution.

/s/ Chu Chang for
CHRIS BURTON, Secretary
Planning Commission

For questions, please contact Planning Official, Robert Manford, at (408) 535-7900.

Attachments: Riparian Setback Diagram
Planning Commission Staff Report

SP20-005, Almaden Office Riparian Setback Diagram





Memorandum

TO: PLANNING COMMISSION**FROM:** Chris Burton**SUBJECT:** File Nos. SP20-005 & T21-015**DATE:** August 25, 2021**COUNCIL DISTRICT: 3**

Type of Permit	Special Use Permit and Vesting Tentative Map
Proposed Land Use	Commercial office and retail
New Square Footage	2,052,028
Additional Policy Review Items	Riparian Corridor Protection and Bird-Safe Design Policy
Demolition	N/A
Tree Removals	N/A
Project Planner	Angela Wang
CEQA Clearance	Supplemental Environmental Impact Report (State Clearinghouse No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942)
CEQA Planner	Kara Hawkins

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council takes the following actions:

1. Adopt a Resolution certifying the Supplemental Environmental Impact Report (SCH No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), and making certain findings concerning significant impacts, mitigation measures, alternatives, Statement of Overriding Considerations, and adopting a related Mitigation Monitoring and Reporting Plan, all in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a Resolution approving, subject to conditions, a Vesting Tentative Map, to merge existing five lots to one lot for up to 15-commercial condominium units on this 3.57-gross acre site.
3. Adopt a Resolution approving, subject to conditions, a Special Use Permit, to allow the construction of a 16-story office building with two towers totaling approximately 2.05 million square feet, including 37,603 gross square feet of ground floor retail and amenity space and 1,416,717 gross square feet of commercial office space with an alternative parking design (three levels of underground parking including stackers, tandem and valet parking) on a 3.57-gross acre site; and to allow up to 15 commercial condominium units and extended construction hours to include Saturday work from 7:00 AM to 7:00 PM and 24-hour concrete pours for up to 12 days per year over the course of construction (approximately 51 months).

PROPERTY INFORMATION

Location	Northwest corner of Woz Way and South Almaden Boulevard
Assessor Parcel No.	APNs 264-28-019, 022-025, 028, 149, 152, 153, 160, 167-169, 172-176
General Plan	Downtown
Growth Area	Downtown
Zoning	DC Downtown Primary Commercial
Historic Resource	None
Annexation Date	March 27, 1850 (Original City)
Council District	3
Acreage	3.57
Proposed Floor Area Ratio	9.98

PROJECT SETTING AND BACKGROUND

As shown on the attached **Vicinity Map (Exhibit A)**, the project site is located at the northwest corner of Woz Way and South Almaden Boulevard. The approximately 3.57-gross acre site is a public surface parking lot with driveway access from Woz Way. The site is surrounded by the Convention Center to the east across South Almaden Boulevard, a 9-story office building to the north, the Guadalupe River and Trail to the west, and single-family residences approved for redevelopment with two office towers (File No. H20-004) to the south across Woz Way.

The site is long and narrowly shaped with an approximately 0.16-mile (845 feet) stretch of the Guadalupe River riparian corridor along the entire western edge. The narrowest portion of the site is approximately 145 feet wide in the middle of the site and the widest portion is approximately 324 feet wide at the southern edge of the site along Woz Way. The 12-foot wide Guadalupe River Trail is immediately adjacent to the west of the site.

On January 31, 2019, BXP Almaden Associates LP filed a Site Development Permit application, File No. H19-004, to allow the construction of one building with two 16-story office towers with three levels of underground parking on this 3.57-acre site. The application was converted to a Special Use Permit application, File No. SP20-005, in early 2020 due to the scope of alternative parking design which includes parking stackers, tandem and valet parking within the proposed underground parking garage. The project also includes extended construction hours including Saturday work from 7:00 AM to 7:00 PM and 24-hour concrete pours for up to 12 days per year over the course of construction (51 months). On April 15, 2021, BXP Almaden Associates LP filed a Vesting Tentative Map application, File No. T21-015, to merge all existing lots to one lot for up to 15-commercial condominium units.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Downtown	DC Downtown Primary Commercial	Office
South	Public/Quasi Public; proposed to be changed to Downtown	DC Downtown Primary Commercial	Single Family Residential (across Woz Way, approved for office)
East	Public/Quasi Public and Downtown	DC Downtown Primary Commercial	Convention Center and office
West	Open Space, Parklands and Habitat	DC Downtown Primary Commercial	Guadalupe River and Trail

As shown the project plan ([Exhibit J](#)), the project would demolish the existing parking lot and construct an approximately 2.05 million square foot building that includes approximately 1,416,717 square feet of office space in two 16-story, 283-foot high towers (North Tower and South Tower) connected by a podium, approximately 37,603 square feet of amenity and retail space on the ground floor podium, and three levels of underground parking. The total floor area ratio (FAR) would be 9.98.

The project design includes abundant pedestrian circulation around the building and provides direct connections from the South Almaden Boulevard sidewalk to the Guadalupe River Trail through two paseos. The project also includes a plaza at the corner of South Almaden and Woz Way.

The project would allow for an alternative parking design including parking stackers, tandem and valet parking within the underground parking garage and allow up to 15 commercial condominium units. The minimum size of the commercial condominium unit is 750 square feet. The project also includes extended construction hours including Saturday work from 7:00 AM to 7:00 PM and 24-hour concrete pours for up to 12 days per year over the course of construction (51 months).

The site is currently accessed by a single driveway on Woz Way. The Woz Way driveway would be removed and replaced with a full-access driveway located north of the Locust Street/Woz Way intersection. In addition, a right-in/right-out only driveway along South Almaden Boulevard would be located at the northeast corner of the project site which would be restricted to trucks only and would provide access to the loading docks in the underground parking garage. In addition, another full access driveway would be located at the South Almaden/Convention Center intersection. The project includes three levels of underground parking with a total of 1,279 parking spaces. The project incorporates an alternative parking arrangement, using stackers, tandem and valet parking. Additionally, the project's required public improvements include a separated bike lane between the sidewalk and drop-off zones along the eastern and southern project frontages on Almaden Boulevard and Woz Way. The project would also remove the existing 30-inch storm drain that currently bisects the northern portion of the site and construct a storm drain realignment along the northern property line on the adjacent property and along the western portion of the site which would connect to the existing Guadalupe River outfall.

A Supplemental Environmental Impact Report (SEIR) to the 2040 Downtown Strategy Environmental Impact Report has been prepared for the project. The 2040 Downtown Strategy Environmental Impact Report was certified by the City Council in December 2018. The SEIR for the project identified significant and unavoidable project impacts to the following resource areas:

- Air Quality: Construction activities associated with the proposed project would expose off-site receptors to PM_{2.5} emissions in excess of BAAQMD thresholds.
- Air Quality: The project would have a significant unavoidable operational PM_{2.5} impact to the off-site Maximum-Exposed Individual (MEI).
- Cumulative Air Quality: The maximum annual PM_{2.5} concentration would exceed the BAAQMD thresholds for cumulative sources.
- Cumulative Biological Resources: Construction and operation of the new buildings within 35 feet of the riparian edge would incrementally contribute to a cumulatively considerable impact to the Guadalupe River as a whole.
- Cumulative Noise and Vibration: All four nearby entitled projects (Museum Place, 200 Park Avenue, Cityview Office Plaza, and Balbach Affordable Housing) would individually impact the nearby sensitive receptors (residences) and when combined, would have a cumulatively considerable noise impact even with inclusion of the identified mitigation measures.

These significant and unavoidable impacts are due to the size of the building, duration and intensity of construction, and proximity to the Guadalupe River. While mitigation measures have been included to reduce the impacts to air quality, biological resources, and noise, to the maximum extent feasible, the impacts will remain significant and unavoidable.

The Supplemental Environmental Impact Report was prepared in accordance with Title 21 of the San José Municipal Code and the California Environmental Quality Act of 1970, as amended (CEQA), and a statement of overriding considerations is required for environmental impacts that cannot be reduced to a less than significant level. Pursuant to Section [21.07.020](#) of the San José Municipal Code, the Planning Commission is required to make a recommendation to the City Council for projects requiring an environmental impact report and a statement of overriding considerations. Therefore, the SEIR, the Special Use Permit and the Vesting Tentative Map require a recommendation by the Planning Commission to the City Council for final action.

ANALYSIS

The proposed Special Use Permit is analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. San José Municipal Code
3. City Council Policies
4. Downtown Design Guidelines
5. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Conformance

As shown in the attached General Plan map ([Exhibit B](#)), The subject site has an Envision San Jose 2040 General Plan land use designation of Downtown. This designation supports uses such as office, retail, service, residential, medical office, hospital, and entertainment uses. All development within this designation is intended to enhance the complete community in Downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown land use designation allows a density of up to 800 dwelling units per acre (DU/AC) and a floor-area ratio (FAR) of up to 30.

The proposed 16-story high-rise office towers with ground floor retail spaces foster a complete community in Downtown by increasing jobs, providing active ground floor store fronts uses along streets and open space frontage, and a plaza. The project also includes a Transportation Demand Management plan that promotes transit ridership and other alternative modes of transportation. Additionally, the project would have a FAR of 9.98, making it consistent with the Downtown land use designation.

The Special Use Permit is **consistent** with the following General Plan policies:

1. Land Use Policy LU-1.2: Encourage walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

Analysis: The project limits vehicular circulation on site and promotes pedestrian connectivity. All the loading and parking activities are directed underground. The project's open pedestrian level design allows abundant pedestrian circulation around the building and provides direct connections from the South Almaden Boulevard sidewalk to the Guadalupe River Trail through two paseos. The project also includes a plaza at the corner of South Almaden and Woz Way, providing an attractive urban space. The project would also construct a 5-foot tree wells, a 5.5-foot wide raised bike lane, a 0.5-foot tactile strip and an 8-foot wide sidewalk along the South Almaden Boulevard frontage, and construct a 5-foot tree wells, a 6-foot wide raised bike lane, a 0.5-foot tactile strip, and a 32 to 38-foot wide sidewalk along the Woz Way frontage. In addition, the South Almaden Boulevard Convention Center crosswalk and the intersection of Woz Way and South Almaden Boulevard will be improved per the new plan line requested by the Department of Public Works and Department of Transportation to provide an enhanced pedestrian connection.

2. Downtown Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the General Plan.
3. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

Analysis: The development's architecture and site plan layout are designed to complement and further enliven the surrounding Downtown area. The ground floor would provide retail and amenity space, and office lobbies along its street frontages, paseo, plaza, and the river trail, which adds to the Downtown amenities for residents, workers, and visitors. The project's design, massing, and on- and off-site improvements would create a focal point in Downtown by improving pedestrian and bicycle circulation, providing active ground floor uses and an intensive employment use in Downtown.

The pedestrian orientation and amenities of the ground floor and site layout would support social interactions. The project's street frontage and river frontage would be lined with active uses including lobbies and retail spaces. The building's ground floor storefront is designed with high transparency to enhance safety and visibility between the public realm and private development.

4. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

Analysis: The site is served by the Santa Clara Valley Transportation Authority (VTA) and is approximately 0.7 miles from Caltrain, Altamont Commuter Express (ACE), and Amtrak stations. The project area is served by many VTA bus routes with high-frequency service. The nearest bus stops are located at the San Carlos Street/Woz Way intersection (Route 23) and San Carlos/Convention Center intersection (Routes 23, 168, 523). The site is also within 1,000 feet of the Children's Discovery Museum Light Rail Station and Convention Center Light Rail Station. The project includes a Transportation Demand Management Plan that promotes transit ridership by incorporating a transit use incentive program. The additional ground floor retail space would provide residents and workers in the Downtown area with additional amenities which would help expand and further connect the pedestrian network and reduce automobile use.

The proximity of the intensive office development to a variety of public transportation options encourages transit use and helps enable workers to have a car-free commute. Furthermore, it is envisioned that employees in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to or on the project site. Finally, the development's commercial/retail spaces would provide the surrounding Downtown neighborhood with additional nearby retail businesses.

5. Downtown Urban Design Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San Jose and maximize development potential and overall density within the Downtown.
6. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
7. Downtown Urban Design Policy CD-6.6: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings higher than 75 feet, to create distinctive silhouettes for the Downtown skyline.

Analysis (Policy CD-6.1 to 6.3): The proposed project has a FAR of 9.98 with the maximum height of approximately 283 feet allowed by the Federal Aviation Administration (FAA), making this a dense commercial project. The significant density of the project would contribute to Downtown's growth as a vibrant urban area. The project has undergone extensive design review to ensure its scale, quality, and character strengthen Downtown's status as an urban center, as discussed in the Design Guidelines conformance section.

8. Environmental Resources Policy ER-2.1: Ensure that new public and private development adjacent to riparian corridor in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP).

Analysis: The Riparian Corridor Policy Study was approved by the City Council in May 1994 and was revised in March 1999. The purpose of the 1999 Policy Study was to explore in detail issues related to the 2020 General Plan policies which promote the preservation of riparian corridors, the areas along natural streams, and how these corridors should be treated for consistency with the 2020 General Plan. The 1999 Policy Study was designed to provide guidance for proposed development projects within or adjacent to riparian corridors.

Environmental Resources Policy ER-2.6 calls for the City Council to develop a City Council policy to

develop and require the use of a criteria checklist to evaluate new development that proposes to use riparian setback exception. Since the 1999 Policy Study and the City Council's adoption of the current Envision 2040 General Plan in November 2011, the City Council adopted Council Policy 6-34: Riparian Corridor Protection and Bird Safe Design on August 23, 2016. Council Policy 6-34 provides guidance consistent with the 2040 General Plan goals, policies and actions for the protection of riparian corridors and bird-safe design. The Policy was developed based on the 1999 Policy Study and the Habitat Conservation Plan in order to successfully implement the riparian goals and policies of the General Plan. Council Policy 6-34 provides guidance on how projects should be designed to protect and preserve the city's riparian corridors, such as incorporating riparian setback recommendations and exceptions from the 1999 Policy Study. The 2016 adopted Council Policy 6-34 replaces the 1999 Riparian Corridor Policy Study.

As stated above, immediately adjacent to the project site to the west is an existing 12-foot wide paved trail along the Guadalupe River. The biological analysis report prepared by H.T. Harvey and Associates dated April 10, 2020, found that this reach of the Guadalupe River is highly fragmented with very little undisturbed habitat due to the highly urbanized surrounding environment and human-related disturbances. The riparian corridor adjacent to the project is extremely limited in its habitat value and influence. The Guadalupe River is a Category 1 stream as defined in the Santa Clara Valley Habitat Conservation Plan (SCVHP). Per SCVHP, this stream type has sufficient flow to support covered species and riparian habitat. These streams include perennial streams and some intermittent streams. These streams are typically larger than ephemeral drainages and support movement of covered species along the length of the stream. The ability of these streams to also support healthy riparian habitats bolsters the ecological value of the stream.

SCVHP has different stream/riparian setback requirements on undeveloped parcels and developed parcels. While the SCVHP requires a 100-foot setback from a Category 1 stream for undeveloped parcels, the project site in its entirety is currently developed with a surface parking lot, and the SCVHP requires no setback for developed parcels. The City submitted an exception request to the Habitat Agency to reduce the setback to a minimum of 35 feet prior to this clarification. The Habitat Agency originally indicated that a 35-foot setback would be required from the riparian edge of vegetation. Since then, the Habitat Agency has issued a revised memo dated April 5, 2021 to supersede the original recommendation that clarifies that the 35-foot setback is not required for this parcel because of its existing developed condition (see [SEIR 1st Amendment Attachment E](#) for details). The project is also consistent with the [City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design](#) as further discussed below.

Zoning Ordinance Conformance

Land Use

The site is zoned DC Downtown Primary Commercial (**Exhibit C**). Pursuant to Section 20.70.100 of the San José Municipal Code, the office and retail are permitted uses within this Zoning District.

Height and Setbacks:

[Section 20.70.210](#) of the San José Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is limited only to that necessary for the safe operation of the San José International Airport and the requirements of FAA Part 77 as discussed in [Section 20.70.200](#) of the San José Municipal Code. Per the Airport Department review memo dated March 12, 2020, the building height will maintain the safe operation of the airport. Per standard condition of approval with Condition No. 11 in the draft Resolution ([Exhibit H](#)) the project is required to secure required FAA clearances for the building's height prior to commencing construction.

Parking

Per Table 20-140 of Zoning Code Section [20.70.020](#), commercial offices require 2.5 vehicle spaces per 1,000 square feet of net floor area and one bicycle space per 4,000 square feet of net floor area. Commercial retail uses have no minimum vehicle parking requirement but require three bicycle parking spaces including two short-term spaces and one long-term spaces per Zoning Code Section [20.70.485](#).

Based on the net office floor area of 1,203,745 square feet (85% of the 1,416,171 gross floor area), the project requires 3,010 vehicle parking spaces and 304 bicycle parking spaces (301 for office and 3 for retail). Applying a parking reduction, the project provides a total of 1,279 parking spaces, and exceeds the bicycle parking requirement by providing a total of 319 bicycle parking spaces on site.

Per Zoning Code Section 20.90.220.A.1.a, a 20% reduction in automobile parking is allowed if the project site is within 2,000 feet of an existing light rail station. The site is within 740 feet of the Convention Center Light Rail Station and 630 feet of the Children's Discovery Museum Light Rail Station. A parking reduction of up to 50% may be authorized if the project implements at least three transportation demand management (TDM) measures as specified in Section 20.90.220.A.1. Additionally, per Section 20.70.330.A, for projects within the Downtown Zoning District, a further 15% parking reduction may be granted if it is determined that 1) a TDM plan program will reduce parking demand and identifies the percentage of parking demand that will be reduced through the program; 2) the TDM will be maintained for the life of the project; and 3) it is reasonably certain the parking provided will be maintained to meet the required parking during the life of the building or use.

The project would utilize the maximum available parking reduction of 57.5%, which would reduce the required 3,010 parking spaces down to 1,279 parking spaces. The project provides 1,279 vehicle parking spaces. The project will be implementing a TDM plan ([Exhibit L](#)). The TDM plan dated July 14, 2021, prepared by Hexagon Transportation Consultants, Inc. conforms with Section 20.90.220 and Section 20.70.330. This TDM plan provides evidence that the proposed TDM measures will reduce parking demand of at least 8 percent, which would achieve the further 15% parking reduction per Zoning Code Section 20.70.330.A.1, after applying the 50% parking reduction based on Zoning Code Section 20.90.220.A.

The TDM measures include a transit use incentive program for employees, providing ground-floor food/beverage-serving uses and other amenities for the benefit of office workers, and providing on-site showers and lockers to compliment the on-site bicycle parking and encourage alternative transportation for all employees. In addition, a permit condition (Condition No. 6) will require the TDM plan to be implemented for the life and use of the building. Therefore, with these project conditions, the project meets the parking requirement.

Alternative Parking Arrangement

The project incorporates an alternative parking arrangement, using stackers, tandem and valet parking which is allowed with a Special Use Permit per Section 20.90.200 based on an adequate parking management plan.

The project includes three levels of parking. Level B1 includes accessible parking, mechanical stacker parking, some tandem spaces parked by the valet and some self-parking with valet assist stalls in the drive aisle. Level B2 includes some self-parking spaces, mechanical stackers parking and some self-parking with valet assist stalls in the drive aisle and some tandem spaces parked by the valet. Level B3 includes self-parking with valet assist in the drive aisles along with some tandem spaces parked by the valet. Among the total 1,279 parking spaces, there are 421 parking spaces in the stackers, 102 tandem spaces, and 208 spaces in the drive aisles with valet assist. The rest are the self-parking spaces. Valet service will operate during normal business hours (typically, Monday through Friday from 8:00 AM to 5:00 PM., and additional hours as needed to implement the parking management plan).

The parking management plan provided on Sheet P-101 of the project plan ([Exhibit J](#)) is adequate in that the reconfiguration of parking spaces is adequate to meet the required number of parking for the project, and the plan includes how parking attendants would manage the tandem and valet parking and how parkers would use stackers. With Condition No. 7 which requires that these parking spaces be maintained throughout the life of the project, it is reasonably certain that this underground parking will continue to be provided and maintained at the same location during the life of the building or use. And the parking spaces are convenient and accessible to the buildings or uses to be served.

Off-Street Loading

Per Zoning Code Section [20.70.420](#), offices with 100,000 to 175,000 square feet of gross floor area shall provide one loading space. One additional loading space shall be provided for each 100,000 square feet of gross floor area in excess of 175,000 square feet. Given the 1,416,171 gross square feet of the office area, 14 loading spaces are required. Zoning Code Section [20.70.430](#).B requires two loading space for retail and commercial use between 30,000 and 50,000 gross square feet of floor area. Two loading spaces are required for the proposed 37,603 square feet square feet of retail space. The project would require a total of 16 loading spaces and the project provides six loading spaces within the below-grade garage.

Zoning Code [Section 20.70.450](#) allows a reduction in the number of loading spaces if it is determined that an adequate area exists within the public right of way for loading. Per the Traffic Memo dated June 3, 2020, prepared by the Department of Public Works, and based on their expertise, the number of code-required loading spaces is excessive for this project, and six spaces would be sufficient. No additional on-street loading spaces are therefore required.

City Council Policy Conformance

[City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design](#) is for the protection, preservation and restoration of riparian habitat. The policy provides general guidelines for riparian corridor protection and requires a minimum 100-foot setback from a riparian corridor's top of bank or a vegetative edge, whichever is closest, to minimize intrusion into the riparian corridor, and allows consideration of reduced setbacks under limited circumstances. A riparian project is a project that requires approval of a development permit, that is within 300 feet of a riparian corridor's top of bank or vegetative edge, whichever is greater.

As shown on [Exhibit D](#) and [Exhibit E](#), the subject site is adjacent to Guadalupe River to the west and is completely within 300 feet of the riparian setback area. The edge of the existing riparian canopy (vegetative edge) is immediately adjacent to the site to the west, with some vegetation overhanging the existing parking lot.

Per the Biological Resources Report prepared by H.T. Harvey and Associates dated April 10, 2020, this reach of the Guadalupe River is highly fragmented with very little undisturbed habitat due to the highly urbanized surrounding environment and human-related disturbances. The riparian corridor adjacent to the project is extremely limited in its habitat value and influence.

As shown on [Exhibit F](#), the project towers' upper floors would have a setback ranging from 3.92 feet to 32.5 feet to the edge of the riparian corridor and the underground parking garage would have a setback ranging from 1.5 feet to 34.25 feet to the edge of the riparian corridor. Therefore, the project is subject to this riparian policy.

Section A of the policy provides design guidance for riparian projects. Section A.2 states that a reduced setback may be considered under limited circumstances such as:

1. Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.

Analysis: The site is within the Downtown growth area defined in the General Plan.

2. Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.

Analysis: This is not applicable to the project because the subject site is 3.57 acres.

3. Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.

Analysis: This is not applicable to the project because Guadalupe River is not a small lower order tributary.

4. Sites with unique geometric characteristics and / or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback.

Analysis: As shown on [Exhibit E](#), the project area is an irregularly long and narrowly shaped site with an approximately 0.16-mile (845 feet) stretch of riparian corridor along the entire western edge. Because the site is narrow, almost 50% of the site is within the 100-foot riparian setback area. The narrowest point is approximately 132 feet to the edge of the riparian corridor, which only leaves approximately 32 feet for development without a setback reduction at the narrowest point. The widest point is approximately 236 feet to the 100-foot riparian setback line at the south end of the project site.

5. Pre-existing one- or two-family residential lots, or typical yard area, but only where a frontage road is infeasible to buffer Riparian Corridors from these and the Building Setbacks are consistent with all Riparian Corridor setback requirements.

Analysis: This is not applicable to the project as the existing use of the site is a parking lot.

6. Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.

Analysis: The project's high-rise office development would be more intensive than the existing parking lot use and have a greater impact on the riparian corridor than the parking lot use. However, the project would include the following site improvements: 1) The existing parking lot is within 35 feet of the riparian edge. The parking lot consists of impervious pavement that covers the entire 3.7-acre project site, with the exception of approximately 660 square feet of landscaping area at the northwest edge of the site. The project would have less impervious surface than the existing parking lot in that there are approximately 8,660 square feet of pervious surfaces proposed, including native vegetation adapted to the Santa Clara Valley watershed. The project would comply with City Council Policy 6-29: Post-Construction Urban Runoff Management to avoid soil erosion and minimize runoff. 2) The existing parking lot includes 390 parking spaces that are accessible 24 hours per day and seven days per week. The project would direct all vehicular circulation to the underground parking garage. 3) As discussed below, although the construction and operation of the new building would be within the 35 feet of the riparian edge and would incrementally contribute to a cumulatively considerable impact to the Guadalupe River as a whole per the SEIR, the project would have a less than significant project-level environmental impact from the individual project-specific level. Furthermore, the project would be required to implement mitigation measures that would reduce impact from encroachment on riparian birds and habitat and would not result in a substantial adverse effect on any riparian habitat or other sensitive natural community.

7. Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback.

Analysis: As discussed above, the existing site is a paved parking lot with the exception of approximately 660 square feet of landscaping area at the northwest edge of the site. The project would have approximately 13,033 square feet of landscape area on grade including approximately 17-foot wide landscape strips with native vegetation adapted to the Santa Clara Valley watershed along the western edge of the site within the 35-foot riparian setback area, which helps enhance the riparian value.

As a result of the project's encroachment within 35 feet of the riparian corridor edge of vegetation, mitigation measures are required to provide restored riparian habitat area at a ratio of 2:1 for disturbed land area. The project encroaches on approximately 1.8 acres of the 100-foot riparian setback area; therefore, 3.6 acres of riparian lands are required to be enhanced and restored. Additional mitigation measures aimed at improving and maintaining riparian habitat include restoration monitoring for a period of 10 years and use of native vegetation. The biological evaluation included in the Biological Resources Report prepared by H.T. Harvey and Associates dated April 10, 2020, found that the reach of the Guadalupe River adjacent to the parcel is highly fragmented with very little undisturbed habitat due to the highly urbanized surrounding environment and human-related disturbances. The riparian corridor adjacent to the project is extremely limited in its habitat value and influence; therefore, required mitigation of 3.6 acres of native restored riparian habitat will enhance the riparian value. The project includes mitigation measure BIO(C)-1.1 and 1.2 with performance criteria to identify location of programs for restoration or enhancement prior to the issuance of grading permits.

8. Recreational facilities deemed to be a critical need and for which alternative site locations are limited.
Analysis: This is not applicable to the project.
9. Utility or equipment installations or replacements that involve no significant disturbance to the Riparian Corridor during construction and operation, and generate only incidental human activity.

Analysis: This is not applicable to the project.

10. The existence of legal uses within the minimum setback.

Analysis: As shown on Exhibit E, the existing 3.57-acre site is a legally paved parking lot used as an off-site parking establishment. Approximately 1.8 acres (50%) of the site is within the 100-foot riparian setback area. The 12-foot wide paved Guadalupe River Trail is immediately adjacent to the project site to the west.

11. The extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).

Analysis: The project site has a disproportionately long riparian frontage, and more than half of the site falls within the 100-foot riparian setback area. As discussed above, the developable area outside the 100-foot setback would be 44 feet wide at the narrowest point, which would not provide adequate area to develop a project consistent with the project's objectives to develop a large office in Downtown. Observing a 100-foot riparian setback would be economically infeasible given the narrow site configuration and market demand for larger floor plates. A 100-foot setback would result in an approximately 18,000-square foot floor plate. A memo dated March 19, 2020, prepared by Commercial Real Estate Services (CBRE) found that office building with a 18,000-square foot floor plate would be unattractive to potential tenants in the Downtown office market. The CBRE Memo found that the majority of tenants in Downtown San Jose are financial and professional service companies that typically desire large floor plates of 40,000 square feet or more. Of the office buildings currently in Downtown, those with floor plates of less than 40,000 square feet have remained vacant the longest (over two years) and have had difficulty attracting tenants. Therefore, an exception to the minimum required setback is appropriate in order to have a viable development.

12. The extent to which meeting the minimum setback would require deviations from, exception to or variances from other established policies, legal requirements, or standards.

Analysis: In general, Downtown Primary Commercial Zoning District 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 would be required.

To qualify for the reduced setback, the applicant may illustrate the existence of one or more of the conditions under Section A.3 of the Riparian Policy by a qualified biologist. A Biological Technical Report including the evaluation of the stream setback was prepared by WRA, Inc. dated February 2020. A Biological Resources Report, dated April 10, 2020, was also prepared by H.T. Harvey and Associates for the Supplemental Environmental Impact Report. Based on the information provided by qualified biologists, the project is qualified for a setback reduction due to the following circumstances under Section A.3:

1. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

Analysis: The SEIR analyzes several reduced development alternatives, including a reduced development project with 35-foot setback to property line and reduced development with 100-foot setback to property line, and concludes that these are not reasonable project alternatives.

Under the reduced development with 35-foot setback to the property line, the two office towers would be 16 stories high with a combined total project area of 1,659,795 square feet, which is 392,233 square feet less than the proposed project. This alternative would include four levels of below-grade parking with 1,148 required parking spaces. The air quality impacts would remain significant and unavoidable under this alternative and all construction related impacts are anticipated to remain the same. The cumulative significant and unavoidable biological impact would remain because this alternative has a 35-foot setback to the property line, and not the edge of the riparian corridor, which overlaps with the property line. This alternative would not meet the project's objective to maximize the use of the site compared to the proposed Project.

Under the 100-foot setback to property line alternative, the two office towers would be 16 stories high with a combined total project square footage of 828,070 square feet and include six levels of below-grade parking to provide 562 required parking spaces. This would be a reduction of approximately 1,221,958 square feet of office and amenity space. This alternative would avoid the project's significant unavoidable cumulative biological resources encroachment impact and construction air quality impact. However, this alternative would not reduce any other impacts identified in the Draft SEIR. This alternative would not meet the project objectives to construct a high-density office development and would not maximize the use of the site. Furthermore, the reduction of 1,221,958 square feet of usable square footage would not be economically feasible for the project. A 100-foot setback would result in an approximately 18,000-square foot floor plate. A memo dated March 19, 2020, prepared by Commercial Real Estate Services (CBRE) found that office building with a 18,000-square foot floor plate would be unattractive to potential tenants in the Downtown office market. The CBRE Memo found that the majority of tenants in Downtown San Jose are financial and professional service companies that typically desire large floor plates of 40,000 square feet or more. Of the office buildings currently in Downtown, those with floor plates of less than 40,000 square feet have remained vacant the longest (over two years) and have had difficulty attracting tenants. The average cap rate for San Jose Class A commercial office buildings is 5.1% as indicated in the CBRE office sales comparable as of the date of the report. Increasing the setback to 100 feet would result in a return on cost of 3.51%, which would be lower than the cap rate and therefore economically infeasible.

2. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.

Analysis: The entire project site is a paved parking lot. As described above, the edge of the existing riparian canopy is immediately adjacent to the site to the west, with some vegetation overhanging the existing parking lot. The proposed building footprint would not extend beyond the existing parking lot boundary and the entire building including the underground parking garage would not encroach into the riparian canopy. The project includes native vegetation adapted to the Santa Clara Valley watershed along the western edge. In addition, the project would apply measures (Condition No. 39.b.6)) to protect trees within the riparian corridor during construction even the Riparian Tree Impacts Assessment Memorandum prepared by H.T. Harvey and Associates dated July 22, 2021 concludes that excavation of the proposed underground parking garage will not result in impacts to roots whose removal would potentially result in damage to trees, and therefore will not result in a significant impact on riparian trees along the Guadalupe River. These measures are recommended by the biologist to be implemented as a precaution. The measures include having a certified arborist monitor the initial excavation if there is excavation beneath the canopies of the riparian trees, and manually exposing and pruning roots three inches back from construction if roots larger than one inch in diameter are encountered during excavation beneath the canopies of riparian trees. The detail root pruning measures are included in Condition No. 39.b.6).

The proposed project would reduce the quality of the riparian habitat. However, per the Biological Resources Report dated April 10, 2020, prepared by H.T. Harvey and Associates, since the existing riparian habitat immediately adjacent to the site is of moderate quality and would not attract a large number of birds, the project would not result in a substantial degradation of riparian bird communities in the segment of the Guadalupe River adjacent to the site or affect regional populations of bird species that use the site. Additionally, compensatory mitigation, as described in Mitigation Measure BIO(C)-1.1, is required to be provided by the project applicant to offset project impacts on the ecological functions and values of the riparian corridor. Mitigation Measure BIO(C)-1.1 requires riparian habitat to be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay at a minimum ratio of 2:1 (compensation : impact), on an acreage basis, for a total of 3.6 acres of enhanced or restored habitat to compensate for 1.8 acres of project encroachment within the 100-foot setback. With this compensation mitigation, the project would have a less than significant project-level impact from encroachment on riparian birds and habitat and would not result in a substantial adverse effect on any riparian habitat or other sensitive natural community.

3. The proposed uses are not fundamentally incompatible with riparian habitats.

Analysis: Section 1B of the City's Riparian Corridor Policy Study defines land uses that are incompatible with riparian systems to include uses which typically generate littering and/or dumping, off-road vehicle use, removal of native vegetation, uses that create noxious odors or use, store, or create toxic materials, and uses that generate high volumes of vehicular traffic. Portions of the ground floor retail and upper floor office, portions of the underground parking garage and the limited at-grade driveway for vehicles to access the underground parking garage, planting area with native landscaping, and the 4-foot wide pathway are would be within the 100-foot riparian setback area. There are no off-road vehicle uses proposed within this area. The project would not result in any of the uses defined to be fundamentally incompatible with riparian habitats and the project's land use does not typically result in any of the described incompatible land use categories. Permit conditions for the project require the site and its publicly-used areas to be maintained free of litter, refuse, and debris. Therefore, the project is not fundamentally incompatible with the riparian habitat.

4. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.

Analysis: The project was analyzed in the Draft SEIR for operation and construction impacts to adjacent properties and riparian corridor. The project would be required to implement the site-specific geotechnical conditions. Based on the geotechnical exploration prepared for the site, the sandy layer is potentially liquefiable, and the eastern Guadalupe riverbank would be subject to failure during a seismic event. The project would comply with City policies, existing regulations, and recommendations of the site-specific geotechnical report and would not expose adjacent or nearby properties to any geologic hazards. Therefore, the impacts related to seismic ground shaking and seismic related ground failure would be less than significant. In addition, the project would comply with City Council Policy 6-29: Post-Construction Urban Runoff Management to avoid soil erosion and minimize runoff. Valley Water is currently performing a two-month work (from July 22, 2021 to September 24, 2021) to repair the erosion occurred at the eastern bank near northwest edge of the site. With the implementation of the above conditions and the compliance with the City policies and regulations, the proposed development would not negatively impact the bank stabilization work.

5. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

Analysis: Development of the project will not have negative effects on properties located adjacent or downstream with the implementation of Mitigation Measure BIO(C)-1.1. The majority of the adjacent developments have reduced setbacks within the 100-foot riparian setback, including developments encroaching within approximately 25-30 feet. The project is required to comply with City Council Policy 6-29: Post-Construction Urban Runoff Management to avoid soil erosion and minimize runoff. Stormwater will be treated locally then discharged to the existing storm drain systems along South Almaden Boulevard and Woz Way. Therefore, the project would not be detrimental or injurious to adjacent and/or downstream properties.

Section A.4.b of the Riparian Policy requires that lighting should not be directed into riparian corridors. The project would include shielded lighting fixtures to direct light downwards. The Photometric Plan included in Exhibit J, the project plan, indicates that the project would have minimal light spillage to the riparian corridor. In addition, all building mounted and exterior site feature lighting (not required for code compliance and safety) will be controlled on separate lighting control zones and system, and will be turned "off" between the hours of midnight and 6:00 AM to minimize light within the riparian buffer at night.

Section A.5 of the Riparian Policy 6-34 strongly encourages restoration and rehabilitation of riparian corridors to be included in the riparian project design and implementation. As discussed above, the project will implement the compensatory mitigation as described in Mitigation Measure BIO(C)-1.1 which requires riparian habitat to be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or off-site on the Santa Clara Valley floor and in areas that drain to the San Francisco Bay at a minimum ratio of 2:1 (compensation : impact), on an acreage basis, for a total of 3.6 acres of enhanced or restored habitat to compensate for 1.8 acres of project encroachment within the 100-foot setback. The project design includes native vegetation adapted to the Santa Clara Valley watershed to be planted along the western property line to help enhance/restore the riparian corridor.

Section A.6 the Riparian Policy 6-34 requires project design and implementation to include erosion-control measures in conformance with the City Council Policies 6-29 and 8-14 (Stormwater Policies) to avoid soil erosion and to minimize runoff. As discussed above, the project would comply with these Stormwater Policies, which are also included in Condition No. 37.5) and Condition No. 37.6).

This project is not subject to the bird-safe design guidance outlined in City Council Policy 6-34 since the project site is south of State Route 237. However, the project would incorporate bird-safety design measures at the building's north, west, and south-facing façades that encroach entirely or partially within the 100-foot riparian setback to comply with Leadership in Energy and Environmental Design (LEED) Pilot Credit 55, Bird Collision Deterrence, as describe in MMRP, MM BIO-1.1 & MM BIO-1.2. From 0-36 feet above grade and 0-12 feet above any green roof, no more than 15% of the glazed area will have a Threat Factor rating higher than 75. All glazed corners or fly-through conditions must have a Threat Factor rating of less than or equal to 25. All structures other than the main buildings on site, including but not limited to handrails, guardrails, windscreens, noise barriers, etc., must be constructed entirely of materials with a Threat Factor rating of 15 or lower. The combined façades will achieve a maximum total Bird Collision Threat Factor rating of 15 or lower. To ensure that all bird-safe design considerations have been met, the applicant is required to submit a verification letter or plan to the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any building permits. The plan shall be accompanied by a letter signed by a qualified biologist, verifying that the building design complies with LEED Pilot Credit 55: Bird Collision Deterrence. A three-year post-construction monitoring plan will be required to routinely monitor the effectiveness of the building and the site design in preventing bird collisions.

Based on the information provided by qualified biologists and the above analysis, the project qualifies for a setback reduction because all the circumstances under Section A.3 can be found. With implementation of the mitigation measures specified in the MMRP, the compliance with City Council Policies 6-29 and 8-14 to avoid soil erosion and minimize runoff, and the compliance with standard permit and environmental conditions, the project would be consistent with the City's Riparian Corridor Policy.

Downtown Design Guidelines

Per Section 20.70.500 of the Zoning Ordinance the project is subject to design guidelines adopted by the City Council. The 2004 Downtown Design Guidelines apply to the project because the project application was filed in January 2019, prior to the effective date of April 23, 2019 of the current San Jose Downtown Design Guidelines and Standards. The project complies with the 2004 Downtown Design Guidelines, as analyzed below:

Urban Form and Massing

A project's massing should correspond to the geographical conditions and patterns of the urban form of the immediate context of the project site.

The building massing is shaped by the irregularly long and narrow site boundary. The massing along the street sides continues the downtown development pattern of buildings lining the edges of streets. The western façade follows the project's curved river side boundary, which results in a dynamic appearance from surrounding viewpoints, such as Discovery Meadow, Woz Way, West San Carlos Street, and Highways 87 and 280. The building massing is divided into two towers starting at Level Five creating additional visual interest. The towers incorporate recessed bays and elevated terraces to create massing variations.

Project Base/Street Wall

Buildings should be designed at the ground level to facilitate social interaction by incorporating transparency and attractive, high quality materials. Further, the Guidelines state that building frontages should appear safe, welcoming, and open to the public. The Guidelines also encourage ground level occupancy by retail, entertainment, service retail, cultural or other active, high intensity pedestrian uses.

The project's ground floor design provides a strong urban street presence on three sides (South Almaden Boulevard, Woz Way and Guadalupe River) and promotes pedestrian activities. Active uses such as retail space and office lobbies are present along these three frontages. All the active frontages on the ground floor are recessed approximately 12 to 15 feet from the columns supporting the buildings above to provide extended pedestrian walkways with a ceiling height of 24 feet. Due to the lengthy South Almaden Boulevard frontage (approximately 816 feet), the ground floor incorporates two paseos with a minimum width of 20 feet through the building to provide pedestrian circulation between South Almaden Boulevard and the Guadalupe River Trail. These paseos are all lined by active uses such as retail and amenity spaces. In addition, a plaza is proposed at the corner of South Almaden Boulevard and Woz Way. This open plaza provides outdoor seating and activity areas, as well as vertical circulation by including escalators near the south edge of the building. All the ground floor active space would have transparent storefront glass to provide an inviting and pleasant outdoor walking experience.

Architecture and Materials

The Guidelines state building architecture should integrate the top, middle, and base into a unified architectural statement. The Guidelines encourage using proportion and scale to reduce building bulkiness.

The project building distinguishes the base, middle and top for each side of the façade. The base of the building is strongly defined by the recessed active ground floor space and columns. The middle consists of the podium (Levels 2 to 4) emphasizing vertical elements and the towers from levels 5 to 15 emphasizing horizontal elements. The top includes penthouses, which significantly step back from the lower floors and screen the mechanical rooms and elevator shafts with a distinct façade treatment.

As discussed above, the building massing is modulated by incorporating vertical breaks (notches) within the towers' east and west façades. These façades include rows of horizontal fins, and the Discovery Meadow side of the building incorporates three successive tones to divide the long horizontal façade into distinct sections. The transition of color would occur one structural bay next to the notches, which helps further break up the massing, adding vibrancy to building façade.

No Net Loss

Approximately 1.38 acres of the project site is identified on the 5th Cycle Housing Element Inventory as a site intended to accommodate a portion of the City's regional housing need allocation (RHNA). The proposed project is wholly commercial and does not propose any residential units.

Pursuant to Govt. Code Section 65863 (No Net Loss Law) jurisdictions must ensure development opportunities remain available throughout the planning period to accommodate the regional housing need allocation (RHNA). In the case that a city approves a development of a parcel identified in its Housing Element sites inventory with fewer units than shown in the Housing Element, it must either make findings that the Housing Element's remaining sites have sufficient capacity to accommodate the remaining unmet RHNA by each income level, or identify and make available sufficient sites to accommodate the remaining unmet RHNA for each income category. The remaining sites identified in the City's Housing Element Inventory are adequate to meet our remaining RHNA for the planning period by income category. The current unmet RHNA need by income level is indicated in Table B of the 2020 Housing Element Annual Progress Report.

Table B- 2020 APR			
Very Low Income	Low Income	Moderate Income	Above Mod Income
7983	5323	3722	4073

There are three recently approved, affordable development projects that have received entitlements and are anticipated to pull building permits this year. This would result in a reduction of the Low Income RHNA unmet need by 259 units, and a reduction of Above Moderate Income RHNA unmet need by 29 units. From January 1, 2021 through June 1, 2021, there have been 426 entitled Above Moderate Income units and 266 entitled Low Income units. This further reduces the unmet need by 692 units. The unmet Low Income RHNA need with proposed development is 16,602; the unmet Above Moderate Income RHNA is 3,618. The remaining capacity of sites identified in the Housing Element for each category is 16,928 and 9,600, respectively. Therefore, the remaining sites identified in the City's Housing Element Inventory are adequate to meet our remaining RHNA for the planning period by income category.

Site Development Permit Findings

To make the Site Development Permit findings pursuant to San José Municipal Code [Section 20.100.630](#), and recommend approval to the City Council, the Planning Commission must determine that:

1. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and

Analysis: As discussed above, the proposed project is consistent with the General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial office and retail at high densities. The project is also consistent with the General Plan policies listed above.

2. The Site Development Permit, as approved, conforms with the Zoning Code and all other Provisions of the San José Municipal Code applicable to the project; and

Analysis: As discussed above, the project is consistent with the height, setbacks, and parking requirements of the DC Downtown Primary Commercial Zoning District. The DC Zoning District does not require any minimum setbacks. The project is subject only to the height limit necessary for the safe operation of the San Jose International Airport; and conditions of approval are included requiring a No Hazard Determination to be obtained from the FAA prior to issuance of Building Permits. The project requires 304 bicycle parking spaces, and the project proposes 319 bicycle parking spaces. With maximum parking reduction that requires implementing a TDM plan, the project would require 1,279 parking spaces. The project would provide 1,279 parking spaces by implementing measures included in the TDM plan dated July 14, 2021, prepared by Hexagon Transportation Consultants, Inc. The project applicant is required to implement the TDM plan for the life and use of the building. The project incorporates an alternative parking design, using stackers, tandem and valet parking, which is allowed with a Special Use Permit per Section 20.90.200 of the San José Municipal Code based on an adequate parking management plan. The parking management plan provided is adequate as described above. Parking attendants would manage the parking of the garage and maintenance of the parking management plan would be a condition of approval for the site. Additionally, the project requires the parking spaces to be maintained throughout the life of the project.

3. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project is consistent with [City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design](#) as discussed in the Riparian Corridor Policy Section above. [Council Policy 6-30: Public Outreach Policy was followed](#) in order to inform the public of the project. Three signs describing the project have been posted on the project site since April 23, 2019. A joint community and environmental scoping meeting was held on June 10, 2019 to inform the surrounding community of the proposed project. A second community meeting was held on June 3, 2021 to provide updates to the community members. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The project is also consistent with [Council Policy 4-3, Outdoor Lighting Policy](#), in that all the proposed outdoor lighting is directed downwards, and the project would generate zero to minimal light spillage to the adjacent riparian corridor per the Photometric Plans (Sheets LT-501 & 502) shown on the Project Plan, [Exhibit J](#).

4. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: Two high-rise towers with a podium are within the development boundary. As discussed above, the entire building massing follows the unique site configuration. The project design directs all vehicular circulation to the underground garage and promotes pedestrian activities on the ground floor at the project's two public street frontages and one public space frontage. The paseos under the building provide "mid-block" connections from the public street to the river side and vice versa, and a plaza at the street corner will provide space for outdoor seating, activities and public arts. Most of the pedestrian walkways, paseos, and plaza are lined by active uses such as retail and amenity space, and office lobbies.

As discussed above, the two towers and the podium together are mutually compatible and aesthetically harmonious. The entire building applies consistent design concepts, such as massing articulation and façade treatment on the same skyline level, podium level and pedestrian level treatment, and apply same colors and materials.

5. The orientation, location, and elevations of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: As discussed above, the project is compatible with adjacent development. The project is mostly surrounded by existing and planned office development to the north, east and the south. A nine-story office building is to the north of the project site. The Convention Center and an 18-story office tower are located to the east across South Almaden Boulevard. Two 20-story office towers are planned on the existing single-family residential community to the south across Woz Way with a height of approximately 297 feet and a total building area of approximately 1.8 million square feet. The existing and proposed office developments and the Convention Center have contemporary architectural styles. The project office towers would be compatible with this existing and planned office development in terms of use, project scale, massing, and the architectural style. The Children's Discovery Museum is located to the west of the site, separated by the Guadalupe River and the Discovery Meadow. Hence, the project would not result in an inharmonious design to the museum. The project would offer dynamic views from the Discovery Meadow with the building's curvilinear outline and gradient color variation on the building façade.

6. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: The project development occurs in an area bounded by streets, existing office development, and the Guadalupe River and Trail. There are existing and planned high-rise office buildings, the Convention Center, surrounding the site. The project includes permit conditions and mitigation measures to ensure that adjacent properties and individuals are not negatively impacted by construction noise, vibration, dust, and erosion. These measures include specific allowable construction hours, relocation of nearby neighbors during 24-hour construction operations if requested, idling time limits for machinery, and more. The operation of the project is primarily commercial office and therefore would not be a generating source for excessive noise or odor. The project has been evaluated for compliance with the City's stormwater treatment requirements. Therefore, the project would not have an unacceptable negative effect on adjacent property or properties.

7. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: As shown on the plan sets attached to this staff report ([Exhibit J](#)) the project would provide landscaping along the west and south sides of the site, and on multiple elevated terraces. The trash collection would occur in the underground parking garage. All mechanical equipment is screened on the roof and not visible from the street or surrounding buildings.

8. Traffic access, pedestrian access and parking are adequate.

Analysis: As described above, the project contains parking consistent with the Zoning Ordinance with TDM measures and alternative parking arrangement (alternative parking design with parking stackers, tandem and valet parking), and has adequate pedestrian, bicycle, and vehicular access into the site. Pedestrians can access the building from the lobby or retail spaces. The project includes a separated bike lane between the sidewalk and drop-off zones along the eastern and southern project frontages on Almaden Boulevard and Woz Way. The site would have three driveway access points. One is from Woz Way, one is from South Almaden Boulevard at the northeast corner of the project site which would be restricted to trucks only and would provide access to the loading docks to the second below-grade parking garage, and one at South Almaden Boulevard at the South Almaden/Convention Center intersection. The project was reviewed by the Department of Public Works, Department of Transportation and Fire Department and was found to be consistent with regulations and standards for vehicle, emergency vehicle, and pedestrian access.

Special Use Permit Findings

A Special Use Permit is required for the alternative parking arrangement (parking stackers, tandem and valet parking) and the 15 commercial condominiums. The findings of the Special Use Permit, pursuant to San José Municipal Code Section 20.100.820, must determine that:

1. The special use permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies; and

Analysis: In addition to the discussion above, the commercial condominium units for the commercial office is consistent with the General Plan land use designation of Downtown as commercial uses are permitted in the DC Downtown Primary Commercial Zoning District.

2. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: In addition to the Zoning Ordinance conformance section in this staff report, [Section 20.175.042](#) of the Municipal Code requires the minimum unit size for nonresidential condominium units to be 750 square feet. Sheet 1 of the Vesting Tentative Map plan, [Exhibit K](#), indicates that the commercial condominium unit will have a minimum size of 750 square feet.

The project incorporates an alternative parking arrangement (alternative parking design with parking stackers, tandem and valet parking) and the parking management plan is adequate to meet Zoning Code Section 20.90.200 as analyzed above.

3. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: See discussion above under Site Development Permit Finding 3. There are no applicable City Council policies other than those discussed above.

4. The proposed use at the location requested will not:

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety, or general welfare; and

Analysis: As described above, the project, including the commercial condominiums, would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area as the use is mainly contained within the project, and the operation of the commercial office would not impact the area outside of the building. This commercial condominium units would not impair the utility or value of property or persons in the immediate area as the office use would be mainly contained in the building.

The alternative parking arrangement would be managed by parking attendants in the underground parking garage and maintained throughout the life and use of the building to meet the required number of parking spaces, as specified in the approved parking management plan. Therefore, the alternative parking arrangement would not adversely affect the surrounding area and would not be detrimental to public health, safety, or general welfare.

5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: As noted above, the 15 commercial condominium units would exceed the minimum square footage requirements for commercial condominiums. The project accommodates the development features such as parking and loading facilities within the underground garage, and landscaping along the west and south sides of the site and on the elevated terraces.

6. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- b. By other public or private service facilities as are required.

Analysis: The overall project is adequately accessible by the downtown street network and said streets have the capacity to handle traffic generated by the project, as analyzed in the SEIR. The site is served by the Santa Clara Valley Transportation Authority (VTA) and is approximately 0.7 miles from Caltrain, Altamont Commuter Express (ACE), and Amtrak stations. The project area is served by many VTA bus routes with high-frequency service. The nearest bus stops are located at the San Carlos Street/Woz Way intersection (Route 23) and San Carlos/Convention Center intersection (Routes 23, 168, 523). The site is also within 1,000 feet of the Children's Discovery Museum Light Rail Station and Convention Center Light Rail Station.

As discussed above, the subdivision of the commercial space would not create any additional need for access.

7. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As stated above in Site Development Permit Finding 6, the project would not have any unacceptable negative effect on the adjacent properties.

8. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development or in the city as a whole.

Analysis: As discussed above, the project, which is a common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity in that the size of the commercial common interest units will be conditioned to meet the minimum size requirement so as to adequately accommodates a variety of potential uses, and the anticipated uses such as restaurant, office and retail uses will add to the economic viability of the area.

9. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

Analysis: A Declaration of Covenants, Codes, and Restrictions will include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development. City staff will review the proposed covenants prior to final map approval for compliance with this requirement.

10. The proposed common interest development includes sufficient provisions of the retention of such common areas for the use of all owners of separate interest therein.

Analysis: The Declaration of Covenants and Restriction will state that each owner shall have, as appurtenant to his unit, an undivided interest in the common area. This will ensure that each common interest development has sufficient retention of common areas for use by all owners as noted in the conditions of approval. City staff will review the proposed covenants prior to final map approval for compliance with this requirement to the satisfaction of the Planning Director.

11. Pursuant to Section 20.90.200.B, in addition to any other findings required for a special use permit, the director, or planning commission on appeal, may approve such off-street parking facility arrangements only upon making the following findings:

- a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;
- b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

Analysis: As discussed in the Zoning Conformance section, the project would provide a total of 1,279 parking spaces which would meet the parking requirements after applying a 57.5% parking reduction allowed by Zoning Code Chapter 20.90 and Chapter 20.70. The parking management plan provided on Sheet P-101 of the project plans is adequate in that the alternative parking design using parking stackers includes parking attendant procedures for managing the tandem and valet parking., ensuring all required parking spaces are available for use With Condition No. 7 which requires that these parking spaces be maintained throughout the life of the project, it is reasonably certain that this underground parking will continue to be provided and maintained at the same location during the life of the building or use. All the parking spaces are located within the underground parking garage below the two office towers and the podium. Office and retail tenant can directly access the underground parking garage through elevators and/or stairs. The parking spaces are convenient and accessible to the buildings or uses to be served.

Tentative Map Findings

In accordance with Section 66474 of the Government Code of the State of California and San José Municipal Code Title 19, the City Council in consideration of the subdivision shown on the Vesting Tentative Map with the imposed conditions, shall deny approval of a Vesting Tentative Map, if it makes any of the following findings:

1. That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
2. That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
3. That the site is not physically suitable for the type of development.
4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Analysis: The proposed Vesting Tentative Map will merge all existing five lots to one lot for up to 15-commercial condominium unit purpose. Based on review of the Vesting Tentative Map and as discussed in detail above, any such findings cannot be made to deny the subject subdivision in that: 1) the proposed project is consistent with the General Plan as noted above; 2) the design of the units is consistent with the General Plan in that it identifies the consolidation of lots to avoid building construction over existing lot lines; 3) the project site is physically suitable for a vesting tentative map to merge five parcels into one parcel to support the office development which is consistent with the Downtown General Plan land use designation and allowed under the Downtown Primary Commercial Zoning District; 4) merging of the five parcels into one parcel will allow a larger building to be developed on-site that will not cross property lines in violation of the Building Code and meet the development intensity within Downtown; 5) the subdivision will not cause any environmental damage or substantially injure fish or other wildlife habitat in that the purpose of the subdivision is to merge five parcels to one large parcel for up to commercial condominium purpose and the project includes mitigation measures such as bird-safe design measures, on-site and off-site habitat restoration and riparian habitat monitoring plan and is required to comply with all the

environmental conditions; 6) the Vesting Tentative map will not cause any public health issues in that it will merge existing five parcels to one parcel for up to 15 commercial condominium units and the associated office development is required to comply with all City regulations and Code requirements and implement mitigation measures; 7) the parcel combination will not conflict with any public easements, as the project will vacate an existing storm drain easement on site and provide a new storm drain easement per the storm drain realignment approved by the Department of Public Works.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Draft SEIR was circulated for public review and comment from July 31, 2020 through September 14, 2020. The EIR prepared for this project concluded that implementation of the proposed project would result in a significant and unavoidable impact on construction, operational, and cumulative PM2.5 air quality, cumulative biological resources, and cumulative noise and vibration.

Mitigation measures were also developed to lessen the following impacts to less than significant levels, including bird-safe design features, entering into a Site Cleanup Program with the Santa Clara county Department of Environmental Health, and implementing a construction noise logistics plan that includes specific measures for reducing nighttime construction noise.

Standard Permit Conditions are also required to ensure no impacts occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction related air quality impacts, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, protection of unknown subsurface resources, protection of construction workers from hazards related to contaminated soils, water quality impacts during construction, and impacts to public facilities.

CEQA Alternatives

As required under CEQA, the Draft SEIR identified and evaluated alternatives to the project. Three critical factors considered in the selection and evaluation of the alternatives included: (1) the significant impacts from the project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. The environmental analysis considered four project alternatives: 1) No Project-No New Development; 2) Reduced Development Alternative 1 (Option 1) – Reduced Square Footage with 35-Foot Setback; 3) Reduced Development Alternative 1 (Option 2) – Reduce Square Footage With 100-Foot Setback; and 4) Reduced Development Alternative 2 – Square Footage Reduction and Increase in Height.

The Reduced Development Alternative 1 (Option 1) – Reduced Square Footage With 35-Foot Setback Alternative was found to be the environmentally superior alternative because it would increase the riparian setback beyond what the project currently proposes without increasing air quality impacts. However, this alternative would not meet one of the project objectives, which is to maximize the use of an underutilized infill site compared to the Project.

Public Comments

The City received 12 written comment letters during the public circulation period. Comments were submitted by five agencies, which were the California Department of Transportation (DOT) who submitted two letters, San Francisco Bay Regional Water Quality Control Board (SFBRWQCB), Santa Clara Valley Transportation Authority (VTA), Valley Water, and the County of Santa Clara Roads and Airports Department. The DOT asked for more information on potential traffic impacts on the adjacent highway and more information on project runoff in case of a 100-year flood event. The County Roads and Airports Department encouraged the City to do a cumulative traffic analysis and provide more on-site parking. The VTA requested impacts to light rail to be disclosed and supported the design of separated bike lanes between the sidewalk and drop-off zones and the inclusion of 319 bike parking spots. The SFBRWQCB expressed that mitigation measure BIO-1.1 may be infeasible in that it may be challenging to find 3.6 acres of riparian land to restore. Valley Water requested more information be provided regarding the storm water outfall alignments and riparian mitigation requirements.

The six organizations and individuals that commented on the SEIR were the California Native Plant Society (CNPS), Guadalupe-Coyote Resource Conservation District (GCRCD), Guadalupe River Park Conservancy, Santa Clara Valley Audubon Society (SCVAS), the Sierra Club Loma Prieta Chapter, and Jean Dresden. The CNPS expressed concerns over the project's encroachment within the minimum 100-foot setback, finding adequate land for mitigation measure BIO-1.1, and inconsistencies with the Santa Clara Valley Habitat Plan. The GCRCD requested that the City select an alternative in the SEIR that meets the 100-foot setback, and expressed concern over impacts to birds, riparian habitat health, local transportation impacts, and environmental awareness. The SCVAS voiced concerns over the project's compatibility with Council Policy 6-34, growth inducing impacts, consistency with Downtown Strategy 2040 findings, flooding, inadequate alternatives, and impacts to Discovery Meadows Park and the riparian habitat. The Sierra Club requested information on soil removal and staging operations and expressed concern over various air quality, biological resources, geology, hazards, hydrology, noise, utilities, mandatory findings of significance, and alternatives impacts. Jean Dresden expressed concern over shade impacts to Discovery Meadows and Guadalupe River Park, dewatering risks, and inadequate alternatives.

None of the comments received addressed an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address habitat agency conformance, storm water, park shading and other suggested texts from agencies.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the MMRP constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (FSEIR) are available for review on the project page on the City's Active EIR website at:

<https://www.sanjoseca.gov/your-government/departments-directory/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/almaden-office-project>.

A copy of the signed MMRP is attached to the proposed CEQA resolution (**Exhibit G**).

Response to Public Comments Addressed in First Amendment

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 has been added to the SEIR since publication of the Draft SEIR; therefore, the Draft SEIR does not need to be recirculated.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or 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 (CEQA Guidelines Section 15088.5).

Statement of Overriding Considerations

Section 15091(a) of the CEQA Guidelines stipulates that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings. If the lead agency approves a project despite it resulting in significant adverse environmental impacts that cannot be mitigated to a less than significant level, the agency must state the reasons for its action in writing. Thus, a Statement of Overriding Considerations is included in the record of project approval.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public. Three signs describing the project have been posted on the project site since April 23, 2019.

A joint community and environmental scoping meeting was held on June 10, 2019 to inform the surrounding community of the proposed project. Approximately 14 members of the public attended the meeting. A second community meeting was held on June 3, 2021, to provide updates to the community members. Approximately 17 members of the public attended the meeting. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The major comments and response are summarized below:

June 10, 2019 Community Meeting (1st Community Meeting)
Number of Attendees: 14
Major Comments and Concerns
Riparian setback: Building is too close to the riparian corridor; Concerns on shading impact on the riparian corridor.
Project Design: 1) Does the project include energy efficiency design? 2) The ground floor retail could be enhanced to integrate more into the trail and public space. 3) What kind of amenity will be provided? Encourage active uses that would attract people and provide space that public could enjoy.
Parking: Support parking reduction as the project is in Downtown and support the development on the existing parking lot. Will the proposed underground parking be open to public during weekends?
Guadalupe River Trail: Who will maintain the trail? Will the applicant be willing to be part of the trail maintenance?
Safety concern on pedestrian circulation.
June 3, 2021 Community Meeting (2nd Community Meeting)
Number of Attendees: 17
Major Comments and Concerns
Concerns on project scale, the riparian setback, the shade impact to the river, the underground parking affecting the trees which canopies encroach into the existing parking lot. Project does not meet the City's riparian policy requirement.
Bird-safe design.
Five community members showed favor in the project design and support the project as it would bring jobs to Downtown and provide amenity space to the community.

Riparian Impacts and Consistency with Riparian Policy:

The impact to the riparian corridor was analyzed in the SEIR. The SEIR concludes that although the construction and operation of the new building would be within the 35 feet of the riparian edge and would incrementally contribute to a cumulatively considerable impact to the Guadalupe River as a whole, 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.

Also as discussed in the report, the project is consistent with the City's Riparian Policy 6-34 which allows a reduced setback for some circumstances. The project is also in compliance with the Santa Clara Valley Habitat Conservation Plan (SCVHP) as discussed in the report.

Bird-safe Design:

As discussed in the SEIR, the project would incorporate bird-safety design measures at the building's north, west, and south-facing façades that encroach entirely or partially within the 100-foot riparian setback to comply with Leadership in Energy and Environmental Design (LEED) Pilot Credit 55, Bird Collision Deterrence, as describe in MMRP, MM BIO-1.1 & MM BIO-1.2. From 0-36 feet above grade and 0-12 feet above any green roof, no more than 15% of the glazed area will have a Threat Factor rating higher than 75. All glazed corners or fly-through conditions must have a Threat Factor rating of less than or equal to 25. All structures other than the main buildings on site, including but not limited to handrails, guardrails, windscreens, noise barriers, etc., must be constructed entirely of materials with a Threat Factor rating of 15

or lower. The combined façades will achieve a maximum total Bird Collision Threat Factor rating of 15 or lower. To ensure that all bird-safe design considerations have been met, the applicant is required to submit a verification letter or plan to the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any building permits. The plan shall be accompanied by a letter signed by a qualified biologist, verifying that the building design complies with LEED Pilot Credit 55: Bird Collision Deterrence. A three-year post-construction monitoring plan will be required to routinely monitor the effectiveness of the building and the site design in preventing bird collisions.

Building Design:

The project is subject to the City's Green Building Ordinance. The project shall achieve the minimum green building certification of LEED Silver, as described in Project Condition No. 19.

As discussed in the report, the project would provide active use such as retail, amenity and office lobbies along the project's three sides including the river side. The plaza at the street corner would provide space for public art, and outdoor seating and activities.

Parking:

Although the project does not include the provision to allow the parking garage for public use during weekends, the applicant has indicated the willingness to make parking garage available for public use during weekends. If parking requirements are reduced in the future, the excess parking can be made available to the public by the office.

Safety Concern on Pedestrian Circulation:

The project will be conditioned to implement signalized control at the Locust Street/Woz Way intersection driveway which will provide a protected crossing phase for all approaches, including the existing north-south crosswalk on Woz Way that connects the Guadalupe River Trail north and south of Woz Way. Additional features planned to be installed as part of the City's improvements along Woz Way include curb extensions that would reduce the pedestrian crossing distance across Woz Way from 60 feet to approximately 45 feet. A crosswalk along the north approach of the Almaden Boulevard/Convention Center Access intersection provides direct access between the project site's east frontage and the Convention Center. The project will be required to install a crosswalk along the south approach, as well as a crosswalk across the proposed west approach, as part of the required signal modification at the intersection.

Guadalupe River Trail Maintenance:

The portion of the Guadalupe River Trail adjacent to the project site is owned by Valley Water and is maintained by the City per a Maintenance Agreement with Valley Water since 2003. The applicant is not required to maintain this trail as it is outside of their property however will maintain the portion within their property.

Project Manager: Angela Wang

Approved by: /s/ , Deputy Director for Christopher Burton, Director

ATTACHMENTS:	
Exhibit A:	Vicinity Map, Aerial
Exhibit B:	General Plan Land Use Designation
Exhibit C:	Zoning District
Exhibit D:	Downtown Map
Exhibit E:	Existing Site with Riparian Setback Lines Overlay
Exhibit F:	Riparian Setback Diagram
Exhibit G:	Draft EIR Resolution & MMRP
Exhibit H:	Draft Special Use Permit Resolution
Exhibit I:	Draft Vesting Tentative Map Resolution
Exhibit J:	Special Use Permit Plan Set
Exhibit K:	Vesting Tentative Map Plan Set
Exhibit L:	TDM Plan

Applicant/Owner:
Attn: Christina Bernardin BXP Almaden Associates LP Four Embarcadero Center, Lobby Level Suite One San Francisco, CA 94111

Exhibit A: Vicinity Map, Aerial

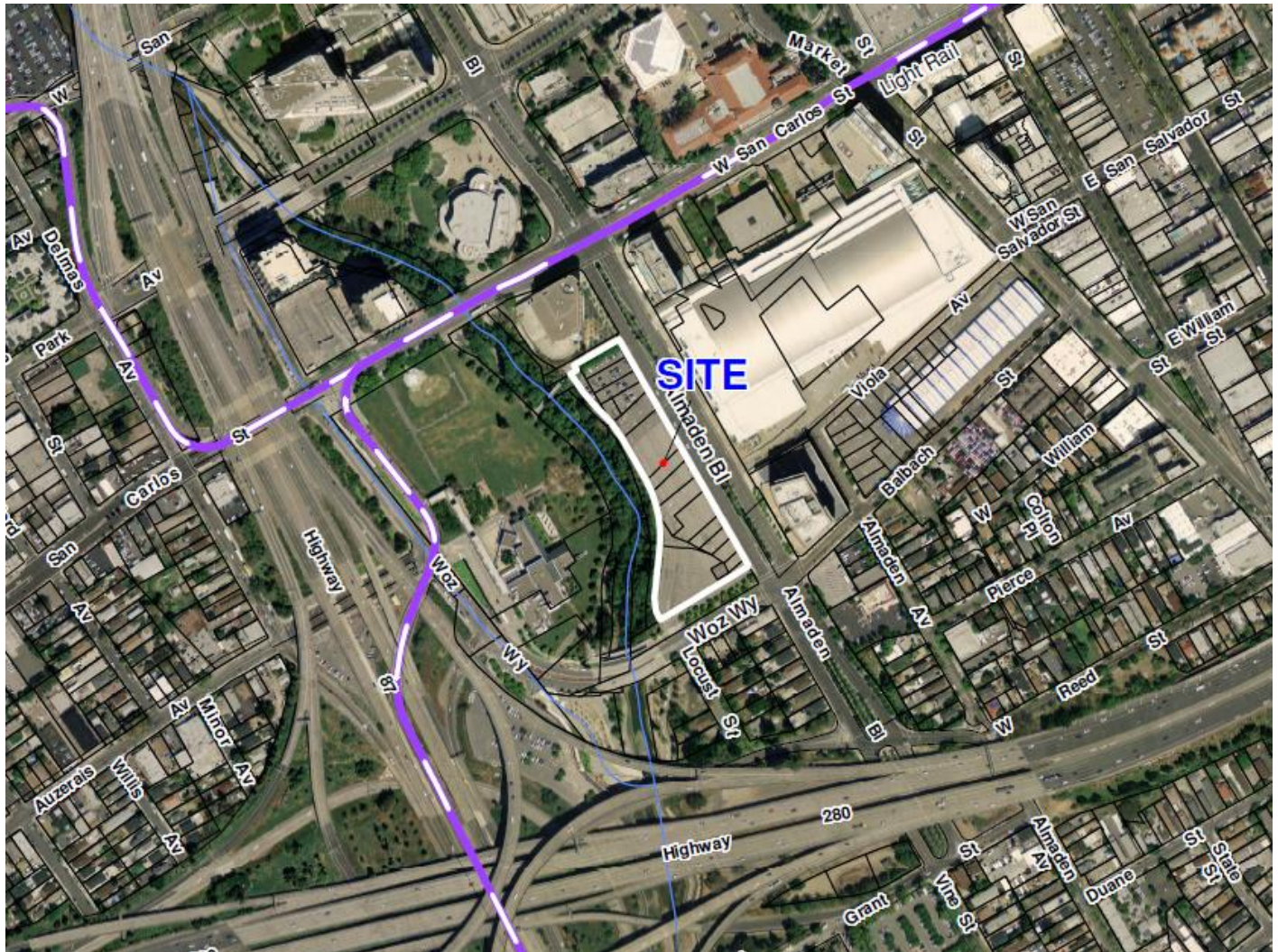


Exhibit B: General Plan Land Use Designation

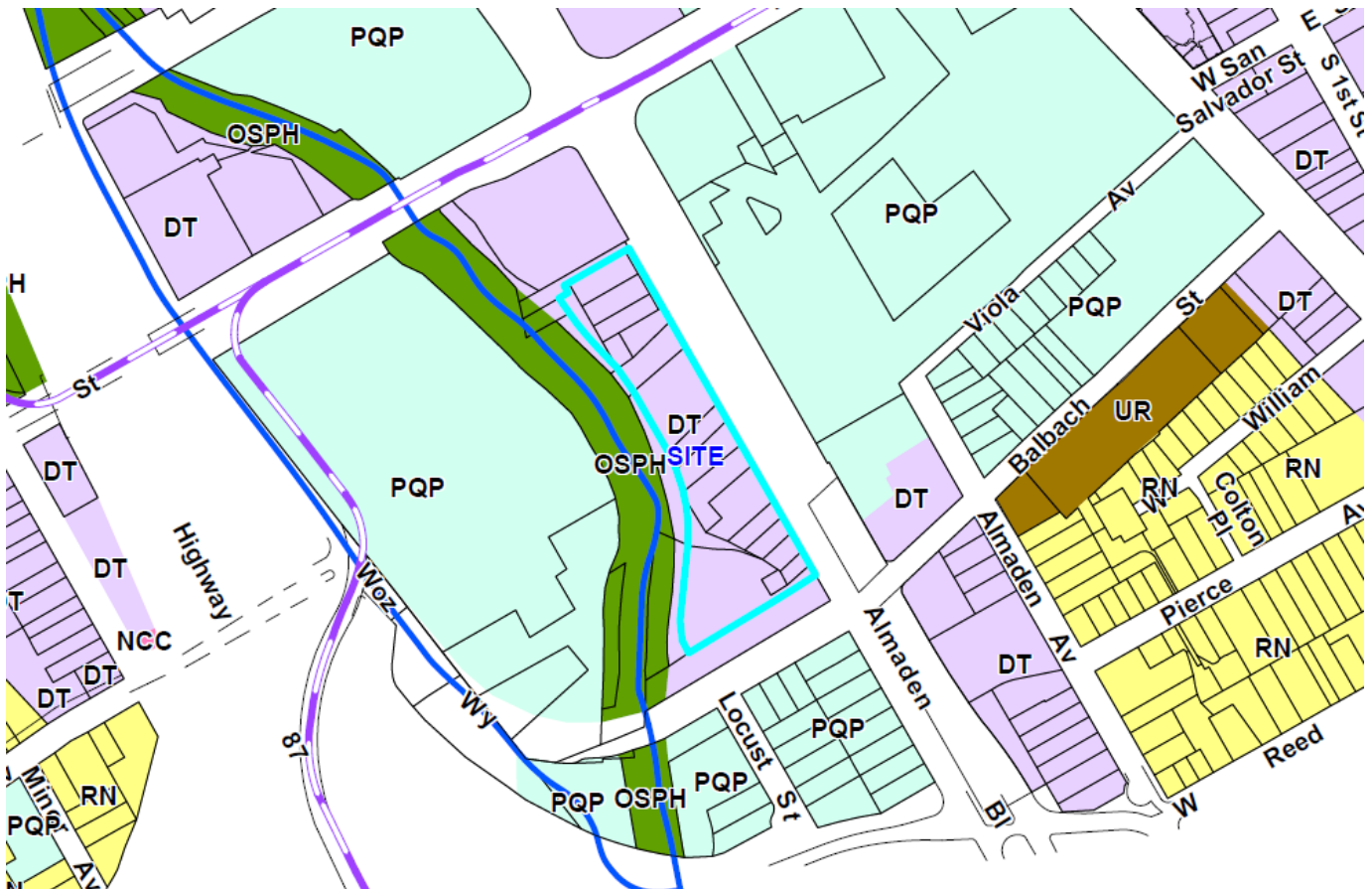


Exhibit C: Zoning Map

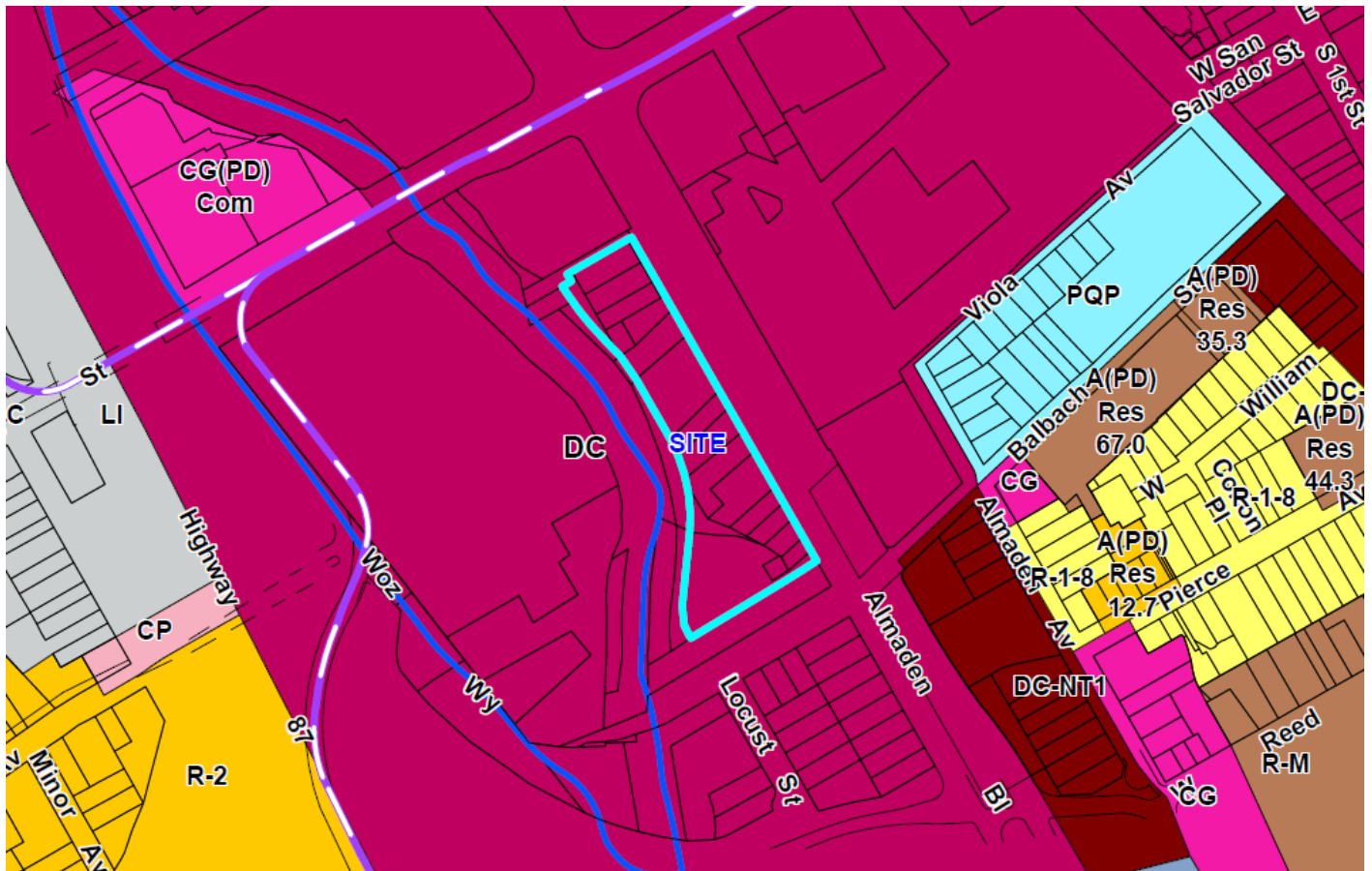


Exhibit D: Downtown Map

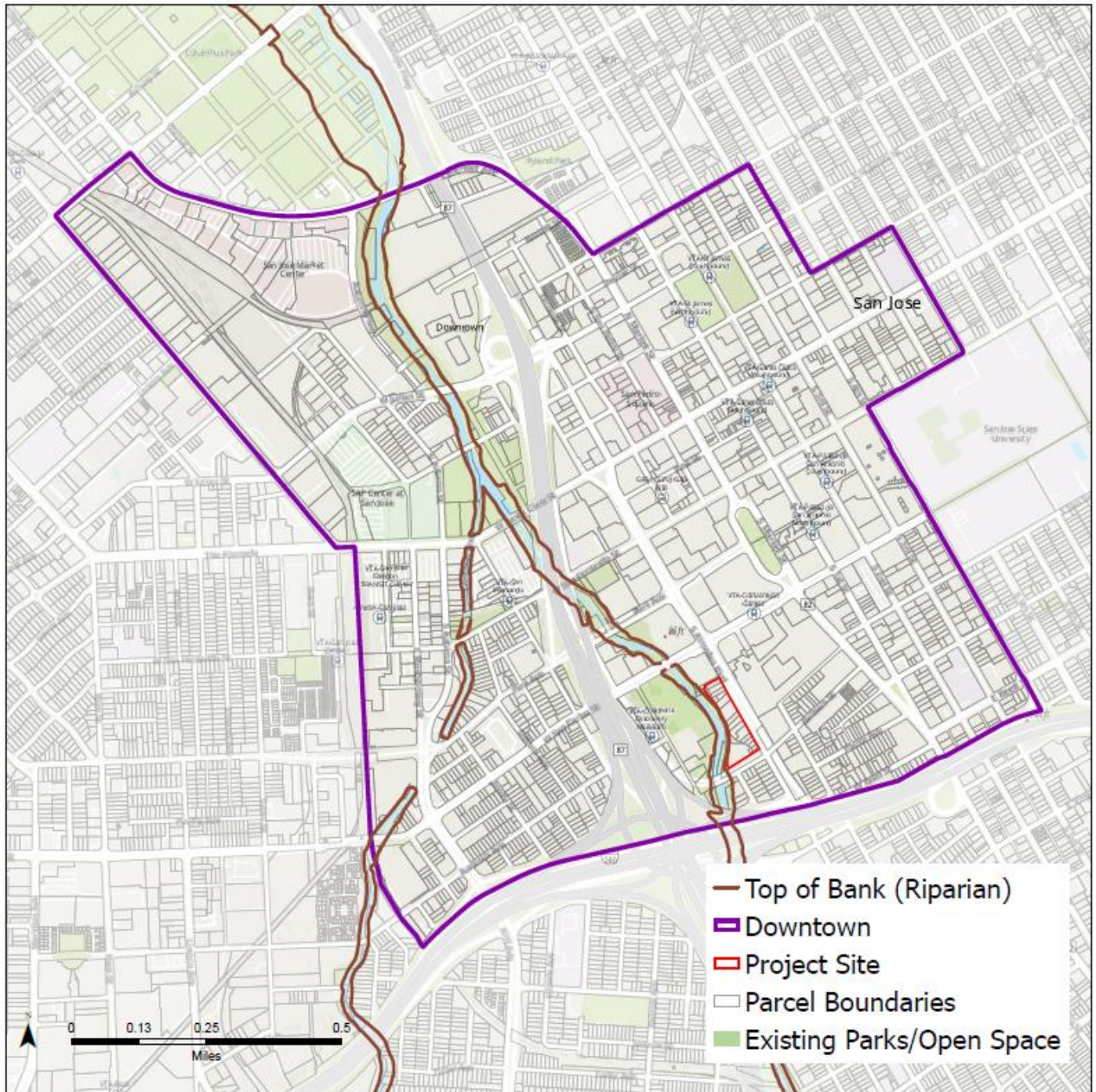


Exhibit E: Existing Site with Riparian Setback Lines Overlay

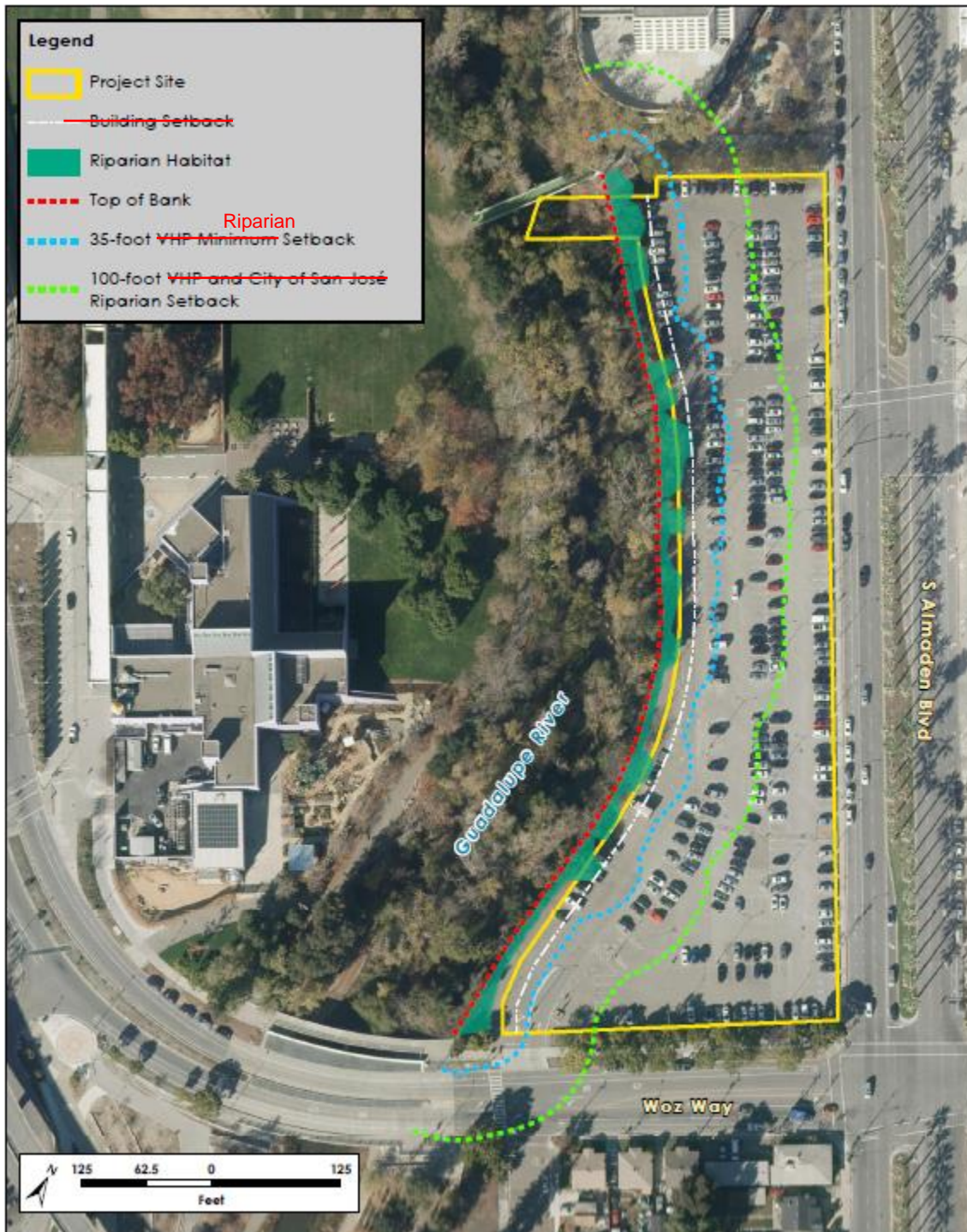
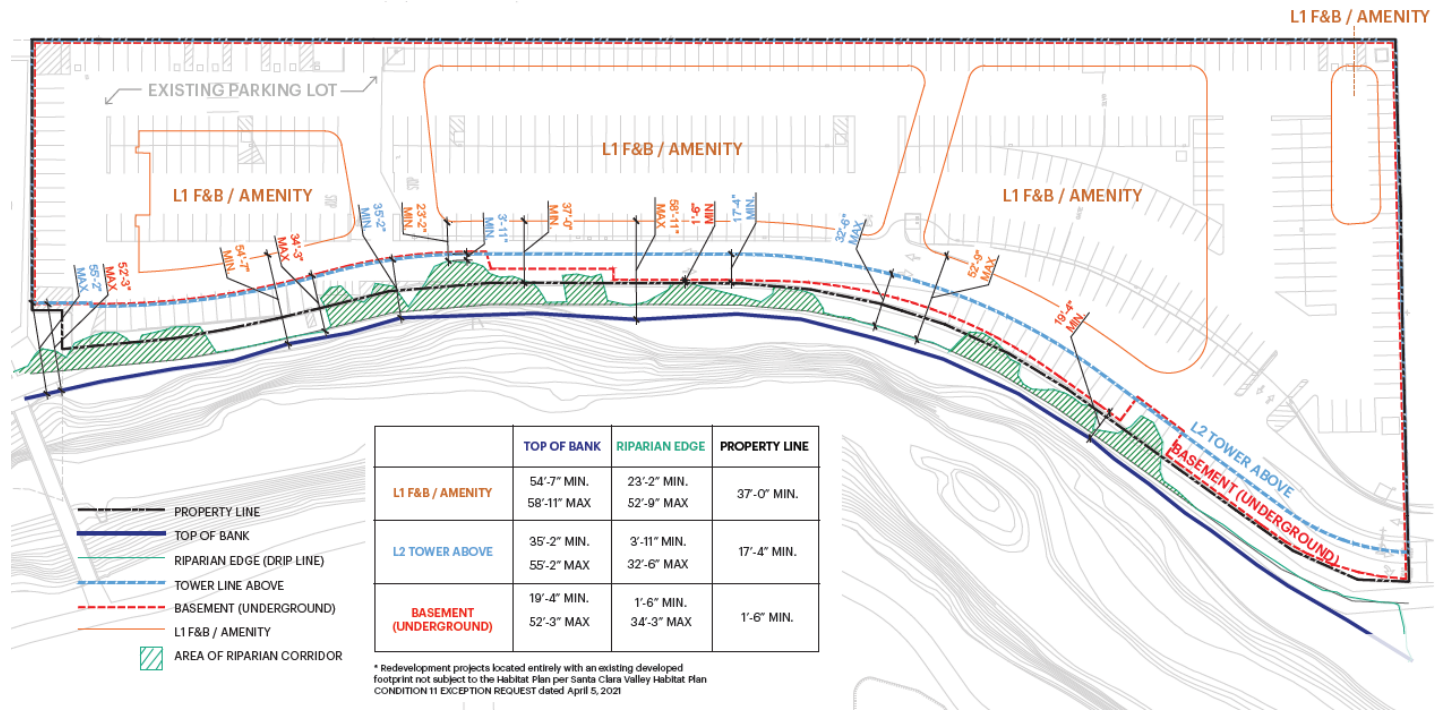


Exhibit F: Riparian Setback Diagram



SP20-005 & T21-005

Links to Attachments G-L

Click on the title to view document

Exhibit G:	Draft EIR Resolution & MMRP
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Correspondence received after August 18, 2021	