

DETERMINATION OF CONSISTENCY WITH THE MITIGATED NEGATIVE DECLARATION

Pursuant to Sections 15064 and 15162 of the CEQA Guidelines, the City of San José has determined that the project described below does not involve significant effects, and the project is consistent with the project description analyzed in the Mitigated Negative Declaration (MND) for the Emergency Interim Housing (EIH) Programs (File No. ER22-198) and adopted by City Council Resolution No. RES2023-380 on October 24, 2023. Therefore, the City of San José can act on this project as being within the scope of the EIH Programs MND.

File Number and Project Name: File. ER24-015, Cherry Avenue Site

This EIH project would accommodate up to 116 sleeping units. Communal spaces would include restrooms and showers, dining areas, laundry facilities, and outdoor community space with a pet run and a smoking area. Storage facilities for residents would also be provided. Case management and 24-hour security would be provided. In addition to the sleeping units, structures on the site would include one or more communal buildings, storage units, a single guard shack, and an insect eradicator shed. All structures would be temporary. This EIH site is expected to be in operation for a maximum of 10 years or less depending upon need. After operations cease, all structures would be removed, and the project site would be returned as much as possible to existing conditions.

Location: Cherry Avenue, San José, CA 95134, APN: 458-16-035

Council District: 9

The environmental impacts of this project were addressed in the MND and supporting Initial Study entitled “Emergency Interim Housing Programs Project” that was adopted by City Council Resolution No. RES2023-380 on October 24, 2024. Specifically, the following impacts were reviewed and found to be adequately considered by the MND:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Aesthetics | <input checked="" type="checkbox"/> Mineral Resources |
| <input checked="" type="checkbox"/> Agriculture and Forestry Resources | <input checked="" type="checkbox"/> Noise and Vibration |
| <input checked="" type="checkbox"/> Air Quality | <input checked="" type="checkbox"/> Population and Housing |
| <input checked="" type="checkbox"/> Biological Resources | <input checked="" type="checkbox"/> Public Services |
| <input checked="" type="checkbox"/> Cultural Resources | <input checked="" type="checkbox"/> Recreation |
| <input checked="" type="checkbox"/> Energy | <input checked="" type="checkbox"/> Transportation |
| <input checked="" type="checkbox"/> Geology and Soils | <input checked="" type="checkbox"/> Utilities and Service Systems |
| <input checked="" type="checkbox"/> Hazards and Hazardous Materials | <input checked="" type="checkbox"/> Wildfire |
| <input checked="" type="checkbox"/> Hydrology and Water Quality | <input checked="" type="checkbox"/> Mandatory Findings of Significance |
| <input checked="" type="checkbox"/> Land Use and Planning | |

ANALYSIS:

There are many designs and structures that are used for transitional housing units and the market is rapidly developing to provide various forms of the actual units. The EIH Programs MND analyzed the option with the greatest massing for a conservative analysis of project impacts. For this project the sleeping cabin units would be single-story modular singles, doubles, and Americans with Disabilities Act (ADA) units. These units are smaller than the two-story modular units analyzed in the EIH Programs MND. All other aspects of the project in terms of services, access, fencing, and safety features are comparable to what was analyzed in the EIH Programs MND.

Because this EIH project will have a smaller massing and less intensive development than that analyzed in the EIH Programs MND, this project is consistent with the analysis in that document. Furthermore, the City

consulted with the Habitat Agency and received a Habitat Conservation Plan Condition 11 Exception for the temporary development of a parcel adjacent to a Category 1 stream. See approved Exception Request attached below.

A Mitigation Monitoring and Report Program (MMRP) was adopted for the EIH Programs MND (see attached, below). That MMRP identified Mitigation Measures for potential air quality, hydrology and water quality, and tribal cultural resources impacts based on the location of the project site. The potential impacts on these resources for this Via del Oro EIH site are discussed below:

Impact Air-1: Future projects located within 1,000 feet of existing sensitive receptors could result in a significant health risk impact from toxic air contaminants during construction: The nearest residences to this project site are within 500 feet to the east, and a hotel is located approximately 200 feet to the north of the site (see Figure 1). Therefore, Mitigation Measures AIR-1.1 and 1.2 would apply to this project.

Impact HYD-1: Construction of EIH projects within Special Flood Hazard Areas or in proximity to waterways could increase the risk of project inundation: This project site is in Zone D of the FEMA Flood Insurance Rate Map Panel 06085C0263H (see Figure 2). Zone D is not a Special Flood Hazard Area. Therefore, Mitigation Measure HYD-1.1 does not apply to this project.

Impact TCR-1: Construction of EIH projects within one mile of a creek, or 1,000 feet of a known Tribal Cultural Resource, could result in significant impacts to unknown Tribal Cultural Resources from ground disturbing activities: The project site is adjacent to Guadalupe River and is in an archaeologically sensitive area (see Figure 3). Therefore, Mitigation Measure TCR-1.1 would apply to this project.

In compliance with Mitigation Measure TCR-1.1, the City will initiate consultation with Tamien Nation and come to an agreement on any additional measures that may be required.

Based on the above analysis, Mitigation Measures AIR-1.1 and 1.2 and TCR-1.1 are required for this project. The project will be subject to the Standard Permit Conditions identified in the EIH Program MND (see attached, below).

There would be no new significant environmental impacts that would result from this project pursuant to CEQA Guidelines 15162. No further analysis under CEQA is required.

Christopher Burton, Director
Planning, Building and Code Enforcement

1/31/24

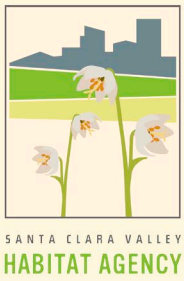
Date


Deputy

Environmental Project Manager: Reema Mahamood

Attachments:

Approved Habitat Conservation Plan Condition 11 Exception Request
MMRP
Figures
Standard Permit Conditions



Santa Clara Valley Habitat Plan

CONDITION 11 EXCEPTION REQUEST

Date	April 3, 2023
Subject	Stream and Riparian Setback Condition (Condition 11) Exception for Cherry Ave EIH City of San Jose
Recommendation	Approve exception to 100ft setback to not less than 50ft from top of bank
Reviewed by	Don Arnold, Planner

The City of San Jose is requesting an exception from Condition 11, Stream and Riparian Setback Condition for their project titled Cherry Ave Emergency Interim Housing (EIH) (“Project”). The Project is located within the City of San Jose (“City”) on an undeveloped 2.52-acre lot along Cherry Avenue, north of State Route 85 and the Sanchez Percolation Ponds, and adjacent to the Guadalupe River (see Figure 1). The City would develop this site for EIH to house currently unhoused persons with the ultimate goal of transitioning them into permanent housing.

The City would install 12 single story modular buildings, each containing 8 residential units, totaling 96 residential units. Each residential unit will include a bedroom and a bathroom. Other modular buildings include a one-story administrative building, a one-story laundry facility and multiple storage units. Common areas for gatherings both indoor and outdoor will be developed. The 2.52-acre lot would have a perimeter fence around the entire site. All areas within the perimeter fence will be considered permanently developed under the Santa Clara Valley Habitat Plan (“Plan”).

The Guadalupe River is a Category 1 Stream, within the Urban Service Limit, with a slope of <30%, thus requiring a 100-foot stream setback from top of bank. According to the request, the stream setback exception is for encroachment into the 100-foot setback as it exists within the fire lane on the empty lot. This encroachment will vary along the Project boundary but will not allow any permanent development within 50-feet of top of bank at this site.

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

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

3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Exception Applicability and Evaluation

The proposed project would install emergency modular housing for 96 residences and related housing services (laundry facilities, meeting space), plus parking spaces for vehicles. The proposed encroachment varies from 1-foot up to 50-feet into the Guadalupe River Category 1 required stream setback of 100-feet.

The following Condition 11 criteria are cited as findings for the recommendation of the is Stream Setback Exception Request:

1. The existence of legal uses within the setback.

The 2.52-acre project site is owned by Valley Water and is adjacent to the Guadalupe River. The majority of the site is empty lot with an existing maintenance road between the site and the riparian buffer. The use and maintenance of the fire lane/maintenance road within the 100-foot setback are legal uses. Valley Water has water recharge facilities and a flood control project existing within the 100-foot setback as well.

The site is also adjacent to existing commercial development. A number of human disturbances (both legal and illegal) occurring on site are likely to continue for the foreseeable future. This project may address some of those concerns if implemented.

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

Maintaining the 100-foot setback would reduce the developable land by a significant percentage and cut the number of residential units to below the minimum needed to make this site feasible. Finding locations for EIH sites in the City is a formidable challenge because of the cost of property which has pushed people out of their homes. This has created a need for the City to provide opportunities to its residents to transition into affordable housing and out of the cycle of homelessness.

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

For a site to be a feasible EIH site, the site must be able to support 80-100 units. Meeting the required setback of 100-feet would not allow the minimum 80 units to be installed and would force the City to deviate from the standard established for EIH sites.

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

The EIH site is adjacent to Reach 12 of the Upper Guadalupe River Flood Control Project. The EIH site is also adjacent to a creek within the geographic scope of the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE). These two large-scale efforts have species and natural communities impacts that they are mitigating for and should be consulted as to the limitations this project may put on their efforts.

It is true that no Plan sensitive land covers will be impacted by this project, however that does not mean that important habitat functions do not exist. We concur with the wildlife agency comments that there are potentially important habitat functions for the Western Pond Turtle and other wildlife on this site. This loss of upland (foraging/nesting/etc..) habitat adjacent to streams is why the stream setback was established.

The EIH installation and perimeter fencing should help remove some of the existing impacts occurring on the site, resulting from illegal encampments. The inclusion within the Water Resources Protection Zone, with increased patrolling, physical barriers, and perimeter activations should also improve and maintain the biological resources on site. Having dedicated funds for maintaining the biological functions of this site would help support the goals and objectives the Plan.

Approval of the stream setback exception would not preclude achievement of the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Determination

Based on the justification provided by the City and Valley Water, in consultation with USFWS and CDFW, the Santa Clara Valley Habitat Agency recommends approval of a reduced stream setback of up to 50 feet from top of bank for this site.

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

Figure 1. Site Map



Attachment 1: Wildlife Agency Comments

Below are the comments from the state and federal wildlife agencies concerning the stream setback exception request for the Cherry Ave EIH project.

Blinn, Brenda@Wildlife <Brenda.Blinn@wildlife.ca.gov>

I don't have any additional comments from what Joseph outlines below. I don't see how a conservation easement would be feasible on a portion of the property, but restoration and enhancement measures should be a component of the proposed project to mitigate for impacts.

Thanks,

Brenda

Here are my comments on the City of San Jose's Cherry Avenue Emergency Interim Housing (EIH) Project Riparian and Stream Setback Condition (Condition 11) exception request.

1. At one of the recent Guadalupe One Watershed public meetings that Valley Water hosted, several comments were made about concerns about stream setback exceptions and their impacts to steelhead and other riparian species and wildlife corridors. Guadalupe River is one of the important Central California Coast steelhead streams. Valley Water's Fish and Aquatic Habitat Collaborative (FAHCE) program is required to enhance habitat for Central California Coast steelhead along the Guadalupe River under the settlement agreement. CDFW, NMFS, USFWS, and several NGOs are Initialing Parties (IP) to the FAHCE program and work collaboratively with Valley Water to ensure the success of FAHCE in restoring and improving habitat for steelhead. Thus allowing the City of San Jose and Valley Water a stream setback exception along the Guadalupe River would seem to counter the collaborative efforts of the FAHCE program to enhance habitat for steelhead along the Guadalupe River. I defended the Santa Clara Valley Habitat Plan (SCVHP) at the recent Guadalupe One Watershed public meeting by saying that in only rare cases are stream setback exceptions allowed. Will the Cherry Avenue EIH project have a public review and comment period and public meetings so that NGOs, NMFS, SFRWQCB, and the public can comment on the proposed stream setback exception? At a minimum, Valley Water and the City of San Jose should bring this project to the FAHCE IP meeting for review and comment by the FAHCE IP members and should incorporate any recommendations from the FAHCE IP.
2. The issue of the many unhoused encampments along riparian corridors in San Jose was also raised as a concern for steelhead, other riparian species, wildlife corridors, and water quality at the recent Guadalupe One Watershed public meeting. The proposed Cherry Avenue EIH with its proposal to provide emergency interim housing for the unhoused on a site that currently has an unhoused encampment would help reduce the effects of unhoused encampments in the area and associated

trash and water quality issues along Guadalupe Creek which would be consistent with the goals of FAHCE, but if the project is allowed a stream setback exception it would reduce the benefits to steelhead, western pond turtle, riparian birds, other riparian species, water quality, and wildlife corridors along the Guadalupe River. The Guadalupe River riparian corridor is the only wildlife corridor available to wildlife in the area; thus granting the stream setback exception would further encroach into the narrow wildlife corridor. At a minimum, if the stream setback exception is granted, there should be a requirement for dedicated funding for an ongoing trash cleanup program at the site and within the Water Resources Protection Zone shown in Figure 7. Fencing should be installed to prevent the public from entering the riparian corridor as was done for another City of San Jose residential development project that was granted a stream setback exception under the SCVHP---in that case a conservation easement was recorded on the undeveloped portions of the property next to the stream to preclude any future disturbance of the riparian area. The proposed Cherry Avenue EIH should similarly grant a conservation easement for any undeveloped portions of the property. The fencing that is installed to keep people out of the riparian corridor should have a gap at the bottom to allow western pond turtles and amphibians to pass through similar to what Valley Water did for the Singleton Road bridge project along Coyote Creek to allow western pond turtles access to adjacent grassland nesting and dispersal habitat at the City of San Jose's landfill.

3. p. 3, *"The City and Valley Water would coordinate to evaluate a mixture of patrol, physical barriers, perimeter activations and other mechanisms to ensure ongoing preservation of the Water Resources Protection Zone. These options are in line with other efforts implemented by the City at other sensitive locations. The City expects to engage with Valley Water in the development and ongoing preservation of the Water Resources Protection Zone. The area currently has unauthorized tent camps which has adversely impacted the riparian area along the Guadalupe River. The proposed EIH project together with the Water Resources Protection Zone would reduce or eliminate the illegal dumping and debris along the riverbank, and the damage to sensitive resources."* Comment: Valley Water and the City of San Jose should bring this project to the FAHCE IP meeting as soon as possible for review and comment by the FAHCE IP members and should incorporate any recommendations from the FAHCE IP for protection and preservation of the Water Resources Protection Zone. There should be ongoing funding for a trash cleanup program with the Water Resources Protection Zone shown in Figure 7.
4. *"Encroachment into the 150-foot or 100-foot buffer would not create an impact because there are no sensitive species or habitat on the project site."* Comment: Western pond turtles have been observed just upstream and downstream of the project site according to the CNDDDB. The project site contains suitable grassland nesting and dispersal habitat for the western pond turtle which the stream setback exception would impact. Suitable sunny, grassland nesting habitat for the western pond turtle should be restored, maintained, and protected from disturbance within the Water Resources Protection

April 3, 2023

Zone to mitigate for the loss of nesting habitat within the stream setback. Suitable basking habitat for the western pond turtle should be installed along the Guadalupe River and in the ponds within the Water Resources Protection Zone.

5. The federal candidate monarch butterfly may breed, forage, and disperse in the project area and the Water Resources Protection Zone. Should plant, restore, and maintain suitable breeding and nectar habitat for the monarch butterfly at the Water Resources Protection Zone due to the loss of suitable breeding and nectar habitat for the monarch butterfly from the proposed project including within the stream setback exception area. Should plant early-emerging milkweed species and early-emerging nectar plants for the western monarch butterfly in addition to nectar plants that are available throughout the breeding and migratory period for the western monarch butterfly. Should implement the USFWS's conservation recommendations for the western monarch butterfly in the proposed project and the Water Resources Protection Zone including avoidance and minimization measures and planting appropriate milkweed and nectar plant species: <https://xerces.org/publications/planning-management/western-monarch-butterfly-conservation-recommendations>

Thanks,

Joseph

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

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

MITIGATION MONITORING AND REPORTING PROGRAM

Emergency Interim Housing Programs Project

File No. ER22-198

September 2023



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Emergency Interim Housing Programs Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

The mitigation measures enumerated in this document would reduce the level of impact of potential environmental effects of the proposed action. In all cases, these mitigation measures would reduce the impact of effects determined to be significant prior to mitigation to less-than-significant levels.

This document does *not* discuss those subjects for which the IS/MND concluded that the impacts from implementation of the project would be less than significant.

The City of San José hereby agrees to fully implement the mitigation measures described below, which have been developed in conjunction with the preparation of an IS/MND for the Project. The City understands that these mitigation measures, or substantially similar measures, will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to less than significant levels.



MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
AIR QUALITY					
Impact AIR-1: Future projects located within 1,000 feet of existing sensitive receptors could result in a significant health risk impact from toxic air contaminants during construction.					
MM AIR-1.1: Emergency Interim Housing (EIH) projects proposing development within 1,000 feet of existing sensitive receptors as defined by the Bay Area Air Quality Management District (BAAQMD) shall have a qualified air quality consultant prepare a site-specific construction and operational health risk assessment (HRA). If the HRA demonstrates that the health risk exposures for adjacent sensitive receptors will be less than the BAAQMD project-level thresholds, no additional mitigation is necessary.	A qualified air quality consultant shall prepare a construction and operational HRA as described in MM AIR-1.1. The HRA will be submitted to the City for review.	Prior to any tree removal, grading, demolition, and/or building activity.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the HRA.	Prior to any tree removal, grading, demolition, and/or building activity.
MM AIR-1.2: If the HRA demonstrates that the health risk exposures for adjacent receptors will be above BAAQMD project-level thresholds, projects shall implement the following measures during all phases of construction: <ul style="list-style-type: none"> Use Tier 4 engines for all off-road equipment greater than 50 horsepower and operating for more 	The City shall implement the measures described in MM AIR-1.2 during all phases of construction. Measures shall be printed on all construction documents, contracts, and project plans.	During all phases of construction.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all appropriate measures identified in the HRA to reduce emissions below the thresholds are printed on all	During all phases of construction.



MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>than 20 total hours over the entire duration of construction activities.</p> <ul style="list-style-type: none"> • Implement fugitive dust best management practices (as outlined in the Standard Permit Conditions) and, if necessary, enhanced dust control measures recommended by BAAQMD. The need for enhanced measures shall be determined by the findings in the HRA. <p>Use portable electrical equipment where commercially available and practicable to complete construction. Construction contractors shall utilize electrical grid power instead of diesel generators when (1) grid power is available at the construction site; (2) when construction of temporary power lines is not necessary to provide power to portions of the site distant from existing utility lines; and (3) when use of portable extension lines is practicable given construction safety and operational limitations.</p>				<p>construction documents, contracts, and project plans.</p>	
HYDROLOGY AND WATER QUALITY					
<p>Impact HYD-1: Construction of EIH projects within Special Flood Hazard Areas or in proximity to waterways could increase the risk of project inundation.</p>					



Planning, Building and Code Enforcement

CHRISTOPHER BURTON, DIRECTOR

**File Nos. ER22-198
Emergency Interim Housing Programs
Project**

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>MM HYD-1.1: EIH projects located within 100-year and 500-year floodplains (Federal Emergency Management Agency [FEMA] Zone AE, A, AH, or AO) shall have the first finished floor of all proposed structures raised above the base flood elevation consistent with the requirements of the Municipal Code (Floodplain Ordinance 17.08) and General Plan policies EC-5.1 and IN-3.7.</p>	<p>The City shall implement measure MM HYD-1.1 during the development review process and during construction. Measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Prior to any tree removal, grading, demolition, and/or building activity</p>	<p>Director of Planning, Building and Code Enforcement or Director's Designee.</p>	<p>Review and approve design plans.</p>	<p>Prior to any tree removal, grading, demolition, and/or building activity.</p>
TRIBAL CULTURAL RESOURCES					
<p>Impact TCR-1: Construction of EIH projects within one mile of a creek, or 1,000 feet of a known Tribal Cultural Resource, could result in significant impacts to unknown Tribal Cultural Resources from ground disturbing activities.</p>					
<p>MM TCR-1.1: Upon identification of an EIH site, the City shall notify tribal representatives of Tribes with a traditional or cultural affiliation in the City of San José who have requested consultation under AB 52. Notification shall be made via electronic mail, and such notification shall include a site address, Assessor's Parcel Number(s), a location map, and conceptual site plan (if available). The notification shall also include information on proposed grading and trenching. Tribal representatives will have 30 days from the date of the notice to respond and request consultation and/or additional mitigation measures depending on the</p>	<p>Once future project sites are identified the City shall notify tribal representatives as described in MM TCR-1.1.</p> <p>If the additional mitigation measures are required, the City shall prepare an ARTP, provide at least one cultural sensitivity training to construction personnel prior to the initial ground-</p>	<p>During the development review process. For additional mitigation required, during construction.</p>	<p>Director of Planning, Building and Code Enforcement or Director's Designee.</p>	<p>Notify tribal representatives of development once future project sites are identified.</p>	<p>During the development review process. For additional mitigation required, during construction.</p>



MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>characteristics of the site and the project. Additional mitigation measures may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • Preparation of an Archaeological Research Treatment Plan (ARTP), which will include guidelines if resources are discovered during site construction. • Conducting a cultural sensitivity training for construction workers in coordination with a Native American Tribal representative from a Tribe with a traditional or cultural affiliation in the City of San José and registered with the Native American Heritage Commission (NAHC). • Engagement of a Native American Tribal Monitor from a Tribe with a traditional or cultural affiliation in the City of San José and registered with the NAHC to be present during ground disturbing activities. • Engagement of an archaeological monitor to be present during ground disturbing activities. 	<p>breaking activities with a qualified Native American Tribal representative, and engage with tribal representatives and/or archaeological monitor to be present during ground disturbing activities, as described in MM TCR-1.1.</p> <p>The ARTP and evidence of the cultural sensitivity training shall be submitted to the Director of Planning, Building and Code Enforcement or Director’s Designee.</p> <p>Measures shall be printed on all construction documents, contracts, and project plans.</p>				

Source: City of San José. *Emergency Interim Housing Programs Initial Study*. June 2023.



Figure 1 - Site Location

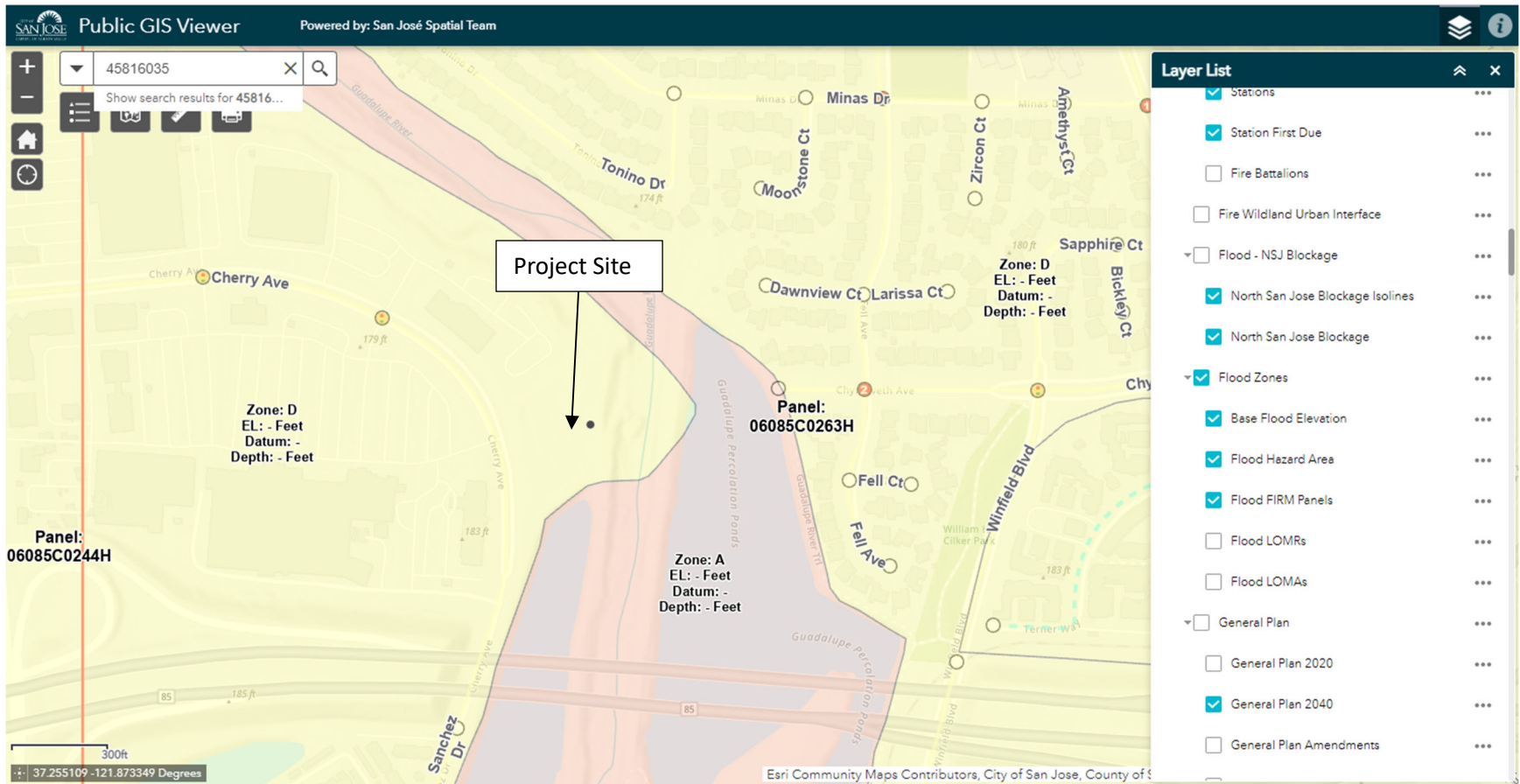


Figure 2 - Flood Zone

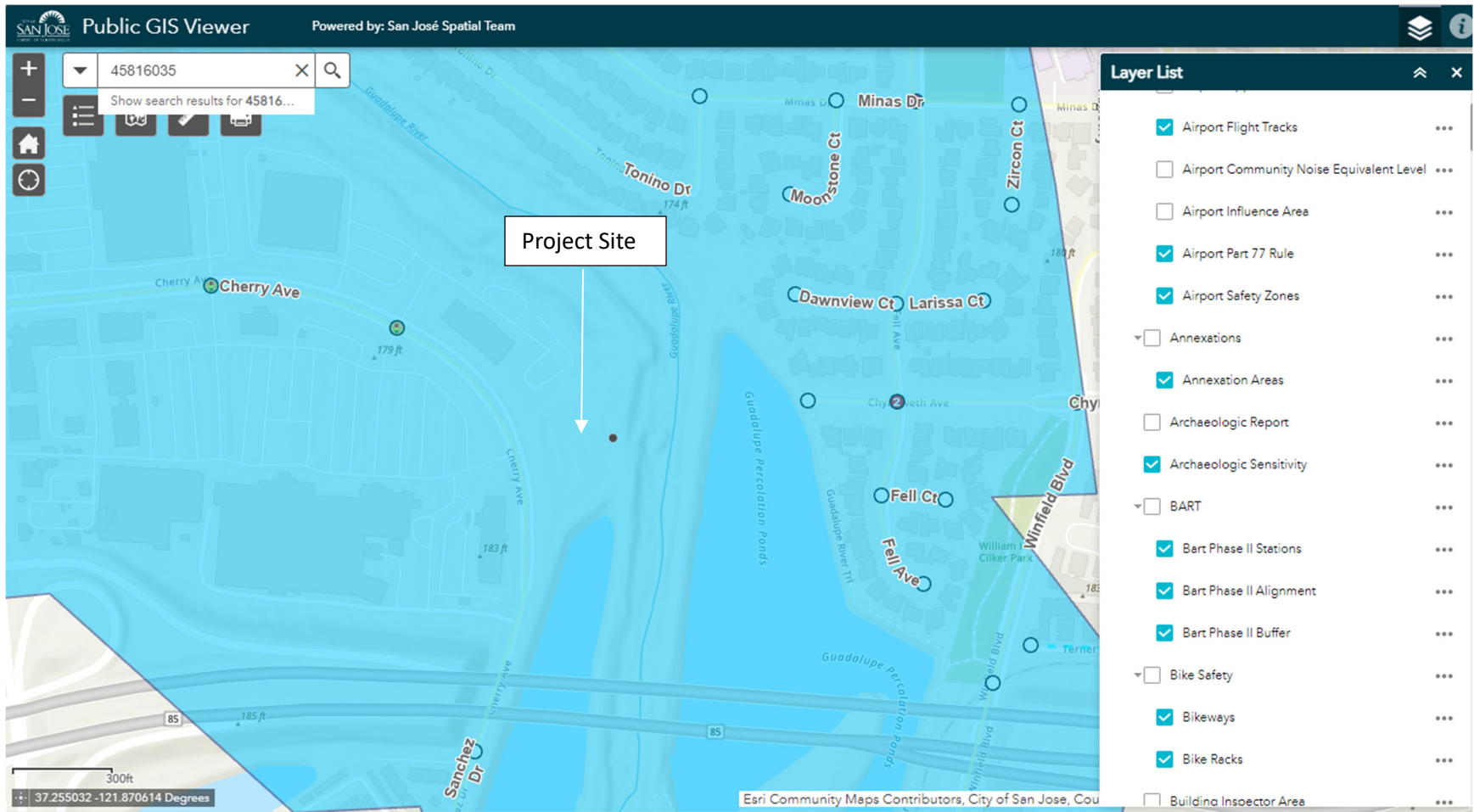


Figure 3 - Archaeological Sensitivity Areas

EMERGENCY INTERIM HOUSING PROGRAMS MITIGATED NEGATIVE DECLARATION
(PLANNING FILE NO. ER22-198)

STANDARD PERMIT CONDITIONS FOR ALL EIH PROGRAMS

Standard Permit Conditions:

Construction Emissions:

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Remove visible mud or dirt track-out onto adjacent public roads using wet-power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Limit all vehicle speeds on unpaved roads to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and properly tune construction equipment in accordance with manufacturer's specifications. A certified mechanic shall check all equipment prior to operation to determine that equipment is in proper operating condition.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

following Standard Permit Conditions required for CEQA compliance.

Standard Permit Conditions:

- **Nesting Birds:**

- Construction shall be scheduled to avoid the nesting season (February 1 to August 31). If it is not feasible to schedule construction between September 1 and January 31, pre-construction nesting bird surveys shall be completed prior to tree removal or construction activities in order to avoid impacts to nesting birds. Surveys shall be completed by a qualified biologist no more than 14 days before demolition or construction activities begin. During this survey, the biologist or ornithologist shall inspect all trees and other nesting habitats in and immediately adjacent to the construction areas for nests.
- If an active nest is found in an area that would be disturbed by construction, the ornithologist shall designate an adequate buffer zone to be established around the nest, in consultation with the California Department of Fish and Wildlife (CDFW). The buffer would ensure that nests shall not be disturbed during project construction. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for seven days or more and then resumes again during the nesting season, an additional survey would be necessary to avoid impacts on active bird nests that may be present.
- The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the Director of Planning, Building and Code Enforcement prior to construction.

Standard Permit Condition:

Santa Clara Valley Habitat Plan. The project may be subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

Standard Permit Condition:

Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's

designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Standard Permit Condition:

Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- The MLD identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

Standard Permit Conditions:

- **Soil Erosion/Loss of Topsoil:**
 - All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
 - Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.

Standard Permit Condition:

If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

Standard Permit Conditions:

Construction-related water quality.

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.

- All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Standard Permit Condition:

Post-construction impacts.

- The project shall design and construct low-impact development (LID) stormwater treatment control measures to treat runoff from impervious surfaces.