
San Francisco Bay Regional Water Quality Control Board

November 18, 2020

Governor's Office of Planning & Research

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Nov 18 2020

STATE CLEARINGHOUSE

City of San Jose

ATTN: Shannon Hill, Environmental Project Manager (shannon.hill@sanjoseca.gov)

200 East Santa Clara Street, 3rd Floor

San Jose, CA 95113

Subject: San Francisco Bay Regional Water Quality Control Board Comments on the *Downtown West Mixed-Use Plan (DWMUP) Draft Environmental Impact Report* (File Nos.: GP19-009, PDC19-039, and PD19-029), *City of San Jose, Santa Clara County*
SCH No. 2019080493

Dear Shannon Hill:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Downtown West Mixed-Use Plan (DWMUP) Draft Environmental Impact Report* (File Nos.: GP19-009, PDC19-039, and PD19-029), *City of San Jose, Santa Clara County* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the Downtown West Mixed-Use Plan (DWMUP; Project).

Project Summary. Google LLC, the Project applicant, is proposing the Project as part of the company's expansion of its workforce and business operations in the Bay Area. To accommodate workforce growth and create more efficient transportation linkages between Google workplaces and employees' homes, the Project is located largely in the area included in the City of San José's Diridon Station Area Plan (DSAP), which envisions a new high-density job center anchored by public transportation. The proposed project would include a mix of uses generally consistent with the DSAP, providing for a mixed-use Downtown neighborhood.

The project site is located in the western portion of Downtown San José, mostly in the DSAP area; it is generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, South Autumn Street, and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west.

The Project consists of the demolition of most existing buildings on the Project site and phased development of new buildings on approximately 81 acres on the west side of Downtown San José. The Project would require amendments to the General Plan and

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

DSAP, Planned Development Rezoning, a Planned Development Permit, including adoption of the Downtown West Design Standards and Guidelines; Vesting Tentative Map(s)/Tentative Map(s)/Final Map(s); and related entitlements from the City including, but not limited to, a Development Agreement and permits related to tree removal, demolition, grading, building, encroachment, solid waste, and historic preservation.

Summary. As is discussed below, we are concerned that the DEIR underestimates the Project's long-term impacts to riparian and aquatic habitat along Los Gatos Creek and the Guadalupe River; these water bodies provide Essential Fish Habitat (EFH) and critical habitat for central California coast steelhead. As we note below, the Project's long-term impacts to riparian and aquatic habitat may be mitigated significantly if the Project fully implements the San Jose Riparian Policy by implementing a full 100-foot riparian setback. Since the majority of the existing buildings in the Project area will be demolished, the Project provides a unique opportunity to re-establish a significant riparian corridor within the urban core. Implementing the full 100-foot riparian setback in the Project area will also set aside land that that will be necessary for the successful implementation of adaptive management measures if long-term negative impacts to riparian and aquatic habitat are observed in post-construction monitoring for the Project. We are also concerned that proposals for Habitat Enhancement Plans or adaptive management measures are not presented in sufficient detail in the DEIR.

Comment 1. Project work to enhance flood conveyance in Los Gatos Creek will require a permit from the Water Board.

The discussion of flood control improvements in Section 2.11, *Flood Control Improvements*, includes discussion of a potential creek restoration program in Los Gatos Creek.

In addition to the West San Fernando Street bridge replacement, the applicant proposes a creek restoration project with ongoing maintenance within Los Gatos Creek to remove the debris, logjams, invasive species, and dead trees in the channel to improve floodwater conveyance. Engineered log structures or other equivalent bioengineered features would be installed in the waterway for fish habitat enhancement to improve ecological function. Ongoing periodic stream maintenance activities would also occur as part of the proposed project, in conjunction with Valley Water, to maintain the creek's capacity for conveying floodwaters. These improvements would require collaboration with and approval by other landowners and regulatory agencies.

Please note that the proposed creek restoration program will require permits from the U.S. Army Corps of Engineers (Corps), the California Department of Fish and Wildlife (CDFW), and the Water Board, as well as consultation with the National Marine Fisheries Service (NMFS). Since the impacted reach of Los Gatos Creek contains Essential Fish Habitat (EFH) and is immediately upstream of critical habitat for the federally listed central California coast (CCC) steelhead, it is likely that the creek restoration program will require CEQA review before it can receive discretionary permits from State agencies.

Comment 2. Section 2.15.8 should include a reference to the State of California's Porter-Cologne Water Quality Act.

Section 2.15.8, *Other State, Regional, and Local Entities*, lists the Project activities that will require permits from the Water Board.

San Francisco Bay Regional Water Quality Control Board: Clean Water Act Section 401 certification for work in Los Gatos Creek, including the proposed new footbridge, the West San Fernando Street bridge replacement, any work on other bridges, and potentially permit approval if any trails or pathways were to be developed within the riparian habitat of Los Gatos Creek. The district water reuse facility or facilities would require approval from the San Francisco Bay Regional Water Quality Control Board under current regulations for on-site treatment and use of non-potable water.

Please revise this text to note that work in waters of the State will also require the issuance of Waste Discharge Requirements (WDRs), pursuant to the State's Porter-Cologne Water Quality Act. The Project will require Clean Water Action Section 401 Certification and/or WDRs from the Water Board for the replacement of stormwater outfalls, removal or construction of bridges, any dewatering necessary for in-channel work, and the proposed creek restoration program in Los Gatos Creek. The Porter-Cologne Act is discussed in Section 3.8.2 of the DEIR (see page 3.8-10).

Comment 3. Please revise text in Section 3.2 to note that Consultation with the National Marine Fisheries Service (NMFS) is necessary for Project impacts that may impact salmonids.

In Section 3.2, *Biological Resources, Impacts and Mitigation Measures*, Impact BI-1 is discussed:

Impact BI-1: The proposed project could have a substantial adverse effect, either directly, indirectly, or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS (western pond turtle, central California coast steelhead distinct population segment, nesting birds, special-status bats). (*Less than Significant with Mitigation*)

Please note that NMFS is the federal agency that oversees projects that may impact CCC steelhead of EFH for Chinook salmon.

Comment 4. The DEIR should acknowledge that Project work in the riparian corridor may impact fish species.

Impacts to special status fish are discussed in Section 3.2, *Biological Resources*. Text on page 3.2-33 states:

The potential for project construction to impact fish species is limited because most of the project site does not contain fish habitat. However, work in and adjacent to the Los Gatos Creek channel would be required to construct a new footbridge over Los Gatos Creek south of West Santa Clara

Street; a pedestrian boardwalk within or adjacent to the creek's riparian corridor and a multi-use trail as close as 10 feet from the riparian corridor; and the West San Fernando Street replacement vehicle bridge over Los Gatos Creek.

Project work that impacts riparian vegetation will impact fish habitat. Loss of riparian vegetation may have long term impacts on special status fish, if the impacts result in increased in-stream temperatures. Also, as is noted on page 3.2-63, the shadowing effects of new buildings may have impacts on riparian habitat quality. To avoid impacts to special status fish species associated with both Project construction and the post-construction impacts of the Project, providing a full 100-foot riparian setback, as specified in the San Jose Riparian Policy; is likely to be the most effective way to protect special status fish species from impacts associated with implementation of the Project.

Comment 5. Impacts to riparian habitat are not fully evaluated or mitigated in the DEIR.

Impacts to riparian habitat are discussed under Impact BI-2.

Impact BI-2: The proposed project could have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations, or by CDFW or USFWS. (*Less than Significant with Mitigation*)

This section addresses impacts on riparian habitat and sensitive natural communities, including EFH and designated critical habitat for project elements in Los Gatos Creek and its associated riparian corridor. As described in Section 3.2.1, *Environmental Setting*, the study area is composed primarily of developed urban land. Although no critical habitat is present, the study area does include EFH, riparian habitat, and a sensitive natural community of creeping wild rye (*Elymus triticoides*).

As described under Impact BI-5, the project would conform to the City's Policy 6-34 (riparian corridor protection) (refer to Section 3.2.2, *Regulatory Framework*). In addition, the *Downtown West Design Standards and Guidelines* (Appendix M) include specific controls for protecting riparian habitat, such as riparian setbacks; additional plantings to extend the riparian corridor in select locations; a footbridge designed for minimal impacts on riparian habitat; replacement of chain-link fencing with wildlife-friendly fences; and control of the lighting adjacent to the riparian corridor.

As is noted below in Comment 9, the Project proposes to request exemptions from the San Jose Riparian Policy's 100-foot riparian setback. The Project site provides a unique opportunity to achieve a full 100-foot setback in the urban core of San Jose. A significantly restored, 100-foot riparian setback will benefit fish habitat in Los Gatos Creek, in particular by ameliorating Project impacts that raise the temperature of water in Los Gatos Creek. Moderating creek temperatures is essential to sustaining CCC steelhead in Los Gatos Creek and the Guadalupe River. Although the Project site does not contain critical habitat, critical habitat for CCC steelhead is located downstream of

the Project site. Enhancement of riparian habitat at the Project site will benefit water quality for CCC steelhead downstream of the Project site.

As is discussed in Section 3.2.2, *Regulatory Framework*, the reaches of Los Gatos Creek and the Guadalupe River within the study area are designated as EFH. The DEIR discusses construction-related impacts to EFH at the Project site. The DEIR should be improved by discussing long-term impacts to EFH associated with impacts to riparian habitat. The DEIR acknowledges that the “project also has the potential to cause increases in water temperatures in Los Gatos Creek associated with the potential loss in riparian cover, which could directly impair EFH in the study area.” The DEIR should discuss the ways in which such impacts may be ameliorated by observing the full 100-foot riparian setback in the San Jose Riparian Policy.

Comment 6. At locations where the Project will impact existing mitigation sites, additional mitigation will be required for impacting a mitigation site.

Text on page 3.2-59 discusses impacts associated with the replacement of a storm drain outfall at West Santa Clara Street:

An existing 18-inch-diameter storm drain outfall into Los Gatos Creek, currently located under the West Santa Clara Street overcrossing, would be replaced with a 33-inch-diameter pipe, headwall and apron, or riprap, on the west bank of Los Gatos Creek south of the Santa Clara Street overcrossing. The new outfall would include a larger flap gate. From the top of bank to approximately 12 feet below the top of bank, this area is vegetated with creeping wild rye, a sensitive natural community. Impacts on creeping wild rye are analyzed in detail later in this impact discussion under *Creeping Wild Rye Sensitive Natural Community*. An additional 20 to 25 feet of riparian vegetation extends from the lower edge of the creeping wild rye down the bank to the channel. CDFW determines the limits of riparian vegetation on a case-by-case basis, but generally defines it as the entire area between the two top-of-bank areas; therefore, for this analysis, the area of the top of bank down to the channel in the immediate area of creeping wild rye is considered riparian habitat.

The work at the outfall at the Santa Clara Street Overcrossing appears likely to impact permit-required mitigation plantings for the Stabilization of the Left Bank of Los Gatos Creek at 450 West Santa Clara Street (CIWQS Place ID No. 838800; CIWQS Reg. Meas. No. 415739). Mitigation plantings that are required by permits issued by the Water Board are expected to remain undisturbed in perpetuity. If the Project will impact mitigation plantings, then additional mitigation will be required to compensate for impacts to permit-required mitigation plantings. The DEIR should acknowledge that additional mitigation will be required when a prior mitigation site is impacted.

Comment 7. More information is required to assess the Project's impacts on riparian habitat in Los Gatos Creek that will be associated with shade from taller buildings, and to sufficiently mitigate those impacts.

The discussion of *Operational Impacts* on page 3.2-63 of the DEIR includes a discussion of impacts associated with shading from new, tall buildings in the Project area:

Under existing conditions, the Los Gatos Creek riparian corridor adjacent to the project site receives minimal shade from buildings. Relatively few existing buildings are adjacent to (or within 100 feet of) the creek, and those that do exist are generally no more than two stories in height. Many existing structures near Los Gatos Creek are single-story buildings. However, as shown in the analysis in Appendix L, development of the proposed project would substantially increase building shadow on the riparian corridor of Los Gatos Creek, particularly during the six months between the fall equinox and the spring equinox. It is important to note that, within the project area, the Los Gatos Creek riparian corridor is composed of a fairly dense riparian canopy of mature trees, which shades the creek; however, the seasonal extent has not been quantified.

Increased water temperatures may result from a reduction in riparian cover due to the substantial increase in shading described above, which may increase the exposure of instream habitat to direct sunlight. In addition, increased water temperatures may result from heat radiation from the newly constructed buildings and hardscape environments. This increased exposure to direct sunlight and/or heat radiation from buildings, and the resulting potential increases in water temperature, could impair the riparian environment. Increased water temperatures may result in the exclusion of fish from this portion of Los Gatos Creek and may prevent steelhead from migrating upstream or dispersing throughout the Los Gatos Creek–Guadalupe River system.

Additional impacts on instream habitat may result from a loss of riparian cover, such as decreased prey availability for fish and a lack of cover for holding fish. Some aquatic insects, the primary source of freshwater prey for steelhead, feed on leaves and woody material that fall in the water; terrestrial insects utilizing riparian vegetation occasionally fall into the waterway as well, providing another source of food for fish.

For these reasons, the impact on riparian habitat from shading by adjacent buildings and from changes in water temperature caused by losses in riparian cover or heat island effects would be **potentially significant**.

To mitigation potential negative impacts on temperature in Los Gatos Creek, text on page 3.2-67 states that:

. . . the proposed project would implement the following mitigation measures to reduce potentially significant operational impacts on riparian habitat to **less than significant with mitigation incorporated**. These measures would reduce the impacts because they require monitoring water temperatures

within Los Gatos Creek to ensure that steelhead are not exposed to harmful conditions (the threshold of concern is 71.6°F); monitoring riparian vegetation before and after building construction adjacent to the riparian corridor; establishing performance criteria for existing riparian vegetation; and, if performance criteria are not met, implementing habitat enhancement.

Mitigation Measure BI-2c: Monitor Effects of Shading and Heat Island on Riparian Vegetation and Stream Temperature

To evaluate the effects of building shading on riparian vegetation and water temperature in Los Gatos Creek, the project applicant shall implement an annual monitoring program that includes a baseline assessment and continues annually for 15 years following construction. Two or more unshaded reference sites shall be included for comparison to shaded areas to account for vegetation effects that are unrelated to the project, such as from drought. The following performance standards shall be used to evaluate vegetation and water temperature changes over time, and determine whether project-related shading is negatively affecting the riparian corridor, or whether the increased urban footprint is negatively affecting water temperatures in Los Gatos Creek.

One year of pre-Project monitoring is not likely to be sufficient to establish baseline temperatures and vegetation conditions, prior to tracking post-Project impacts on habitat quality in Los Gatos Creek. In light of the high inter-annual variability in weather in the Bay Area, three to five years of baseline monitoring should be conducted prior to construction to establish baseline conditions for riparian habitat and water temperature in Los Gatos Creek at the Project site.

The DEIR states that the proposed monitoring would consist of:

Aquatic monitoring. The project applicant shall use the following methodology to study water temperature in Los Gatos Creek during the 15-year monitoring period. Prior to project construction, water and ambient air temperature loggers shall be installed at three locations within and adjacent to the project site. One logger shall be installed in upstream Los Gatos Creek, one within the affected reach adjacent to building construction, and one downstream of the project site. Care shall be taken to ensure that each of these temperature loggers is installed in similar habitat types (e.g., pool, riffle, run) within similar habitat conditions (e.g., amount of cover, depth, flow rate). Loggers at these three locations shall record hourly water temperature values before, during, and after project construction. If the difference in water temperature between the upstream and downstream monitoring locations increases substantially over time, particularly above the threshold of concern (71.6 degrees Fahrenheit), then additional adaptive actions shall be implemented (e.g., riparian planting, increase in urban tree canopy, treatment of runoff) to compensate for any increase in stream temperature. All actions shall be consistent with the approved Habitat Enhancement Plan, described below.

More detail should be provided to demonstrate that the proposed monitoring would establish an appropriate baseline for pre-Project riparian vegetation and water

temperature. In addition, the DEIR should include a more detailed monitoring protocol so that stakeholders can review it to assess its sufficiency for characterizing creek temperatures.

In addition, the DEIR should provide more defined “adaptive actions” to ameliorate any detected increases in water temperature in Los Gatos Creek. The proposed adaptive measures include additional riparian plantings. But additional riparian plantings will not be feasible if the Project site is built out up to the edge of the Project’s reduced 50-foot riparian buffer. The entire 100-foot buffer specified in the San Jose Riparian Policy should be preserved so that land is available for additional riparian plantings to mitigate any detected increase in water temperature in Los Gatos Creek. It is difficult to find land available for riparian plantings in urbanized San Jose, because of the high cost of land and the extent of existing development adjacent to Los Gatos Creek and the Guadalupe River. Mitigation for increased temperatures in Los Gatos Creek must be provided in a location that will mitigate the locally increased temperature. The most practical location for such riparian mitigation is in the full 100-foot setback specified in the San Jose Riparian Policy.

The DEIR proposes the following monitoring of post-Project riparian habitat:

Riparian monitoring. At a minimum, riparian vegetation shaded by project buildings shall meet the following performance standards by the 15th year of post-project monitoring:

- (1) The loss of absolute cover of riparian canopy and understory cover relative to baseline conditions is less than or equal to 15 percent. (If the loss of cover exceeds this criterion, then the change shall be compared with changes measured in the reference site[s] to determine whether on-site shading is the causal factor as opposed to other external regional factors such as climate change, drought, and alterations to reservoir releases.)
- (2) There is no more than a 5 percent reduction in native species relative to non- native species for tree and woody shrub species, measured both as species richness and relative cover.

The mitigation measure includes a detailed study of riparian habitat that may be impacted by Project implementation, and specifies the conditions that would trigger the need for mitigation measures. However, mitigation measures cannot be implemented if near creek land is not set aside in which mitigation measures can be implemented. In addition, the DEIR calls for the preparation of a draft Habitat Enhancement Plan, but does not provide a sufficient description of the contents of an effective Habitat Restoration Plan. At this point in the CEQA review process, a draft Habitat Enhancement Plan should be available for review by the resource agencies and other stakeholders. Without a draft Habitat Enhancement Plan, the Project team cannot anticipate the necessary land area that will be necessary to implement a successful Habitat Enhancement Plan. In the absence of a draft Habitat Enhancement Plan, a full 100-foot riparian setback should be established so that land is available for enhancement of riparian habitat as a part of a Habitat Enhancement Plan. At this time, the DEIR does not yet demonstrate that the Project’s shading impacts on riparian habitat can be mitigated to less than significant level.

Comment 8. The DEIR only proposes mitigation for impacts to trees with diameters at breast height (DBH) of six inches or more, while regulatory agencies will require mitigation for all impacts to riparian habitat.

The Project's *Construction Impacts on creek habitat* are described on page 3.2-70:

To facilitate water conveyance, decrease flooding, and enhance habitat, the project would remove an estimated 4 dead trees and 7 live trees (non-native and native) from the riparian corridor, as well as 13 individual in-channel logs, 3 logjams, 2 logs lodged on the creek bank, and 13 aerial logs within a highly constrained stream reach from West Santa Clara Street to San Carlos Street.

Live trees larger than 6 inches diameter at breast height (dbh) removed by the project would be replaced at a minimum ratio of 3:1 (trees replaced: trees removed) for native species and 2:1 for non-native species. Removal of live trees with a dbh of 2 to 6 inches would be mitigated at a minimum of 1:1 for native trees, and no mitigation for non-native trees. No mitigation is proposed for the removal of invasive tree species regardless of dbh. Removal of dead trees would be mitigated at a ratio of 1:1 (refer to Appendix D2, the *Google Downtown San José Los Gatos Creek Enhancement Project Site Assessment Summary Report*). Replacement trees would consist of a combination of plantings of shade-tolerant riparian vegetation such as Oregon ash (*Fraxinus latifolia*), California buckeye (*Aesculus californica*), and other locally appropriate native species. With implementation of tree replacement at the ratios above, permanent impacts associated with tree removal would be less than significant.

The six-inch diameter threshold for requiring mitigation for removed riparian trees has no basis in regulations. The Water Board and CDFW usually require mitigation for all riparian trees removed by a Project.

Comment 9. To avoid impacts to Riparian habitat that includes EFH and is immediately tributary to critical habitat for CCC steelhead, the Project should implement the full 100-foot riparian setback specified in City Policy 6-34.

The discussion of Impact BI-6 on page 3.2-85 states that the Project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan.

As set forth in the discussion in Section 3.2.2, *Regulatory Framework*, the City is a Permittee of the *Santa Clara Valley Habitat Plan* (Habitat Plan), and the proposed project is within the Habitat Plan Permit Area.

Any project requesting a riparian setback reduction from City Policy 6-34 and the Habitat Plan's Condition 11 must be reviewed and approved by the City. For exceptions to the Habitat Plan's Condition 11, the stream and riparian setback requirement, an exception request is submitted to the City. The City could work with the project applicant to make any adjustments, and the City

would then provide the exception request to the Habitat Agency, CDFW, and USFWS for a 30-day period for review and comment. At the conclusion of the 30-day review period, the City would consider any comments received from these agencies and may then consider the stream and riparian setback exception request for approval.

The Habitat Plan defines the standard setback for Los Gatos Creek, a Category 1 stream inside the existing urban service area, and with a slope class of 0–30 percent, as 100 feet. As described under Impact BI-2, the project proposes 50-foot building setbacks from Los Gatos Creek, consistent with a setback reduction that may be permitted under Policy 6-34. The project would also retain certain existing buildings along South Autumn Street (Blocks D8, D9, D10, D11, D12, and D13) that are currently within 50 feet of the riparian corridor. One or more of these buildings could also be replaced within existing building footprints if retention is determined not reasonably feasible, subject to City confirmation of consistency with Policy 6-34; such replacement would be required under the Downtown West Design Standards and Guidelines to maintain or reduce the existing building footprint within the City-mandated minimum 50-foot riparian setback. The project would remove certain hardscape areas and areas of disturbed landscape behind (on the Los Gatos Creek side of) at least two of these buildings on Block D that are adjacent to the top of the stream bank, would revegetate the formerly hardscape/disturbed areas with riparian plant species, and would then install sections of a raised pedestrian boardwalk along the edge of, and in some cases within, the riparian corridor. This boardwalk would provide continuous pedestrian access along Los Gatos Creek from the VTA rail tracks north to West Santa Clara Street. Where it would be along the edge of, or intrude into, the riparian corridor, the pedestrian boardwalk would travel exclusively above the formerly paved or disturbed areas to be revegetated. Similarly, the project would develop a pedestrian boardwalk on the east side of Los Gatos Creek between the VTA tracks and West Santa Clara Street, on Block E. This boardwalk would remain outside the riparian corridor.

With implementation of Mitigation Measure BI-2a, along with Mitigation Measures BI-1a, BI-1b, and BI-1c, the proposed project would have a less-than-significant impact on the riparian corridor and the riparian habitat that it provides. Because the identification of a significant impact under CEQA depends on the finding that a project would result in a physical change in the environment (CEQA Guidelines Section 15358(b), the fact that the project would provide less than the Habitat Plan's standard 100-foot riparian setback would not rise to the level of a significant unavoidable impact, given that mitigation for any adverse physical effects is feasible through implementation of Mitigation Measures BI-1a, BI-1b, BI-1c, and BI-2a and given that a reduced setback for any proposed construction would require approval by the City during Conformance Review to ensure conformance to the Habitat Plan's reduced setback provisions.

Requesting a riparian setback reduction is not completely compliant with the Habitat Plan, especially in a reach of Los Gatos Creek that contains EFH and is immediately

upstream of a reach of the Guadalupe River that provides critical habitat for CCC steelhead. As we have noted above in Comments 5 and 7, mitigation measures in the DEIR are not yet sufficient to ensure that the Project would not have significant impacts to riparian habitat, EFH, and downstream critical habitat for CCC steelhead. It is also not clear in the DEIR why non-historic buildings are proposed to be retained within the reduced 50-foot riparian setback, when the Project description calls for the demolition of most buildings in the Project area. Please clarify the rationale for retaining these existing buildings, which compromise the integrity of even the proposed, reduced 50-foot riparian setback. The Project should prioritize enhancement of riparian habitat and remove existing non-historic buildings within the proposed riparian setback.

Variances from the 100-foot setback make sense in developed areas in which a one lot expansion of the riparian buffer has limited environmental benefit, when neighboring, existing structures are much closer to the top of bank. However, the DWMUP provides a unique opportunity to restore a full riparian setback within the urban core, since most of the existing buildings in the Project area will be demolished. Implementing the full 100-foot setback in the DWUMP redevelopment area will provide a significant enhancement of riparian habitat in the urban core; this full riparian corridor may prove especially beneficial to sustaining CCC steelhead in Los Gatos Creek and the Guadalupe River. Wider riparian corridors provide more robust insulation of creek water temperatures from the negative impacts of urban heat islands.

Implementing the full 100-foot riparian setback will also provide valuable opportunities for on-site riparian enhancement and/or mitigation. Onsite mitigation is especially valuable along salmonid streams, since off-site mitigation does not sufficiently mitigate onsite impacts to water temperature and water quality that may impair fish migration and fish spawning. To minimize impacts to riparian habitat, EFH, and critical habitat for CCC steelhead, we recommend using the full 100-foot riparian setback in City Policy 6-34. We also encourage the Project to construct trails outside of the riparian buffer, since humans and domestic animals are likely to disturb wildlife in the riparian corridor.

Comment 10. The Project appears to be likely to impact special status species.

The discussion of cumulative impacts on page 3.2-87 asserts that the Project's impacts on special-status fish (i.e., CCC steelhead) and western pond turtle are limited to impacts from construction activity in or adjacent to Los Gatos Creek and the Guadalupe River. We do not concur with this conclusion. As is discussed in Comments 4, 5, 7, and 9, above, long-term impacts associated with impacts to riparian habitat are likely to have potentially significant impacts to special status fish.

Comment 11. The DEIR should document that the Project is dedicating sufficient surface for use in Low Impact Development (LID) stormwater treatment.

Text in Section 3.8, Hydrology and Water Quality, Section 3.8.2, Regulatory Framework, describes the regulation of stormwater runoff under National Pollutant Discharge Elimination System (NPDES) regulations.

Discharges of stormwater runoff from municipal separate storm sewer systems (MS4s) are regulated by the Municipal Regional Stormwater NPDES permit (MRP), under Order No. R2-2015-0049; NPDES Permit No. CAS612008, issued by the San Francisco Bay Regional Water Quality Control Board.

Under Provision C.3 of the MRP, new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface area, or 5,000 square feet or more of impervious surface area for regulated projects involving special land use categories (i.e., auto service, retail gasoline station, restaurant, and/or uncovered parking), are required to implement site design, source control, and Low Impact Development–based stormwater treatment controls to treat post-construction stormwater runoff. Low Impact Development–based treatment controls are intended to maintain or restore the site’s natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and for using stormwater as a resource (e.g., rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures be properly installed, operated, and maintained.

Post-construction monitoring and treatment controls, as required by MRP Provision C.3 and the Construction General Permit and pursuant to City Policy 6-29, would be implemented to ensure that the proposed project would not have ongoing adverse residual impacts on receiving waters.

The Water Board will review the stormwater control plan as part of reviewing applications for Certifications and/or Waste Discharge Requirements for the Project. The successful implementation of bioretention areas and other Low Impact Development (LID) measures to treat stormwater runoff requires that land be set aside within the Project area for the construction of these treatment measures, which have surface areas on the order of three to four percent of the impervious surface area that drains to the LID treatment measure. The DEIR should include procedures for ensuring that sufficient land area is set aside for stormwater treatment measures that are compliant with the MRP.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at brian.wines@waterboards.ca.gov.

Sincerely,



Brian Wines
Water Resources Control Engineer
South and East Bay Watershed Section

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)
CDFW, Kristin Garrison (kristin.garrison@wildlife.ca.gov)