

**From:** [Keyon, David](#)  
**To:** [Gerry Haas](#); [Andy Wang](#)  
**Cc:** [Bethany Windle](#); [Hill, Shannon](#); [Downtown West Project](#); [Edmund Sullivan](#); [Kim Rook](#)  
**Subject:** Re: Downtown West review  
**Date:** Wednesday, April 14, 2021 2:56:30 PM

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Thank you for the clarification, Gerry!

## David Keyon

Principal Planner, Environmental Review  
City of San Jose  
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**From:** Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)>  
**Sent:** Wednesday, April 14, 2021 2:05 PM  
**To:** Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>; Andy Wang <[wangan@google.com](mailto:wangan@google.com)>  
**Cc:** Bethany Windle <[bethanywindle@google.com](mailto:bethanywindle@google.com)>; Hill, Shannon <[Shannon.Hill@sanjoseca.gov](mailto:Shannon.Hill@sanjoseca.gov)>;  
Downtown West Project <[downtownwest@esassoc.com](mailto:downtownwest@esassoc.com)>; Edmund Sullivan <[edmund.sullivan@scv-habitatagency.org](mailto:edmund.sullivan@scv-habitatagency.org)>; Kim Rook <[kim.rook@scv-habitatagency.org](mailto:kim.rook@scv-habitatagency.org)>  
**Subject:** RE: Downtown West review

[External Email]

Hello David,

The Downtown West Project, if limited to redevelopment entirely within the existing developed footprint, would not be subject to Condition 11. Additionally, if the project proposes new features within undeveloped portions of the stream setback area, and those new features are included in the list of exempted development (Page 6-53 of the Habitat Plan), then those features are also not subject to Condition 11, but may be otherwise covered by the Habitat Plan. Ed's comment on the prior proposed redevelopment of this site is consistent with our revised response to the Boston Properties stream setback exception request dated April 7, 2021.

Regards,

## Gerry Haas

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**From:** Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>  
**Sent:** Tuesday, April 13, 2021 5:57 PM  
**To:** Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)>; Andy Wang <[wangan@google.com](mailto:wangan@google.com)>

**Cc:** Bethany Windle <bethanywindle@google.com>; Hill, Shannon <Shannon.Hill@sanjoseca.gov>;  
Downtown West Project <downtownwest@esassoc.com>

**Subject:** Re: Downtown West review

Hi Gerry,

I would like to clarify the applicability of Condition 11 to the Downtown West (Google Project), specifically in light of recent direction regarding the Boston Properties project upstream from the project on the Guadalupe River (attached) and guidance from the Habitat Agency on the previous development proposal on the site in 2016.

In your February 10 email, you stated that the City's 2016 approval of a 30-foot setback from the top of the wall along the Guadalupe River conflicted with the Habitat Plan Condition 11.

However, recent guidance from the Habitat Agency on the Boston Properties suggests that the Condition 11 riparian setbacks would not apply from the Guadalupe River for this site. Is this the case?

Staff also did some research and found a Biological Assessment on the presence of riparian habitat during the environmental review process for the prior development proposal on the site in 2016, referred to as the Delmas Avenue Mixed Use Project (also attached). This assessment quotes a March 8, 2016 email from Edmund Sullivan, Executive Director of the Habitat Agency, stating that Condition 11 did not apply and the project was exempt from Habitat Plan coverage (see page 9 of attached memo).

Unfortunately, we couldn't find the original email sent to former City staff, but is the determination quoted from Ed Sullivan in the attached memo from Huffman-Broadway Group in line with your understanding, especially in light of recent guidance on other projects such as Boston Properties?

Please note that since publication of the Draft EIR, Google modified the project to increase setbacks for new buildings adjacent to the Guadalupe River to 50-feet and proposes a 35-foot setback between the top of wall along the Guadalupe River and new roadways.

Thank you for your direction on this.

**David Keyon**

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**From:** Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)>

**Sent:** Friday, February 12, 2021 5:54 PM

**To:** Andy Wang <[wangan@google.com](mailto:wangan@google.com)>

**Cc:** Bethany Windle <[bethanywindle@google.com](mailto:bethanywindle@google.com)>; Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>

**Subject:** RE: Downtown West review

[External Email]

That would work on the second issue. Dual purposing the pedestrian pathway and open space would not technically be a request to build a road within the setback and should be fine. David would need to agree, as well.

We'll talk next week.

**Gerry**

**From:** Andy Wang <[wangan@google.com](mailto:wangan@google.com)>

**Sent:** Friday, February 12, 2021 5:42 PM

**To:** Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)>

**Cc:** Bethany Windle <[bethanywindle@google.com](mailto:bethanywindle@google.com)>; Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>

**Subject:** Re: Downtown West review

Thank you for this update, Gerry. I appreciate your attentiveness on this! We'll of course look forward to hearing back next week.

On the second issue: I should clarify that the project will require that new roadways be outside the 35-foot setback (and new buildings would be set back further, at 50 feet or more). Since there would be no new roadway within the 35-foot setback from the top of channel, emergency vehicle access as currently contemplated would be permitted over the planned open space area and/or pedestrian pathway within the 35 feet.

Bethany and I would be happy to chat more about this by phone on Tuesday if you think that could clear up any confusion as well.

Thanks, and have a great long weekend.

On Fri, Feb 12, 2021 at 2:27 PM Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)> wrote:

Hello Andy,

thanks for clarifying the information request. I've just let David know that we have been in discussion with the Wildlife Agencies about the 35-foot setback issue and we are very close to a determination that should resolve the first issue. I may not hear back from them until early next week, but will reach out to you the moment I do hear from them.

The second issue seems to be challenging because technically only pedestrian trails/paths are allowed within the setback, not new roads (even if just an emergency access). Please see Page 6-53 - Exemptions for the list of allowable uses within a stream setback: <https://scv-habitatagency.org/DocumentCenter/View/128/Chapter-6-Conditions-on-Covered-Activities-and-Application-Process>

Once I have clarity on the 35-foot setback issue, I'll reach out to David to set up another meeting with all of us to discuss the process moving forward.

Regards,

**Gerry Haas**

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**From:** Andy Wang <[wangan@google.com](mailto:wangan@google.com)>  
**Sent:** Wednesday, February 10, 2021 9:49 PM  
**To:** Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)>  
**Cc:** Bethany Windle <[bethanywindle@google.com](mailto:bethanywindle@google.com)>  
**Subject:** Re: Downtown West review

Thanks for your note, Gerry, and certainly appreciate what it means to juggle a heavy workload!

On your question regarding the two issues: you are correct, with minor nuances on both questions. The material we sent over does explain them each a bit more, but in short:

- On the first issue: we're seeking confirmation on our approach to reusing and renovating existing buildings that are within the 35-foot setback from Los Gatos Creek. Our definition of renovation is premised on the reuse of existing foundations. We're seeking confirmation that the Habitat Agency agrees that such a definition would be within the bounds of the Habitat Plan's contemplation of the continued use of existing buildings within the 35-foot setback. Additionally, to the extent we pursue new building footprint (i.e. new foundations), these would occur outside of the 35-foot setback.
- On the second issue: you'll find that our development, on a site that is currently developed,

proposes new buildings and a roadway set back 35 feet from the Guadalupe River top of channel. On this issue, we're not questioning the setback; rather, we're seeking confirmation on two components that are designed to be within the 35-foot setback due to the complexity of many components at this site. The components within the 35-foot setback are: a pedestrian pathway only (not vehicular pathway), and emergency vehicle access.

Again, these are described a bit more in the material we sent over late last week, although I hope that this explanation clarifies the questions a bit more. I'm more than happy to discuss more, including by phone if we could provide more detail or answer any follow-up questions you and your executive officer may have.

Much appreciated,  
Andy

Thanks much,  
Andy

On Wed, Feb 10, 2021 at 1:55 PM Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)> wrote:

Hi Andy,

I've looked over this and there is quite a bit to unpack, and with our current workloads, I simply haven't had time to complete a response. You mention two issues, and I want to make sure I understand them both. As I recall, the first issue is the definition of "reuse" or "redevelop" when applied to existing structures within the 35-foot setback from Guadalupe Creek. The second issue is the requirement for setbacks to apply to the sections of Guadalupe Creek that consist of a concrete-lined engineered channel. If this is the correct understanding of the two issues, please confirm today, and I will discuss them both with our Executive Officer first thing tomorrow morning.

Please also bear in mind the existing language in the Habitat Plan for Condition 11: "Regardless of project location, stream setback exceptions may not reduce a Category 1 stream setback to less than a distance of 50 feet for new development or 35 feet for existing or previously developed sites with legal buildings and uses." Recall that the San Jose City Council approved the Habitat Plan in 2013, which is in conflict with the Council's action to approve a 30-foot setback from Guadalupe Creek in 2016, three years after the Habitat Plan became effective.

Regards,

**Gerry Haas**

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**From:** Andy Wang <[wangan@google.com](mailto:wangan@google.com)>

**Sent:** Tuesday, February 09, 2021 4:40 PM

**To:** Gerry Haas <[gerry.haas@scv-habitatagency.org](mailto:gerry.haas@scv-habitatagency.org)>  
**Cc:** Bethany Windle <[bethanywindle@google.com](mailto:bethanywindle@google.com)>  
**Subject:** Re: Downtown West review

Good afternoon Gerry,

I thought I'd check in with you to see whether you've had a chance to review the material we sent over last week, and whether you have any sense of timing for feedback from your end. We have a number of documents that we'd like to begin to finalize and your input in the near term will be vital. Bethany and I would be happy to chat further if at all helpful as well.

Much appreciated!  
Andy

On Fri, Feb 5, 2021 at 10:09 AM Andy Wang <[wangan@google.com](mailto:wangan@google.com)> wrote:

Good morning Gerry,

Thank you for your time the other day. As discussed I've attached a few figures here to aid your review. We've included on each figure a narrative as well. As supplemental reference, I've included the city staff report for the previous project entitled on the site depicted on the last page.

We do happen to have an internal design meeting with key consultants early next week, and if at all possible it would be very helpful if we could get your clarification on these two areas by the end of day Monday, Feb 8.

Thanks again!  
Andy



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