

RESOLUTION NO. 77917

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A NEW COUNCIL POLICY, ENTITLED "RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN POLICY"

WHEREAS, the Envision San José 2040 General Plan (General Plan) contains goals, policies, and actions for the protection of riparian corridors and birds, including but not limited to:

- (1) General Plan Policy ER 2.2 that states, "Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur";
- (2) General Plan Action ER 2.6, that states, "Develop a City Council Policy based on the City's Riparian Corridor Policy Study and the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan to successfully implement the riparian goals and policies of the Envision General Plan, which recognizes that a 100-foot setback is the standard to be achieved in all but a limited number of instances, where no significant environmental impacts would occur";
- (3) General Plan Policy ER 7.1 that states, "In the area north of Highway [State Route] 237 design and construct buildings and structures using bird-friendly design and practices to reduce the potential for bird strikes for species associated with the baylands or the riparian habitats of lower Coyote Creek"; and

WHEREAS, in response to stakeholder interest in enhancing protection of riparian corridors and birds, the City Council directed staff to prepare a new Council Policy to provide additional guidance for developments proposed within or in proximity to riparian corridors, and to include guidance on bird-safe building design for the area north of State Route 237 as referenced in the General Plan; and

WHEREAS, the City Council desires to establish a new City Council Policy No. 6-34 entitled "Riparian Corridor Protection and Bird-safe Design Policy"; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act, together with related state and local implementation guidelines, including Title 21 of the San José Municipal Code (collectively, "CEQA"), the City Council's action has been found to be within the scope of the Envision San José 2040 General Plan, and the environmental impacts of the proposed project have been adequately described by the Envision San José 2040 General Plan Environmental Impact Report, adopted by City Council Resolution No. 76041 on November 1, 2011; and the Envision San José 2040 General Plan Supplemental Environmental Impact Report, adopted by City Council Resolution 77617 on December 15, 2015;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

A new Council Policy entitled, "Riparian Corridor Protection and Bird-Safe Design," which policy is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein, is hereby approved.

ADOPTED this 23rd day of August, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS,
M. NGUYEN, T. NGUYEN, OLIVERIO, PERALEZ,
ROCHA; LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

EXHIBIT A

City of San José, California

COUNCIL POLICY

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 1 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

PURPOSE

The purpose of this Council Policy (Policy) is to provide guidance consistent with the goals, policies, and actions of the City's Envision San José 2040 General Plan (General Plan) for:

- 1) protecting, preserving, or restoring riparian habitat;
- 2) limiting the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff, and control erosion; and
- 3) encouraging bird-safe design in baylands and riparian habitats of lower Coyote Creek, north of State Route 237.

This Policy's guidelines supplement the regulations for Riparian Corridor protection in the Council-adopted Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan) (Chapter 18.40 of Title 18 of the San José Municipal Code), the Zoning Code (Title 20 of the San José Municipal Code), and other existing City policies that may provide for riparian protection and bird-safe design.

DEFINITIONS

"**Riparian Project**" means any development or activity that is located within 300 feet of a Riparian Corridor's top of bank or vegetative edge, whichever is greater, and that requires approval of a Development Permit as defined in Chapter 20.200 of Title 20 of the San José Municipal Code (the Zoning Code), except that projects that only require approval of a Single-Family House Permit under the provisions of the Zoning Code are not subject to this Policy.

The definitions set forth in Chapter 20.200 of Title 20 the San José Municipal Code, will govern the construction of the provisions of this Policy, except where the context otherwise requires.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 2 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

BACKGROUND

San José has more than 30 streams¹ that form approximately 136 miles of Riparian Corridors. These riparian resources preserve greenery, benefit water quality, provide possible habitat, and facilitate trail networks along these waterways. The City has policies and requirements for the protection of riparian resources, habitat, flood safety, and bird-safe design in the General Plan, the Habitat Plan, the San José Municipal Code, and other City Council Policies.

The Riparian Corridor Policy Study, revised in 1999 (Policy Study) analyzed numerous streams and Riparian Corridors found within San José and provided detailed policy recommendations on how various types of development should be designed to protect and preserve the City's Riparian Corridors. The General Plan incorporates by reference the policy recommendations in the Policy Study for protecting Riparian Corridors. The General Plan goals, policies, and implementing actions further riparian protection, including establishment of a standard of a 100-foot Riparian Corridor setback, with an exception for projects where no significant environmental impact will occur. The Policy Study provides guidance for a range of Riparian Corridor setbacks, based on types of land uses, activities, development, and physical attributes of a Riparian Project's site.

The Habitat Plan provides a regulatory framework for the protection and recovery of natural resources, including endangered species other than fish, while streamlining the permitting process for development, construction of infrastructure, and maintenance activities. The Habitat Plan generally requires at least a 100-foot setback for projects covered by the Habitat Plan. However, under the Habitat Plan, a reduced setback may be allowed for small parcels, or on sites near unmapped streams, and a greater setback may be required for development on steeply sloping sites. The Habitat Plan provides a number of options for minimum required setbacks, including an allowance for reduction of the otherwise required minimum setback based on 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).

¹ A map identifying the streams covered by this Policy is included in the Riparian Corridor Policy Study, revised 1999 (Policy Study), a copy of which is available on the City of San José Planning, Building and Code Enforcement website.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 3 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

The City also has policies in the General Plan and regulations in the San José Municipal Code to address flood safety. The General Plan additionally includes a goal of encouraging bird-safe design in the area north of State Route 237 (see Attachment A), and City staff has developed a factsheet entitled “Bird-Friendly Building Design” and a “Bird-Friendly Building Design Checklist”.

POLICY

This Council Policy provides guidance for how Riparian Projects should be designed to protect and preserve the City’s Riparian Corridors.

This Council Policy also provides guidance for the bird-friendly design of buildings and structures in the baylands and riparian habitats of lower Coyote Creek, north of State Route 237, as depicted on a map created by the City, as may be updated from time to time to show more current information (see Attachment A).

This Council Policy should be implemented in compliance with applicable local, State, and Federal agencies’ laws and regulations.

A. Riparian Guidance

Riparian Projects in the City of San José are subject to the following design guidelines:

- 1) Riparian Projects should be designed and implemented to minimize intrusion into Riparian Corridors. Land use related operational issues that could affect Riparian Corridors may need to be addressed through conditions in Development Permits. Consistent with recommendations from the Policy Study, the following general guidelines for setbacks from Riparian Corridors should be included in Riparian Projects:

Land Use Type	Minimum² setback - in feet³	Comments
----------------------	--	-----------------

² These setback and buffer widths are intended to provide general guidance for site design. For actual setback and buffer dimensions, the specific setback sections in Chapter 3 of the Policy Study should be consulted. Averaging of setbacks is discouraged.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 4 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

New Buildings in Existing Urban Infill Areas	100	
New Residential Buildings	100	These include single-family and two-family buildings as well as attached-unit buildings.
Commercial / Institutional Buildings	100	Loading docks and other major activity areas should be oriented away from riparian corridors.
Parking Facilities	100	<ul style="list-style-type: none"> - Paved areas should be oriented so as not to drain directly to creeks. - Storm drain systems and parking surfaces should be cleaned and maintained regularly.
Roads - 2 lanes; 2 lane collectors or arterials; and 4 lanes and greater	100	
New and Existing Agriculture / Horticultural		
- Crop and horticultural	25	Herbicide, pesticide, and fertilizer use should not be allowed to impact water quality and wildlife.
- Equipment / chemical storage	300	Storage areas should not drain into creeks, rivers, and streams.
- Grazing activities	10	Fence Riparian Corridor, to exclude grazing activities.
Public Recreation		
- Multi-use trails on natural channels (pedestrian/equestrian/bicycle trail)	10	Set trails back where opportunities exist (e.g. in parks, or as part of new development).
- Multi-use trails on flood control channels (pedestrian/equestrian/bicycle	N/A	Trails may enter Riparian Corridor where necessary for continuity. Maintenance roads along top of

³ Setback is measured from the outside dripline of the Riparian Corridor vegetation or top-of-bank, whichever is greater.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 5 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

trail)		bank should be used for motorized vehicle circulation.
- Pedestrian-only trail	0	Trails may enter Riparian Corridor where necessary for continuity.
- Passive recreational uses	0	
- Active recreational uses	100	Night-lighted facilities should have a larger setback – 200 to 300 feet is preferred.
- Active recreational uses <ul style="list-style-type: none"> • Lighting and mechanical noise generating sources 	200	Physically screen Riparian Corridor where feasible under site conditional and operational constraints. Night-time light sources should not be visible (a technical report may be required).
- Golf course fairways, greens and tees (public and private)	100	These should be designed to collect and treat run-off.
- Interpretive nodes/paths/stream crossings	-	These may be located at 500 linear feet or greater intervals.
Hazardous Material, herbicide, pesticide, fertilizer use and storage	100	Toxic substances should be stored and used to avoid drainage and drift to riparian habitats.

- 2) A reduced setback may be considered under limited circumstances such as:
- Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.
 - Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.
 - Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.
 - Sites with unique geometric characteristics and / or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 6 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

- e. 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.
 - f. 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.
 - g. Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback.
 - h. Recreational facilities deemed to be a critical need and for which alternative site locations are limited.
 - i. 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.
 - j. The existence of legal uses within the minimum setback.
 - k. 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).
 - l. The extent to which meeting the minimum setback would require deviations from, exception to or variances from other established policies, legal requirements, or standards.
- 3) Applicants requesting reduction in setbacks may be required to submit a report by a qualified biologist, stream hydrologist and/or other appropriate qualified professional certifying the existence of some or all of the following conditions:
- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 7 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.
- c. The proposed uses are not fundamentally incompatible with riparian habitats (see Chapter 3, Section IB Incompatible Land Uses of the Policy Study).
- d. 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.
- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

4) Materials and Lighting

- a. New development should use materials and lighting that are designed and constructed to reduce light and glare impacts to Riparian Corridors. For example, the use of bright colors, and glossy, reflective, **see through** or glare-producing Building and material finishes is discouraged on Buildings and Structures.
- b. Lighting should not be directed into Riparian Corridors.

5) Restoration and rehabilitation of Riparian Corridors are strongly encouraged to be included in Riparian Project design and implementation.

- 6) Project design and implementation should 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. Projects that are not subject to the Stormwater Policies should incorporate basic site-design measures such as limiting disturbances of Riparian Corridor areas, conserving natural areas through the protection or planting of riparian-compatible vegetation, minimizing impervious surfaces, directing runoff to areas outside of and away from Riparian Corridors, and locating trash storage away from Riparian Corridors.

B. Bird-Safe Design Guidance

Design of Buildings and Structures in the area depicted on Attachment A should:

COUNCIL POLICY

RES NO 77917

TITLE RIPARIAN CORRIDOR PROTECTION AND BIRD-SAFE DESIGN	PAGE Page 8 of 8	POLICY NUMBER 6-34
EFFECTIVE DATE: August 23, 2016	REVISED DATE	
APPROVED BY COUNCIL ACTION: 08-23-16, Item 4.2(b)		

- 1) Avoid mirrors and large areas of reflective glass.
- 2) Avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent Building corners.
- 3) Avoid funneling open space to a Building façade.
- 4) Strategically place landscaping to reduce reflection and views of foliage inside or through glass.
- 5) Avoid or minimize up-lighting and spotlights.
- 6) Turn non-emergency lighting off, or shield it, at night to minimize light from Buildings that is visible to birds, especially during bird migration season (February - May and August - November).

Applicants seeking a Development Permit for a Riparian Corridor Projects in the area depicted on Attachment A should be required to continue to submit the checklist entitled, "Bird-Friendly Building Design Checklist".

C. References

Additional City documents that may be referenced for guidance for riparian protection and bird-safe design include, but are not limited to the following:

- 1) Riparian Corridor Policy Study, approved by City Council, May 17, 1994, and Revised March 1999;
- 2) City Council Policy 4-3: Outdoor Lighting on Private Developments;
- 3) City Council Policy 6-29: Post-Construction Urban Runoff Management; and
- 4) City Council Policy 8-14: Post-Construction Hydromodification.

