



**DEPARTMENT OF THE ARMY**  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102-3404

Operations and Readiness Division

**PUBLIC NOTICE**

**REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS  
PROJECT UNDER SECTION 408**

**TITLE:** Guadalupe River – Caltrain Bridge Replacement, 408-SPN-2022-0002

Public notice comment period:

Begins: August 24, 2022

Ends: September 8, 2022

**REQUESTER:** In compliance with U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408, The Peninsula Corridor Joint Powers Board (JPB) (requester) has requested permission through Valley Water (non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter the Upper Guadalupe River an existing federal flood risk management project, authorized by Water Resources Development Act of 1999.

**LOCATION:** Project location, adjacent to the Guadalupe River, in San Jose, Santa Clara County, California. (see attachment 1)

**REQUESTER'S PROPOSED ACTION:** JPB proposes to replace two railroad bridges used by Caltrain rail service. (Attachment 2)

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** The proposed project is located in the active channel for the Guadalupe River. As lead federal agency, the Federal Transit Administration (FTA) coordinated compliance with the National Environmental Policy Act (NEPA).

As part of the NEPA process, impacts to endangered species were analyzed pursuant to Section 7 of the Endangered Species Act. This is a summary of the results. Fish species in the jurisdiction of the National Marine Fisheries Service (NMFS) were addressed through an informal consultation process. FTA initiated consultation on January 8, 2021, requesting NMFS concurrence with its determination of "may affect, but is not likely to adversely affect" federally listed Central-California Chinook salmon and Pacific salmon essential fish habitat (EFH). On March 22, 2021, NMFS sent a letter in concurrence with the effect determinations, completing the consultation process.

After an initial review, USACE has determined no eligible or potentially eligible cultural resources may be affected by the proposed project. USACE will review FTA's

consultation with the State Historic Preservation Officer and Native American Tribes under Section 106 of the National Historic Preservation Act.

Upon review of the Section 408 application and other supporting documentation, USACE has made a preliminary determination that the project qualifies for a Categorical Exclusion. USACE will review FTA's categorical exclusion documentation to determine if the requirements under NEPA have been met.

**AUTHORITY:** The authority to grant permission for temporary or permanent use, occupation, or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C 408) ("Section 408"). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of Army's authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity.

**LIMITS OF SECTION 408 AUTHORITY:** A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344), and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413). In addition, an approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

**EVALUATION FACTORS:** The decision whether to grant the requested permission for project alteration under Section 408 will be based on several factors. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of requests for alteration will be reviewed by a USACE technical review team considering the following factors:

- 1) Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs. In order for an alteration to be approved, the requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.

2) Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest evaluation depend upon the type of USACE project being altered and the nature of the proposed alteration and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

3) Environmental Compliance. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the San Francisco District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and procedures. NEPA and other analysis completed to comply with other environmental statutes (e.g. Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The San Francisco District will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from activities resulting in the temporary or permanent use, occupation, or alteration of any USACE civil works project. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Section 408 permission for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Operations and Readiness Division.

**PUBLIC INVOLVEMENT:** The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the Guadalupe River – Caltrain Bridge Replacement, a proposed alteration to an existing federally authorized project. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources and in the evaluation of whether the proposed alteration would be injurious to the public interest and/or would impair the usefulness of the authorized project. Only the specific activities that have the potential to occupy, use or alter the Upper Guadalupe River will be evaluated. Please limit comments to the area of the alteration and those adjacent areas that would be directly or indirectly affected by the alteration to the Upper Guadalupe River. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act.

**SUBMITTING COMMENTS:** Written comments, referencing 408-SPN-2022-0002 must be submitted to the office listed below on or before September 8, 2022.

Jessica Vargas, 408 Coordinator  
U.S. Army Corps of Engineers, San Francisco District  
Operations and Readiness Division  
450 Golden Gate Avenue, 4<sup>th</sup> Floor, Room 1111  
San Francisco, California 94102-3404

Email: *spn.operationsdivision@usace.army.mil*

**ATTACHMENTS:** vicinity map, location map, and proposed project footprint in relation to federal project.



-  Caltrain Station
-  Existing Caltrain Main Line
-  Guadalupe River
-  Park
-  Study Area

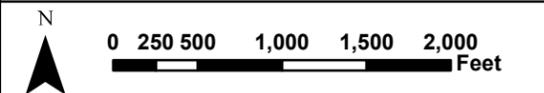
October 2021

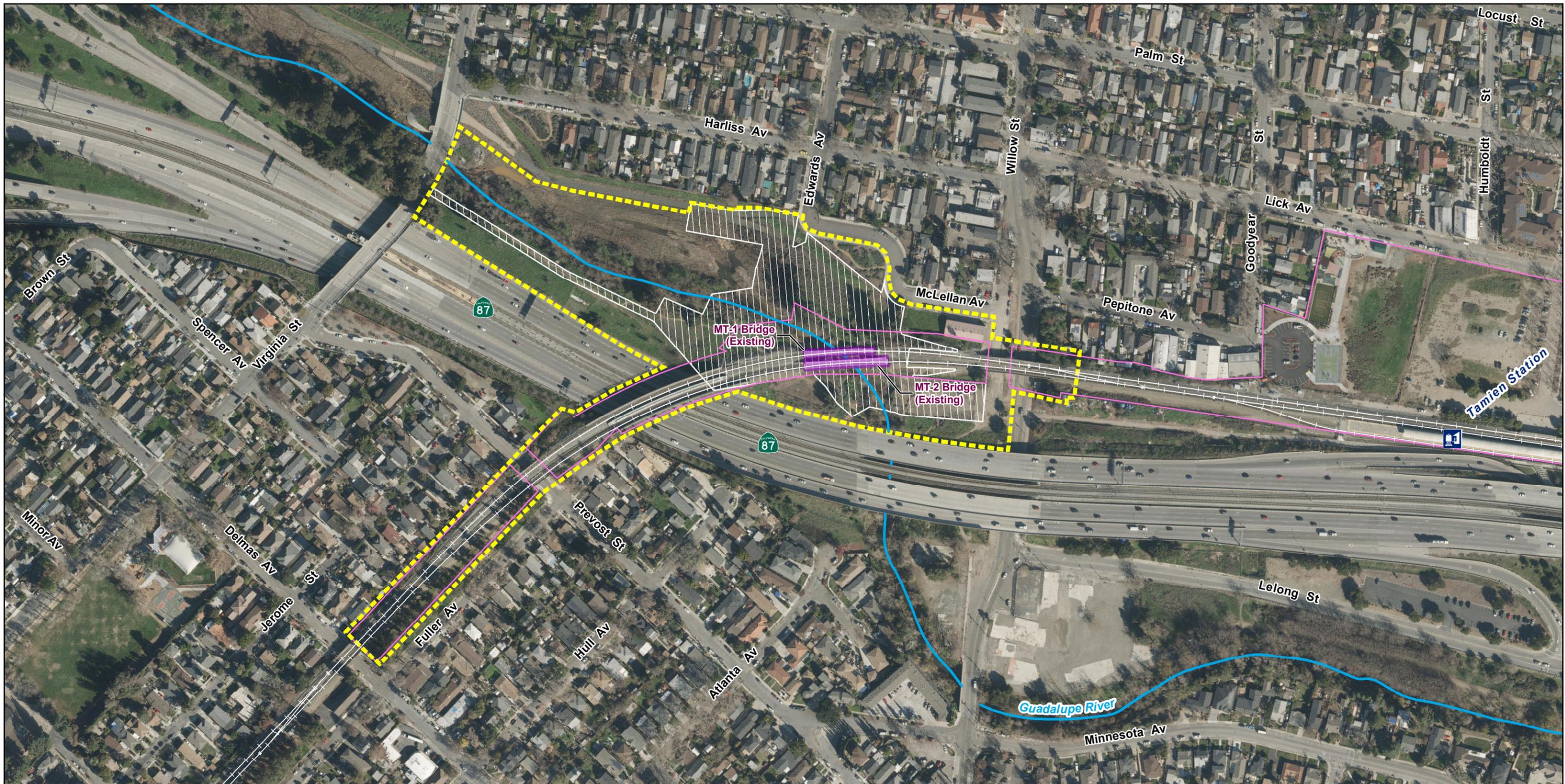
Figure 1

Sources: Caltrans, City of San Jose, County of Santa Clara, Bing



**Guadalupe River Bridge Replacement  
Project Location**



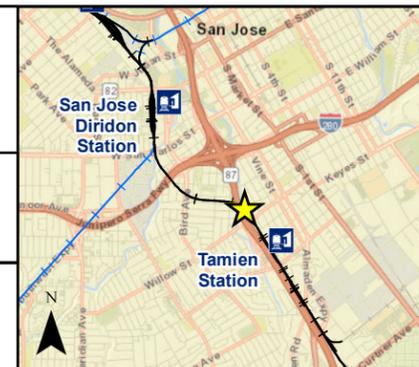


-  Existing Caltrain Main Line
-  Guadalupe River
-  Guadalupe River Bridges (Existing)
-  JPB Right-of-Way (Shown Around Study Area)
-  Construction Footprint
-  Study Area

October 2021

Figure 2

Sources: Caltrans, City of San Jose, County of Santa Clara, Bing



**Guadalupe River Bridge Replacement Study Area**



