



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** November 13, 2018

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**COUNCIL DISTRICT: 10**

**SUBJECT: FILE NO. C16-017: CONVENTIONAL REZONING FROM THE A AGRICULTURAL ZONING DISTRICT TO THE R-2 TWO-FAMILY RESIDENCE ZONING DISTRICT ON A 1.01-GROSS ACRE SITE LOCATED ON THE EAST SIDE OF CAMDEN AVENUE, BETWEEN MALPAS AND CANNA LANE (APN: 567-26-014)**

## **RECOMMENDATION**

The Planning Commission voted 5-0-2 (Commissioners Ballard and Griswold absent) to recommend that the City Council:

- a) Adopt a resolution approving an Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041), the Envision San José General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto, in accordance to the California Environmental Quality Act, as amended; and
- b) Approve an ordinance rezoning certain real property of approximately 1.01-gross acre located on the east side of Camden Avenue, between Malpas Drive and Canna Lane (APN: 567-26-014), from the A Agricultural Zoning District to the R-2 Two-Family Residence Zoning District.

## **OUTCOME**

If City Council adopts the ordinance approving the proposed rezoning, future development applications consistent with R-2 Two-Family Residence Zoning District standards can be considered for the subject site.

## **BACKGROUND**

On November 7, 2018, the Planning Commission held a public hearing to consider the proposed Conventional Rezoning, which was included on the Consent Calendar of the Planning Commission Agenda. The item was pulled from the Consent Calendar to be heard as a public hearing because the applicant wished to speak on the item.

### **Public Testimony**

Public testimony included only the applicant, who requested that the future development permit take into consideration a 50-foot riparian setback for the subject parcel, as supported by the biological study.

### **Staff and Planning Commission Discussion**

Commissioner Leyba requested information on the nature of compacted soil and the prior use of the vacant land. The applicant responded that the use was agriculture and that the soil compaction with gravel was done by the Santa Clara Valley Water District.

Commissioner Yesney requested clarification on the statements in the staff report regarding whether two duplexes were feasible and whether future development would be subject to a minimum 100-foot riparian setback, since the biological report stated that a 50-foot setback would be consistent with the Riparian Corridor Protection Policy.

Staff responded stating that up to two duplexes were feasible and once a development application is submitted, further analysis of the site would be required to justify any reduction in the required 100-foot riparian setback. Commissioner Marquez stated that she supported staff's 100-foot riparian setback requirement and disagreed with the biological study's justification regarding a 50-foot setback.

The Planning Commission voted 5-0-2 (Commissioners Ballard and Griswold absent), to recommend approval of the rezoning to the City Council, as recommended by the Planning staff.

## **ANALYSIS**

A complete analysis of the issues regarding the proposed Conventional Rezoning, including General Plan conformance, is contained in the attached Planning Commission staff report.

## **EVALUATION AND FOLLOW UP**

If the rezoning is approved, the appropriate entitlement application may be submitted to implement uses consistent with the General Plan and the development standards of the R-2 Two-Family Residence Zoning District. Determination on a reduced 100-foot riparian setback would occur during the development application process.

## **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City's website. The rezoning request was also published in a local newspaper, the Post Record. This Memorandum is posted on the City's website. Staff has been available to respond to questions from the public.

## **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's Office.

## **CEQA**

An Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041), the Envision San José General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto, was prepared for the project under the provisions of the environmental review requirements, and the California Environmental Quality Act of 1970, as amended, including the state and local implementing regulations. A complete analysis is contained in the attached staff report.

/s/  
ROSALYNN HUGHEY, Secretary  
Planning Commission

For questions please contact Sylvia Do, Interim Planning Official, at (408) 535-7907.

Attachments: November 7, 2018 Planning Commission Staff Report and attachments



## PLANNING COMMISSION STAFF REPORT

<b>File No.</b>	<b>C16-017</b>
<b>Applicant</b>	<b>Matt Kelsey</b>
<b>Location</b>	<b>East side of Camden Avenue, between Malpas Drive and Canna Lane (APN: 567-26-014)</b>
<b>Existing Zoning</b>	<b>A Agricultural</b>
<b>Proposed Zoning</b>	<b>R-2 Two-Family Residence</b>
<b>Council District</b>	<b>10</b>
<b>Historic Resource</b>	<b>No</b>
<b>Annexation Date:</b>	<b>August 25, 1978</b>
<b>CEQA:</b>	<b>Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041), the Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto</b>

### APPLICATION SUMMARY:

Conventional Rezoning from the A Agricultural Zoning District to the R-2 Two-Family Residence Zoning District for a vacant 1.01-gross acre site.

### RECOMMENDATION:

Staff recommends that the Planning Commission recommend that the City Council:

1. Adopt a resolution approving an Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041), the Envision San José General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto, in accordance to the California Environmental Quality Act, as amended; and
2. Adopt an ordinance rezoning certain real property of approximately 1.01-gross acre located on the east side of Camden Avenue, between Malpas Drive and Canna Lane, from the A Agricultural Zoning District to the R-2 Two-Family Residence Zoning District.

**PROJECT DATA**

GENERAL PLAN CONSISTENCY			
<b>General Plan Designation</b>		<b>Residential Neighborhood</b> <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
<b>Consistent Policies</b>		<b>Implementation Policies IP-1.1, IP-1.6 and IP-8.2</b>	
<b>Inconsistent Policies</b>		None	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
<b>North</b>	Residential Neighborhood	A(PD) Planned Development	Single-family attached residential units (Townhomes)
<b>South</b>	Open Space, Parklands and Habitat	Agricultural	Riparian land, vacant
<b>East</b>	Open Space, Parklands and Habitat	Agricultural	Riparian land, Guadalupe Creek beyond
<b>West</b>	Neighborhood/Community Commercial	CP Commercial Pedestrian	Commercial strip shopping center
RELATED APPROVALS			
Date	Action		
8/25/1978	Site annexed into the City of San José (Arroyo No. 15)		

**PROJECT DESCRIPTION**

On March 30, 2016, the applicant applied for a Conventional Rezoning of the subject property from the A Agricultural Zoning District to the R-2 Two-Family Residence Zoning District on a 1.01-gross acre site. Rezoning is required to allow the consideration of a future subdivision application. A Tentative Map would be required for any proposed subdivision and a Site Development Permit would be required for the construction of future two-family residences. No development permit application is on file at this time.

**Site Location:** The project site is vacant and is located on the east side of Camden Avenue, between Malpas Drive and Canna Lane (see Figure 1).



Figure 1: Location Map

The site is surrounded by single-family attached residences to the north, Guadalupe Creek riparian corridor to the east and south, and a commercial strip shopping center to the west, across Camden Avenue, with two-family residences (duplexes) beyond.

The approximately one-acre site is within the 300-foot Guadalupe Creek riparian corridor and is, therefore, subject to City Council Riparian Policy, as discussed further below. The property consists of a levelled vacant lot with minimal vegetation cover. The property has a continuous six-foot-high chain link fence along the eastern edge maintained by Santa Clara Valley Water District (SCVWD), which creates a physical separation between the riparian corridor and the subject Camden property. The future development of the site will be subject to street dedication for public right-of-way improvements, approximately 27 feet to 31 feet wide, along its western property line fronting Camden Avenue. The total proposed right-of-way width between two parallel lines along Camden Avenue must be maintained at 106 feet as per the draft dedication map drawn by the Department of Transportation (indicated with pink dotted lines in Figure 2 below). The total net square footage of the subject parcel after deducting street dedication area would be approximately 0.76 acres.



Figure 2: Camden Avenue Dedication Map

## ANALYSIS

The proposed Conventional Rezoning was analyzed with respect to conformance with: 1) the Envision San José 2040 General Plan; 2) the Zoning Ordinance; 3) the Riparian Corridor Policy; and 4) the California Environmental Quality Act (CEQA).

### Envision San José 2040 General Plan Conformance

The subject site has a land use designation of Residential Neighborhood on the Envision San José 2040 General Plan Land Use/Transportation Diagram (see Figure 3).

The typical maximum density in areas designated Residential Neighborhood is eight dwelling units per acre (8 DU/AC). This designation is applied broadly throughout the City to encompass most established residential neighborhoods. The intent of this designation is to preserve the existing character of these neighborhoods by strictly limiting new development to infill projects that closely conform to the prevailing neighborhood development pattern.

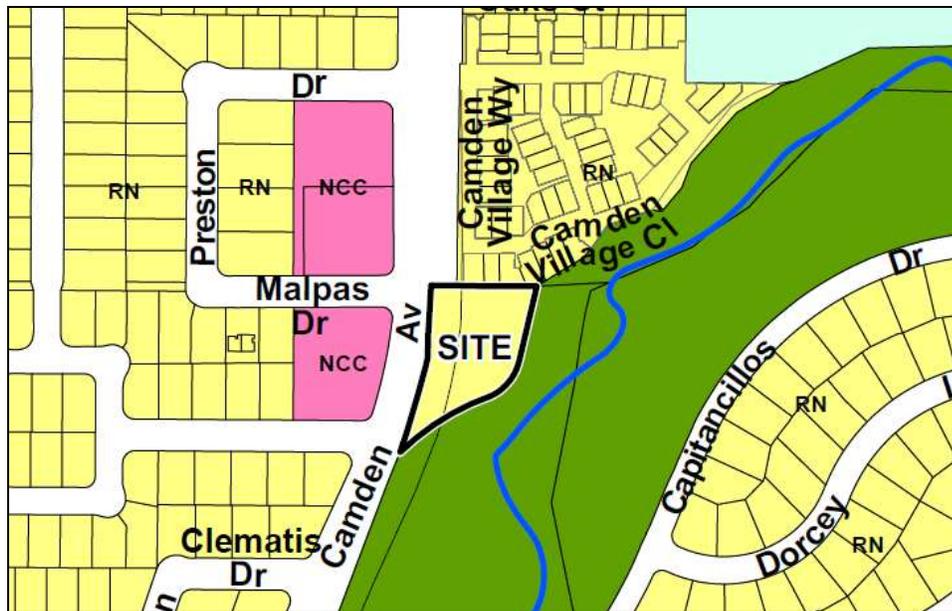


Figure 3: General Plan Map

New projects should complement existing neighborhood conditions in terms of density, average lot size and orientation, and massing of structures, with particular emphasis given to maintaining consistency with other homes fronting onto the public street to be shared with future projects. New infill development should conform to the Envision General Plan design guidelines for Residential Neighborhoods and be limited to a density of 8 DU/AC or the prevailing neighborhood density, whichever is lower. For infill projects where 50% or more of the development on the same block (both sides of the street) is developed at a density greater than 8 DU/AC, new development can match the prevailing density. For any new project to exceed 8 DU/AC, it is necessary that: (1) other policies in this Plan are met, (2) applicable design guidelines are met, and (3) development does not exceed 16 DU/AC.

*Analysis: The proposed conventional rezoning of the site from A Agricultural Zoning District to R-2 Two-Family Residence Zoning District is consistent with the site's Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood. This rezoning would allow the site to be developed with single-family or two-family residences.*

*The intent of the proposed rezoning is to allow consideration of a potential density of up to 12 DU/AC, for a future subdivision application, to conform to the prevailing existing neighborhood character as defined by density, lot size and neighborhood form and pattern, in that the site abuts residential townhome planned development to the north with a density of up to 10-12 dwelling units per acre and parcels to the west, across Camden Avenue and behind the shopping center (along Malpas Drive and Canna Lane), are developed with two-family homes (duplexes) with an average density of 13.3 dwelling units per acre.*

*The 0.76 net acres of the subject site at 12 DU/AC would allow up to nine units based solely on density. However, the actual number of units that could be developed would be less. This is because a riparian setback would significantly reduce the buildable area of the site. For example, a 100-foot riparian setback would leave just about 0.2 acres of buildable area, after street dedication. With this setback, and given the shape of the subject site, staff estimates that up to two duplexes--or four units--could be developed that would meet setback and parking requirements of the Zoning Ordinance. The specific riparian setback that will ultimately be required for the project will be based on a detailed biological evaluation at the time a Planning Development Permit is applied for and reviewed. Any reduced setback, however, could potentially allow up to one or two additional units beyond the four units stated, but probably not the full nine units based on the allowable density.*

This conforming rezoning is also consistent with the following General Plan policies:

1. Implementation Policy IP-1.1: Use the Envision General Plan Land Use/Transportation Diagram designations to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.
2. Implementation Policy IP-1.6: Ensure that proposals to rezone and pre-zone properties conform to the Land Use/Transportation Diagram, and advance Envision General Plan vision, goals and policies.
3. Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed uses and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.

*Analysis: The site is currently located in the A Agricultural Zoning District which limits the development of the site to a single-family residence, allowed with a Conditional Use Permit.*

*The R-1-8 Single-Family Residence Zoning District is a conforming zoning district and R-2 Two-Family Residence Zoning District is a conventional zoning district for the General Plan designation of Residential Neighborhood. Both zoning districts have a minimum lot size requirement of 5,445 square feet. The future subdivision of the subject parcel, as mentioned above, would be limited to a density of up to 12 DU/AC.*

*The proposed Conventional Rezoning to the R-2 Two-Family Residence Zoning District is supported over R-1-8 Single-Family Residence Zoning District, as it will allow new development on the site to be compatible with the higher density townhome development to the north, higher intensity commercial uses across Camden Avenue, with two-family residential development beyond. Both single-family and two-family residences are allowed in the R-2 Two-Family Residence Zoning District, but duplexes are not allowed in the R-1-8 Zoning District. The adjacent lands to the east and south are undevelopable due to the open space General Plan designation.*

### **Zoning Ordinance Conformance**

The subject site is in the A Agricultural Zoning District (see Figure 4). This zoning district allows the development of a single-family dwelling unit with a Conditional Use Permit.

Although the proposed Conventional Rezoning of R-2 Two-Family Residence Zoning District is not identified as the conforming zoning district for the General Plan land use designation of Residential Neighborhood, this zoning district is preferred over R-1-8 Single-Family Residence Zoning District, as discussed above, since it would allow development to be consistent with the development pattern to the north and west.

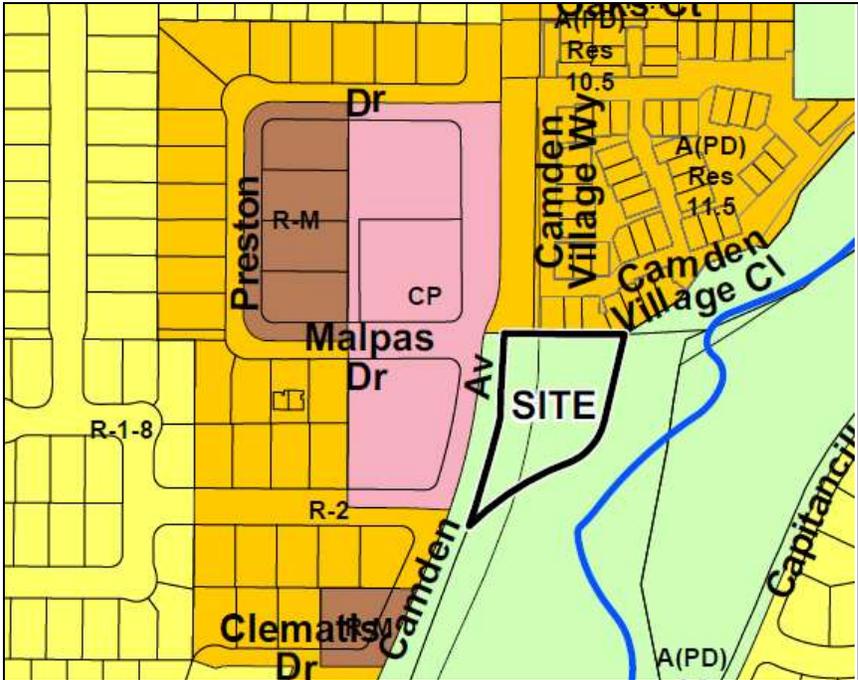


Figure 4: Zoning Map

The proposed rezoning of the subject site to R-2 Two-Family Residence will allow the construction of a duplex with the issuance of a Site Development Permit. A duplex would need to comply with the development standards below (see Table 1).

Development Regulations	R-2
Lot Size (Minimum)	5,445 square feet
Front Setback (Minimum)	15 feet
Side Setback	5 feet
Side Corner Setback	12.5 feet
Rear Setback	25 feet
Height (Maximum)	35 feet

Table 1: Setbacks and Height Comparison

**Riparian Corridor Protection and Bird Safe Design Policy**

City Council’s Riparian Corridor Policy (Council Policy 6-34) is for the protection, preservation and restoration of the riparian habitat. The Policy provides general guidelines for riparian corridor protection and requires a minimum 100-foot setback from a riparian corridor’s top of bank or a vegetative edge to minimize intrusion into the riparian corridor. The policy also allows reductions to the 100-foot setback to be made on a case by case basis. For example, sites with unique geometric characteristics or disproportionately long riparian frontages; or where the project implements measures that better protect and enhance riparian values than a 100-foot setback would, may be allowed a reduced setback.

The project site borders riparian corridor along its east side adjacent to Guadalupe Creek. A riparian setback assessment study, dated March 7, 2018, by a qualified biologist submitted by the applicant (see

Attached Riparian Setback Assessment Study), identifies the subject site's full 100-foot riparian setback area to be 0.57 acres, as shown in Figure 5 below (green hatched area).



**Figure 5: 100-foot Riparian Setback**

Any future application of a development permit on the project site is subject to this minimum 100-foot setback, including all site improvements.

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The environmental impacts of this project were addressed by the following Final Environmental Impact Reports: "Envision San José 2040 General Plan Final EIR," adopted by City Council Resolution No. 76041 on November 1, 2011, Supplemental Program EIR entitled, "Envision San José 2040 General Plan Supplemental EIR," adopted by City Council Resolution No. 77617 on December 15, 2015, and addenda thereto.

In order to determine the appropriate zoning district that could facilitate future redevelopment on this parcel, multiple riparian setback assessments were completed to identify the existing top of the bank and edge or vegetation to understand the feasibility of the development with the incorporation of the 100-foot setback in pursuant to the Riparian Corridor Protection and Bird-Safe Design Policy (i.e. Council Policy 6-34). Furthermore, the assessments were to make the case for a riparian setback up to 50-foot. Without a full development application to complete staff review and analysis, the project cannot be granted a 50-foot riparian setback exception as part of this rezoning. However, based on the assessment and preliminary review from staff, even with an approximately 100-foot setback, the site could continue to facilitate future development consistent with the R-2 Two-Family Residence Zoning District Designation.

The project would rezone the property from A Agricultural Zoning District to R-2 Two-Family Residence Zoning District to facilitate potential future development as allowed under the R-2 Two-Family Residence Zoning District with applicable permits (i.e. Single Family House, Site Development, Conditional Use, or Special Use). Although the proposed Conventional Rezoning of R-2 Two-Family Residence Zoning District is not identified as the conforming zoning district for the General Plan land use designation of Residential Neighborhood, this zoning district is still consistent as it would allow development to be consistent with the development pattern to the north and west. Therefore, the R-2 Two-Family Residence Zoning designation would allow future development at the subject site to include residential uses as anticipated by the Envision San José 2040 General Plan.

The proposed rezoning itself would not result in any new or substantially increased significant impacts beyond those previously identified in the Envision San José 2040 General Plan FPEIR, the Envision San Jose 2040 General Plan SEIR, and addenda thereto. There is no development currently proposed for the site. Any further actions, such as a subdivision or a development permit, will require additional environmental review and policy review (i.e. Council Policy 6-34) at the time such a permit application is submitted.

Given the proposed project description and knowledge of the project area, the City has concluded that the proposed project would not result in any new impacts beyond those previously identified certified EIRs. Additionally, the proposed rezoning would not result in a substantial increase in the magnitude of any significant environmental impacts previously identified in the previously certified EIRs; nor have any new mitigation measures or alternatives which are considerably different from those analyzed in the EIRs been identified. For these reasons, a supplemental or subsequent EIR is not required and an addendum to the EIRs has been prepared and the City of San José may take action on the proposed project as being within the scope of the Final Program EIR. This addendum will not be circulated for public review, but will be attached to the EIRs, pursuant to CEQA Guidelines §15164(c).

## PUBLIC HEARING NOTIFICATION

To inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. An on-site sign describing the project was posted along the frontage of the site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**Project Manager:** Rina Shah

**Approved by:**  , Acting Planning Official for Rosalynn Hughey, Planning Director

**Date:** 10/29/2018

### Attachments:

CEQA Resolution  
Riparian Setback Assessment Study  
Draft Ordinance  
Legal Description & Plat Map

### Owner/Applicant:

Matt Kelsey  
45 Pebble Beach Drive  
Aptos, CA 95003

### Contact:

Paul Bailey  
9119 Soquel Drive  
Aptos, CA 95003

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE CAMDEN AVENUE REZONING PROJECT ADDENDUM TO THE ENVISION SAN JOSE 2040 GENERAL PLAN FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT, SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT, AND ADDENDA THERETO, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED**

**WHEREAS**, the City of San José (“City”) acting as lead agency under the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”), prepared, completed, and adopted in accordance with CEQA the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (“General Plan Update FPEIR”), which analyzed the environmental impacts set forth from the land use and development assumptions of the Envision San José 2040 General Plan; and

**WHEREAS**, the Planning Commission of the City certified said General Plan Update FPEIR, which certification was not appealed; and

**WHEREAS**, in connection with the adoption of a resolution approving said Envision San José 2040 General Plan (Planning File No. PP09-011), the City Council adopted Resolution No. 76041 on November 1, 2011, setting forth certain findings pertaining to the General Plan Update FPEIR and adopting a mitigation monitoring and reporting program, all pursuant to the provisions of CEQA; and

**WHEREAS**, subsequent to said actions on the General Plan Update FPEIR, the City prepared, completed, and adopted in accordance with CEQA the Supplemental EIR

“SEIR”) to the Envision San José 2040 General Plan, Greenhouse Gas Reduction Strategy (Planning File No. PP15-060); and

**WHEREAS**, the Planning Commission of the City certified said SEIR, which certification was not appealed; and

**WHEREAS**, in connection with the adoption of a resolution approving said SEIR to the Envision San José 2040 General Plan Greenhouse Gas Reduction Strategy (Planning File No. PP15-060), the City Council adopted Resolution No. 77617 on December 15, 2015 setting forth certain findings pertaining to the SEIR, all pursuant to the provisions of CEQA; and

**WHEREAS**, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared and approved an Addendum to the General Plan Update FPEIR and SEIR for the Camden Avenue Rezoning under Planning File No. C16-017 (the “Addendum”), all in accordance with CEQA; and

**WHEREAS**, the Camden Avenue Rezoning Project (the “Project”) analyzed under the Addendum consists of a conventional rezoning of a certain real property situated on the project site located on the east side of Camden Avenue, between Malpas Drive and Canna Lane from the A Agricultural Zoning District to the R-2 Two-Family Residence Zoning District totaling approximately 1.01 gross acres, in San José, California; and

**WHEREAS**, as further described in the Addendum, the implementation of the Project would not result in new significant effects on the environment beyond those already identified in the previously approved General Plan Update FPEIR, SEIR, and Addenda thereto nor will the Project result in an increase in the severity of significant effects identified in the General Plan Update FPEIR, SEIR, and Addenda thereto; and

**WHEREAS**, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

**WHEREAS**, the City Council has reviewed and considered the General Plan Update FPEIR and SEIR and the Addendum and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the General Plan Update FPEIR and SEIR and the Addendum thereto for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the General Plan Update FPEIR and SEIR, as all modified by the Addendum, as well as other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Addendum modifying the General Plan Update FPEIR and SEIR prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Addendum modifying the General Plan Update FPEIR and SEIR represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

**THAT THE CITY COUNCIL** does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Addendum prepared for the Project (Planning File No. C16-017). The General Plan Update FPEIR and SEIR and the Addendum are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and (2) available for inspection by any interested person.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk



**H. T. HARVEY & ASSOCIATES**

Ecological Consultants

**Camden Avenue (APN# 567-26-014)**

**Riparian Setback Assessment**



**Project #2421-04**

Prepared for:

Paul Bailey

**Bailey Properties Inc.**

9119 Soquel Drive

Aptos, California 95003



Prepared by:

**H. T. Harvey & Associates**



March 7, 2018



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## List of Preparers

Daniel D. Stephens, Principal  
Kelly Hardwicke, PhD, Principal



# Section 1. Introduction

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This report is a riparian setback assessment of the property Camden Avenue, just south of the intersection with Blossom Hill Road, and is an update to the following previous reports by H. T. Harvey & Associates:

- August 13, 2004 Camden Avenue Property (APN# 567-26-014) Riparian Assessment
- June 17, 2015 Camden Avenue Property (APN# 567-26-014) Riparian Assessment
- July 26, 2017 Camden Avenue (APN# 567-26-014), San Jose, Updated Riparian Assessment

This updated assessment includes additional information in response to the following documents from the City of San Jose:

- September 12, 2017 Riparian Exception Response memo from Thai-Chau Le, City of San Jose Planning Department
- September 14, 2017 Preliminary Review memo from Rina Shah, City of San Jose Planning Department
- Dec 12, 2017 email from Rina Shah, City of San Jose Planning Department

Summaries of our findings are presented below under VHP Setback Recommendation and Consistency Summary and City of San Jose Setback Recommendation and Consistency Summary.



## Section 2. Assessment of Site Conditions

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H. T. Harvey & Associates ecologists visited the site on February 15 and 20, 2018 to determine if site conditions have changed since previous site visits. Conditions were mostly similar, except there have been several changes to site conditions relating to removal of trees from the property and from the contiguous SCVWD property as described below.

The property is located in south San José, just south of the intersection of Blossom Hill Road and Camden Avenue (Figure 1). The approximately 1-acre Camden property is located along Camden Avenue near Guadalupe Creek. The property consists of a level, compacted-fill vacant lot with minimal vegetation cover (see Appendix A for site photos). Several trees that were present on the property during prior surveys have been removed; all those trees were well outside the riparian corridor of Guadalupe Creek. Additionally, during a February 20, 2018 site visit our staff biologist encountered representatives of the Regional Water Quality Control Board who had just completed removal of numerous nonnative, invasive trees from along Guadalupe Creek in the SCVWD property as a habitat improvement measure. They removed several black acacias and holly oaks and treated the stumps with herbicide (see Appendix A, Photopoints 6 and 9). The description and graphic mapping of the corridor in this report reflects the current condition at the property, after the removal of those trees; however the aerial photo used in the figures is a slightly outdated Google Earth image that still shows some of the trees later removed from the property, and all of the trees later removed from the riparian corridor by RWQCB. The lines mapping the current edge of riparian canopy and the top of bank of Guadalupe Creek in the figures accurately depict existing conditions as surveyed at the Camden property using GPS with submeter accuracy.

The top of bank was mapped for the assessment using a GPS unit with submeter accuracy, and we captured survey points along the topographic hinge point, clearly visible at this site, where the steep creek bank abruptly transitions to the flat adjacent upland to the west and includes the property. The edge of riparian canopy was also mapped using GPS with submeter accuracy, using trees and shrubs continuous with the riparian corridor to define the edge of canopy. The top of bank and edge of the riparian canopy are shown in Figures 2 and 3. The riparian setbacks shown on these figures are measured from whichever of those two lines is extends the furthest from the riparian corridor.

Townhouse residences (see Appendix A, Photopoint 6) occur immediately north of the property and that development extends to the edge of the riparian corridor. Santa Clara Valley Water District (SCVWD) property (see multiple photos in Appendix A) is contiguous with the eastern edge of the subject property and is delineated with a 6-foot-high chain link fence along the interface of the two properties. The fence constitutes a barrier to the movement of most non-avian wildlife from the riparian corridor present on the SCVWD property into the subject property. It appears that the SCVWD maintains the ground surface of their property along the fence to remain clear of vegetation. On the adjacent SCVWD property, the top of bank of Guadalupe Creek generally coincides with the limit of riparian vegetation, except in several small areas where the canopy

dripline of riparian trees extends outward beyond the top of bank up by approximately 10 feet (see multiple photos in Appendix A). This dripline does not extend into the Camden property.

The reach of Guadalupe Creek near the property consists of a low-flow perennial aquatic channel and an adjacent floodplain on the channel's west side, which leads immediately to a very steep western bank estimated to be approximately 30-40 feet high. The property is located west of the creek, well outside the top of bank and the edge of the riparian canopy (Figures 2 and 3). The creek bank was carefully examined during the February 15, 2018 site visit for any visual signs of erosion such as slumps, gullies, bare soil, etc. No visible signs of erosion were noted, other than soil disturbance where human visitors have trampled paths down into the creek, and a small encampment (see Appendix A, Photopoint 5). These paths and the encampment, although exposing bare soil and strewn with garbage, did not appear to be contributing substantial sedimentation to the creek or affecting surficial slope stability. In addition, there was no evidence of previous attempts to structurally stabilize the bank. The entire creek bank along the site, from top to bottom, is for the most part heavily vegetated with grasses, shrubs, and trees which serve to minimize erosion. Photographs were taken along the top of bank and where line of sight was possible given heavy vegetation onto the creek bank, to document the absence of visible erosion (see Appendix A, multiple photos along top of bank and down from top of bank).

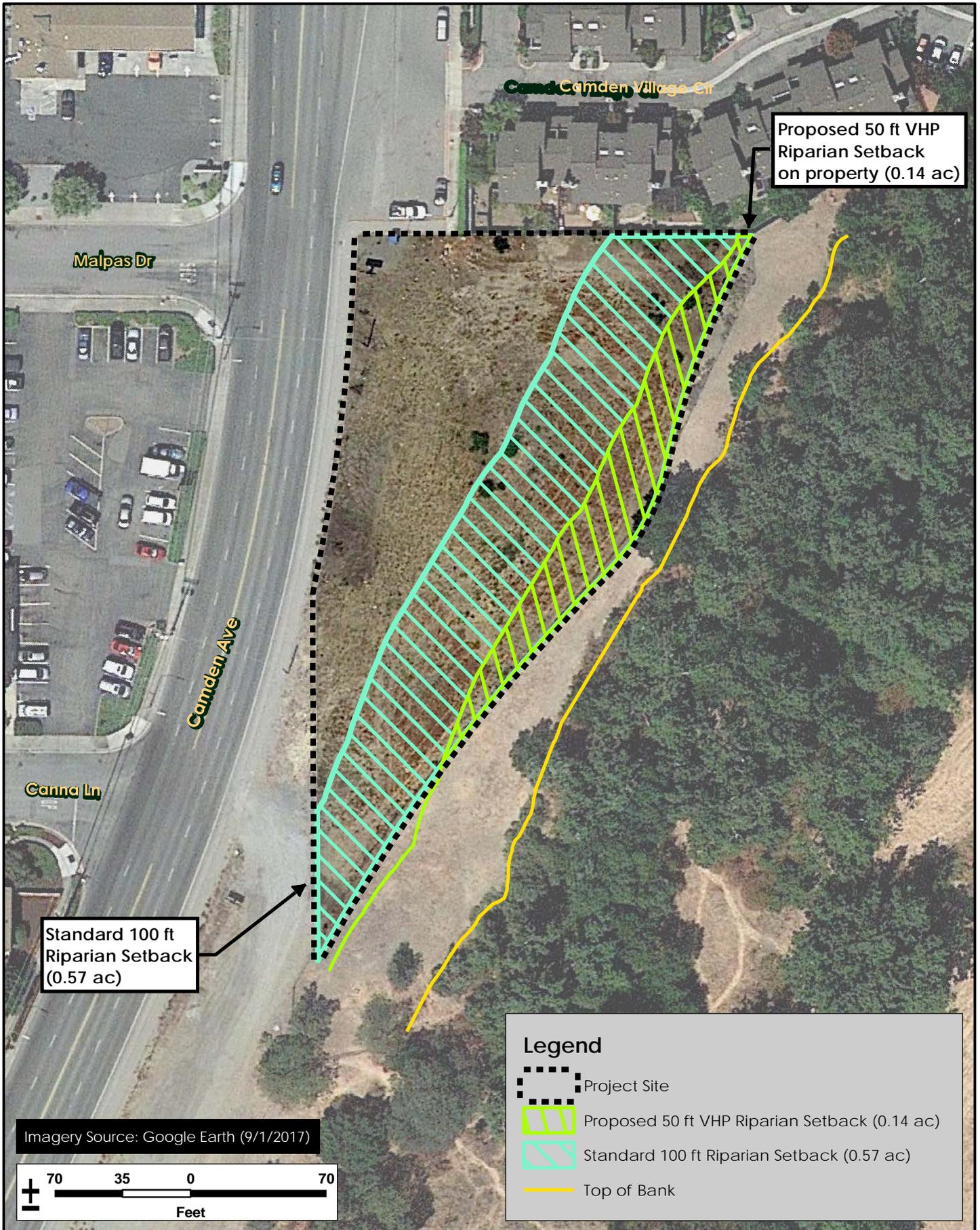
Adjacent to the property, Guadalupe Creek supports a well-developed stand of oak-sycamore riparian forest. Mature western sycamore (*Platanus racemosa*) trees share dominance with coast live oak (*Quercus agrifolia*) and, less commonly, valley oak (*Quercus lobata*). The sycamores range from approximately 12 to over 20 inches in diameter and are rooted at mid-terrace, at a minimum of about 35 feet from the top-of-bank. Oaks are rooted somewhat higher but are generally shorter in stature than the sycamores, creating a nearly-continuous canopy at a height of approximately 75 feet above the active channel (about 15 feet above the top-of-bank). Blue elderberry (*Sambucus mexicana*) and California buckeye (*Aesculus californica*) trees form a dense canopy understory. The lowest bank terrace, directly adjacent to the active channel, supports red willows (*Salix laevigata*) and dense herbaceous growth. Fewer trees are rooted above the mid-point of the steeply-sloping bank, which is unarmored and vegetated with a moderate cover of poison oak (*Toxicodendron diversilobum*), coastal sagebrush (*Artemisia californica*), California wild grape (*Vitis californica*), and nonnative cherry trees (*Prunus* sp.).

In general, mature, multi-layered riparian habitat provides important habitat for terrestrial and aquatic wildlife. However, the wildlife function of the adjacent riparian habitat is compromised and diminished by proximity to existing development (i.e., residences, roadways, vacant lot). For example, the adjacent townhouse residences are located almost contiguous with the riparian habitat of Guadalupe Creek. Furthermore, the property itself is currently barren and disturbed with no habitat features that serve to enhance or buffer the riparian corridor in the existing condition. As noted above, the SCVWD property ground surface above the top of bank is apparently maintained to be clear of vegetation and has a continuous 6-foot-high chain link fence which creates a biological separation between the riparian corridor and the Camden property, thereby reducing the habitat value on the Camden property.



N:\Projects\2421-02\03\Reports\Fig1 Riparian Assessment Area.mxd



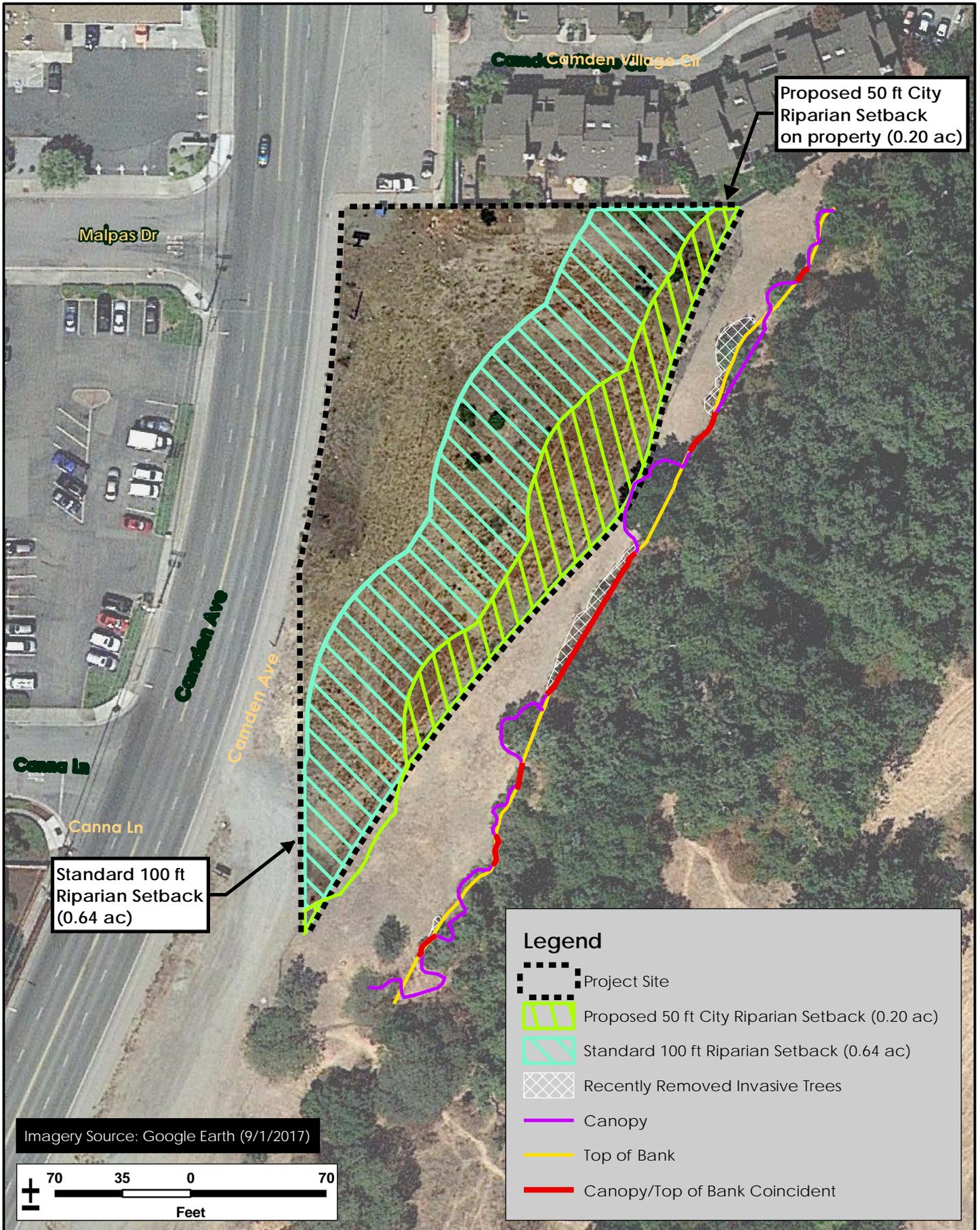


N:\Projects\2421-02\04\Fig2\_Proposed 50ft VHP Setback.mxd



**Figure 2. VHP Riparian Setback**





N:\Projects\2421-04\CA\Fig3 Proposed 50ft City Setback.mxd



**Figure 3. City Riparian Setback**



## Section 3. VHP Conditions 11 and 17 Riparian Setback Guidance

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Guadalupe Creek is a Category 1 stream under the VHP. According to VHP Condition 11: Stream and Riparian Setbacks:

“Inside the urban service area at the time of Plan adoption, the setback for Category 1 streams is 100 feet... In addition, if the site supports riparian vegetation the setback is equal to either the riparian edge plus a 35 foot buffer or the setback as defined above, whichever is greater.”

The VHP does allow for setback exceptions in some limited circumstances based on the following factors:

- The existence of legal uses within the setback
- When meeting the required setback would result in demonstrable hardship.
- When meeting the required setback would require deviation from other established policies.
- The stream setback exception does not preclude achieving the biological goals and objectives of the habitat plan.

However, The VHP does limit the reduction of stream setbacks to a minimum of 50 feet for new development:

“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.”

Condition 17, as originally presented in the VHP (ICF 2012), required habitat suitability surveys for tricolored blackbird (*Agelaius tricolor*) in any property located within 250 feet of “any riparian, coastal and valley freshwater marsh (perennial wetlands), or pond land cover types”. However, this Condition was amended in 2017 with the release by the Habitat Agency of VHP Guidance Memo HPM2017-03, Condition 17: Tricolored Blackbird Survey Requirements. In this guidance memo, the Habitat Agency acknowledged the original text of the VHP was too conservative for Condition 17, because it required surveys in riparian habitats where the species had never previously been known to nest, and species’ experts concurred, was unlikely to ever nest in Santa Clara County. Guidance Memo HPM2017-03 amended the condition requirements as follows:

“Projects may require surveys if the project-specific verified land cover map (see Section 6.8.3 Item 3: Land Cover Types on Site) shows that the project area is within 250 feet of potential nesting habitat, which is defined as any riparian, coastal and valley freshwater marsh (perennial wetlands), or pond land cover types that adjoin field-verified grassland, oak woodland, riparian forest and scrub, grain/row-

crop/hay/pasture, and barren land cover types. Riparian, coastal and valley freshwater marsh, or pond land cover types that are completely surrounded by other land covers, such as urban-suburban or golf course/urban park, do not provide suitable nesting habitat and will not need habitat surveys.”

The Geobrowser for the VHP was then updated to indicate urban areas that met this definition, or in other words, where riparian, wetland, or pond habitats were adjoining substantial areas of grassland or other habitat types. On the current Geobrowser files, Guadalupe Creek is not depicted as a Condition 17 tricolored blackbird survey area until over 2,000 feet upstream from the Camden property (Santa Clara Valley Habitat Agency 2018). Additionally, biologists’ surveys of the Camden property and adjacent riparian corridor did not detect the presence of suitable nesting habitat for this species within either area. Therefore, suitable nesting habitat for this species does not exist within 250 feet of the property. And no further surveys are warranted for compliance with Condition 17.

### **3.1 VHP Setback Recommendation and Consistency Summary**

Based on our analysis, as summarized above, we find that a 50 foot setback from the top of bank would be consistent with the VHP guidance on riparian setbacks and circumstances that warrant request of a riparian setback exception under Condition 11 (Figure 2). It should be noted that this VHP 50-foot setback is therefore slightly different from the City of San Jose riparian setback recommended below, as the City setback extends outwards from the top of bank or edge of riparian canopy, whichever is greater.

## Section 4. City of San Jose Riparian Setback Guidance

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San José riparian corridor policies including the 1999 Riparian Corridor Policy Study, the 2040 Envision San José General Plan update in 2011, and Council Policy 6-34, require a 100-ft setback from edge of riparian vegetation, unless certain conditions for an exception are met. It is understood that setback exceptions are only allowable if specific criteria are met. The key criteria, excerpted from Council Policy 6-34 are noted below, with our opinion as to the applicability of each criteria noted:

- 1) A reduced setback may be considered under limited circumstances such as:
  - a. Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.

**Applicability of criteria as justification for setback exception:** Not applicable.

- b. Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.

**Applicability of criteria as justification for setback exception:** Yes this site is approximately 1 acre and is located in an area where adjacent properties are fully developed. The adjacent development to the north has buildings and landscaping that abut the riparian corridor with no setback. This proposed development is therefore not out of character with existing developments in the vicinity with respect to the riparian corridor setback.

- c. Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.

**Applicability of criteria as justification for setback exception:** Guadalupe Creek is a lower order tributary to the Guadalupe River, and is a small stream with a low flow channel that is approximately 8-10 feet wide. The limit of the riparian canopy is outside the property, the adjacent core riparian habitat is for the most part set well below the property in a canyon like setting, the SCVWD property is maintained clear of vegetation and has a permanent fence, and the property itself has no vegetation to attract wildlife. The combination of these factors serves to substantially limit the riparian influence of creek into the full extent of a 100 foot setback onto the property. Because of those factors, it is our opinion that the proposed development in the outermost 50 feet of a 100 foot setback at this site will have no adverse effects on the riparian corridor.

- d. Sites with unique geometric characteristics and / or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback.

**Applicability of criteria as justification for setback exception:** This property is triangular shaped, with a long hypotenuse along the creek. This certainly constitutes a unique geometric characteristic and creates a disproportionately long riparian frontage such that a full 100 foot setback has disproportionate coverage of the property footprint (Figures 2 and 3). A 50 foot setback would overlay 0.2 acres of the property and a 100 foot setback would overlay an additional 0.64 acres of the property, for a total of 0.84 acres for a 100 foot setback (see acreage callouts on Figure 3). This problem is compounded by the 28-31 foot frontage setback from Camden Avenue requested by the Department of Transportation, which further reduces the developable footprint.

- 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.

**Applicability of criteria as justification for setback exception:** Not applicable.

- 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.

**Applicability of criteria as justification for setback exception:** Not applicable.

- g. Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback.

**Applicability of criteria as justification for setback exception:** Unknown at this time if the proposed development design will include such enhancement measures, which could include native planting in the riparian setback area. However, even without such measures a 50 foot setback is adequate to protect the biological functions of the riparian corridor.

- h. Recreational facilities deemed to be a critical need and for which alternative site locations are limited.

**Applicability of criteria as justification for setback exception:** Not applicable.

- 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.

**Applicability of criteria as justification for setback exception:** Not applicable.

- j. The existence of legal uses within the minimum setback.

**Applicability of criteria as justification for setback exception:** Not applicable.

- 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).

**Applicability of criteria as justification for setback exception:** See 1d above describing how a 100 foot setback, in addition to the road setback, would significantly reduce the developable area on the property. We believe that a 100 foot setback would constitute an adverse effect on the real property interest at this parcel.

- 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.

**Applicability of criteria as justification for setback exception:** Not applicable.

- 2) 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.

**Applicability of criteria as justification for setback exception:** Due to the small size of the property, its geometric configuration, and a road setback, there is no reasonable development configuration that would avoid the conflict with a full 100 foot setback.

- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.

**Applicability of criteria as justification for setback exception:** It is our opinion as professional ecologists that a 50 foot setback is adequate to avoid adverse impacts to the riparian corridor from the proposed project. Furthermore, it is our opinion that a larger setback would not provide a significantly more valuable protective effect on 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).

**Applicability of criteria as justification for setback exception:** The proposed development with a 50 foot setback is compatible with protecting the riparian corridor per the guidance in 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.

**Applicability of criteria as justification for setback exception:** A careful examination of the stream banks on February 15, 2018 revealed no evidence of erosion or previous bank stabilization. See also photographs in Appendix A documenting the general state of the stream bank.

- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

**Applicability of criteria as justification for setback exception:** The proposed development would not have any deleterious ecological effects on the riparian corridor or properties upstream or downstream.

## 4.1 City of San Jose Setback Recommendation and Consistency Summary

We recommend that the City consider a 50 foot riparian setback for this property (Figure 3). This exception is consistent with City guidance and policy, based on the fact that the following criteria, cited and assessed above, from Council Policy 6-34 are met by this project: 1b, 1c, 1d, 1l, 2a, 2b, 2c, 2d, 2e. The recommendation for a reduced setback is further supported by our biological assessment of the existing conditions of the property and the adjacent riparian corridor, as described above under Assessment of Site Conditions. To summarize the latter, we found that the property itself is devoid of biological value due to the bare soil and lack of vegetation, and it is already separated from the riparian corridor by bare areas and an SCVWD fence. Thus the property itself presents little or no value to the riparian corridor, and a reduced buffer of 50 feet will represent an adequate buffer to protect the existing riparian functions and values of the riparian corridor.

As noted above under VHP Setback Recommendation and Consistency Summary, the City of San Jose proposed 50 foot setback line is slightly greater than the VHP proposed 50 foot setback line which is only measured from top of bank. The project proponent will comply with the greater setback.

## Section 5. Additional Information

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In response to 5 questions in the December 12, 2017 email from Rina Shah of the City of San Jose, the following additional information is provided:

1. When you say that there is no evidence of "stream bank erosion along the parcel" do you have photographic evidence?

**Response:** Yes we have conducted further detailed visual observation of the creek bank and included photographs in Appendix A of the stream bank showing no erosion.

2. Do you have a cross-section through the stream bank that shows the 60-foot depth?

**Response:** We believe our 60 foot statement was poorly phrased and misinterpreted. It was intended to indicate the horizontal distance from the property to the creek. We have corrected that language in this report to better present the physical layout of the riparian corridor, under Assessment of Site Conditions.

3. Do you have soil sample analysis to prove that soil erosion won't occur due to excavation and grading within 50 feet of the riparian edge? Or is it an assumption?

**Response:** First, our field survey noted no evidence of erosion in the existing condition, therefore we see no reason to conduct soil sampling. Second, it is our understanding that such specific concerns about future erosion would be reviewed by the City when the project submits its development grading and drainage plans.

4. You state that the Camden property consists of barren, compacted fill material that provides little or no buffering capacity-does that mean that new vegetation cannot be planted? How do you reach this conclusion?

**Response:** Our statement regarding "barren, compacted fill material that provides little or no buffering capacity" is a statement of fact about the existing condition (compacted soil and the lack of vegetation) and its ability to provide ecological buffering of the riparian corridor. With respect to the question about future potential to plant vegetation, it is feasible to mechanically loosen compacted soils, and amend them with standard landscaping techniques to provide for a suitable planting substrate. We did not state any conclusion about a future limitation on planting.

5. Provide the 100-foot setback line on the maps provided?

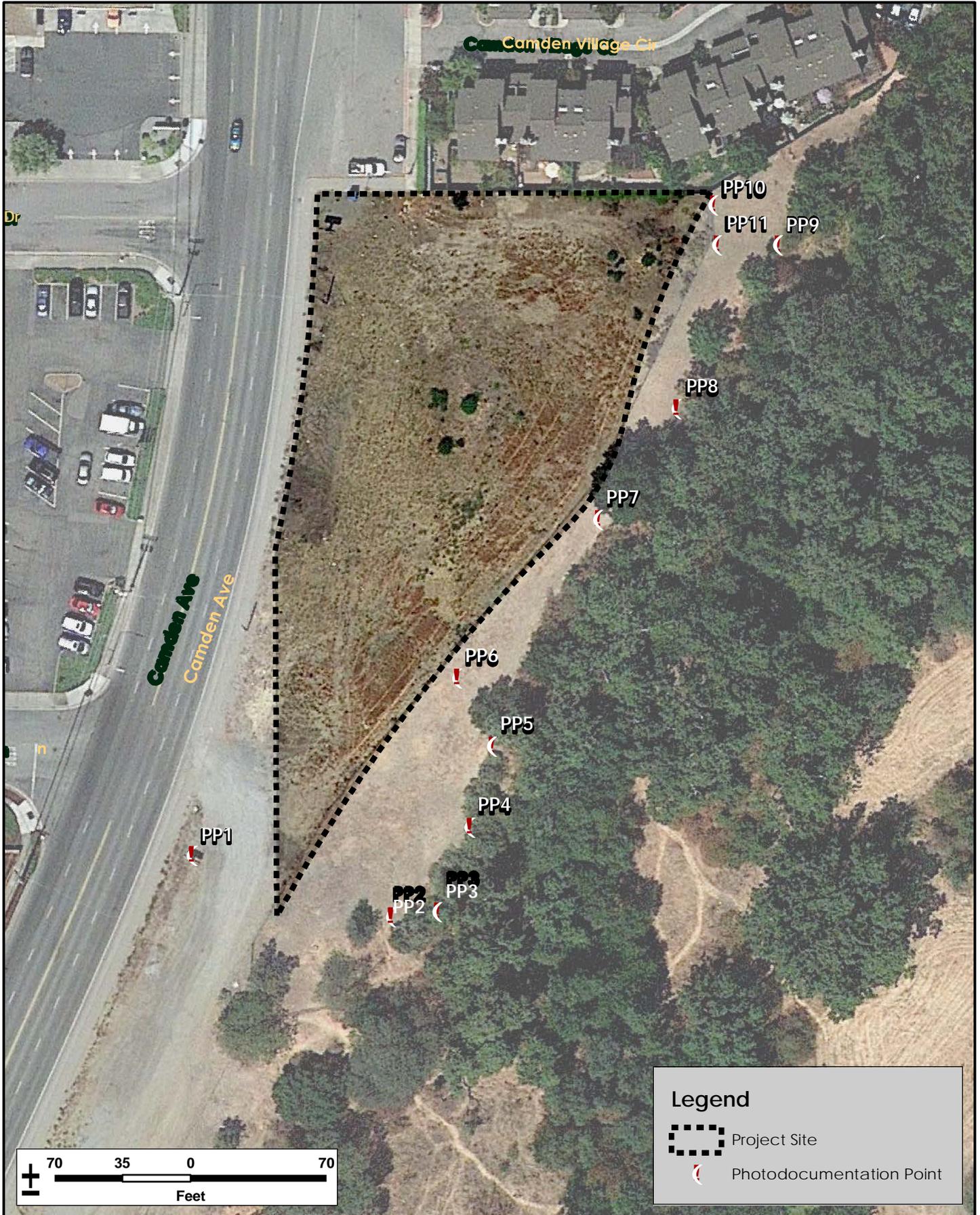
**Response:** Yes, Figures 2 and 3 show a 100 foot setback line.



# Appendix A. Photo-documentation

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N:\Projects\2421-02\04\Fig4 Photodocumentation Points.mxd



**H. T. HARVEY & ASSOCIATES**  
Ecological Consultants

**Figure A-1. Photodocumentation Points**

Camden Avenue Property (APN 567-26-014) Riparian Assessment (2421-04)  
March 2018





Photo-point 6 facing north. The Camden parcel (at left) is separated from SCVWD property and the riparian corridor (at right) by a chain-link fence.



Photo-point 10 facing south. View across the Camden parcel, SCVWD fence is to the left.



Photo-point 1 facing northeast. View across the Camden parcel from the Camden Ave frontage.



Photo-point 6 facing northwest. View across the Camden parcel from the adjacent SCVWD property.



Photo-point 2 facing north across SCVWD property. View along the top of bank of Guadalupe Creek. Note that the ground surface of the SCVWD property beyond the top of bank is maintained clear of vegetation.



Photo-point 5 facing south across SCVWD property. View along the top of bank of Guadalupe Creek. Note that the ground surface of the SCVWD property beyond the top of bank is maintained clear of vegetation.



Photo-point 6 facing south. View across SCVWD property adjacent to the Camden parcel, at right. Note that the ground surface of the SCVWD property beyond the top of bank is maintained clear of vegetation.



Photo-point 8 facing north across SCVWD property toward adjacent residential development. View along the top of bank of Guadalupe Creek. Note that the ground surface of the SCVWD property beyond the top of bank is maintained clear of vegetation.



Photo-point 6 facing east across the SCVWD property toward the riparian corridor. Nonnative, invasive trees recently cut from along the top of bank on SCVWD property.



Photo-point 9 facing east across the SCVWD property. A recently cut and treated black acacia (*Acacia melanoxylon*).



Photo-point 11 facing southeast. View across SCVWD property. Note that the ground surface of the SCVWD property beyond the top of bank is maintained clear of vegetation.



Photo-point 2 facing east across the SCVWD property. View towards top of bank.



Photo-point 3 facing east across the SCVWD property. View down top of bank toward creek channel.



Photo-point 4 facing east across the SCVWD property. View down top of bank toward the creek channel.



Photo-point 5 facing east across the SCVWD property. View down top of bank toward the creek, with a path leading downslope to an encampment.



Photo-point 5 facing south across the SCVWD property. Encampment is located below top of bank.



Photo-point 7 facing east across the SCVWD property. View down top of bank.



Photo-point 9 facing southeast across the SCVWD property. View down top of bank.

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 1.01-GROSS ACRES SITUATED ON THE EAST SIDE OF CAMDEN AVENUE BETWEEN MALPAS DRIVE AND CANNA LANE (0 CAMDEN AVENUE, 567-26-014), FROM THE A AGRICULTURAL ZONING DISTRICT TO THE R-2 TWO-FAMILY RESIDENCE ZONING DISTRICT**

**WHEREAS**, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

**WHEREAS**, an Addendum to the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (the “FEIR”), certified by the City Council on November 1, 2011 by Resolution No. 76041, and the Supplemental Environmental Impact Report (the “SEIR”), certified by the City Council on December 15, 2015 by Resolution No. 77617, and Addenda thereto, all in conformance with the California Environmental Quality Act, was prepared and approved by the Planning Director for the subject rezoning; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the R-2 Two-Family Residence Zoning District; and

**WHEREAS**, this Council of the City of San José has considered and approves the application and use of said Addendum as the appropriate environmental clearance for this proposed project prior to taking any approval actions on the project;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** The recitals above are incorporated herein.

**SECTION 2.** All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as R-2 Two-Family Residence Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein by this reference.

**SECTION 3.** The district map of the City is hereby amended accordingly.

**SECTION 4.** The land development approval that is the subject of City File No. C16-017 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

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PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_, 2018 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

DRAFT

EXHIBIT "A"  
RE-ZONING LEGAL DESCRIPTION  
FOR  
LANDS OF KELSEY  
FILE NO. C16-017  
APN: 567-26-014



File No. 25788  
Drawn By BFH  
Checked By ABF  
October 29, 2018

BRYAN F. HAPPEE, PLS 8229

PERIMETER DESCRIPTION OF THE LANDS OF THE KELSEY FAMILY TRUST DATED MARCH 17, 2000 AS TO AN UNDIVIDED ½ INTEREST AND THE LANDS OF THE EBERTS FAMILY LIVING TRUST, UDT 09/10/08 AS TO AN UNDIVIDED ½ INTEREST;

**SITUATE** IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND

**BEING** the lands described in "Property Two" of the Lands conveyed to Matt A. Kelsey and Rachael A. Kelsey, Trustees of the "Kelsey Family Trust dated March 17, 2000", and Recorded April 25, 2000 in Document Number 15224632, Official Records of Santa Clara County Records, and;

**BEING** the lands described in "Property Two" of the lands conveyed to Kenneth Marvin Eberts, Jr. and Marjorie K. Eberts, Trustees of the "Eberts Family Living Trust, UTD 09/10/08 (Marjorie K. Eberts, separate Property)", and being more particularly bounded described as follows to wit;

**BEGINNING** at a point on the northern boundary of that 2.36 acre Parcel of Land Conveyed from Bank of America National Trust and Savings Association to Vivian Arnerich Kelsey, et al, by Deed Recorded June 3, 1957 in Book 3812, Page 9, Official Records of Santa Clara County, from which point, the northwestern corner thereof bears, North 89°51'00" West 22.56 feet distant, said **POINT OF BEGINNING** being the northeastern corner of the parcel deeded to the City of San Jose, by Deed Recorded, December 8, 1988 in Book K780, Page 2018, Official Records of Santa Clara County;

**THENCE** from said **POINT OF BEGINNING**, leaving said northern boundary, southwesterly along a non-tangent curve to the right from a tangent that bears South 1°32'22" West, having a radius of 1008.00 feet, through a central angle of 10°34'25" and arc length of 186.02 feet to a point on the eastern line of Camden Avenue (formerly Hicks Road and before that was also known as Los-Gatos-Almaden Road or Harwood Road); thence southeasterly along said eastern boundary, South 00°09'00" East 188.87 feet, to a point from which the southern corner of Parcel II of the lands conveyed to the Santa Clara Valley Water District recorded August 27, 1976 in Book C248, Page 176, Santa Clara County Records, (also being the southern corner of the lands conveyed to Vivian Arnerich Kelsey et al, by deed Recorded in Book 1426, Page 9,

EXHIBIT "A"  
RE-ZONING LEGAL DESCRIPTION  
FOR  
LANDS OF KELSEY  
FILE NO. C16-017  
APN: 567-26-014

Official Records of Santa Clara County) bears the following courses, South 00°09'00" East 78.96 feet (South 00°22'53" East 78.96 feet in said last referenced deeds), South 36°30'00" West 67.12 feet (South 37°01'53" West 67.12 feet in said last referenced deeds), and South 00°09'00" East 416.10 feet (South 00°22'53" East 416.10 in said last referenced deeds) distant; thence leaving said eastern line of Camden Avenue (formerly Hicks Road and before that was also known as Los-Gatos-Almaden Road or Harwood Road) along a curve to the right from a tangent that bears North 28°27'29" East (North 28°59'09" East in said deeds) , having a radius of 866.50 feet, through a central angle of 16°39'16", for an arc length of 251.87 feet (251.89 feet in said deeds) to a point of reverse curvature; thence along a curve to the left, having a radius of 108.50 feet, through a central angle of 33°07'50", an arc length of 62.74 feet to a point of reverse curvature; then along a curve to the right, having a radius of 416.50 feet, through a central angle of 17°29'42", an arc length of 127.18 feet, to a point on the northern boundary of the above referenced 2.365 acre parcel, from which point, the eastern corner of said 2.366 acre parcel, also being the northwestern corner of the first cited exception as described in the above referenced lands of "the Kelsey Family Trust dated March 17, 2000", and as described in the first cited exception to the above referenced lands of "Eberts Family Living Trust, UTD 09/10/08 (Marjorie K. Eberts, separate Property)", bears North 89°51'00" East (South 89°37'07" East in said last referenced deeds) 137.85 feet distant; thence southwesterly along said northern boundary of said 2.36 acre parcel South 89°51'00" West (South 89°37'07 East in said last referenced deeds) 203.12 feet, to the **POINT OF BEGINNING**;

Containing 43,797 Sq. ft./ 1.005 Acre gross, a little more or less;

SURVEYED & COMPILED IN SEPTEMBER 2018 BY BOWMAN AND WILLIAMS CONSULTING CIVIL ENGINEERS FILE NO. 25788.

**EXHIBIT B**

RE-ZONING PLAT  
 APN: 567-26-014

TRACT NO. 4762 IALPAS PROPERTIES LLC  
 56-M-16 DOC#19037090  
 567-14-066

TRACT NO. 6924  
 467-M-13

MALPAS DR. (60')

TRACT NO. 5036  
 293-M-36

3.0' SEE NOTE  
 KELSEY ET. AL.  
 DOC 7074491  
 567-26-014  
 43,797 sq.ft.  
 1.005 acre gross

CANNA LANE (60')

GUADALUPE CREEK



10/29/2018

CLEMATIS DR.  
 (60')

CAMDEN AVE (WIDTH VARIES)  
 N28°27'29"E TAN

S.C.V.W.D.  
 DOC 5396288  
 3026-6  
**NOTE**  
 KELSEY TO CITY OF SAN JOSE  
 3.00' FOOT WIDE STRIP  
 DOC#9938043 12/8/1988

GRAPHIC SCALE



( IN FEET )  
 1 inch = 100 ft.

**BOWMAN & WILLIAMS**

CONSULTING CIVIL ENGINEERS & LAND SURVEYORS

3949 RESEARCH PARK COURT, SUITE 100  
 SOQUEL, CA 95073-2094, TEL (831)426-3560

SCALE 1"=100'

DATE OCTOBER 29, 2018

DRAWN BFH

JOB NO. 25788

DWG NAME 25788.DWG

FILE NO. 25788



# BOWMAN & WILLIAMS

CONSULTING CIVIL ENGINEERS & LAND SURVEYORS

ESTABLISHED IN 1908, A CALIFORNIA CORPORATION SINCE 1974

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PHONE (831) 426-3560 FAX (831) 426-9182 www.bowmanandwilliams.com

## PARCEL AREA EXTERIOR BOUNDARY OF EBERTS/KELSEY

End North: 9914.8244' East: 10769.8524'

Segment #1 : Curve

Length: 251.87' Radius: 866.50'

Delta: 16°39'16" Tangent: 126.83' Radial Bearing: N 28°27'29" E

Chord: 250.98' Course: NORTH 36° 47' 07" EAST

Course In: SOUTH 61° 32' 31" EAST Course Out: NORTH 44° 53' 15" WEST

RP North: 9501.9239' East: 11531.6499'

End North: 10115.8306' East: 10920.1437'

Segment #2 : Curve

Length: 62.74' Radius: 108.50'

Delta: 33°07'50" Tangent: 32.27'

Chord: 61.87' Course: NORTH 28° 32' 50" EAST

Course In: NORTH 44° 53' 15" WEST Course Out: SOUTH 78° 01' 05" EAST

RP North: 10192.7021' East: 10843.5734'

End North: 10170.1786' East: 10949.7104'

Segment #3 : Curve

Length: 127.18' Radius: 416.50'

Delta: 17°29'42" Tangent: 64.09'

Chord: 126.68' Course: NORTH 20° 43' 46" EAST

Course In: SOUTH 78° 01' 05" EAST Course Out: NORTH 60° 31' 23" WEST

RP North: 10083.7118' East: 11357.1361'

End North: 10288.6577' East: 10994.5494'

Segment #4 : Line

Course: SOUTH 89° 51' 00" WEST Length: 203.12'

North: 10288.1259' East: 10791.4301'

Segment #5 : Curve

Length: 186.02' Radius: 1008.00'

Delta: 10°34'25" Tangent: 93.28' Radial Bearing: S 1°32'22" W

Chord: 185.76' Course: SOUTH 6° 49' 34" WEST

Course In: NORTH 88° 27' 38" WEST Course Out: SOUTH 77° 53' 13" EAST

RP North: 10315.2060' East: 9783.7940'

End North: 10103.6827' East: 10769.3514'

Segment #6 : Line

Course: SOUTH 0° 09' 00" EAST Length: 188.87'

North: 9914.8133' East: 10769.8458'

Perimeter: 1019.79' Area: 1.005394acres

Error Closure: 0.0129 Course: SOUTH 30° 52' 20" WEST

Error North: -0.01108 East: -0.00662

Precision 1: 78858.91



10/29/2018