LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

CAMDEN AVENUE SITE
BIOLOGICAL EVALUATION TECHNICAL REPORT
SAN JOSÉ, CALIFORNIA

Prepared by

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1 INTRODUCTION

Live Oak Associates, Inc (LOA) evaluated the Camden Avenue Site (APN 567-26-014) located within the southern portion of the City of San José, California, to ascertain whether future build-out of a proposed residential project would have a significant impact (as defined by CEQA) on the biological resources of the site and the region. This report describes the biotic resources of the approximately 0.998-acre Camden Avenue Site ("study site") that is comprised of a vacant lot located between a major roadway (Camden Avenue) and the riparian corridor of Guadalupe Creek. This report evaluates potential impacts to such resources from development of the site and it summarizes the project's potential conformance to the City of San José's Council Policy Number 6-34 (2016), Envision San José 2040 General Plan (City of San José 2011) and Santa Clara Valley Habitat Conservation Plan ("SCVHP"; ICF International 2012).

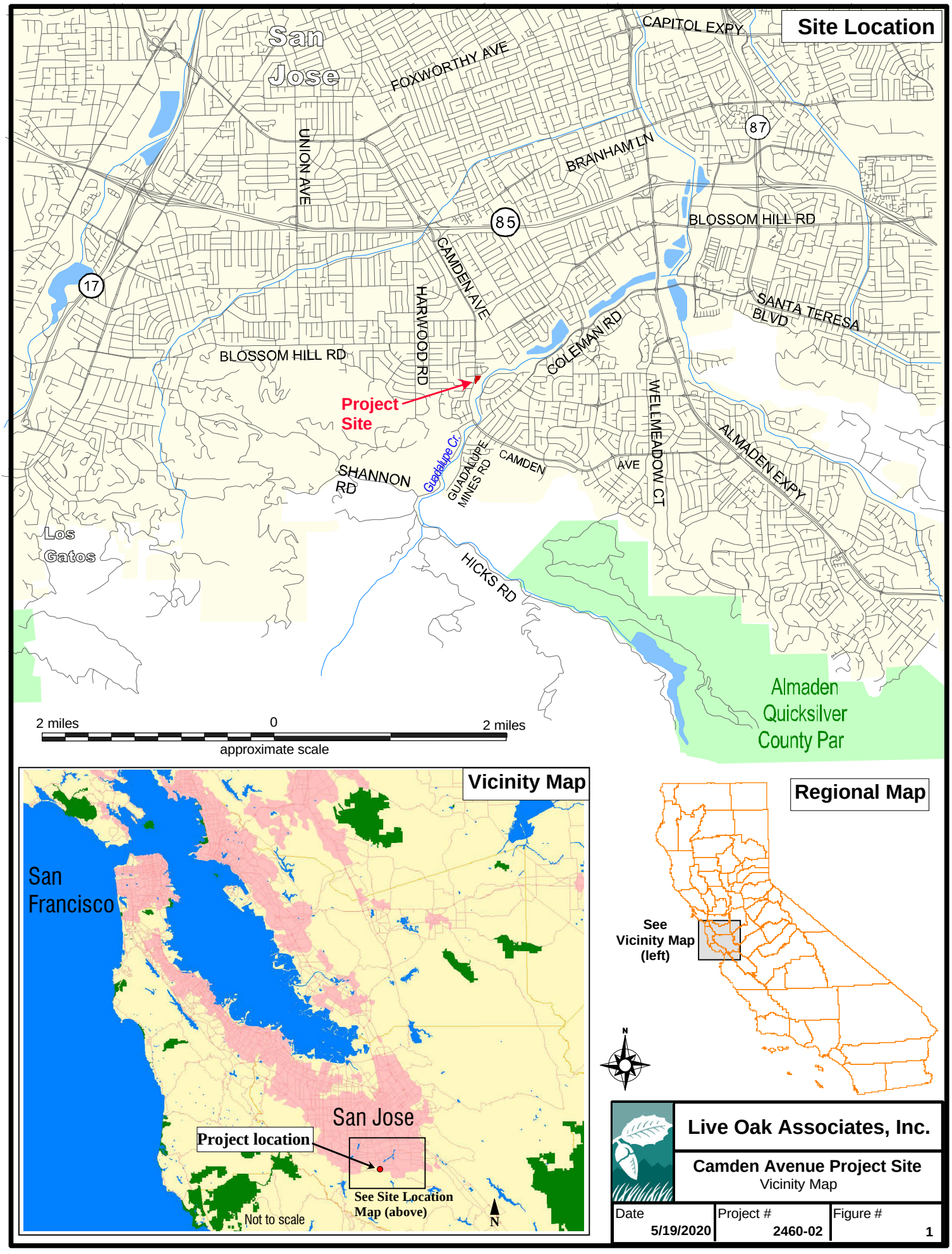
The triangle-shaped study site is bounded by Camden Avenue to the west, existing residential development to the north, and a Valley Water maintenance road easement and the riparian habitat of the Guadalupe Creek to the southeast. The site is at the southern-most tip of the land grant San Juan Bautista in Santa Clara County. Or if the U.S. Public Land Survey is overlaid the following would describe the project location: NW1/4, SW1/4, SE1/4, T8S, R1E of the Mt. Diablo Meridian. The site can be found in the Los Gatos, California U.S.G.S quadrangle.

The site is currently comprised of a vacant lot bearing very low managed vegetation, and the site occurs adjacent Guadalupe Creek.

In general, the development of parcels can damage or modify biotic habitats used by sensitive plant and wildlife species. In such cases, site development may be regulated by state or federal agencies, subject to provisions of the California Environmental Quality Act (CEQA), and/or covered by policies and ordinances of the City of San José. Therefore, this report addresses issues related to: 1) sensitive biotic resources occurring in the study area; 2) the federal, state, and local laws regulating such resources, 3) whether or not the project results in any significant impact to these resources; and 4) if so mitigates these impacts to less-than-significant (as defined by CEQA).

The analysis of impacts, as discussed in Section 3.0 of this report, was based on the known and potential biotic resources of the study area discussed in Section 2.0. Sources of information used in the preparation of this analysis included: 1) the *California Natural Diversity Data Base* (CDFW

2019); 2) the *California Rare Plant Rank* (CNPS 2019); 3) manuals and references related to plants and animals of the Santa Clara Valley Region; 4) the Envision San José 2040 General Plan; 5) the City of San José policies and ordinances; and 6) the Santa Clara Valley Habitat Conservation Plan (ICF International 2012).



Live Oak Associates, Inc.

Camden Avenue Project Site
Vicinity Map

Date	Project #	Figure #
5/19/2020	2460-02	1

General site information pertaining to the biological setting was collected during two site visits by LOA. The edge of riparian habitat was delineated by LOA ecologist Nathan Hale on March 23 and 26, 2020. Mr. Hale conducted a general habitat assessment survey of the site and immediate site vicinity on June 2, 2020. All constituent habitats and species observed within the study site were recorded during these site visits.

1.1 PROJECT DESCRIPTION

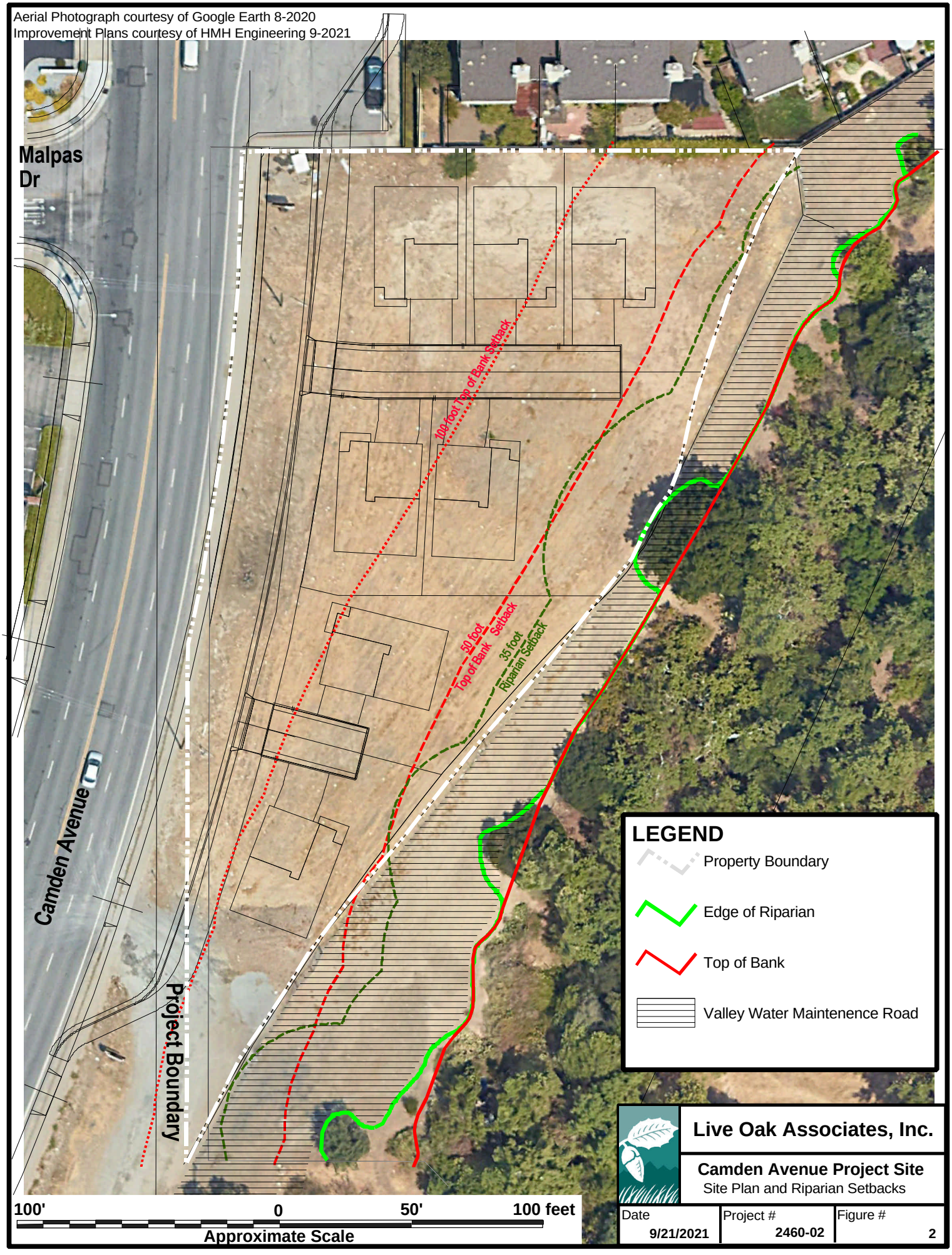
The proposed project is to rezone the 0.998-acre site from A (Agriculture) to a Planned Development Zoning ((A) PD), in conformance with the existing general plan of Residential Neighborhood. This will allow for the construction of up to seven single family detached residential units, dedication of public street right-of-way to widen Camden Avenue, street improvements, and landscaping (Figure 2).

The seven homes on the site will have a net density of 9.26 dwelling units per acre which is in keeping with the existing adjacent neighborhood. The average lot size is estimated to be 2,600 square feet. The proposed homes would consist of two or two and one-half story structures with a maximum height of 35 feet. The square footage of the homes will range from 2,100-2,300 square feet.

The project will have two car garages with two driveway aprons each. This will generate a total of 16 parking spaces.

The site would be accessed from Camden Avenue to private drives or private streets. The proposed development would have a riparian setback of 50 feet from the top of bank of Guadalupe Creek and at least 35 feet from the outer dripline of riparian vegetation. The project proposes additional riparian landscaping within the 0.25 acre riparian setback area and includes a five-year monitoring plan. This landscaping project will be implemented in conformance with a Habitat Mitigation and Monitoring Plan (HMMP) that has been prepared for the site (Appendix A).

There is an existing SCVWD maintenance road immediately adjacent to the site on the top of bank that will remain.


Aerial Photograph courtesy of Google Earth 8-2020
Improvement Plans courtesy of HMH Engineering 9-2021
Malpas Dr
Camden Avenue
Project Boundary
100 foot Top of Bank Setback
50 foot Top of Bank Setback
35 foot Riparian Setback
LEGEND
Property Boundary
Edge of Riparian
Top of Bank
Valley Water Maintenence Road
100' 0 50' 100 feet
Approximate Scale
Live Oak Associates, Inc.
Camden Avenue Project Site
Site Plan and Riparian Setbacks
Date 9/21/2021
Project # 2460-02
Figure # 2

2 EXISTING CONDITIONS

The study area is located in south San José, California, generally between Camden Avenue and Guadalupe Creek. The study area evaluated by this report consists of the approximately 0.998-acre site, a Valley Water maintenance road between the site boundary and the creek, and the riparian and creek habitat area adjacent to the site. The site itself has relatively level topography, ranging in elevation from 292 to 298 feet (89 to 91 m) National Geodetic Vertical Datum (NGVD). The site is currently undeveloped, though it has been subjected to iterative disturbances such that it does not support natural habitats. Evidence was observed of previous vegetation removal (i.e., removal of approximately 4 trees), placement of offsite fill, including gravels and chipped wood, and grading. A gravel Valley Water maintenance road occurs between the site and the riparian vegetation of the Guadalupe Creek riparian corridor, which is separated from the site by a chain-link fence.

Soils of the site are mostly comprised of Urbanland-Flaskan complex, 0 to 2% slopes and with a small component of Urnbanland-Landelspark complex, 0 to 2% slopes, soils. Urbanland soils are soils that are extensively influenced by previous human activities. Both complexes are soils formed of alluvium derived from mixed rock sources. Both complexes are well-drained, and neither is considered to be hydric nor are they considered soils that support edaphic plant communities (e.g., serpentine communities).

Annual precipitation in the general vicinity of the study area is about 14-20 inches, almost 85% of which falls between the months of October and March. Effectively, all precipitation falls in the form of rain.

2.1 BIOTIC HABITATS

Two main land types occur within the vicinity of the study site, only one of which occurs within the site boundary. The land use type that occurs within the site itself is a ruderal form of annual vegetation called a Russian thistle (*Salsola tragus*) ruderal annual forb alliance. Adjacent to the site, separated from the site by a barren gravel Valley Water maintenance road that is approximately 20 to 25 feet wide, is a sycamore-oak riparian forest habitat associated with Guadalupe Creek. These land types are discussed below.

2.1.1 **Russian Thistle (*Salsola tragus*) Ruderal Annual Forb Alliance**

The study site is a highly disturbed land area with soils that have been manipulated through grading, vegetation removal, and iterative placements of piles of fill, gravels, and wood mulch, apparently from offsite locations. Much of the soils are barren, and the site supports low vegetation diversity dominated by a few non-native ruderal species. During the June 2, 2020, site visit, LOA observed that the site is heavily dominated by Russian thistle, which makes up approximately 70-80 percent of the relative plant cover. Co-dominant species included lamb's quarters (*Chenopodium album*), horseweed (*Erigeron canadensis*), and seedlings and saplings of the tree-of-heaven (*Ailanthus altissima*), a highly invasive non-native tree. Other species that were present included common sow-thistle (*Sonchus oleraceus*), serrated lettuce (*Lactuca serriola*), and filarees (*Erodium* spp.). Non-native annual grasses, such as ripgut brome (*Bromus diandris*), represent a very small component of the relative vegetation of the site. The northern boundary of the site includes a backyard fence that is covered in a Mexican blood-trumpet vine (*Amphilophium buccinatorium*). A low-statured coast live oak sapling (*Quercus agrifolia*) was also noted growing as a stump sprout from a tree stump within the site. Several stumps were noted on the site. According to available aerial imagery, these trees were cut down and removed between November 2016 and April 2017 (Google Earth 2020). The only trees present on the site were sapling-sized individuals of the tree-of-heaven, ranging in height from approximately 2 feet to 6 feet and the small coast live oak stump sprout that was approximately 3 feet tall.

Given the low diversity of vegetation, soil disturbances, and the lack of native species, the site offers low habitat values for wildlife. Such conditions would reduce invertebrate diversity and abundance which would reduce forage for many species of reptiles, amphibians, birds, and mammals. As such, few animals were observed using the site during the site visits. Western fence lizards (*Sceloporus occidentalis*), were observed on the site, and three bird species were observed within or over the site during the June 2, 2020, site visit including a California gull (*Larus californicus*), house finch (*Haemorhous mexicanus*), and house sparrow (*Passer domesticus*). Other species that are adapted to human-modified land use areas may use the site as low-quality forage habitat including the rock pigeon (*Columba livia*), mourning dove (*Zenaida macroura*), American crow (*Corvus brachyrhynchos*), brewer's blackbird (*Euphagus cyanocephalus*), rats (*Rattus* spp.), Virginia opossum (*Didelphis virginiana*), and Northern raccoon (*Procyon lotor*), but overall, the site does not offer much cover, forage, or breeding habitat for regional wildlife.

2.1.2 **Riparian Habitat of the Guadalupe Creek**

The study site occurs west of Guadalupe Creek which flows, perennially, from southwest to northeast. The bank of the creek closest to the site, which occurs offsite and which is separated from the study site boundary by a compacted gravel Valley Water maintenance road, is a steep, densely vegetated bank with an elevation change of approximately 30 to 40 feet from the top of bank, which is approximately level with the study site, down to the aquatic channel below. This bank is vegetated with a mature oak-sycamore riparian forest including a dense tree layer and an understory shrub, grass, and forb layer. During the May and June 2020 site visits a large homeless encampment was observed within the riparian habitat zone of the creek. Slightly eroded social trails from human access occur in a few locations along the bank.

The riparian habitat on the banks is a mostly contiguous native habitat dominated by California sycamore trees (*Platanus racemosa*) and coast live oaks. Sub-dominant tree species include the California buckeye (*Aesculus californica*), valley oak (*Quercus lobata*), blue oak (*Q. douglasii*), sandbar willow (*Salix exigua*), and blue elderberry (*Sambucus nigra* ssp. *cerulea*). Other trees observed in the canopy include the Persian silk tree (*Albizia julibrissia*), tree-of-heaven saplings, California black walnut (*Juglans hindsii*), almond trees (*Prunus dulcis*), and red willow (*Salix laevigata*). Understory plants included sagebrush (*Artemisia californica*), oat grass (*Avena fatua*), Italian thistle (*Carduus pycnocephalus*), elegant clarkia (*Clarkia unguiculata*), fennel (*Foeniculum vulgare*), bedstraw (*Galium aparine*), prickly-pear (*Opuntia* sp.), bee plant (*Scrophularia californica*), poison oak (*Toxicodendron diversilobum*), and California wild grape (*Vitis californicus*). With a few exceptions, this mix of species is largely native in composition.

The structural diversity of the riparian habitat occurring adjacent to the site is expected to support relatively high animal species richness and diversity. However, the presence of homeless encampments within the creek is likely to partially deter many of these animal species from this particular reach. Leaf litter and decaying wood provide a moist microclimate suitable for reptiles and amphibians such as the ensatina (*Ensatina eschscholtzi*), arboreal salamander (*Aneides lugubris*), California slender salamander (*Batrachoseps attenuatus*), western fence lizard, southern alligator lizard (*Gerrhonotus multicarinatus*), Pacific chorus frog (*Pseudacris regilla*), and western toad (*Anaxyrus boreas*). Gopher snakes (*Pituophis melanoleucus*) and western rattlesnakes (*Crotalus viridis*) may forage for small mammals in the upland areas adjacent to the creek. Birds

that were noted in the riparian canopy during the brief site visits included the mourning dove, California scrub jay (*Aphelocoma californica*), northern mockingbird (*Mimus polyglottos*), spotted towhee (*Piplio maculatus*), and bushtit (*Psaltriparus minimus*). Other avian species that could be expected to occur include the barn owl (*Tyto alba*), great horned owl (*Bubo virginianus*), red-tailed hawk (*Buteo jamaicensis*), Cooper's hawk (*Accipiter cooperii*), American crow, white-crowned sparrow (*Zonotrichia leucophrys*), northern flicker (*Colaptes auratus*), acorn woodpecker (*Melanerpes formicivorus*), Nuttall's woodpecker (*Picoides nuttallii*), Anna's hummingbird (*Calypte anna*), California towhee (*Melozone crissalis*), white-breasted nuthatch (*Sitta carolinensis*), dark-eyed junco (*Junco hyemalis*), chestnut-backed chickadee (*Parus rufescens*), ash-throated flycatcher (*Myiarchus cinerascens*), black phoebe (*Sayornis nigricans*), and yellow-rumped warbler (*Setophaga coronata*). Nesting and foraging habitat is adequately available for these and other birds. Mammalian species utilize this habitat for forage, cover, and migratory habitat. No mammalian species were observed during the 2020 surveys; however, several of the mammals that could be expected to use the riparian habitat include the eastern fox squirrel (*Sciurus niger*), Botta's pocket gopher (*Thomomys bottae*), California vole (*Microtus californicus*), western harvest mouse (*Reithrodontomys megalotis*), ornate shrew (*Sorex ornatus*), California mouse (*Peromyscus californicus*), brush rabbit (*Sylvilagus bachmani*), Virginia opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis*), and black tailed deer (*Odocoileus hemionus columbianus*). Some of the smaller of these mammals attract a variety of predators, including various snakes and raptors as previously discussed, but also other mammals including coyote (*Canus latrans*), northern raccoons (*Procyon lotor*), and bobcats (*Lynx rufus*). Cougars (*Puma concolor*) are also known to occur in the region and may utilize the riparian corridor in a limited way as dispersal habitat or in search of prey.

2.2 MOVEMENT CORRIDORS

Movement corridors or landscape linkages are usually linear habitats that connect two or more habitat patches (Harris & Gallagher 1989), providing assumed benefits to species by reducing inbreeding depression, and increasing the potential for recolonization of habitat patches. Habitat corridors are vital to terrestrial animals for connectivity between core habitat areas (i.e., larger intact habitat areas where species make their living). Connections between two or more core habitat areas help ensure that genetic diversity is maintained, thereby diminishing the probability of inbreeding depression and geographic extinctions. This is especially true in fragmented landscapes and the

surrounding urbanized areas as found in the rural/urban matrix along the edges of the City of San José.

The quality of habitat within the corridors is important: "better" habitat consists of an area with a minimum of human interference (e.g., roads, homes, etc.) and is more desirable to more species than areas with sparse vegetation and high-density roads. Movement corridors in California are typically associated with valleys, rivers and creeks supporting riparian vegetation, and ridgelines. With increasing encroachment of humans on wildlife habitats, it has become important to establish and maintain linkages, or movement corridors, for animals to be able to access locations containing different biotic resources that are essential to maintaining their life cycles.

Healthy riparian areas (supporting structural diversity, i.e., understory species to large shrubs and small trees to large-statured, mature riparian trees) have a high biological value as they not only support a rich and diverse wildlife community but have also been shown to facilitate regional wildlife movement. Riparian areas can vary from tributaries winding through scrubland to densely vegetated riparian forests.

A riparian zone can be defined as an area that has a source of fresh water (e.g., rill, stream, river), a defined bank, and upland areas consisting of moist soils (e.g., wetter than would be expected simply due to seasonal precipitation). These areas support a characteristic suite of vegetative species, many of which are woody, that are adapted to moister soils, such as several of the tree species observed in the Guadalupe Creek riparian habitat, described herein.

The study site itself is not a movement corridor, and it does not provide the functions and values discussed above. However, the study area is adjacent to the riparian corridor of the Guadalupe Creek, separated by a Valley Water maintenance road and chain-link fence. The adjacent reach of the creek itself offers generally high habitat value to regional wildlife in the form of forage, cover, and breeding/roosting habitat, and it also serves as an important regional habitat linkage for many species. Several fish species may use the Guadalupe River, which the Guadalupe Creek flows into approximately 2 miles downstream or east of the site, including the Sacramento sucker juveniles (*Catostomus occidentalis occidentalis*), rifle sculpin (*Cottus gulosus*), California roach (*Hesperoleucus symmetricus*), Central California Coast steelhead (*Oncorhynchus mykiss*), chinook salmon (*O. tshawytscha*), and Sacramento blackfish (*Orthodon microlepidotus*). The watershed is

also known to support several non-native fish species including the common carp (*Cyprinus carpio*), green sunfish (*Lepomis cyanellus*), bluegill (*Lepomis macrochirus*), and golden shiner (*Notemigonus crysoleucas*). The reach is limited upstream by Guadalupe Dam, and the reach is potentially limited by Masson Dam, though a fish ladder was built in around 2000. Many bird species use the Guadalupe Creek for movement and foraging habitat. In general, the Guadalupe Creek is expected to act as a movement corridor for many common local species.

2.3 SPECIAL STATUS PLANTS AND ANIMALS

Several species of plants and animals within the state of California have low populations, limited distributions, or both. Such species may be considered "rare" and are vulnerable to extirpation as the state's human population grows and the habitats these species occupy are converted to agricultural and urban uses. As described more fully in Section 3.2, state and federal laws have provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting the diversity of plant and animal species native to the state. A sizable number of native plants and animals have been formally designated as threatened or endangered under state and federal endangered species legislation. Others have been designated as "candidates" for such listing. Still others have been designated as "species of special concern" by the CDFW. The California Native Plant Society (CNPS) has developed its own set of lists of native plants considered rare, threatened, or endangered (CNPS 2019). Collectively, these plants and animals are referred to as "special status species."

A number of special status animals and plants occur in the vicinity of the study area. These species, and their potential to occur in the study area, are listed in Table 3. Sources of information for this table included *California Natural Diversity Data Base* (CDFW 2020), *Endangered and Threatened Wildlife and Plants* (USFWS 2019), and the annual reports on the status of California state listed threatened, endangered, and rare plants and animals (CDFW 2020b & 2019).

A search of published accounts for all of the relevant special status plant and animal species was conducted for the Los Gatos USGS 7.5 minute quadrangle in which the project site occurs, and for the eight surrounding quadrangles (Cupertino, San José West, San José East, Castle Rock Ridge, Santa Teresa Hills, Felton, Laurel, and Loma Prieta) using the California Natural Diversity Data Base Rarefind5 2020 (CDFW 2020a). All species listed as occurring in these quadrangles on CNPS Lists 1A, 1B, 2, or 4 were also reviewed (See Figure 3).

The study area is a highly disturbed, managed site with low plant diversity and generally low plant density, the majority of which are invasive, non-native plants. Soils of the site appear to have been historically, regularly, and recently disturbed. The site lacks botanical values that would support any sensitive plant species, and none were observed during a thorough investigation of the site's flora on June 2, 2020, site visit. Of the species of special status plants that occur within the 9-quad area, LOA has determined that no special status plant species would occur within the site. Plant species that were considered include the following:

> *Arenaria paludicola*, *Erysimum teretifolium*, *Hesperocyparis abramsiana* var. *abramsiana*, *Holocarpha macradenia*, *Pentachaeta bellidiflora*, *Plagiobothrys diffuses*, *Polygonum hickmanii*, *Amsinckia lunaris*, *Arctostaphylos andersonii*, *Arctostaphylos silvicola*, *Balsamorhiza macrolepis*, *Calyptridium parryi* var. *hesseae*, *Campanula californica*, *Carex comosa*, *Carex saliniformis*, *Ceanothus ferrisiae*, *Centromadia parryi* ssp. *congdonii*, *Chorizanthe pungens* var. *hartwegiana*, *Chorizanthe pungens* var. *pungens*, *Chorizanthe robusta* var. *hartwegii*, *Chorizanthe robusta* var. *robusta*, *Cirsium fontinale* var. *campylon*, *Collinsia multicolor*, *Dacryophyllum falcifolium*, *Dirca occidentalis*, *Dudleya abramsii* ssp. *setchellii*, *Eriogonum nudum* var. *decurrens*, *Fissidens pauperculus*, *Fritillaria liliacea*, *Hoita strobilina*, *Horkelia cuneata* var. *sericea*, *Horkelia marinensis*, *Lasthenia conjugens*, *Lessingia hololeuca*, *Lessingia micradenia* var. *glabrata*, *Malacothamnus arcuatus*, *Malacothamnus hallii*, *Micropus amphiboles*, *Microseris paludosa*, *Monardella sinuata* ssp. *nigrescens*, *Monolopia gracilens*, *Penstemon rattanii* var. *kleei*, *Piperia candida*, *Plagiobothrys chorisianus* var. *chorisianus*, *Plagiobothrys glaber*, *Senecio aphanactis*, *Silene verecunda* ssp. *verecunda*, *Stebbinsoseris decipiens*, *Streptanthus albidus* ssp. *albidus*, and *Streptanthus albidus* ssp. *peramoenus*.

Of the animal species that have been recorded as occurring within the 9-quad area of the site, several species are known to be absent from the site based on fact that these species occur in specialized habitats that are not present within or near the study site. These include the marbled murrelet (*Brachyramphus marmoratus*), Ohlone tiger beetle (*Cicindela ohlone*), Smith's blue butterfly (*Euphilotes enoptes smithi*), Bay checkerspot butterfly (*Euphydryas editha bayensis*), Mount Hamilton June beetle (*Polyphylla barbata*), and Zayante band-winged grasshopper (*Trimerotropis infantillis*). The remaining special status animal species are evaluated in Table 1.

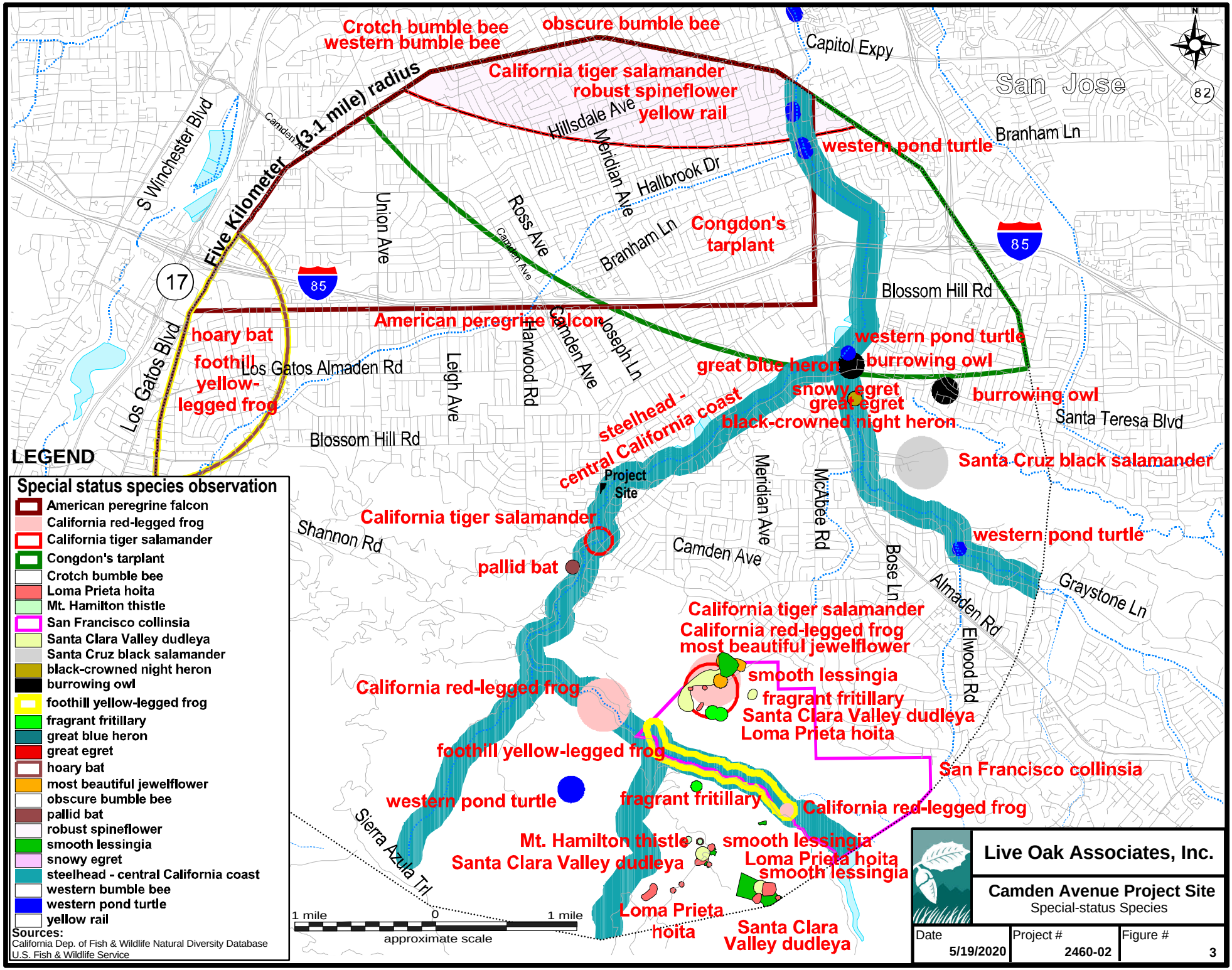

Crotch bumble bee
western bumble bee
obscure bumble bee
California tiger salamander
robust spineflower
yellow rail
(3.1 mile) radius
Five Kilometer
Capitol Expy
San Jose
82
Branham Ln
western pond turtle
Hillsdale Ave
Meridian Ave
Hallbrook Dr
Congdon's tarplant
Union Ave
Ross Ave
Camden Ave
S Winchester Blvd
17
85
Blossom Hill Rd
American peregrine falcon
hoary bat
foothill yellow-legged frog
Los Gatos Almaden Rd
Leigh Ave
Harwood Rd
Joseph Ln
Los Gatos Blvd
great blue heron
burrowing owl
snowy egret
great egret
black-crowned night heron
steelhead - central California coast
Santa Teresa Blvd
Santa Cruz black salamander
Project Site
California tiger salamander
pallid bat
Shannon Rd
Camden Ave
Meridian Ave
McAbee Rd
Bose Ln
Almaden Rd
Graystone Ln
Elwood Rd
California red-legged frog
most beautiful jewelflower
smooth lessingia
fragrant fritillary
Santa Clara Valley dudleya
Loma Prieta hoita
foothill yellow-legged frog
San Francisco collinsia
western pond turtle
fragrant fritillary
California red-legged frog
Sierra Azula Trl
Mt. Hamilton thistle
Santa Clara Valley dudleya
smooth lessingia
Loma Prieta hoita
smooth lessingia
Loma Prieta hoita
Santa Clara Valley dudleya
1 mile
0
1 mile
approximate scale
LEGEND
Special status species observation
American peregrine falcon
California red-legged frog
California tiger salamander
Congdon's tarplant
Crotch bumble bee
Loma Prieta hoita
Mt. Hamilton thistle
San Francisco collinsia
Santa Clara Valley dudleya
Santa Cruz black salamander
black-crowned night heron
burrowing owl
foothill yellow-legged frog
fragrant fritillary
great blue heron
great egret
hoary bat
most beautiful jewelflower
obscure bumble bee
pallid bat
robust spineflower
smooth lessingia
snowy egret
steelhead - central California coast
western bumble bee
western pond turtle
yellow rail
Sources:
California Dep. of Fish & Wildlife Natural Diversity Database
U.S. Fish & Wildlife Service
Live Oak Associates, Inc.
Camden Avenue Project Site
Special-status Species
Date
5/19/2020
Project #
2460-02
Figure #
3

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS (adapted from CDFW 2020a and USFWS 2019)

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Study Area
Crotch bumble bee (*Bombus crotchii*)	CCE	In California, inhabits open grassland and shrubland habitats of the southern 2/3 of California. Historically in, but largely extirpated from the Central Valley. Flight period for queens is late February to late October peaking in April and July; flight period for males and workers is March through September peaking in early July. Constructs nests underground in animal burrows. Overwintering sites are likely in soft soils or in debris or leaf litter.	**Absent.** The soils and vegetation of the site are unsuitable for the Crotch bumble bee. Regular soil disturbances would have deterred nesting and overwintering. Suitable nectar sources are highly limited for this species. Finally, the crotch bumble bee was historically known to occur within the same quadrangle in which the project occurs (CDFW 2020), but it is now considered to be locally extirpated (Xerces Society 2018).
Western bumble bee (*Bombus occidentalis*)	CCE	In California, mainly occurring within the coastal and Sierra Nevada ranges within meadows and grasslands and some natural areas within urban environments. Indication of recent population potentially being restricted to high elevation and coastal areas. Historically occurred from the Channel Islands to the northern California boarder. Flight period is February to late November, peaking in late June and late September. Tends to construct nest underground in animal burrows on west and south-west facing slopes. Overwintering sites are likely in friable soils or in debris or leaf litter.	**Absent.** The soils and vegetation of the site are unsuitable for the Western bumble bee. Regular soil disturbances would have deterred nesting and overwintering. Suitable nectar sources are highly limited for this species. Finally, the crotch bumble bee was historically known to occur within the same quadrangle in which the project occurs (CDFW 2020), but it is now considered to be locally extirpated (Xerces Society 2018).
Coho salmon- Central California Coast ESU (*Oncorhynchus kisutch*)	FE, CE	Spawn in freshwater streams, adults live in ocean, usually within 30 km of their natal stream. Occupied California streams are located in central to northern California.	**Absent.** The study area lacks any aquatic habitat for this species. However, the site is adjacent to the Guadalupe Creek, which has the potential of supporting coho salmon. There are no verified records of Coho salmon using the greater Guadalupe River watershed (M. Jennings, pers. comm., August 2015). Also, the project will not result in any impacts to the aquatic or riparian habitat of Guadalupe Creek.
Steelhead - Central California Coast DPS (*Oncorhynchus mykiss irideus*)	FT	Spawn in freshwater rivers or streams in the spring and spend the remainder of their life in the ocean.	**Absent.** The study area lacks any aquatic habitat for this species. However, the Guadalupe Creek adjacent to the site may support steelhead. The project will not result in any impacts to the aquatic or riparian habitat of Guadalupe Creek.
California Tiger Salamander (*Ambystoma californiense*)	FT, CT	Breeds in vernal pools and stock ponds of central California. Adults aestivate in grassland habitats adjacent to the breeding sites.	**Absent.** The site does not support breeding habitat, and it currently lacks aestivation habitat due to soil disturbances and the absence of suitable debris piles. The nearest presumed extant breeding pond for CTS is approximately 1.5 miles to the SE.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS – cont'd.

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Study Area
Foothill Yellow-legged Frog (*Rana boylii*)	CSC	Occurs in swiftly flowing streams and rivers with rocky substrate with open, sunny banks in forest, chaparral, and woodland habitats, and can sometimes be found in isolated pools.	**Absent on site, marginal habitat within the creek adjacent to the site.** Suitable habitats required by this species are completely absent from the site; however, the site is adjacent to Guadalupe Creek. The FYLF is known to occur within Guadalupe Creek in the higher quality channel sections immediately downstream from Guadalupe Dam, approximately 3 miles upstream from the site. An individual may occur within the adjacent reach of the creek from time to time, but the site itself provides no habitat qualities that would attract this species. An animal would have to climb the steep bank and cross the inhospitable Valley Water maintenance road to access the inhospitable site.
California Red-legged Frog (*Rana draytonii*)	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and coast range, preferring pools with overhanging vegetation.	**Absent on site, marginal habitat within the creek adjacent to the site.** Suitable habitats required by this species are completely absent from the site; however, the site is adjacent to Guadalupe Creek, which is presumed to support this species, though primarily in the reaches upstream from the site. The site itself provides no habitat qualities that would attract this species. An animal would have to climb the steep bank and cross the inhospitable Valley Water maintenance road to access the inhospitable site. CRLF have been reported within Almaden Quicksilver Park within the Guadalupe Creek Watershed, upstream from the site.
California least tern (*Sterna antillarum browni*)	FE, CE, CP	Occurs in central to southern California April to November. Found in and near coastal habitat including coasts, beaches, bays, estuaries, lagoons, lakes, and rivers.	**Absent.** Breeding and foraging habitat is absent from the study area for this species. At most, a California least tern may fly over the site during migratory movements.
Swainson's hawk (nesting) (Buteo swainsoni)	CT	Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah. Requires adjacent suitable foraging areas such as grasslands or alfalfa fields supporting rodent populations.	**Absent.** Breeding and foraging habitat for Swainson's hawk is not present on the site. The nearest area where Swainson's hawk breeding is known is more than 9 miles to the southwest in Coyote Valley near the Bailey Avenue interchange at HWY 101.
Tricolored Blackbird (Agelaius tricolor)	CSC, CT	Breeds near fresh water, primarily emergent wetlands, with tall thickets. Forages in grassland and cropland habitats.	**Unlikely.** Suitable foraging and breeding habitat do not occur onsite for tricolored blackbirds. However, an individual or flock could pass through the site from time to time. The site does not provide any important habitat for this species.
Western yellow-billed cuckoo (nesting) (*Coccyzus americanus occidentalis*)	FC, CE	Breed in large blocks of riparian habitats, particularly cottonwoods and willows.	**Absent.** Dense riparian habitat required by the western yellow-billed cuckoo is absent from the study area. This species is not known to breed in Santa Clara County (Bousman 2007).

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
Santa Cruz black salamander (*Aneides niger*)	CSC	Occurs in deciduous woodland, coniferous forests, and coastal grasslands around the Santa Cruz Mountains and foothills. This species is also known to occur on the developed flats in pockets within older developments. They can be found under rocks near streams, in talus, under damp logs, rotting wood, and other objects.	**Absent.** Suitable habitat does not exist onsite for this species.
Northern California legless lizard (*Anniella pulchra*)	CSC	The NCLL (previously silvery legless lizard) occurs mostly underground in warm moist areas with loose soil and substrate. The NCLL occurs in habitats including sparsely vegetated areas of beach dunes, chaparral, pine-oak woodlands, desert scrub, sandy washes, and stream terraces with sycamores, cottonwoods, or oaks.	**Absent.** Suitable habitat does not exist onsite for this species.
Western Pond Turtle (*Actinemys marmorata*)	CSC	Intermittent and permanent waterways including streams, marshes, rivers, ponds, and lakes. Open slow-moving water of rivers and creeks of central California with rocks and logs for basking.	**Absent from the site, unlikely to occur in the creek adjacent to the site.** Suitable habitat for the western pond turtle is absent from the site, although it may occur in the adjacent Guadalupe Creek. The site provides no habitat for this species, and a Valley Water fence would exclude access to the site. Homeless encampments along the creek may deter this species from occurring within this reach. The closest recorded occurrence of this species is from 2016, approximately 2 mi. from the site.
Golden Eagle (nesting & nonbreeding/wintering) (*Aquila chrysaetos*)	CP	Typically frequents rolling foothills, mountain areas, sage-juniper flats and desert.	**Absent.** Suitable breeding and foraging habitat are absent from the site. The study area would not attract golden eagles.
Northern harrier (nesting) (*Circus cyaneus*)	CSC	Frequents meadows, grasslands, open rangelands, emergent wetlands; uncommon in wooded habitats.	**Unlikely.** Habitat for this species is absent from the site, although they may fly over the site from time to time.
White-tailed Kite (nesting) (Elanus leucurus)	CP	Open grasslands and agricultural areas throughout central California.	**Unlikely.** The site offers, at most, low-quality foraging habitat for this species. Suitable breeding habitat is absent from the site and the immediate site vicinity. However, an individual may fly over the site from time to time.
American Peregrine Falcon (nesting) (*Falco peregrines anatum*)	CP	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	**Absent.** This species would not be expected to nest or forage within the site or in the site vicinity. An individual could fly over the site from time to time. Breeding habitat is lacking for this species.
Western Burrowing Owl (*Athene cunicularia*)	CSC	Open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. Often associated with California ground squirrels.	**Absent.** The site does not support suitable burrowing owl habitat. Ground squirrel burrows and other suitable cover habitat were lacking from the site, and the site has significantly disturbed soils. This species was not detected during 2020 site surveys.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
Black Swift (nesting) (*Cypseloides niger*)	CSC	Migrants found in many habitats of state; in Sierra nests are often associated with waterfalls.	**Absent.** The site does not provide suitable breeding or foraging habitat for this species. At most this species may pass over the site from time to time
Purple martin (nesting) (*Progne subis*)	CSC	Cavity nester, nests widely in man-made birdhouses.	**Unlikely**. Potentially suitable breeding habitat occurs within the riparian habitat of Guadalupe Creek, but breeding habitat is lacking from the site itself. The site may provide low-quality forage for this species, but higher quality forage is abundantly available elsewhere. Given the low habitat value offered by the site, this species would be unlikely to occur.
California yellow warbler (*Dendroica petechia brewster*)	CSC	Migrants move through many habitats of Sierra and its foothills. This species breeds in riparian thickets of alder, willow and cottonwoods.	**Unlikely**. Potentially suitable breeding habitat occurs within the riparian habitat of Guadalupe Creek, but breeding habitat is lacking from the site itself. The site may provide low-quality forage for this species, but higher quality forage is abundantly available elsewhere. Given the low habitat value offered by the site, this species would be unlikely to occur within the site itself.
Pallid Bat (*Antrozous pallidus*)	CSC	Grasslands, chaparral, woodlands, and forests of California; most common in dry rocky open areas that provide roosting opportunities.	**Possible.** Low-quality foraging habitat is present on the site, but roosting habitat is absent for the Pallid bat.
Townsend's big-eared bat *Corynorhinus townsendii*	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats of the state.	**Possible.** Low-quality foraging habitat is present on the site, but roosting habitat is absent for the Townsend's big-eared bat.
San Francisco Dusky-Footed Woodrat (*Neotoma fuscipes annectens*)	CSC	Found in hardwood forests, oak riparian and shrub habitats.	**Absent.** The site does not support suitable habitat for the San Francisco dusky-footed woodrat; additionally, no woodrat nests were observed during the 2020 site visit. Potentially suitable woodrat habitat is present in the riparian habitat near the site.
American Badger (*Taxidea taxus*)	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils, specifically grassland environments. Natal dens occur on slopes.	**Absent.** The site and surrounding development are not suitable habitat for the American badger. Also, no badger digs were observed during the surveys and the site is isolated from other potential and known badger habitat.
Ringtail (*Bassariscus astutus*)	CP	Occurs in riparian and heavily wooded habitats near water.	**Absent.** Suitable riparian habitat for this species occurs adjacent to the site in the form of Guadalupe Creek; however, the ringtail would not utilize the site.

***Explanation of Occurrence Designations and Status Codes**

Present: Species observed on the sites at time of field surveys or during recent past.
Likely: Species not observed on the site, but it may reasonably be expected to occur there on a regular basis.
Possible: Species not observed on the sites, but it could occur there from time to time.
Unlikely: Species not observed on the sites, and would not be expected to occur there except, perhaps, as a transient.
Absent: Species not observed on the sites and precluded from occurring there because habitat requirements not met.

STATUS CODES

FE	Federally Endangered	CE	California Endangered
FT	Federally Threatened	CT	California Threatened

FPE	Federally Endangered (Proposed)	CR	California Rare
FC	Federal Candidate	CP	California Protected
CSC	California Species of Special Concern	CCE	California Candidate Endangered

***Explanation of Occurrence Designations and Status Codes (cont'd).**

CNPS	California Native Plant Society Listing		
1A	Plants Presumed Extinct in California	3	Plants about which we need more information – a review list
1B	Plants Rare, Threatened, or Endangered in California and elsewhere	4	Plants of limited distribution – a watch list
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere		

2.4 JURISDICTIONAL WATERS

Jurisdictional waters include rivers, creeks, and drainages that have a defined bed and bank and which, at the very least, carry ephemeral flows. Jurisdictional waters also include lakes, ponds, reservoirs, and wetlands. Such waters may be subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), and the California Regional Water Quality Control Board (RWQCB). See Section 3.2.4 of this report for additional information.

No jurisdictional waters or wetlands occur onsite and the project is not expected to impact the bed or bank of the Guadalupe Creek, which occurs across a Valley Water maintenance road easement from the site.

3 IMPACTS AND MITIGATIONS

3.1 SIGNIFICANCE CRITERIA

General plans, area plans, and specific projects are subject to the provisions of the California Environmental Quality Act (CEQA). The purpose of CEQA is to assess the impacts of proposed projects on the environment before they are constructed. For example, site development may require the removal of some or all of its existing vegetation. Animals associated with this vegetation could be destroyed or displaced. Animals adapted to humans, roads, buildings, pets, etc., may replace those species formerly occurring on a site. Plants and animals that are state and/or federally listed as threatened or endangered may be destroyed or displaced. Sensitive habitats such as wetlands and riparian woodlands may be altered or destroyed. These impacts may be considered significant. According to 2019 CEQA Statute and Guidelines (AEP 2019), "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest. Specific project impacts to biological resources may be considered "significant" if they will:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;

- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;

- Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;

- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; and

- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

For the purposes of this report, it is assumed that impacts will include possible buildout of the entire study area outside of the riparian area. The project will also seek a riparian setback exception to build within 100 feet from the edge of the riparian habitat of the Guadalupe Creek. No direct impacts to the bed or banks of the Guadalupe Creek will result from the project.

3.2 RELEVANT GOALS, POLICIES, AND LAWS

3.2.1 Threatened and Endangered Species

State and federal "endangered species" legislation has provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Species listed as threatened or endangered under provisions of the state and federal Endangered Species Acts, candidate species for such listing, state species of special concern, and some plants listed as endangered by the California Native Plant Society are collectively referred to as "species of special status." Permits may be required from both the CDFW and USFWS if activities associated with a proposed project will result in the take of a listed species. To "take" a listed species, as defined by the state of California, is "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill" said species (California Fish and Game Code, Section 86). "Take" is more broadly defined by the federal Endangered Species Act to include "harm" of a listed species (16 USC, Section 1532(19), 50 CFR, Section 17.3). Furthermore, the CDFW and the USFWS are responding agencies under the California Environmental Quality Act (CEQA). Both agencies review CEQA documents in order to determine the adequacy of their treatment of endangered species issues and to make project-specific recommendations for their conservation.

3.2.2 Migratory Birds

State and federal laws also protect most bird species. The State of California signed Assembly Bill 454 into law in 2019, which clarifies native bird protection and increases protections where California law previously deferred to Federal law. The Federal Migratory Bird Treaty Act

(FMBTA: 16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

3.2.3 **Birds of Prey**

Birds of prey are protected in California under provisions of the State Fish and Game Code, Section 3503.5, (1992), which states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto". Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the CDFW.

3.2.4 **Jurisdictional Waters and Wetlands**

Jurisdictional waters include waters of the United States subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE) and waters of the State of California subject to the regulatory authority of the California Department of Fish and Wildlife (CDFW) and the California Regional Water Quality Control Board (RWQCB).

3.2.4.1 Clean Water Act, Section 404

The USACE regulates the filling or grading of Waters of the U.S. under the authority of Section 404 of the Clean Water Act. Drainage channels and adjacent wetlands may be considered "waters of the United States" or "jurisdictional waters" subject to the jurisdiction of the USACE. The extent of jurisdiction has been defined in the Code of Federal Regulations and clarified in federal courts.

The definition of waters of the U.S. have changed several times in recent years. In January 2020, the Environmental Protection Agency (EPA) and USACE jointly issued the Navigable Waters Protection Rule. The new rule was published in the Federal Register on April 21, 2020, and took effect on June 22, 2020.

The Navigable Waters Protection Rule (33 CFR §328.3(a)) defines waters of the U.S. as:

Territorial Seas and Traditional Navigable Waters (TNWs)

- The territorial seas and traditional navigable waters include large rivers and lakes and tidally-influenced waterbodies used in interstate or foreign commerce.

Tributaries

- Tributaries include perennial and intermittent rivers and streams that contribute surface flow to traditional navigable waters in a typical year. These naturally occurring surface water channels must flow more often than just after a single precipitation event—that is, tributaries must be perennial or intermittent.
- Tributaries can connect to a traditional navigable water or territorial sea in a typical year either directly or through other "waters of the United States," through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).
- Ditches are to be considered tributaries only where they satisfy the flow conditions of the perennial and intermittent tributary definition and either were constructed in or relocate a tributary or were constructed in an adjacent wetland and contribute perennial or intermittent flow to a traditional navigable water in a typical year.

Lakes, Ponds, and Impoundments of Jurisdictional Waters

- Lakes, ponds, and impoundments of jurisdictional waters are jurisdictional where they contribute surface water flow to a traditional navigable water or territorial sea in a typical year either directly or through other waters of the United States, through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).
- Lakes, ponds, and impoundments of jurisdictional waters are also jurisdictional where they are flooded by a water of the United States in a typical year, such as certain oxbow lakes that lie along the Mississippi River.

Adjacent Wetlands

- Wetlands that physically touch other jurisdictional waters are "adjacent wetlands."
- Wetlands separated from a water of the United States by only a natural berm, bank or dune are also "adjacent."
- Wetlands inundated by flooding from a water of the United States in a typical year are "adjacent."
- Wetlands that are physically separated from a jurisdictional water by an artificial dike, barrier, or similar artificial structure are "adjacent" so long as that structure allows for a direct hydrologic surface connection between the wetlands and the jurisdictional water in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.
- An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a direct hydrologic surface connection through or over that structure in a typical year.

The Navigable Waters Protection Rule also outlines what do not constitute waters of the United States. The following waters/features are not jurisdictional under the rule:

- Waterbodies that are not included in the four categories of waters of the United States listed above.
- Groundwater, including groundwater drained through subsurface drainage systems, such as drains in agricultural lands.
- Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools.
- Diffuse stormwater run-off and directional sheet flow over upland.
- Many farm and roadside ditches.
- Prior converted cropland retains its longstanding exclusion, but is defined for the first time in the final rule. The agencies are clarifying that this exclusion will cease to apply when cropland is abandoned (i.e., not used for, or in support of, agricultural purposes in the immediately preceding five years) and has reverted to wetlands.
- Artificially irrigated areas, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease.
- Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters.
- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel.
- Stormwater control features excavated or constructed in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off.
- Groundwater recharge, water reuse, and wastewater recycling structures, including detention, retention and infiltration basins and ponds, that are constructed in upland or in non-jurisdictional waters.
- Waste treatment systems have been excluded from the definition of waters of the United States since 1979 and will continue to be excluded under the final rule. Waste treatment systems include all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater or stormwater prior to discharge (or eliminating any such discharge).

All activities that involve the discharge of dredge or fill material into waters of the U.S. are subject to the permit requirements of the USACE under Section 404 of the Clean Water Act. Such permits are typically issued on the condition that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values. No permit can be issued without a CWA Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards (Section 3.6.2).

3.2.4.2 Porter-Cologne Water Quality Act/Clean Water Act, Section 401

There are nine Regional Water Quality Control Boards (RWQCB) statewide; collectively, they oversee regional and local water quality in California. The RWQCB administers Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act. The RWQCB for a given region regulates discharges of fill or pollutants into waters of the State through the issuance of various permits and orders.

Pursuant to Section 401 of the Clean Water Act, the RWQCB regulates waters of the State that are also waters of the U.S. Discharges into such waters require a Section 401 Water Quality Certification from the RWQCB as a condition to obtaining certain federal permits, such as a Clean Water Act Section 404 permit (Section 3.6.1). Discharges into all Waters of the State, even those that are not also Waters of the U.S., require Waste Discharge Requirements (WDRs), or a waiver of WDRs, from the RWQCB.

The Porter-Cologne Water Quality Control Act, Water Code Section 13260, requires that "any person discharging waste, or proposing to discharge waste, within any region that could affect the 'waters of the State' to file a report of discharge" with the RWQCB. Waters of the State as defined in the Porter-Cologne Act (Water Code Section 13050[e]) are "any surface water or groundwater, including saline waters, within the boundaries of the state." This gives the RWQCB authority to regulate a broader set of waters than the Clean Water Act alone; specifically, in addition to regulating waters of the U.S. through the Section 401 Water Quality Certification process, the RWQCB also claims jurisdiction and exercises discretionary authority over "isolated waters," or waters that are not themselves waters of the U.S. and are not hydrologically connected to waters of the U.S.

The RWQCB also administers the Construction Stormwater Program and the federal National Pollution Discharge Elimination System (NPDES) program. Projects that disturb one or more acres of soil must obtain a Construction General Permit under the Construction Stormwater Program. A prerequisite for this permit is the development of a Stormwater Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer. Projects that discharge wastewater, stormwater, or other pollutants into a Water of the U.S. may require a NPDES permit.

3.2.4.3 California Fish and Game Code, Section 1602

The CDFW has jurisdiction over the bed and bank of natural drainages and lakes according to provisions of Section 1602 of the California Fish and Game Code. Activities that may substantially modify such waters through the diversion or obstruction of their natural flow, change or use of any material from their bed or bank, or the deposition of debris require a Notification of Lake or Streambed Alteration. If the CDFW determines that the activity may adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement will be prepared. Such an agreement typically stipulates that certain measures will be implemented to protect the habitat values of the lake or drainage in question.

3.2.5 Ordinance Sized Trees

The City of San José has a Tree Ordinance (Chapter 13.32 of the Municipal Code), which regulates the removal of trees. The City's Tree Ordinance seeks to:

> Promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems.

An "ordinance-size tree" is defined as any native or non-native tree with a circumference of 38 inches (diameter of 12 inches) at 54 inches (4.5 feet) above the natural grade of slope. For multi-trunk trees, the circumference is measured as the sum of the circumferences of all trunks at 54 inches above the natural grade of slope. The ordinance covers both native and non-native species. A tree removal permit is required from the City prior to the removal of any trees covered under the ordinance. Prior to the issuance of a removal permit, the City requires that a formal tree survey be conducted which indicates the number, species, trunk circumference and location of all trees which will be removed or impacted by the project.

Based on the results of 2020 site surveys, ordinance-sized trees are absent from the site, and no tree removal permit will be required.

3.2.6 **Required Riparian Setbacks**

Riparian habitats have high conservation value due to their importance for water quality, biological diversity, and/or habitat connectivity. Historically, riparian habitats throughout the west have been substantially altered and degraded. As such, cities, counties and other land planning agencies throughout the west have given high priority to preserving functioning riparian systems by establishing suitable setbacks to lessen indirect effects from construction of new roads and associated development on existing riparian habitats.

Relevant to the proposed project, the conditions of the Santa Clara Valley Habitat Plan (SCVHP) and the City of San José's Council Policy 6-34 (Council Policy 6-34), and the City's Envision 2040 General Plan (2040 Plan) address riparian setback distances between extant riparian habitat and planned development. The following content addresses the proposed setback with respect to the SCVHP, Council Policy 6-34, and the 2040 Plan.

3.2.6.1 Riparian Setback: Santa Clara Valley Habitat Plan

The SCVHP (Section 3.2.7) includes a condition to minimize impacts on riparian habitat where the primary method for riparian habitat protection is a development-free setback from the riparian community. Setback requirements are dependent on what type of stream community they relate to, whether or not the project is within the City's Urban Service Area (USA), and the slope of the project site. Stream communities under the SCVHP plan area are categorized into two groups: Category 1 and Category 2 streams. Stream categories are defined in the SCVHP as follows:

- "Category 1. This stream type has sufficient flow to support covered species and riparian habitat. These streams include perennial streams and some intermittent streams. These streams are typically larger than ephemeral drainages and support movement of covered species along the length of the stream. The ability of these streams to also support healthy riparian habitats bolsters the ecological value of the stream.
- "Category 2. This stream type may not have sufficient flow to support covered species and riparian habitat. These streams include all ephemeral streams and some intermittent stream reaches. These reaches provide minimum support of water-quality functions and primary breeding habitat for covered species." (pp. 6-47 & 6-48; ICF International 2012).

Specific riparian setbacks are classified in the SCVHP. For Category 1 streams, the setback set by the SCVHP is 100 feet from the top of bank for projects occurring inside the USA and 150 feet from the top of bank for projects occurring outside the USA. If the proposed project occurs within an area with a slope of greater than 30% adjacent to a Category 1 stream, the setback is increased

by 50 feet. In addition, if the site supports riparian vegetation the setback is equal to the riparian edge plus a 35-foot buffer or the setback as defined above, whichever is greater.

For Category 2 streams the mandated setback is 35 feet from the top-of-bank and edge of riparian regardless of the slope or location of the site.

The SCVHP defines exceptions that allow for reduced setbacks that are "…necessary to allow reasonable use and development of a property based on a variety of constraints and factors that may affect the property," (pp. 6-54; ICF International 2012). Riparian setback exceptions, which are intended to be granted in a minority of cases, are to be considered based the following factors:

- "The existence of legal uses within the setback.
- "The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
- "The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
- "The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies." (pp. 6-54; ICF International 2012).

Regardless of the project location, Category 1 stream setbacks to less than 50 feet from the top of bank for new development or 35 feet from the top of bank for redevelopment (of sites with legal buildings or uses) would not be permitted under the SCVHP. Preliminary mapping of all Category 1 streams has been included in the SCVHP (ICF International 2012). The reach of the Guadalupe Creek adjacent to the project site is designated by the SCVHP as a Category 1 stream.

3.2.6.2 Riparian Setback: City of San José's Council Policy 6-34

The City of San José adopted a formal riparian setback policy in 2016. Titled "Riparian Corridor Protection and Bird-Safe Design," the City of San José's Council Policy 6-34 provides project

design guidance to most projects that require approval of a development permit that occur within 300 feet of stream banks. Such guidance includes measures to reduce impacts to streams, primarily including minimum setbacks from stream courses. Stream setbacks are measured from the outside dripline of the riparian corridor vegetation or top-of-bank, whichever is greater. All riparian projects are required to implement a standard minimum setback of 100 feet, with potential exceptions granted to projects where no significant environmental impact will occur. The Policy also addresses potential impacts to riparian systems as it relates to construction materials and lighting design of the building. The Policy encourages restoration or rehabilitation of riparian corridors to be included in project designs.

Setbacks of less than 100-feet can be approved under a limited set of circumstances, including;

1. Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.

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

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

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

5. 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.

6. 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.

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

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

9. 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.

10. The existence of legal uses within the minimum setback.

11. 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).

12. The extent to which meeting the minimum setback would require deviations from, exception to or variances from other established policies, legal requirements, or standards.

To receive an exception to a 100-foot setback, a project applicant would be required to submit a report by a qualified biologist, stream hydrologist, or other appropriate professional that certifies that:

1. There is no reasonable alternative for the proposed project that avoids or reduces the encroachment into the setback area.

2. The reduced setback will not significantly reduce or adversely impact the riparian corridor.

3. The proposed used are not fundamentally incompatible with riparian habitats.

4. 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.

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

The Council Policy 6-34 prescribes design guidance related to the materials and lighting of the proposed projects. Specifically, the Policy states that new development should use materials and

lighting that reduce light and glare impacts into the riparian habitat and which are not reflective, glossy, brightly colored, see-through, or glare-producing in the material finishes on buildings. Also, night lighting should not be directed into the riparian corridor. Projects are furthermore encouraged by the Council Policy to incorporate habitat restoration or rehabilitation projects into the design and implementation of the project.

The Council Policy also addresses potential impacts to birds from buildings that are designed in ways that do not reduce bird collisions (also called "bird strike") with the building's reflective windows. Specifically, the bird safe building design elements of the Council Policy are specific to new construction within San José, north of State Route 237. This project is therefore not subject to the bird safe design elements of the Council Policy 6-34; however, bird-safe design considerations of any future building is addressed in Section 3.3.6, below.

3.2.6.3 Riparian Setback: City of San José Envision 2040 General Plan

The 2040 Plan (Section 3.2.6) addresses protection of riparian habitat as it relates to new development. Specifically, the 2040 Plan seeks to ensure that new development projects conform to both the City of San José Riparian Corridor Policy Study (City of San José 1999) as well as any relevant Habitat Conservation Plans (e.g., the SCVHP). The 2040 plan recommends "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," (Chapter 3, pp. 28; City of San José 2011). The 2040 Plan also advises that new development projects are designed to protect adjacent riparian habitat from the biological impacts of night lighting, exotic landscaping, noise, and toxic substances into the riparian zone, and endorses restoration of riparian habitat through planting of native plants and removal of exotic/invasive species. Design guidelines of the referenced City of San José Riparian Corridor Policy Study include the following:

- Guideline 2B: Windows on new structures should not have mirrored surfaces that glare into the riparian corridor;
- Guideline 2E: Night lighting should not be oriented directly into riparian areas to avoid light impacts on wildlife;
- Guideline 2F: Operation of mechanical equipment adjacent to the riparian corridor should not exceed open space noise levels as specified in the City of San José's General Plan. Stationary, noise-making mechanical equipment should be placed as far from the riparian corridor as necessary to maintain ambient levels within the corridor;

- Guidelines 3A and 4G: Landscaped areas adjacent to the riparian corridor, including vegetated barriers between the corridor and development (4G), should utilize locally adapted native vegetation, and invasive species should not be used;
- Guideline 3B: Irrigation systems within 100-feet of the riparian corridor should be designed so as to avoid negative impacts to the riparian system;
- Guideline 4F: If fences are used between riparian areas and development, they should be designed so that wildlife is not hindered (no higher than 3 or 4 feet).
- Guideline 7B: On-site runoff retention areas should be sited at least 25 feet from the edge of riparian areas.
- Guideline 7E: During project construction, temporary fencing or some other solid barriers should be installed outside of the riparian area to protect riparian habitat from project build-out.

3.2.7 **Santa Clara Valley Habitat Plan**

The project will be subject to the conditions and fees contained in the Santa Clara Valley Habitat Plan (SCVHP). Six local partners (the County of Santa Clara, Santa Clara Valley Transportation Authority; Valley Water; and the Cities of San José, Gilroy, and Morgan Hill) and two wildlife agencies (the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service) prepared and adopted this multi-species habitat conservation plan, which primarily covers southern Santa Clara County, as well as the City of San José with the exception of the bayland areas. The SCVHP addresses listed species and species that are likely to become listed during the plan's 50-year permit term. The eighteen covered species include nine plants and nine animals. The animal species covered include, but are not limited to, the California tiger salamander, California red-legged frog, western pond turtle, and western burrowing owl. The SCVHP requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value. Funding sources for the SCVHP include development fees based on land cover types (natural, agricultural or small vacant sites surrounded by urban development). Additional fees are charged based on the occurrence of certain sensitive habitat types such as serpentine and wetlands.

3.2.7.1 SCVHP Fees

Chapter 9 of the SCVHP identifies fees that may be required by this project. The following describes fees that are subject to the project based on the 2019-2020 fee schedule; however, fees

are calculated based on the fee schedule at the time the project submits for a grading or building permit. Thus, the following numbers should be considered approximate. The development area (i.e, the project site minus the riparian setback area) of the Camden Avenue site would be designated as an urban site that does not require payment of Fee Zone A, B, or C fees; however, other fees may apply. The 2021-2022 SCVHP fees for impacts to sensitive resources; including, but not limited to riparian and stream habitats, are $186,524 per acre for mixed riparian habitat and $632 per linear foot for stream habitat. These fees may apply to the project if permanent impacts occur within 50 feet of such sensitive resources. Also, a Nitrogen Deposition Fee would be required at $5.50 for each new vehicle trip generated by the project and/or $52.01 for each single-family residence, depending on the final project design.

3.2.7.2 Conditions on Covered Activities

The SCVHP provides several conditions for covered activities under the SCVHP. These conditions can be found in Chapter 6 of the SCVHP (Appendix F) and are listed below:

- **Condition 1 (page 6-7). Avoid Direct Impacts on Legally Protected Plant and Wildlife Species-** Condition 1 instructs developers to avoid direct impacts on legally protected plant and wildlife species, including federally endangered Contra Costa goldfields and fully protected wildlife species including the golden eagle, bald eagle, American peregrine falcon, southern bald eagle, white-tailed kite, California condor, and ring-tailed cat. Several of these species are likely to occur on or forage over the site (golden eagle, bald eagle, white-tailed kite, and ringtail). Condition 1 also protects bird species and their nests that are protected under the Migratory Bird Treaty Act (MBTA); additionally, golden eagles and bald eagles are protected under the Bald and Golden Eagle Protection Act. Additionally, page 6-94 and Table 6-8 identify required surveys for breeding habitat of select covered wildlife species.
- **Condition 2 (page 6-9). Incorporate Urban-Reserve System Interface Design Requirements-** Condition 2 provides design requirements for the urban-reserve system interface. Some of the design requirements included in Condition 2 are installing non-permeable fences between urban and reserve areas, fencing public roads that run adjacent to reserve areas, minimizing the length of shared boundaries between urban and reserve areas, outdoor lighting limitations, and landscaping requirements.
- **Condition 3 (page 6-12). Maintain Hydrologic Conditions and Protect Water Quality-** Condition 2 provides design requirements for the urban-reserve system interface. Some of the design requirements included in Condition 2 are installing non-permeable fences between urban and reserve areas, fencing public roads that run adjacent to reserve areas, minimizing the length of shared boundaries between urban and reserve areas, outdoor lighting limitations, and landscaping requirements.

- **Condition 4 (page 6-14). Avoidance and Minimization for In-Stream Projects-** Condition 4 minimizes impacts on riparian and aquatic habitat through appropriate design requirements and construction practices and provides avoidance and minimization measures for in-stream projects that may impact stream morphology, aquatic and riparian habitat, flow conditions, covered species, natural communities, and wildlife movement.
- **Condition 5 (page 6-18). Avoidance and Minimization Measures for In-Stream Operations and Maintenance-** Condition 5 provides avoidance and minimization measures for in-stream operations and maintenance activities, which includes, but is not limited to trail, bridge, road, and culvert maintenance, bank stabilization, removal of debris, and vegetation management.

  Avoidance and minimization measures for Conditions 3-5 can be located in Table 6-2 of the SCVHP; these measures relate to stormwater runoff, in-stream channel and floodplain impacts, vegetation control and/or maintenance, materials a project should and should not use, landscaping and revegetation, free-span bridges at stream crossings, culverts, trails, levees, erosion control, and construction requirements and timing.
- **Condition 6 (Page 6-21). Design and Construction Requirements for Covered Transportation Projects-** Condition 6 provides requirements for rural development design, construction, and post-construction. Types of projects that Condition 6 includes highway projects, mass transit projects, roadway projects and interchange upgrades, road safety and operational improvements, and dirt road construction.
- **Condition 7 (page 6-28). Rural Development Design and Construction Requirements-** Condition 7 provides requirements for development design and construction of new development outside of the urban service area including requirements relating to site hydrology, vineyards, private rural roads, vegetation management, soils, and lighting.
- **Condition 8 (page 6-35). Implement Avoidance and Minimization Measures for Rural Road Maintenance-** Condition 8 provides requirements for rural roads, road median, and barrier maintenance including requirements regarding riparian setbacks, erosion measures, herbicide and pesticide use, seasonal restrictions, mower cleaning, revegetation, ground-disturbing road maintenance, and flow lines.
- **Condition 9 (page 6-37). Prepare and Implement a Recreation Plan-** Condition 9 requires providing public access to all reserve lands owned by a public entity; each reserve land must provide a recreation plan.
- **Condition 10 (page 6-42). Fuel Buffer-** Condition 10 provides requirements for fuel buffers between 30 and 100 feet of structures. Requirements include measures relating to fuel buffers near structures and on reserve lands; the most notable measure is the requirement for nesting bird surveys prior to any fuel buffer maintenance during the nesting season.
- **Condition 11 (page 6-44). Stream and Riparian Setbacks-** See Section 3.2.6.1, above, for an expanded discussion.
- **Condition 12 (page 6-56). Wetland and Pond Avoidance and Minimization-** Condition 12 provides measures to protect wetlands and ponds, including planning actions, design, and construction actions. The project would complete a wetland delineation to confirm the distribution and condition of the wetlands onsite.

- **Condition 13 (page 6-58). Serpentine and Associated Covered Species Avoidance and Minimization-** Condition 13 requires surveys for special status plants and the Bay checkerspot butterfly as well as its larval host plant in areas that support serpentine bunchgrass grassland, serpentine rock outcrops, serpentine seeps, and serpentine chaparral. Fees apply for impacts to serpentine habitat.
- **Condition 14 (page 6-60). Valley Oak and Blue Oak Woodland Avoidance and Minimization-** Condition 14 provides requirements for project planning and project construction, including avoidance of large oaks, guidance on irrigation near oak trees, and a buffer around the root protection zone, roads and pathways within 25 feet of the dripline of an oak tree, trenching, and pruning activities.
- **Condition 15 (page 6-62). Western Burrowing Owl-** Condition 15 requires preconstruction surveys for burrowing owls in appropriate habitat prior to construction activities, provides avoidance measures for owls and nests in the breeding season and owls in the non-breeding season, and requirements for construction monitoring.
- **Condition 16 (page 6-68) Least Bell's Vireo-** Condition 16 requires preconstruction surveys in appropriate habitat for the least Bell's vireo prior to construction activities and provides avoidance and construction monitoring measures.
- **Condition 17 (page 6-69) Tricolored Blackbird-** Condition 17 requires preconstruction surveys in appropriate habitat for the tricolored blackbird prior to construction activities and provides avoidance and construction monitoring measures.
- **Condition 18 (page 6-71) San Joaquin Kit Fox-** Condition 18 requires preconstruction surveys in appropriate habitat for the San Joaquin kit fox prior to construction activities and provides avoidance and construction monitoring measures.
- **Condition 19 (page 6-74). Plant Salvage when Impacts are Unavoidable-** Condition 19 provides salvage guidance and requirements for covered plants.
- **Condition 20 (page 6-76). Avoid and Minimize Impacts to Covered Plant Occurrences-** Condition 20 provides requirements for preconstruction surveys for appropriate covered plants (per habitat).

3.3 IMPACTS SPECIFIC TO THE PROJECT

Development of the Camden Avenue site will include grading of the site, removal of all onsite ruderal vegetation, and construction of up to 7 residential units that range from 2 to 2.5 story units. The project will also implement a road widening of Camden Avenue, street improvements, dedication of a public street, and landscaping. The project will observe a minimum 50-foot development-free setback from the top of bank and a 35-foot setback from extent riparian vegetation occurring beyond the top of bank (Figure 2). The project will not enter into the Valley Water easement along Guadalupe Creek, so no culverts into or bridges over the Guadalupe Creek will be included in the project. Temporary impacts within the riparian setback area will occur during project buildout and during installation of a habitat mitigation planting (Appendix A).

3.3.1 Loss of Habitat for Special Status Plants

Potential Impact. No special status plant species that occur within the region would occur within the study area due to a lack of suitable habitat onsite and due to the complete disturbance of any natural habitats that once occurred within the site. No impacts to special status plants will occur during project buildout.

Mitigation. No mitigation is warranted.

3.3.2 Loss of Habitat for Special Status Animals

Potential Impact. Twenty-seven (27) special status animal species occur, or once occurred, regionally. Of these, twenty-five species would be absent or unlikely to occur on the site due to a lack of suitable habitat for these species. These species include the crotch bumble bee, western bumble bee, Coho salmon, steelhead, California black salamander, California tiger salamander, California red-legged frog, foothill yellow-legged frog, Northern California legless lizard, western pond turtle, California least tern, golden eagle, western burrowing owl, peregrine falcon, Swainson's hawk, northern harrier, white-tailed kite, western yellow-billed cuckoo, tricolored blackbird, black swift, purple martin, California yellow warbler, San Francisco dusky-footed woodrat, American badger, and ringtail. Of these, the steelhead, western pond turtle, foothill yellow-legged frog, and California red-legged frog may occur within the Guadalupe Creek habitat near the site. The steelhead is strictly an aquatic species, and neither the pond turtle, foothill yellow-legged frog, or California red-legged frog would be attracted to the site due to the unsuitable conditions of the site for these species and the fact that the site is boarded by an urbanized, built environment on all non-riparian facing boundaries. Some bird species may occur within the riparian habitat adjacent to the site including the tricolored blackbird, western yellow-billed cuckoo (though unlikely), and the California yellow warbler. None of these species would be expected to venture from the riparian habitat to the Camden Avenue site for any regular reason, as the site lacks cover and provides at best low-quality foraging habitat for them. Of the remaining bird species, some would be absent from the site altogether, such as the Swainson's hawk, golden eagle, and burrowing owl; and the others might at most fly over the site from time to time in route to higher quality habitat.

The two remaining special status animal species from Table 3 include the pallid bat and Townsend's big-eared bat. These two bat species would not be expected to utilize the Camden Avenue site as breeding or roosting habitat; they would potentially only use the site as foraging habitat. However, the site does not offer particularly high- or moderate-quality foraging habitat for these species, as indicated by the low diversity of plants and wildlife on the site that would suggest a suitable prey base. Conversion of the 0.998-acre Camden Avenue site from the degraded vacant lot to a landscaped residential neighborhood is likely to result in a negligible shift in habitat value for these bat species. Therefore, project buildout is expected to result in a less-than-significant impact to the loss of habitat for all of the special status animal species listed in Table 3.

Mitigation. No mitigation is warranted.

3.3.3 Loss of Habitat for Native Wildlife

Potential Impact. Natural habitats are completely lacking from the site. Therefore, the habitat value of the site, consisting of a vacant lot dominated by non-native plant species and with disturbed soils is generally low-quality for most species of native animals. Animals that would occasionally use the site would include species that are adapted to urban land uses. In general, the site expected to be occupied by a low density and diversity of animal species. Impacts due to the loss of the habitat value of the site for native wildlife resulting from the proposed project are considered less-than-significant.

Mitigation. No mitigation is warranted.

3.3.4 Interference with the Movement of Native Wildlife

Potential Impact. While no detailed study of animal movements has been conducted for the study area, knowledge of the site and site vicinity, its land uses, and the ecology of the species occurring on-site permits sufficient predictions about the types of movements occurring in the region and whether or not proposed construction activities within the site and subsequent project build-out may result in a disruption of local wildlife movements. The study area consists of a ruderal lot. Movement of native wildlife is more likely to take place adjacent to the site within the Guadalupe Creek riparian corridor, which provides a contiguous habitat corridor for many species from the Santa Cruz Mountains into the urbanized portion of San José. The proposed project will setback

from the creek bank by a minimum distance of 50-feet. Other than species that are highly adapted to an urban setting that would venture from the riparian corridor and onto the study site, species that may move from the riparian corridor into the site during migratory, territorial, and/or dispersing movements would do so to a lesser degree, as the site offers low habitat values for them and does not represent a pathway to higher quality habitat beyond the site. Species that travel through the Guadalupe Creek riparian corridor would be more likely to continue utilizing the corridor than the study area. Therefore, the loss or reduction of the ability to move into the study area due to project buildout would not be considered an impact to native wildlife. Project development, therefore, is expected to have a less-than-significant impact on the movements of native wildlife.

Mitigation. No mitigation is warranted.

3.3.5 Potential Impacts to Active Migratory Bird Nests including Raptor Nests from Construction Activities During Project Implementation

Potential Impacts. The site itself offers, at most, areas that are potentially suitable for ground nesting birds such as the killdeer. Trees and structures adjacent to the site, such as along a wooden fenceline boarding the site that is covered in vining vegetation, on the buildings and landscaping to the north, and in the riparian habitat adjacent to the site, may support nesting migratory birds. Build-out of the project during the nesting period for migratory birds (i.e., typically between February 1 to August 31), including equipment mobilization, grading, placement of fill soils, or other large scale disturbances to the site, poses a risk to any nesting birds within or near the site in the form of nest abandonment and death of any eggs or young that may be present within the nest. Such an effect would be considered a significant impact. To ensure that any active nests will not be disturbed, and individual birds will not be harmed by construction activities, the following measures should be followed.

Mitigation. The following measures will ensure that active nests of migratory birds, including raptors, will not be disturbed, and individual birds will not be harmed by construction activities, especially including tree removal.

If initial site disturbance activities, including mobilization, grading, and/or fill soil placement, is to occur during the breeding season (February 1 to August 31), a qualified biologist will conduct pre-construction surveys for nesting migratory birds onsite and within 250 feet of the site, where

accessible. The survey shall occur within 14 days of the onset of ground disturbance if such disturbances are to commence during the nesting bird season.

If an active bird nest is detected, an appropriate construction-free buffer would be established by the qualified biologist. Actual size of buffer, which would be determined by the project biologist based on observations of the nesting birds' behaviors, would depend on species, topography, and type of activity that would occur in the vicinity of the nest. Any nest buffers shall be monitored periodically by the biologist to ensure compliance, and the buffer shall not be entered by construction personnel or removed until the biologist has confirmed that the nest(s) is complete and young of the nest have fledged.

Survey results, including documentation of any active nests and proposed buffers, will be documented in a letter report to be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee.

Completion of these measures will reduce the potential impacts to nesting migratory birds, including raptors, to a less-than-significant level.

3.3.6 Disturbance to Waters of the United States or Direct Impacts to Riparian Habitats

Potential Impacts. Offsite reaches of the Guadalupe Creek are considered Waters of the U.S. and are therefore under the jurisdiction of the USACE. The channel and riparian habitat of the Guadalupe Creek is also jurisdictional to the CDFW and RWQCB. However, there is not expected to be any direct disturbance to the Guadalupe Creek's bed, bank, or riparian habitat. Therefore, the project will not result in disturbances to Waters of the United States of direct impacts to riparian habitats. Potential indirect impacts to the riparian corridor are considered in section 3.3.9.

Mitigation. No mitigation is warranted.

3.3.7 Potential Degradation of Water Quality in the Guadalupe Creek

Potential Impact. Eventual site development and construction will require grading that leaves the soil of construction zones barren of vegetation and, therefore, vulnerable to sheet, rill, or gully erosion. Eroded soil is generally carried as sediment in surface runoff to be deposited in natural creek beds, canals, and adjacent wetlands. Furthermore, urban runoff is often polluted with grease,

oil, pesticide and herbicide residues, heavy metals, etc. These pollutants may eventually be carried to sensitive wetland habitats used by a diversity of native wildlife species. The deposition of pollutants and sediments in sensitive riparian and wetland habitats would be considered a potentially significant adverse environmental impact. The project will comply with the City's grading requirements and City policies 6-29 and 8-14 and as such will result in a less-than-significant impact to water quality. Potential short-term impacts that could result from project related soil disturbances in the form of sedimentation into the Guadalupe Creek would be avoided through implementation of water quality best management practices included in the project.

Mitigation. No mitigation is warranted.

3.3.8 Disturbance to Ordinance-Size and Heritage Trees

Potential Impacts. The project contains no ordinance-sized or heritage trees. No tree removal permit would be required for removal of the saplings present within the site.

Mitigation. No mitigation is warranted.

3.3.9 Potential Impacts to the Riparian Habitat by the Project including from a Reduced Setback Buffer

Potential Impact. The proposed project includes construction of 7 single-family residential units within the 0.998-acre property. To accommodate this the project will seek a riparian setback exception to build within 100 feet from the edge of the Guadalupe Creek (Figure 2)—up-to a minimum setback of 50 feet from the top of bank—though greater than a 50-foot setback in some places. Inside the riparian setback area, the project proposes to install and monitor a native habitat planting (Appendix A). The reduced setback will have no direct impacts on any native habitats. However, potential indirect impacts to the riparian habitat from the development project could result, as discussed below.

The study area of the property does not support any natural habitats, and it is surrounded on all sides, except the riparian habitat-facing edge, by active human uses including a busy roadway, commercial and gas station business, and an apartment building, so the site does not provide important upland habitat or contribute to any movement corridor. The site boundary itself is spaced from the riparian bank of the Guadalupe Creek by a gap of approximately 20 to 30 feet, which is a

graded gravel-surfaced Valley Water maintenance road easement with a chain-link fence. Also, the site sits well-above the channel by approximately 35 or 40 feet in elevation (Google Earth 2020), further sheltering the riparian corridor from any direct influences from the site. With a 50-foot setback from the top of bank, the project construction footprint would be approximately 130 feet from the aquatic channel at the closest point with no direct line of site between most of the construction site and the lower elevation riparian areas, including the channel. These nuances of the relationship between the study site and the riparian corridor are important in considering the potential effects the project may have on the riparian corridor. In general, based on current conditions, the site is not influenced by the presence of the riparian corridor in a meaningful way. For instance, the limited plants occurring on the site were not riparian species or species that require the proximity of moist soils, as would be found in a riparian corridor.

The proposed project, which would convert the non-native and bare ground dominated parcel into a residential neighborhood with landscaping and a native habitat restoration planting within the riparian setback area (Appendix A), is likely to result in a negligible difference in foraging habitat to native wildlife in the immediate-term and may result in an increase in suitable nesting locations for native birds, and forage and cover habitat for native wildlife, as the native habitat plantings and residential landscaping matures. Also, soils of the native habitat planting area are likely to improve over time on account of leaf litter and other biotic factors made possible by the planting, which could improve habitat for the recruitment of native plants. The native habitat planting would be guided by a habitat mitigation monitoring plan included in Appendix A of this report.

The project proposes buildings that are 2-story and 2.5-story units. Lighting and window glare from these units may shine into the riparian corridor, especially the upper portions of the canopy, potentially discouraging habitat use by nocturnal animals, potentially exposing nesting birds to increased predation, and creating less safe conditions for nocturnal animals. Successful implementation of the HMMP would offset some of the potential impacts of night lighting over time due to creating a habitat buffer between the development and the extant riparian habitat. Landscaping near the riparian setback area that could include invasive species (e.g. English ivy [*Hedera helix*] or tree-of-heaven) could result in such plants moving into the riparian corridors and causing adverse impacts to the plant communities up- or downstream of the site. Landscaping could also include irrigation and chemical inputs (e.g. pesticides and fertilizers) that could negatively impact the riparian environment. During construction, trash from the project site could travel by

wind, scavenging bird, or storm water from the construction footprint to the riparian habitat. The potential impacts of litter into riparian habitat has been well-documented and well accepted. It is assumed that a project SWPPP will ensure project soil runoff or other forms of storm water pollution during construction will not occur. Finally, unsuccessful implementation of the HMMP may result in the absence of the proposed vegetated buffer and/or the riparian setback area being used by the public and/or residents in ways that potentially harm or degrade the habitat values of the riparian corridor.

The potential indirect impacts from project buildout within a 100-foot buffer that are listed above would be considered a moderate but significant impact to the riparian habitat of Guadalupe Creek. To offset potential habitat impacts to the riparian corridor, and the species that utilize the corridor, several mitigation measures are warranted. Implementation of mitigation measures described here, would reduce the potential impact of a reduced setback to a less-than-significant level.

The 100-foot setback is furthermore codified as a regulatory standard by the City of San José Council Policy 6-34 and the SCVHP (Section 3.2.6). Encroachment within the 100-foot setback by the proposed residential project would require regulatory approval. The minimum setback allowable by the regulatory agencies that are signatories to the SCVHP would be 50 feet from the top of bank and 35 feet from overhanging riparian vegetation—whichever is greater—for undeveloped sites (ICF International 2012). The City of San José also requires approval for anything less than a 100-foot construction-free setback from the edge of riparian habitat (refer to Section 3.3.12 for an expanded discussion on this topic).

Mitigation: The following mitigation measures are proposed to reduce impacts from a reduced riparian setback buffer to a less-than-significant level. The proposed project shall be designed to ensure the protection of biological resources occurring within the adjacent riparian habitat. This will be achieved with the following measures:

- To ensure the native habitat planting is successful implemented, the project HMMP, included herein as Appendix A, shall be made a condition of the project. This shall include all elements of the HMMP including the planting plan, maintenance plan, and monitoring plan.
- To the extent feasible, the final building design, including any modifications, should maximize the buffer between the top-of-bank of Guadalupe Creek and the proposed residential yards and buildings, including any fencing and hardscapes of the project. At a

minimum, the project shall observe a 50-foot development-free setback from the top-of-bank of the Guadalupe Creek and a 35-foot setback from riparian vegetation (Figure 2), which is the minimum setback allowed by the SCVHP.

- All lighting associated with the development shall be designed so that the throw of light is low to the ground and not directed toward the riparian corridor.
- All landscaping within 100 feet of the riparian edge shall be comprised of locally native and/or non-invasive species that are not featured on the California Invasive Plant Council's Invasive Plant Inventory of invasive plant species (www.cal-ipc.org/ip/nventory).
- All windows that directly face the riparian habitat shall be constructed with un-mirrored surfaces, and, if feasible, they should be comprised of bird-friendly glass, such as glass products that are etched or textured to be observable to birds (e.g., glass products certified as Bird Smart by the American Bird Conservancy).
- During construction, trash control measures shall be employed to ensure that the riparian habitat is protected from litter or construction debris moving into the riparian habitat from the development site due to wind or storm water. This shall include placement of lidded trash cans near construction area parking, near portable toilets, and near actively constructed houses. Trash cans will have tight fitting lids replaced at the end of each day and they shall be emptied before they are overflowing.

Successful implementation of these measures will ensure that any impacts to the riparian habitat of the Guadalupe Creek and associated riparian habitat are reduced to a less-than-significant level.

Regulatory considerations

While not classified as mitigation, the project cannot build within 100-feet of the riparian corridor without a setback exception approval from the City of San José and from the Santa Clara Valley Habitat Agency. A Condition 11 Exception Request is required by the Habitat Agency, and the City may need additional documentation to approve a setback exception Council Policy 6-34. Sections 3.3.11.2 discusses conditions of approval required for a SCVHP Condition 11 exception.

3.3.10 **Potential Constraints to Development from the San José 2040 General Plan**

The Envision San José 2040 General Plan covers the study area and most notably recommends tree removal permits and setbacks of 100 feet along riparian corridors "in all but a limited number of instances, only where no significant environmental impacts would occur" (Goal ER-2), and measures for storm water/water quality are spelled out (Goal ER-8 and 9). The Project should adhere to local government policies, such as the Envision San José 2040 General Plan. Chapters 3 and 6 of the General Plan include several goals that the project must follow. Goals that may relate to biological issues and are expected to be applicable to this project include Goals MS-21, ER-2,

and ER-4 through ER-9 in Chapter 3. These Goals are summarized in Section 3.2.6 above. It is assumed that the project is consistent with all the above Goals as long as any reduced riparian setback is approved by the City of San Jose.

Mitigation. No mitigation is warranted.

3.3.11 **Potential Constraints to Development from Habitat Conservation Plans**

The project will be subject to conditions and fees contained in the Santa Clara Valley Habitat Conservation Plan. Six local partners (the County of Santa Clara, Santa Clara Valley Transportation Authority; SCVWD; and the Cities of San José, Gilroy, and Morgan Hill) and two wildlife agencies (the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service) prepared and adopted this multi-species habitat conservation plan, which primarily covers southern Santa Clara County, as well as the City of San José except for the bayland areas. The SCVHP addresses listed species and species that are likely to become listed during the plan's 50-year permit term. The eighteen covered species include nine plants and nine animals. The animal species covered include, but are not limited to, the California tiger salamander, California red-legged frog, western pond turtle, and western burrowing owl. The SCVHP requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value. Funding sources for the SCVHP include development fees based on land cover types (natural, agricultural, or small vacant sites surrounded by urban development). Additional fees are charged based on the occurrence of certain sensitive habitat types such as serpentine and wetlands.

The project would need to complete the SCVHP's Application for Private Projects and submit it to the City of San Jose with applicable fees prior to receiving approval for a project grading permit.

3.3.11.1 Fees

Chapter 9 of the SCVHP identifies fees that may be required by this project. The Study area is entirely an urban area, but it occurs adjacent to a parcel containing riparian habitat. Therefore, the site may be subject to Fee Zone fees. No fees would be required for the portion of the site that is protected with a riparian setback buffer, but the remainder of the site may be subject to applicable zone fees. A Nitrogen Deposition Fee would also be required at approximately $5.31 per new

vehicle trip or $50.09 for each new single-family residence that results from the project (these values are based on 2020-2021 fee schedule).

3.3.11.2 Conditions on Covered Activities

Chapter 6 of the SCVHP includes several additional conditions that must be followed. Conditions that are expected to be applicable to this project include Conditions 1, 3, and 11, which are summarized in Section 3.2.7. The project is not required to conduct SCVHP-required surveys for covered species given the lack of potential that covered species requiring surveys occur onsite and due to the fact that the site is not within the plant or wildlife survey areas.

Condition 11 of the SCVHP provides requirements for stream and riparian setbacks (Section 3.2.6). As the project site is within the City's USA and the site does not possess a 30% or greater slope, required stream setbacks measured from the top of the stream bank are required to be at least 35 to 100 feet depending on the category of the stream. Setbacks for Category 1 streams are at least 100 feet. The Guadalupe Creek is a Category 1 stream; therefore, development is required to maintain a 100-foot setback. As discussed above, the project proposes a reduced riparian setback from Guadalupe Creek. While setbacks that are less than 100 feet do not meet the requirement of the SCVHP, the SCVHP provides a framework for allowable exceptions to these setbacks. As summarized above, for a project to be considered for a setback, the following factors must be met:

1. "The existence of legal uses within the setback.
2. "The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
3. "The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
4. "The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies," (pp. 6-54, ICF International 2012).

Factors #2 or #3 in the above list are not relevant to the biology of the project and thus are not addressed in this analysis. The proposed project is consistent with factor #1, and, with the incorporation of mitigation measures included in this report, including nesting bird surveys prior to construction (Section 3.3.5) as well as bird-safe design and setback restoration (Sections 3.3.9), the proposed project would be consistent with #4. An exception request would have to be prepared, that addresses each of these four factors, and submitted to the Habitat Agency for approval of a reduced setback. This approval would be required for the project to be allowed to develop within 100-feet of the riparian edge.

It is expected that the project will comply with all required measures of the SCVHP, including submitting payment of appropriate fees, which will be assessed based on the current fee schedule at the time that a grading or building permit is issued (please note that 2021-2022 fees were reported in this document), and with all applicable SCVHP conditions. It is also assumed that the project will apply for an exception to a 100-foot riparian setback, in which case the proposed riparian setback will be subject to approval. Whether the project is approved for a riparian setback exception, it is expected that the project will observe a riparian setback that has been approved by the Habitat Agency and the City of San José.

Mitigation. No mitigation is warranted.

3.3.12 Potential Constraints to Development from the San José City Council Policy 6-34: Riparian Corridor Protection and Bird Safe Design.

Section 3.2.6.2 summarizes the City of San José's Council Policy 6-34, which requires development projects to maintain a 100-foot setback from riparian habitat and to employ construction design elements that reduce potential adverse effects from the new development on riparian corridor habitats. The Camden Avenue project will seek a reduced setback from 100-feet. For the City to approve of a reduced setback, the project must qualify for a circumstance that would warrant a reduced setback. The full list of such circumstances is included in Section 3.2.6.2; those circumstances that are relevant to the Camden Avenue project are relisted here (numbered according to the policy): #2: "Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre;" #3: Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback;" #4: "Sites with

unique geometric characteristics and/or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback;" and #7: "Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback." The Camden Avenue project fits these 4 circumstances. Each is discussed here:

The property is one of the only undeveloped sites in the vicinity, and it is boarded on all sides by urban development except for the side that is shared with the parcel that includes the riparian habitat. Therefore, the site fits circumstance #2.

The orientation of site to the Guadalupe Creek, being at a much higher elevation to the creek and the lower portions of the riparian corridor canopy, means that most of the site is beyond the influence of the riparian habitat. The site is oriented such that soils of the site do not collect alluvial or organic deposits from riparian activity, and the vegetation of the riparian habitat does not even drop leaves and other duff onto the site in any significant way. This is most apparent in the suite of non-native and drought-tolerant plant species that are present onsite (e.g., Russian thistle, which is the dominant species). Soils of the site are clearly disturbed by human uses and lacking in nutrients required by most plants. This is evident in the significant barren areas of the site and the lack of plant diversity. Typical riparian soils are generally rich in nutrients and replete with vegetation growth and diversity. Therefore, circumstance #3 is relevant to the site.

The parcel fits the circumstance of being a site with a unique geometric characteristic and disproportionately long riparian frontage in relation to the width of the minimum Riparian Corridor setback. The parcel is generally a small, triangle-shaped site with the long edge facing the riparian corridor. Approximately 61 percent of the site area occurs within 100-feet of the edge of riparian habitat. This means that a very small amount of the site—approximately 39 percent—falls outside of the 100-foot setback area. Therefore, circumstance #4 is relevant to the site.

Development of the site includes plans to install a native riparian habitat planting within the proposed riparian setback area and it includes plans to monitor the plantings for a 5-year period. The benefits of this habitat mitigation included in the project would vastly improve the onsite habitat values of the Camden Avenue study site over current conditions. Not only would tree-nesting birds be able to utilize the plantings, once established, but the proposed plantings would be able to stabilize soils within the riparian setback area, increase organic matter in the soil, and

provide foraging, breeding, and cover habitat for numerous regional wildlife where such values are nearly lacking. Therefore, circumstance #7 is relevant to the site.

Since the project meets several circumstances required by the Council Policy 6-34 for consideration of an exception, the project would also have to certify that all of the following conditions are true:

1. There is no reasonable alternative for the proposed project that avoids or reduces the encroachment into the setback area.

2. The reduced setback will not significantly reduce or adversely impact the riparian corridor.

3. The proposed uses are not fundamentally incompatible with riparian habitats.

4. 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.

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

LOA has considered each of these conditions with regard to the biological setting of the proposed project. Condition 1 is not in the purview of this biological evaluation report, as it relates to project costs and real estate valuation questions; however, the applicant has provided this analysis as part of a *Santa Clara Valley Habitat Plan Condition 11 Exception Request* (Appendix B). Condition 5, above, is only partially biologically relevant in that it considers the potential danger posed by the project on downstream properties, but it also suggests an economic consideration of the project on downstream communities (refer to Appendix B). As proposed, the project with a reduced setback does not pose any potential biological risk to downstream properties. Conditions 2, 3, and 4, which are fundamentally biological questions, are met by the project. These are each addressed in turn as follows:

Condition 2. The project will not directly impact the riparian corridor. There will be no reduction in riparian habitat because of the proposed development project as the project will occur well outside of the Guadalupe Creek's riparian corridor. Also, the parcel and creek are separated by a Valley Water maintenance road, and the creek occurs 35 to 40 feet lower in elevation than the site.

These factors serve as a significant separation from the proposed project and the Guadalupe Creek channel. Implementation of mitigation measures and design guidance listed in Section 3.3.9 will ensure there are no significant impacts from potential indirect impacts to the riparian corridor. Therefore, the project will not adversely impact the riparian corridor.

Condition 3. The proposed development project is not a fundamentally incompatible use adjacent to a riparian habitat. Incompatible uses would be uses that cannot co-occur at all or without serious adverse effects. Uses that could result in damage to riparian habitat, as would high-decibel power generation, an animal stock lot, chemical manufacturing or refining, or wastewater treatment, are not proposed. Residential housing is a pre-existing use adjacent to Guadalupe Creek both up- and down-stream of the site, indicating that the proposed residential development project is a compatible use. This is true for this project given the protective measures proposed by the project including a 50-foot setback from the top of bank and a native planting restoration within the setback area.

Condition 4. The project occurs near a reach of stream bank that is steep but appears stable, especially given that is has a dense riparian canopy serving to both hold soils together with root networks and blocks surface soil from erosion of falling rain. A graded and level Valley Water maintenance road occurs between the site boundary and the riparian corridor, and there does not appear to be any evidence of attempts to stabilize the stream banks in this reach with hardscape structures. Furthermore, development of the project will have no bearing on the stability of the bank as it will maintain a 50-foot setback from the creek's top of bank.

Condition 5. The proposed project, a small residential development with a 50-foot development-free setback from the top of bank, is proposed adjacent to the Guadalupe Creek. The project will not result in any increased concentration of water runoff, sediment transport, or general erosion. The project will not change the functioning or habitat values of Guadalupe Creek. The project itself will also not damage any downstream properties as the proposed project is simply the conversion of an empty lot into a small residential development without impact, encroachment, or degradation to any adjacent property and without inputs into the stream.

These analyses suggest that the proposed project, with incorporation of mitigation measures and design guidance included in Section 3.3.9, is a candidate for approval of a riparian setback under

the Council Policy 6-34 based on the biological conditions of the proposed project (economic and real estate valuation conditions not withstanding).

Mitigation. No mitigation is warranted.

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APPENDIX A: CAMDEN AVENUE SITE HMMP

LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

CAMDEN AVENUE RIPARIAN BUFFER HABITAT MITIGATION AND MONITORING PLAN SAN JOSE, CALIFORNIA

Prepared by

LIVE OAK ASSOCIATES, INC.
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Nathan Hale, M.S., Project Manager and Staff/Restoration Ecologist

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1 INTRODUCTION

Live Oak Associates, Inc. (LOA), has prepared this habitat mitigation and monitoring plan (HMMP) to reduce potential indirect impacts to the Guadalupe Creek resulting from development of a residential project on Camden Avenue located in the City of San Jose, Santa Clara County, California (APN 567-26-014). The proposed Camden Avenue project may result in indirect impacts to riparian habitat due to project-related encroachment into a standard 100-foot riparian corridor setback buffer. This HMMP has been developed for compensation of impacts to the riparian buffer with a buffer planting of oak woodland species. Elements of this mitigation and monitoring plan include: 1) Habitat Creation Plan; 2) Maintenance Plan; 3) Monitoring Plan; and 4) Adaptive Management Plan.

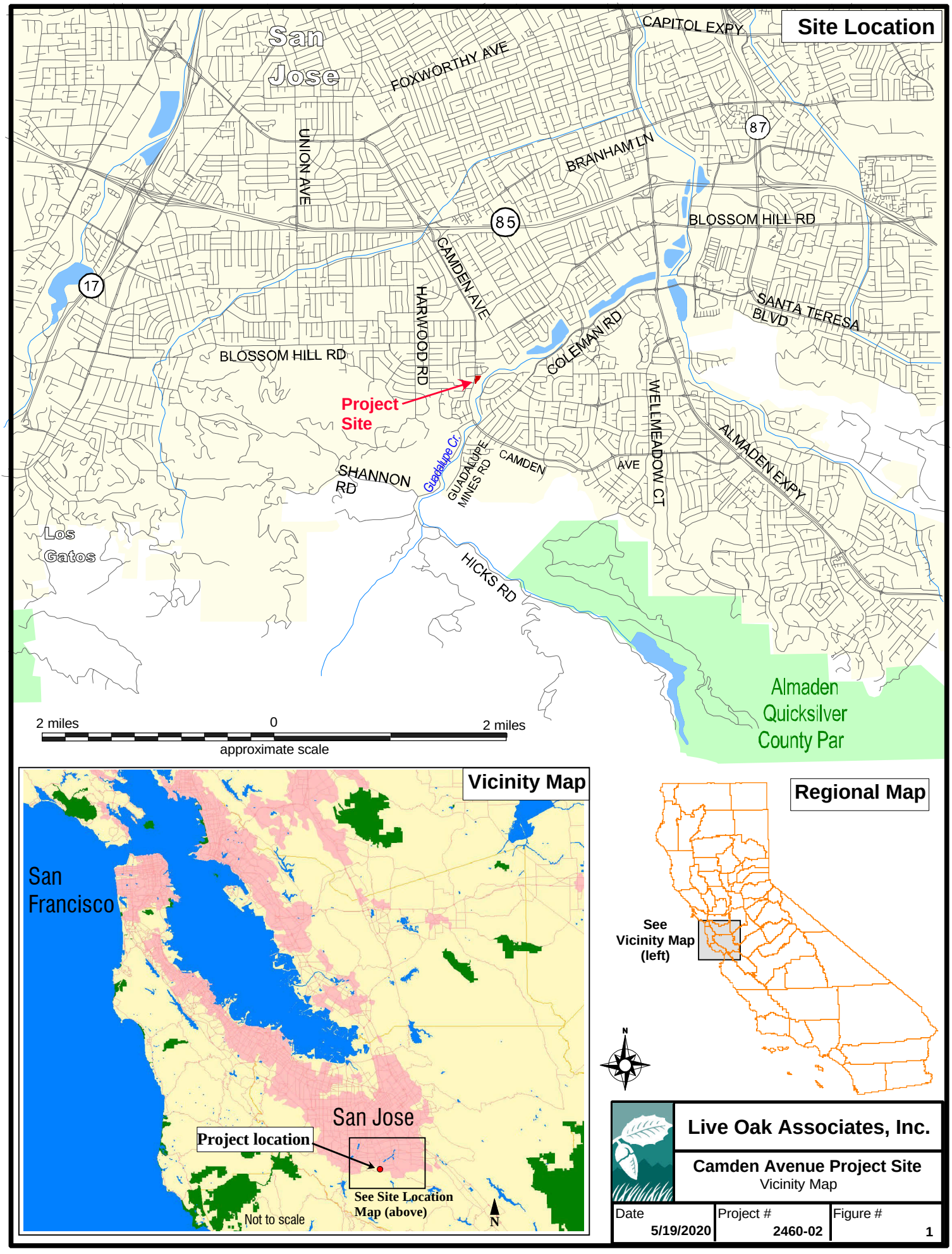
1.1 PROJECT LOCATION

The approximately 0.998-acre property is located on Camden Avenue, across from the termini of Canna Lane and Malpas Drive, in the City of San Jose, Santa Clara County, California (Figure 1). The triangle-shaped study site is bounded by Camden Avenue to the west, existing residential development to the north, and a Valley Water maintenance road easement and the riparian habitat of the Guadalupe Creek to the southeast. The site is at the southern-most tip of the land grant San Juan Bautista in Santa Clara County. If the U.S. Public Land Survey is overlaid, the following would describe the project location: NW1/4, SW1/4, SE1/4, T8S, R1E of the Mt. Diablo Meridian. The site can be found in the Los Gatos, California U.S.G.S quadrangle. The site itself has relatively level topography, ranging in elevation from 292 to 298 feet (89 to 91 m) National Geodetic Vertical Datum (NGVD).

The proposed mitigation site (Figure 2) will be contained within undeveloped area along the southeastern boundary of the site located between the planned development and Guadalupe Creek. A Valley Water gravel access road and chain-link fence occur between the mitigation area and the creek.

1.2 PROJECT DESCRIPTION

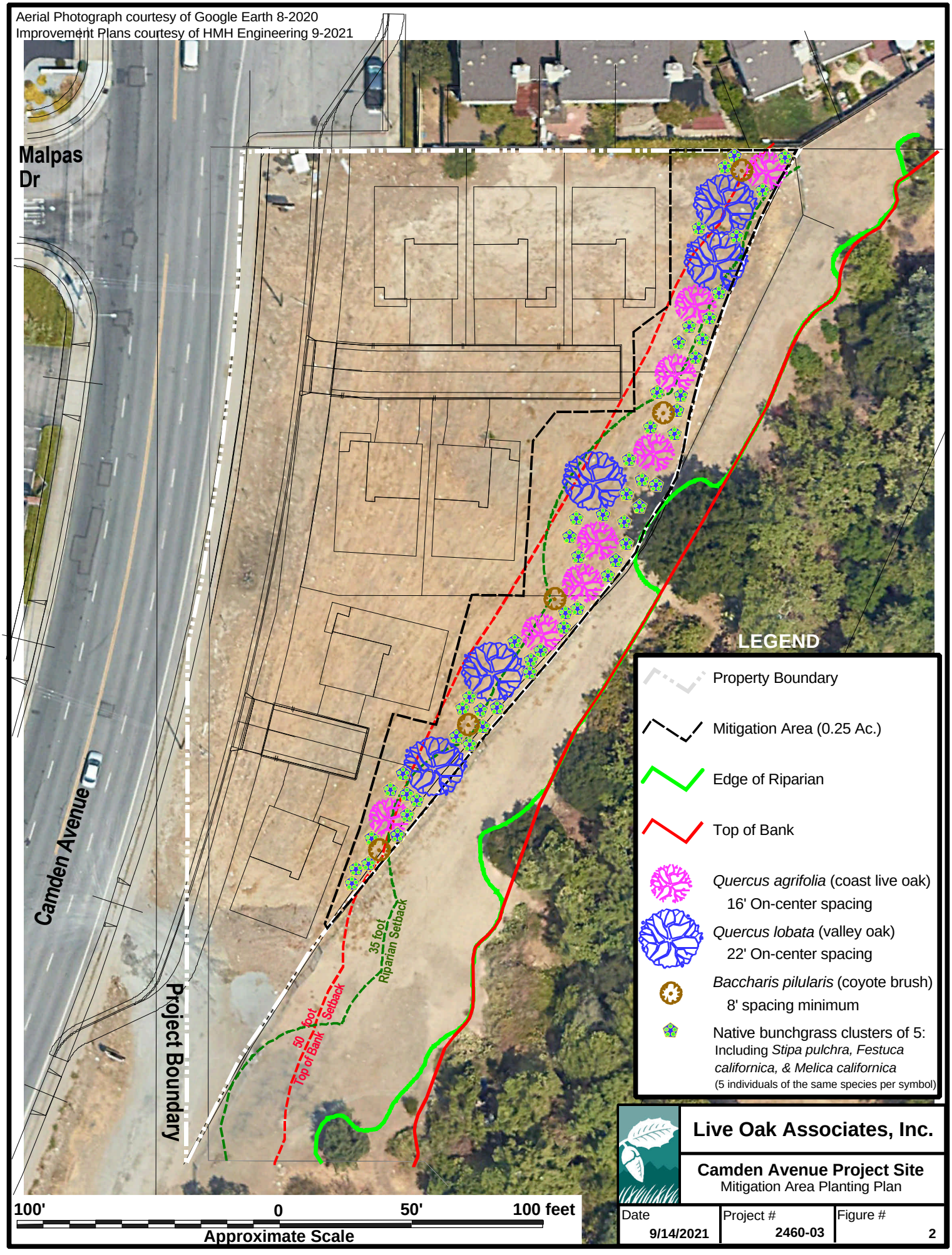
The proposed project is the rezoning of the 0.998-acre site from A (Agriculture) to a Planned Development Zoning ((A) PD), in conformance with the existing general plan of Residential



Live Oak Associates, Inc.

Camden Avenue Project Site
Vicinity Map

Date	Project #	Figure #
5/19/2020	2460-02	1



Live Oak Associates, Inc.

Camden Avenue Project Site
Mitigation Area Planting Plan

Date	Project #	Figure #
9/14/2021	2460-03	2

Neighborhood. This will allow for the construction of up to seven single family detached residential units, dedication of public street right-of-way to widen Camden Avenue, street improvements, and landscaping (Figure 2).

The seven homes on the site will have a net density of 9.26 dwelling units per acre which is in keeping with the existing adjacent neighborhood. The average lot size is estimated to be 2,600 square feet. The proposed homes would consist of two or two and one-half story structures with a maximum height of 35 feet. The square footage of the homes will range from 2,100-2,300 square feet.

The project will have two car garages with driveways along with two driveway aprons each. This will generate a total of 16 parking spaces

The site would be accessed from Camden Avenue to private drives or private streets. The proposed development would have a riparian setback of 50 feet from the top of bank and 35 feet from the edge of overhanging riparian vegetation.

1.3 EXISTING CONDITIONS

Existing conditions of the site and general site vicinity are described in the biological report titled *Camden Avenue Site Biological Evaluation Technical Report San Jose, California* (LOA 2020). In summary, the site is dominated by ruderal non-native plants, mostly including the noxious annual weed Russian thistle (*Salsola tragus*). Mature trees are lacking, though a few saplings and seedlings occur therein including tree-of-heaven (*Ailanthus altissima*) and one coast live oak (*Quercus agrifolia*) root sprout emerging from a cut tree stump. Surrounding land uses and habitats include development in the form of the busy roadway of Camden Avenue, residential, and commercial houses. A Valley Water easement with a gravel road and chain-link fence separate the site from the mature riparian habitat of the Guadalupe Creek. The creek supports a generally intact, native tree canopy of mature trees dominated by western sycamore (*Platanus racemosa*) and coast live oak individuals. Other trees of the offsite riparian corridor include California buckeye (*Aesculus californica*), valley oak (*Quercus lobata*), blue oak (*Q. douglasii*), sandbar willow (*Salix exigua*), and blue elderberry (*Sambucus nigra* ssp. *cerulea*).

1.4 PROJECT RELATED IMPACTS

As designed, the proposed project encroaches into the riparian setback areas defined by both the Santa Clara Valley Habitat Plan (SCVHP; ICF International 2012) and the City of San Jose's City of San Jose's Council Policy 6-34 (2016). The former requires a 100-foot setback from the top of bank and/or edge of riparian vegetation for Category 1 streams, such Guadalupe Creek. The City's Council Policy 6-34 calls for a 100-foot setback from the top of bank and riparian vegetation as a standard for most development projects regardless of the stream type. Both plans allow for exceptions to these setbacks if qualifying conditions are met. For this project, a reduced setback has been proposed. The project would maintain a 50-foot top-of-bank setback and a minimum 35-foot riparian vegetation setback, thereby encroaching at most 50 feet into the standard 100-foot top-of-bank setback requirement of the SCVHP and at most 65 feet into the City's 100-foot setback. Such an encroachment may pose moderate to low impacts to the riparian habitat including increasing night-lighting effects into the riparian habitat, increasing human inputs into the riparian habitat associated with residential development (e.g., release of invasive ornamental plants from landscaping into the riparian habitat area and potential adverse effects of outdoor pets, especially cats). While the project will be subject to mitigations to ameliorate these effects, this mitigation planting, included in the project, will further offset potential impacts and create onsite native habitat for native species where currently only low-quality, disturbed habitat values exist.

1.5 MITIGATION STRATEGY

As part of a strategy to offset potential indirect impacts from encroachment into the 100-foot setback standard, the project proposes to enhance the setback area with a native vegetation planting and invasive species removal that would complement the offsite riparian corridor. The dominant plants for this enhancement effort are native oak trees. Large trees such as coast live oak and valley oak trees are known to increase richness and diversity of native birds in urban settings (Fontana et al. 2011), among other habitat benefits.

In addition to this planting, development encroachment triggers payment of additional fees to the SCVHP that go toward supporting SCVHP regional conservation and restoration initiatives.

1.5.1 Payment of SCVHP Fees

The project is required to pay land use and/or nitrogen deposition fees under the SCVHP for all development occurring within the SCVHP coverage area. These fees, which were paid prior to obtaining a grading permit, are to be put toward regional conservation efforts supporting preservation of similar to higher quality habitat under the SCVHP. The City of San Jose is required to determine the specific SCVHP fees that this project would be required to pay. However, payment of SCVHP fees are considered one element of the project mitigation strategy for offsetting riparian setback encroachment, as the fees will support habitat benefits in the region.

1.5.2 Native Habitat Planting

The project will provide onsite mitigation in the form of a native vegetation planting within the observed setback (Figure 2). The planting program, detailed in this HMMP, would create a native vegetation buffer, primarily comprised of native oak trees (Section 2.3), between the extant riparian habitat and the planned development. The area subject to the HMMP planting was comprised of ruderal areas absent of native habitats. Biological monitoring and plant management for five years following installation is included to ensure the native plantings survive sufficiently through the establishment period and are on-track toward developing into a mature habitat area after monitoring is completed.

Approximately 0.25 acres or 11,170 square feet of planned open space is present within the observed riparian setback area available to be used as a native habitat buffer.

1.5.3 Deed Restrictions

The mitigation planting area shall be subject to a deed restriction to ensure that development, material storage, planting of non-native species, and/or removal of planted native vegetation are not permitted. The deed restriction should specify that any additional plantings installed in the mitigation planting area (e.g., replacement plantings) Such restrictions should also be defined in forthcoming HOA bylaws relevant to the riparian setback area.

1.6 RESPONSIBLE PARTIES

DAL Properties, LLC., will be responsible for the implementation of the project and this riparian mitigation and monitoring plan. Their contact information is:

DAL Properties, LLC.
255 W. Julian Street, Suite 502, San Jose CA, 95110
Attn: Mark Lazzarini; phone: 408-298-9302; email: mlazzarini@dalpropertiesllc.com

If the Camden Avenue project is transferred to a different entity (e.g., an HOA or another developer) before the successful completion of this mitigation plan, signed letters from DAL Properties, LLC. and the transferee shall be submitted to the City of San Jose Director of Planning indicating an understanding and acceptance of the new owner's responsibility for taking over obligations of the mitigation effort and all responsibilities of this HMMP and any subsequent monitoring and reporting.

After successfully meeting project criteria and obtaining sign-off from the City of San Jose, responsibility for management of the mitigation area would transfer to the HOA developed for the residential complex. Their duties would need to be determined based on site conditions after installation of the planting program. HOA responsibilities are likely to include regular maintenance in the form of weed abatement and trash removal. The HOA would be restricted from adding non-native plants to the setback area and would be required to retain the extant native vegetation within the setback areas excluding needs for weed abatement close to development for fire safety. If the HOA wishes to make changes to the plant community created according to this plan, the HOA should only be permitted to do so in consultation with the City planning department and a qualified biologist.

2 HABITAT CREATION PLAN

Approximately 0.227 acres or 9,885 square feet of area located between planned development and the riparian habitat of Guadalupe Creek has been designated for the mitigation planting. This area would be converted from ruderal, non-native open space to native oak woodland habitat through implementation of this HMMP. The habitat creation area is separated from the Guadalupe Creek by a Valley Water easement that includes a gravel access road and chain-link fence. Within the setback area, several saplings of noxious invasive tree-of-heaven trees occur, and the annual invasive plant, Russian thistle, is plentiful. The mitigation area will be prepared for planting with soil pretreatment, seeding (Sections 2.1, 2.2, and 2.3), and planted with container-grown, native vegetation as described in Section 2.3. This mitigation habitat creation effort will offset the potential indirect impacts to the extant riparian corridors of Guadalupe Creek from development within 100-feet of the creek. As it develops, this habitat creation effort will provide a benefit for local wildlife and a habitat buffer between the project development and the extant riparian corridors. The required planting measures as well as soil preparation measures are defined below.

2.1 SITE CLEAN-UP INCLUDING INVASIVE PLANTS

To ensure the planting area is an appropriate setting for native habitat creation, all construction debris, trash, and invasive plants will be completely removed from the setback area prior to soil preparation and planting. Tree of heaven plants should be extracted with a weed wrench or cut, and their cut stems treated with an herbicide known to work on this species (e.g., Garlon and Glyphosate). Mechanical cutting of Russian thistle should also be conducted, and it should be timed to ensure Russian thistle plants are not flowering at the time (i.e., prior to July).

2.2 SOIL PREPARATION

A portion of the mitigation planting area is likely to require limited grading. This may include placement of fill related to elevations required for development of the Camden Avenue site. To ensure the soils are appropriately setup for planting, the project should implement the following measures.

The following measures are designed to ameliorate issues with compaction and weed seed composition.

- Soils of the site shall include incorporation of organic compost as described below:
    - Organic compost from a well-decomposed, stable, weed-free organic matter source shall be uniformly applied over the entire planting area at an average depth of approximately 1 to 2 inches.
    - Compost shall be incorporated to a depth of 5 to 7 inches (for a 20% to 30% inclusion rate) using a rotary tiller or other appropriate equipment.
    - If any soil testing identifies a need for pH adjusting agents (e.g., lime and sulfur), these ingredients may be applied before incorporation of compost, as necessary.
    - After incorporation, the soil surface shall be smoothed prior to seeding and planting.
    - If a tractor is used in soil incorporation, the final pass should be perpendicular to the fall line of the slope (i.e. across the slope).
    - Any large debris, including cement, trash, and construction materials, shall be completely removed from the mitigation planting area soils before the next phase of soil preparation.
- Temporary overhead irrigation will then be applied to the setback area 3 to 4 times over the course of approximately 2 weeks to force emergence of weeds in the seedbank.
- Immediately after weeds emerge, management of emerging weeds would be completed with flaming, weed whipping, and/or aquatic safe herbicide (i.e., an aminopyralid herbicide such as Milestone, Aquamaster®, or Roundup Custom other formulations acceptable to the California Department of Fish and Wildlife [CDFW]), or through other methods approved by the project restoration biologist. Herbicide must only be applied by someone possessing a valid herbicide applicator's license.
- Repeated weed management will occur at least twice monthly for a period of at least 1 month following this initial weed removal effort prior to planting. The goal is to exhaust the weed seed in the germination zone of the seedbank prior to planting. Delay in weed control will result in weed seed set and should be avoided.
- After weed control, the entire planting area shall be seeded with native seed consistent with Section 2.3.2, below. Seed should be gently incorporated to the top 0.5 inch of soil through placement of a thin layer of fine textured soil/compost and/or light raking.

2.3 NATIVE PLANT INSTALLATION

The setback area is an upland area near extant riparian habitat. Therefore, the suite of species included in this restoration plan is consistent with a transitional mixed oak woodland community. The species chosen are based on observations of native plant species that occur within the vicinity of the site and species that are expected to contribute to an increase in habitat value for native wildlife (Fontana 2011; Pavlik, Muick, & Johnson 1993). Table 1, provided below, lists the species and minimum required numbers to be used in the mitigation planting. Any substitutions to the species listed resulting from nursery availability or landscaper recommendations would need to be approved by the monitoring biologist. Planting in addition to the required minimum numbers is allowable to account for anticipated mortality resulting from transplant shock, wildlife browsing, and/or generally unsuitable conditions for some or one of the planted species.

Table 1. Minimum required planting palette for the Camden Avenue project riparian setback habitat mitigation plantings

Species	Scientific Name	Form	Min. Qty	Plant Container	Planting notes
Coast live oak	*Quercus agrifolia*	Tree	8	*5-gallon*	Minimum on-center spacing: 16 feet. No root disturbance during planting.
Valley oak	*Quercus lobata*	Tree	5	*5-gallon*	Minimum on-center spacing: 22 feet. No root disturbance during planting; Plant generally closer to existing riparian corridor.
Coyote brush	*Baccharis pilularis*	Shrub	5	*1-gallon*	Minimum on-center spacing: 8 feet.
Tree and Shrub Total			**18**		
Native Bunchgrasses: California fescue, melic grass, & purple needle grass	*Festuca californica, Melica californica, & Stipa pulchra*	Bunchgrass	270	*LT6 or LT8 (alternately plug trays)*	Minimum on-center spacing: 2 feet. Sun to shade. Plant in groupings of 5 of the same species. Percentage of the total bunchgrass for each species should be decided based on nursery availability.
Bunchgrass Total			**270**		
PLANT TOTAL			**298**		

2.3.1 Plant Sourcing

Plants shall be of local genetic origin grown from source populations within the Guadalupe River watershed. If such source plants are unavailable due to nursery availability and project timing,

plants can be obtained from source populations in the Coyote Creek and West Valley Watersheds. At the time of plant procurement a qualified biologist shall be consulted to ensure plants are sourced adequately.

It is recommended that plants be contract grown early in the project planning process to ensure availability of local stock.

2.3.2 Seeding

Following soil preparation including weed treatments and incorporation of compost, all areas of disturbed soil within the riparian setback area will be seeded with a seed mix consistent with Table 2. Immediately after seeding, the seeded surface should be lightly raked and then smoothed with a pass of a light drum roller to increase seed soil contact. Alternative methods for increasing soil seed contact shall be approved by the project biologist. Seeding rates are described in Table 2.

Table 2. Recommended native grass and forb seeding mix

Species	Common name	lbs/acre
Achillea millefolium	Yarrow	0.5
Asclepias fascicularis	Narrow-leaved milkweed	2
Bromus carinatus	California Brome	6.5
Eschscholzia californica	California poppy	1
Elymus glaucus	Blue wildrye	5
Hordeum californicum	California Barley	5
Lupinus bicolor	Miniature lupine	3
Melica californica	California oniongrass	3
Stipa lepida	foothill stipa	4
Stipa pulchra	Purple Needlegrass	3
Total		**33 lbs/ac.**

2.3.3 Container Plants

Table 1 lists the species proposed for installation with recommended plant numbers, pot sizing, and planting notes. A conceptual planting layout is shown in Figure 2.

Planting holes should be dug approximately twice the width and depth of the container. Soil auguring to 36 inches in depth may be needed in some compacted areas and is highly recommended to ensure good taproot access for oak tree species. Plants shall be installed with the root crowns at or slightly above the natural grade after soil settling. Each plant should be

encircled with a 3-4 inch berm to create an approximately 3-4 foot wide basin. No fertilizer should be used. Plants shall be thoroughly watered-in immediately after planting, and should be irrigated every other day for the first 10-14 days following installation.

To increase soil moisture retention and limit weeds, a 3 foot diameter, 2 to 3-inch deep layer of wood mulch will be installed around each planting. Mulch must be kept from covering any of the root crown or stem of the plant. If desired, mulch can be used in the intervening areas between plantings. Mulch must be from clean sources and must be certified as not containing highly infectious material such as sudden oak death spores.

2.4 PLANT INSTALLATION TIMING

Seeds shall be installed approximately 1 to 3 weeks after removing/treating emergent weeds. Seeding should generally be installed between August and December.

Container plants should be installed between November and January (Table 3). Plants should not be planted between May and September. Installation of plants should occur no more than 8 months after soil preparation work.

Table 3. Plant installation timing

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Installation Date	Best	Ok	Ok	Ok	No	No	No	No	No	Ok	Best	Best

2.5 REPLACEMENT PLANTS

Immediately following Year 1 and Year 2 monitoring data are collected, all dead plants (i.e., plants that have dropped below the minimum required totals for trees, shrubs, and bunch grasses) will be replaced to the 100 percent level.

2.6 SUPPLEMENTAL WATER

Application of irrigation during the monitoring period of this project should be based on direction from the project restoration biologist. All installed plantings will receive supplemental water as needed during initial establishment. If drip irrigation is used, at least 2 low-water emitters should be used per plant on opposing sides of the plant, and emitters should enable some spreading of water so that irrigation is not imbalanced within the root zones. Overhead sprayer emitters should not be used if there is any risk of irrigation affecting the offsite riparian habitat.

Irrigation will be designed to be deep and slow. The goal of the irrigation regime will be to encourage plants to develop deeper roots and thus self-sufficiency. In general, irrigation should be infrequent with higher frequency during the initial establishment period and a lower frequency thereafter. By year three, irrigation should be used very intermittently or only as needed depending on dry spells of the year.

Irrigation should not be used after three years from planting unless drought conditions or other unknown circumstances provide reasonable challenges to survival for the plantings. Should replacement plantings be required, these will be irrigated for an appropriate period following installation not to exceed three years (i.e., unless as above).

2.7 PLANTING DESIGN

If a formal planting plan is prepared, a qualified restoration biologist shall review the landscape plans and specifications prior to finalization and approval to ensure they are consistent with this mitigation plan. Any additional plantings associated with the housing development that are planned to be installed adjacent to or within the setback area must be approved by the project biologist and consistent with this mitigation plan.

2.8 AS-BUILT PLAN

Following installation, an as-built plan of the site will be prepared. This plan will include the identity and approximate location of tree and shrub species planted within the mitigation areas and will be submitted to (or prepared by) the project biologist for verification and reporting. This plan should be provided to (or prepared by) the project biologist within 30 days of the completion of planting. The purpose of this time restriction is to ensure that a verification survey (Section 2.3) is conducted in a time period that allows for an easier inventory of what was

planted. If the biologist finds a significant absence of plants, relative to those listed in Table 1, then replanting may be required before the planting is officially determined to be completed.

2.8.1 Collection of Baseline Data (Year 0)

The project restoration biologist will survey the planting site and verify that all newly installed plantings are accounted for and consistent with the as-built plan and this HMMP. Observed mortality of plantings would not negate the accuracy of the as-built plan if evidence of the plant(s) is identified, but additional planting may be needed as determined by the biologist. If planting numbers are below those required in this HMMP, additional plantings will be installed immediately to compensate for any differences and ensure that plantings were installed per the HMMP prior to the first year of monitoring. Verification by the project biologist that the installation is consistent with the HMMP signifies completion of installation.

3 MAINTENANCE PLAN

The restoration area will be maintained for the duration of the monitoring period (i.e. through the Year 5 monitoring visit), or until final success criteria are met, to ensure the successful establishment of the installed plantings. The primary objective of the maintenance staff will be to protect and support the native plantings as directed by the project biologist. This will be achieved through the following methods.

3.1 SUPPLEMENTAL WATER

All installed plantings will receive supplemental water as needed as discussed in Section 2.4 (above). The frequency and duration of watering will be determined in consultation with the project biologist and will be adjusted regularly to train plantings off of supplemental water over the initial three years. The irrigation system will be inspected monthly through the first growing season and at least on a quarterly basis for the remainder of the required irrigation period. Any identified malfunctions or problems will be repaired immediately.

During the final year of monitoring, upon project sign-off by the City, the irrigation system should be completely removed from the riparian setback planting area without damaging the installed plants. Verification of the removal should be conducted by the project biologist.

3.2 WEED CONTROL

In order to ensure that native plantings do not suffer impacts of competition, regular control of weeds will be needed. This will include target weeding around all planting basins, general weed control between the plantings, and invasive species eradication, including eradication of tree-of-heaven plants.

- *Target Basin Weeding.* Weeding around each planting for non-invasive weed species is required. An area of approximately 3 to 4 feet in diameter will be hand cleared of weedy vegetation from around the base of each installed plant by project maintenance staff. This clearing is required to take place monthly during the first year (12 months) after planting, monthly during the growing seasons in the following years, and at least once during the winter when irrigation is used. After irrigation is removed from the project area weeding around plantings should continue as needed to ensure that plantings are not negatively affected by weeds.

- *General weed control.* During the first year starting after installation of plant materials, non-native species will be controlled throughout the riparian setback mitigation site at least quarterly. Subsequently, this weeding will be conducted at least twice per year through the 5-year monitoring period. Weeding should be conducted by a landscape firm familiar with native plants to ensure that new recruiting native species are avoided to the maximum extent possible. At least one weeding should take place in the early spring before the majority of weed species have set seed.
- *Invasive non-native plant eradication.* Invasive non-native species rated within the California Invasive Plant Council (Cal-IPC) list as a "high" ecological impact species will be controlled immediately upon identification. This list should be accessed from https://www.cal-ipc.org/plants/inventory/. The project biologist will conduct periodic follow-up visits after eradication treatments to identify if additional treatment will be required. Treatment timing should be conducted with attention paid to the flowering cycles of the plants to ensure that removal occurs before these plants go to seed and to ensure adequate uptake of herbicide, if used.

3.3 ADDITIONAL MAINTENANCE TASKS

3.3.1 Trash removal

During maintenance visits, the maintenance crew will ensure that trash accumulation is removed from the setback area. This includes unused irrigation materials, pots and plant labels, etc.

3.3.2 Semi-annual maintenance report

At least once per year maintenance staff will report maintenance activities that have occurred in the riparian setback areas to the project biologist. The detail should include dates that maintenance activities occurred, observations by maintenance staff of the site conditions including observations of vandalism or slope instability, tasks completed during maintenance trips, and specific methods used. The report will contain species lists of any plants installed during replanting efforts. This report will be provided to the biologist responsible for monitoring the area. This information will be summarized in the biologist's annual monitoring report.

4 MONITORING PLAN

Subsequent to collection of Year 0 data for the site and verification of the as-built conditions, the monitoring biologist will monitor the riparian setback mitigation area annually for 5 years or until final success criteria are met, if longer than five years. The purpose of the monitoring period is to ensure that the mitigation area, at Year 5, is trending toward a sustainable, predominantly native, oak tree planting suited to the riparian setback area. Monitoring will begin starting approximately 6 to 9 months after the successful installation of the mitigation plantings, in the late spring to early summer (April 1 through July 15). An annual monitoring report will be completed and provided to the City of San Jose and other relevant agencies by December 31 of each monitoring year.

4.1 VEGETATION MONITORING

Installed plantings will be monitored annually for a 5-year period or until final success criteria are met, if longer than five years. Monitoring will be conducted by the project restoration biologist beginning after the first spring growing season following plant installation. Vegetation monitoring will include collection and evaluation of the following data which have been chosen to characterize the status of the restoration effort.

4.1.1 Tree and Shrub Survivorship

The survivorship of all installed mitigation trees and shrubs planted into the riparian setback area will be an indicator of mitigation success. Survivorship of trees and shrubs needs to be monitored and inventoried by species annually beginning in Year 1. A separate inventory may be made of any naturally-recruited native trees and shrubs that are ecologically suitable to the mitigation area. These natural recruits can be used to offset mortality of the enhancement plantings at the biologist's discretion, typically based on size and vigor of the recruits. This will be acceptable if the natural recruit is determined to provide the same ecological value as those species originally included in the enhancement. Annual incremental performance criteria should be used to track survivorship of trees and shrubs (Table 3) and the final performance criteria will determine if these restoration goals have been achieved.

The functions of these criteria are to ensure that vegetation planted as part of this mitigation is numerous enough after the 5-year period to ensure that a high probability exists for the continued maturity of a predominantly native habitat.

Survivorship Performance Criteria:

Seventy percent (70%) of the number of individual required trees and shrubs and 60% of the required bunchgrass plants shown in Table 1 are required to occur within the riparian setback mitigation area during the final year of monitoring. For bunchgrasses, the final year of monitoring is Year 3 as these plants are expected to be established following Year 3 and will be less distinguishable as individual plants thereafter. For trees, Year 5 is the final monitoring year. It is expected that most of this mortality would occur in the initial two-year period as plants become established. This is reflected in the interim performance criteria for tree survivorship (Table 4). Tree and bunchgrass replacement are required following Year 1 and Year 2 monitoring to ensure plants are back to 100 percent of the required minimum going into Year 3.

If survivorship falls below 70% for trees and/or 60% for grasses in Year 3 or later (for trees), all dead plants will be replaced up to at least 100% of the number of individuals required in Table 1. New trees will be monitored for a minimum of 2 years after installation. If survivorship of trees falls below 50% at any time during the monitoring period, then all dead trees will be replaced and the monitoring period shall start anew (i.e., at Year 1) subsequent to replanting. Naturally recruited trees and bunchgrasses may be used to offset mortality at the biologist's discretion.

Table 4. Camden Avenue project riparian setback habitat mitigation restoration performance criteria.

Measurement	Yr. 0	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5 or Final Performance Criteria
Tree and shrub survivorship	100% (≥18)	~100%* (≥18)	~100%* (≥18)	~85% (≥15)	~77% (≥14)	**≥70% (≥13)**
Bunchgrass survivorship	100% (≥270)	~100%* (≥270)	~100%* (≥270)	~60%* (≥162)	n/a	**n/a**
Tree health and vigor	N/A	5-10	6-10	7-10	7-10	**7-10**

* All dead/missing plants are to be replaced following Year 1 and Year 2 monitoring.

4.1.2 Health and vigor

The health and vigor of installed mitigation trees will be assessed beginning in Year 1 according to the following scale:

Dead	= 1	
Poor	= 2-3	= alive but with 0-30% healthy foliage and bark
Fair	= 4-6	= 31-60% healthy foliage and bark
Good	= 7-9	= 61-90% healthy foliage and bark
Excellent	= 10	= 91-100% healthy foliage and bark

This qualitative observation of health and vigor considers several factors, including foliage color, bud development, new growth, herbivory, drought stress, fungal/insect infestation, and physical damage. If foliage is abnormally sparse, and not as a result of drought deciduousness, then the health and vigor rating will be lowered accordingly, even if the foliage present is healthy. Alternately, if a species has large abundant growth with some unhealthy foliage and a few dead branches, the health and vigor should balance the various qualities accordingly. Dead individuals will be noted as they relate to other monitoring factors, but they shall not be included in the calculation of mean health and vigor for the restoration site.

The function of this requirement is, in part, to provide feedback about the status of the enhancement effort so as to trigger adaptive management measures in the event of low ratings, but the main function will be to ensure that surviving vegetation is healthy at the time the mitigation is signed-off.

Health and Vigor Performance Criteria:

Health and vigor of all trees planted in the mitigation area shall be monitored. The final success criteria should be a mean of 7 or greater, indicating "good" to "excellent" health and vigor. Interim targets are listed in Table 4. If a particular individual tree is in poor health relative to the rest of the trees of that species the mean health and vigor score for that individual can be dropped from the calculation if dropping the individual from the survivorship totals does not reduce survivorship below the performance criteria. This stipulation is based on the understanding that some individual may be unsuited to a particular site's micro-habitat conditions.

If drought conditions are severe during the final year of mitigation monitoring the health and vigor scale can be adjusted based on the health and vigor of appropriate species occurring in local and suitable reference locations. In this case, the biologist would need to present a rational for any adjustment to the health and vigor scale to the City planning department for approval.

4.1.3 Seeding Installation Verification

A copy of the order slip for purchased seeds used in the installation of seeding will be provided to the monitoring biologist. The monitoring biologist will ensure that the seeding of barren areas was completed based on receipt of the order slip and field identification of evidence of seeding (e.g. seeded species in the understory, a hydro mulch layer if hydroseeding was used, etc.). If significant barren areas are noted, additional seeding may be required at the discretion of the biologist.

The function of this criterion is to provide for soil stability and development as well as habitat diversity at the onset of planting.

4.1.4 Photo-documentation

In order to visually document site conditions, photo points will be established at several representative locations to capture the riparian setback mitigation area. These photographs will be established during Year 0 baseline monitoring (i.e., right after planting). These photos shall be taken again during annual monitoring visits and included in annual monitoring reports.

4.1.5 Santa Clara Valley Habitat Plan Fee Payment

Proof of fulfillment of the payment of the SCVHP fees shall be provided to the project biologist for verification.

4.1.6 Contingency Planning

As depicted in Sections 4.1.1 through 4.1.5, including Table 4, the project is required to achieve final performance criteria in order for the mitigation to be judged to be a successful mitigation effort. If the final performance criteria have not been achieved, then adaptive management strategies will be implemented and monitoring continued annually until these criteria have been met. If after 7 years of maintenance the performance criteria are still far from being met, the amount of mitigation that was achieved by the project will be quantified by a project restoration

biologist and the remainder can be offset through an appropriate alternative mitigation approved by the City of San Jose.

4.2 ANNUAL MONITORING REPORT

At the end of each annual monitoring period a monitoring report will be completed by the biologist and submitted to the City of San Jose and any other relevant agencies for their review.

Year 1 through Year 5 monitoring will culminate in an annual reporting document. The annual monitoring report will address or include the following:

- Results of monitoring efforts conducted from that year;
- A discussion of the condition of the mitigation area including observed mortality and health of planted species, the persistence of non-native species, and any other condition that may affect the success of the mitigation;
- A discussion of all maintenance activities for the enhancement areas during the prior year;
- Photo documentation; and
- Any adaptive management recommendations (see Section 5.0).

5 ADAPTIVE MANAGEMENT PLAN

Adaptive management strategies will be implemented if the results of the annual monitoring indicate that a large constituent of the plantings are struggling to survive or achieve the success criteria. The following adaptive management strategies are primarily focused on the objectives of restoring native vegetation along Guadalupe Creek assuming no physical barriers to restoration. These strategies may include, but not be limited to:

- Evaluation of the irrigation system for necessary repairs;
- Evaluation and amendment of soils of the riparian setback area;
- Adjustment of the supplemental watering schedule;
- Modifications to weed control measures; and

- Installation of new plantings during the autumn or winter immediately following the monitoring period. The number and species to be planted will be determined by the project biologist.

A summary of all adaptive management actions taken during the year will be discussed in the annual monitoring report.

If issues with habitat restoration are related to physical issues with the system including the stability of the bank and/or vandalism, then appropriate measures should be taken to ameliorate such issues. Any issues identified during monitoring should be reported immediately to DAL Properties, LLC. or their successor. For issues related to vandalism or other human impacts, suitable measures should be taken to protect the restoration site from these impacts. This may include fencing, installation of signs, and or use of a security patrol.

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APPENDIX B: SCVHP CONDITION 11 EXCEPTION REQUEST

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building, and Code Enforcement
HARRY FREITAS, DIRECTOR

Santa Clara Valley Habitat Plan
CONDITION 11 EXCEPTION REQUEST

Date	**September 21, 2021**
Subject	Stream and Riparian Setback Condition (Condition 11) Exception for Camden Avenue Site APN: 567-26-014, PDC21-029, PD21-006
Approved	[Approved by]
Effective Date	[Date of approval – leave blank until approval]
Revision Date *(If applicable)*	

DAL Properties, LLC, is requesting an exception from Condition 11, Stream and Riparian Setback Condition for their project titled the Camden Avenue Planned Development Rezoning Project located in the City of San Jose.

This condition applies to all covered activities that may impact streams. This includes all development inside the urban service area where a stream or the stream setback overlaps any portion of the parcel on which a covered activity is being implemented. Outside the urban service area, this includes all covered activities where a stream or stream setback overlaps any portion of the development area or project footprint.

Condition 11 Exception Criteria

For all proposed exceptions to the stream setbacks (inside or outside the urban service area), exceptions will be considered based on the following factors:

1. The existence of legal uses within the setback.
2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.

4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Other considerations may be made based on:

- the implications of a reduced setback on the riparian system and covered species, progress toward the biological goals and objectives of the Plan, and potential effects on adjacent properties; and
- if the exception would allow the project to avoid and minimize impacts on covered species and natural land cover types to the maximum extent practicable.

Exception Applicability and Evaluation

The project is a Planned Development Rezoning from the R-2 Two Family Residence Zoning District to the A(PD) Planned Development District to allow the construction of up to seven single family detached residential units and subsequent subdivision. The project includes a native habitat planting and monitoring plan between the planned development and the Valley Water maintenance road that occurs at the top of bank of Guadalupe Creek.

This proposed development is requesting a 50-foot minimum setback from the top of bank and 35-foot setback from riparian vegetation along portions of Guadalupe Creek classified as a Category 1 stream in the SCVHP. The setback areas would also be subject to temporary impacts as part of project development and a restoration planting with native seed, bunchgrasses, shrubs, and oak trees. Temporary impacts would include:

- Some placement of clean fill may be as part of the site work to achieve the necessary to achieve target grade elevation for proper drainage including storm water treatment measures. Clean fill will also necessary to back fill for utility improvements. Clean fill may also be required to replace on-site soil that may be contaminated given the previous agricultural use of the property pending results of soil sampling.
- Associated grading to perform these tasks.
- Plant installation disturbances and temporary irrigation.

Finally, subsequent to these temporary impacts, the project would result in the creation of a native upland habitat restoration between the proposed residential structures and the edge of existing riparian habitat of the Guadalupe Creek with what would be native and habitat appropriate species (comprised of mixed oak woodland constituent species) sourced from the Guadalupe River Watershed. The restoration area would be approximately 0.25 acres in extent. A mitigation and monitoring plan has been prepared by Live Oak Associates, Inc. that provides direction for the restoration effort, including a maintenance plan and a 5-year biological monitoring period.

Per the Santa Clara Valley Habitat Plan, exceptions may be considered based on the following factors:

1. Existence of legal uses within the setback.

2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of the land or adversely affects recognized real property interests for the applicant.

3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning or other established code standards.

4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

#1 Existence of legal uses within the setback

Currently the site is vacant but would allow for a legal use for residential density of 8-16 units per acre. The proposed use for residential is consistent with the City General Plan 2040 and therefore would be a permitted use subject to the riparian setback exceptions consistent with the Santa Clara County Habitat Plan and current City Policy.

The proposed uses within the 100-foot setback would include single family residential homes, private drives and riparian restoration planting. Other legal uses within the setback that are adjacent but not a part of this project include and chain link fence and a compacted gravel Valley Water maintenance road. The *Camden Avenue Site Biological Evaluation Technical Report, San José, California* (dated September 15, 2021) which was prepared by Live Oak Associates (LOA), provides a biological analysis of the proposed riparian setback. In the report, LOA documents the existing site and includes a riparian delineation of the site (Figure 2 of the September 15, 2021, Biological Evaluation). LOA also summarizes the suitability of the proposed project riparian setbacks in relation to the City Council Policy 6-34, the General Plan 2040, the City of San Jose's Riparian Corridor Policy Study, and the Santa Clara Valley Habitat Plan. The LOA analysis addresses and has found the proposed project satisfies the criteria for #1.

#2. The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of the land or adversely affects recognized real property interests for the applicant.

There are limiting factors that prevent this site from being a viable residential development that adversely affects the real property interests of the applicant and property owner unless the proposed development, including the requested setback exceptions, is allowed. The requested riparian setback exception is a pre-requisite for compliance with the City General Plan and current zoning calling for a density of 8-16 dwelling units per acre. Engineering analysis demonstrates that without this setback exception, only 3 dwelling units would be permitted and would only yield 3.9 dwelling units per net acre. Cost associated with on-site, off-site construction improvements, implementation of a riparian habitat restoration plan and monitoring program, ongoing common

area maintenance expenses associated would deprive the property of any economic feasibility resulting in a true hardship and regulatory taking. The main site factors which this development can over come with these reduced riparian setback conditions are:

- Surrounding physical constraints including right-of-way setbacks.
- Economic feasibility associated with site improvement and infrastructure.
- Implementation of a riparian restoration plan and monitoring program.

Physical Constraints
The proposed development has several physical constraints that can only be overcome by the development as proposed. Contributing to the physical constraints of the site are:

- riparian setbacks
- site access and Right-of-Way constraints off of Camden Avenue
- irregular parcel and resultant land planning inefficiencies

Existing Site limitations & Riparian Setbacks

Without the exception of the 100-foot setback along Guadalupe Creek the site would not generate the number of homes to reach economic feasibility given the costs associated with the improvements for the site and today's cost of construction. The riparian corridors, Camden Avenue right-of-way combine to create a constrained and dimensionally inefficient development footprint of 0.286. acre of this 0.998-acre parcel making the 8-16 dwelling units per acre per the City Zoning infeasible. With the setback exception the site, while still inefficient due to its irregular shape, can provide a unit yield consistent with the existing zoning. This still leaves an area that will provide common area open space with native species plantings. This open space provides an opportunity to both enhance the habitat value of the site over existing conditions and buffer the site from the extant riparian area.

This riparian setback area will be restored to higher quality habitat than current conditions as part of the project development. The proposed development allows for seven homes to be built making for a viable residential development consistent with the current zoning. Development on this site with a fewer number of homes would not be economically feasible given the cost parameters associated with development costs and the irregular and physical constraints of the site from Camden Avenue Right of Way. Under the City's Riparian Policy (Council Policy 6-34) a reduced setback may be considered in urban infill locations where properties are equal to or less than one acre, where the site has an irregular and disproportionate riparian frontage, where the site is adjacent to streams that do not have a riparian influence beyond 100-feet, and where the implementation of a project with a reduced setback offers opportunities to protect or enhance the riparian habitat more than would the minimum setback. Without an exception to the riparian setbacks the residential development as proposed would not be feasible with the current zoning designation thereby resulting in an economic hardship and regulatory taking.

Site Access

As part of the proposed development access would be directly off of Camden Avenue. This would entail providing private streets and common driveways with appropriate traffic operational measures for ingress and egress.

The subject property contains unique site constraints leading to inherent site plan inefficiencies and limitations. These site constraints and costs result of residential development consistent with the General Plan residential land use designation requires a minimum number of unit yield to provide the necessary economies of scale for a project to be financially feasible.

Small in-fill site factors are generally more costly to development. The development of this site at the required densities permitted under the current zoning can only be accomplished with the implementation of the proposed site plan. The site plan with the riparian setback exceptions achieves a minimum level of feasibility by achieving the necessary economies of scale to overcome the cost factors associated with these construction costs, inefficient site plan and site right-of-way constraints**.**

#3. The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning or other established code standards.

The Santa Clara Valley Habitat Plan (SCVHP) requires a setback along Category 1 streams, such as Guadalupe Creek, of 100 feet from the top of bank or 35 feet from the edge of riparian vegetation, whichever is greater. As proposed, the development site would include seven housing units situated along the westerly edge of a minimum of 50-foot setback from the top of bank of Guadalupe Creek and 35-feet from the edge of riparian vegetation. This 50-foot minimum setback would run for a distance of 350 feet out of an overall frontage length of 440 feet along Guadalupe Creek. The majority of the setback area would be planted as a native plant restoration area featuring an oak woodland planting palette. The setback along this overall frontage varies from 53 to 80 feet.

The developable area beyond the 100-foot setback is only 19,600 SF or 0.45 acres. Of this 7,110 SF or 0.16 acres would be required for public street dedication. This leaves 12,490 SF or 0.29 acres for residential development on a small triangular shaped parcel that is compromised for its development simply by its geometry. (See Figure 2. Developable Land with 100 ft setback). At best the residual developable area outside the 100-foot setback may yield three homes, resulting in a density of 3.9 Dwelling Units per acre, or half the density that is required by existing zoning. A zoning change or variance would be required for development of three homes which is contrary to the City's direction and efforts to create housing opportunities at greater densities. Other variances would be required such as a reduce right-of-way setback along Camden Avenue and parking variances to accommodate on site residence and visitor parking. These variances particularly the right-of-way requirements for Camden Avenue would normally not be allowed as part of the City's standards for public improvements especially along a major arterial roadway. All of these factors combine to prohibit the viability of development on this urban infill parcel.

The current General Plan designation is R-2 Two Family Residence establishing minimum density of 8-16 units per acres. Given its physical constraints established by implementing the 100' riparian setback and the Camden Avenue Right-of-way easement, would result in the inability to achieve the density required by the current zoning. Meeting the established HCP setbacks standards would be at variance with the City's General Plan by rendering a residential project to be unfeasible. Adherence to the setback standards without a variance would yield fewer units than proposed which would result in 'no project' and thereby create a financial hardship and regulatory taking.

The inability to develop this property as proposed would prevent the implementation of other goals and policies as referenced in Chapter 3 Environmental Leadership, Environmental Resources of the City of San Jose's General Plan. These goals and policies provide guidance for how to balance resource conservation and urban development. Goal ER-2-Riparian Corridors calls to "preserve, protect, and restore the City's riparian resources in an environmentally responsible manner to protect them for habitat value and recreational purposes. Goal ER-6 - Urban Natural Interface calls to 'minimize adverse effect of urbanization on natural lands adjacent to the City's developed areas.' Adherence to the setback standards would be at variance with these General Plan goals and policies as there would be no other means to restore these riparian areas to achieve these goals and policies without the implementation of this development.

#4. The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

The project's biological evaluation technical report dated September 15, 2021, and prepared by Live Oak Associates, Inc., addresses how the exception does not preclude achieving goals and objectives of the SCVHP or conflict with other applicable requirements and local policies including the City of San Jose's Riparian Corridor Policy Study. In summary, the project would ensure appropriate species surveys are provided prior to construction, that there would be no direct impacts to protected species or habitats, and that indirect habitat impacts are mitigated. In fact, the Biological Evaluation identifies that in some ways the project would provide a benefit for regional species by creating habitat values in the riparian setback area, such as nesting and foraging habitats, that are currently lacking from the parcel. The stream setback exceptions are consistent with other local policies as described as follows.

The proposed project site is an urban infill location, and the proposed residential homes are consistent with established neighborhoods in the project vicinity and with the City of San Jose's 2040 General Plan. Development of the sites ensures that additional housing and economic development occurs in areas already affected by urban development while reducing pressure on more natural areas rather than creating homes in a more pristine natural area. LOA (2021) documented that the site itself does not contain any natural habitats and does not function as an important pathway for species to access higher quality habitat from the riparian corridor. The proposed project is also consistent with other goals and objectives within the Measureable Environmental Sustainability (MS) and Environmental Resource (ER) policies section of the City of San Jose 2040 General Plan including:

- Incorporating landscape plantings with tree species native to the area (MS-21.9)
- Being consistent with the City's Riparian Corridor Policy Study and adopted provisions of the Santa Clara Valley Habitat Conservation Plan. (ER-2.1)
- Avoiding any significant environmental impacts as part of the exception to the riparian setback standards (ER-2.2)
- Designing new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise, and toxic substances in the riparian zone (ER-2.3)
- Implementing appropriate measures to restore, and/or mitigate damage or disturbances to the riparian corridors. (ER-2.3)
- Employing low-glare lighting in areas developed adjacent to natural areas (ER-6.3)
- Avoiding planting invasive species in the landscaping areas (ER-6.5)
- Utilizing native plants in the landscaping of developed areas adjacent to natural lands (ER-6.6)

The project complies with the City of San José's Council Policy 6-34, which requires most development projects to maintain a 100-foot setback from riparian habitat and to employ construction design elements that reduce potential adverse effects from the new development on riparian corridor habitats. However, the Camden Avenue project qualifies for a reduced setback from 100-feet, which has been determined a requirement for the project to be built. For the City to approve of a reduced setback, the project must qualify for a circumstance that would warrant a reduced setback. Four of the circumstances listed in the policy that are relevant to the Camden Avenue project are relisted here (numbered according to the policy):

#2: "Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre;"
#3: Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback;"
#4: "Sites with unique geometric characteristics and/or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback;" and
#7: "Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback." The Camden Avenue project fits these 4 circumstances.

Each is discussed here:

Circumstance #2: The property is one of the only undeveloped sites in the vicinity, and it is boarded on all sides by urban development except for the side that is shared with the parcel that includes the riparian habitat.

Circumstance #3: The orientation of site to the Guadalupe Creek, being at a much higher elevation to the creek and the lower portions of the riparian corridor canopy, means that most of the site is beyond the influence of the riparian habitat. The site is oriented such that soils of the site do not collect alluvial or organic deposits from riparian activity, and the vegetation of the riparian habitat does not even drop leaves and other duff onto the site in any significant way. This is most apparent in the suite of non-native and drought-tolerant plant species that are present onsite (e.g., Russian thistle, which is the dominant species). Soils of the site are clearly disturbed by human uses and

lacking in nutrients required by most plants. This is evident in the significant barren areas of the site and the lack of plant diversity. Typical riparian soils are generally rich in nutrients and replete with vegetation growth and diversity.

Circumstance #4: The parcel fits the circumstance of being a site with a unique geometric characteristic and disproportionately long riparian frontage in relation to the width of the minimum Riparian Corridor setback. The parcel is generally a small, triangle-shaped site with the long edge facing the riparian corridor. Approximately 61 percent of the site area occurs within 100-feet of the edge of riparian habitat. This means that a very small amount of the site—approximately 39 percent—falls outside of the 100-foot setback area.

Circumstance #7: Development of the site includes plans to install a native riparian habitat planting within the proposed riparian setback area and it includes plans to monitor the plantings for a 5-year period. The benefits of this habitat mitigation included in the project would vastly improve the onsite habitat values of the Camden Avenue study site over current conditions. Not only would tree-nesting birds be able to utilize the plantings, once established, but the proposed plantings would be able to stabilize soils within the riparian setback area, increase organic matter in the soil, and provide foraging, breeding, and cover habitat for numerous regional wildlife where such values are nearly lacking.

Since the project meets several circumstances required by the Council Policy 6-34 for consideration of an exception, the project would also have to certify that all of the following conditions are true:

1. There is no reasonable alternative for the proposed project that avoids or reduces the encroachment into the setback area.
2. The reduced setback will not significantly reduce or adversely impact the riparian corridor.
3. The proposed uses are not fundamentally incompatible with riparian habitats.
4. 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.
5. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

Conditions 1: The developable area beyond the 100-foot setback is only 19,600 SF or 0.45 acres. Of this, 7,110 SF or 0.16 acres would be required for public street dedication. This leaves 12,490 SF or 0.29 acres for residential development on a small triangular shaped parcel that is compromised for its development simply by its geometry. At best the residual developable area outside the 100-foot setback may yield three homes resulting in a density of 3.9 Dwelling Units per acre, or half the density that is required by existing zoning. A zoning change or variance would be required for development of three homes which is contrary to the City's direction and efforts to create housing opportunities at greater densities. Furthermore, additional variance not normally permitted by the City for parking and right-of-way easements would be necessary and may still not result in achieving the minimum density required by the current zoning for the site.

Condition 2: The project will not directly impact the riparian corridor at all (LOA 2020). There will be no reduction in riparian habitat because of the proposed development project. Also, the parcel

and creek are separated by a Valley Water maintenance road, and the creek occurs 35-40 feet lower in elevation than the site. Implementation of restoration measures and riparian protective design guidance (e.g., ensuring lighting does not shine on the riparian habitat, and that windows are not highly reflective) will ensure there are no significant impacts from potential indirect impacts to the riparian corridor. Therefore, the project will not adversely impact the riparian corridor.

Condition 3: The proposed development project is not a fundamentally incompatible use adjacent to a riparian habitat. Incompatible uses would be uses that cannot co-occur at all or without serious adverse effects. Uses that could result in damage to riparian habitat, as would power generation, high-density animal farming, chemical manufacturing, refining, or storage facilities, or wastewater treatment, are not proposed. Residential housing is a pre-existing use adjacent to Guadalupe Creek both up- and down-stream of the site, precluding that the proposed residential development project is in fact a compatible use. This is true for this project given the protective measures proposed by the project including a 50-foot riparian setback from the top of bank and 35-foot setback from riparian vegetation and a native planting restoration within the setback area.

Condition 4: The project occurs near a reach of stream bank that is steep but appears stable. A Valley Water maintenance road occurs between the site boundary and the riparian corridor, and there does not appear to be any evidence of attempts to stabilize the stream banks in this reach. Furthermore, development of the project will have no bearing on the stability of the bank as it will maintain a 50-foot setback from the creek's top of bank.

Condition 5: The property is one of the only undeveloped sites in the vicinity, and it is boarded on all sides by urban development except for the side that is shared with the parcel that includes the riparian habitat. An existing residential development on the northern boundary of the site was built in the 1980's well within the 50-foot setback and directly adjacent to the Valley Water maintenance road. Also, the parcel and creek are separated by a Valley Water maintenance road that is apparently managed to keep vegetation growth minimized, and the creek occurs 35-40 feet lower in elevation than the site. By virtue of the site being separated from the riparian channel and bank by the Valley Water maintenance road this further limits any adverse indirect impact this development would have on the adjacent creek and its riparian vegetative cover. Implementation of restoration measures and riparian protective design guidance (e.g., ensuring lighting does not shine on the riparian habitat and that windows are not highly reflective) will ensure there are no significant or injurious impacts to the riparian corridor. Therefore, the project, which will maintain a slightly larger riparian setback from the creek compared with other development in the vicinity, will not adversely impact the riparian corridor either adjacent, upstream or downstream of the site. This means the project will have no detrimental or injurious effect (e.g., increased risk of creek flooding or increased risk of creek pollution) on downstream properties.

These analyses suggest that the proposed project, with incorporation of mitigation measures and design guidance, would meet the circumstances and conditions for a reduced setback and thus would conform to the Council Policy 6-34.

Conclusion

The cumulative cost implications unique to the Camden Avenue site can be attributed to the physical constraints resulting in an inefficient site configuration and the provision for significant habitat restoration and biological monitoring. The number of homes being proposed provides for a minimum number necessary to achieve the economies of scale sufficient to offset the costs associated with this development and site constraints while satisfying the zoning requirements for this site. The proposed development becomes the only viable means by which to implement the residential use as designated by the City's General Plan. There is no reasonable alternative for the proposed project that avoids or reduces the encroachment into the setback area.

This development is only achievable with exceptions to the riparian setback requirements as established in the SCVHP. Imposing the required 100-foot riparian setback without exception, would result in a demonstrable hardship and deny the owner of any economically viable use of the land and would in-fact create a regulatory taking that would adversely affect real property interests for the owner and applicant. Furthermore, strict adherence to the required riparian setbacks of the SCVHP, without the requested exception, would result in substantial deviations or exceptions to the established local policies for infill sites as per the Riparian Corridor Policy Study and as noted in the Measurable Environmental Sustainability and Environmental Resource Policy sections of the City of San Jose's GP 2040.

Furthermore, the reduced setback will not reduce or adversely impact the riparian corridor, nor is the proposed use incompatible with riparian habitats. There is no evidence of stream bank erosion, nor will the stream banks be negatively affected by the proposed development that sets back from the top of bank by a 50-foot minimum setback. The granting of the setback exception will not be detrimental or injurious to adjacent and/or downstream properties.

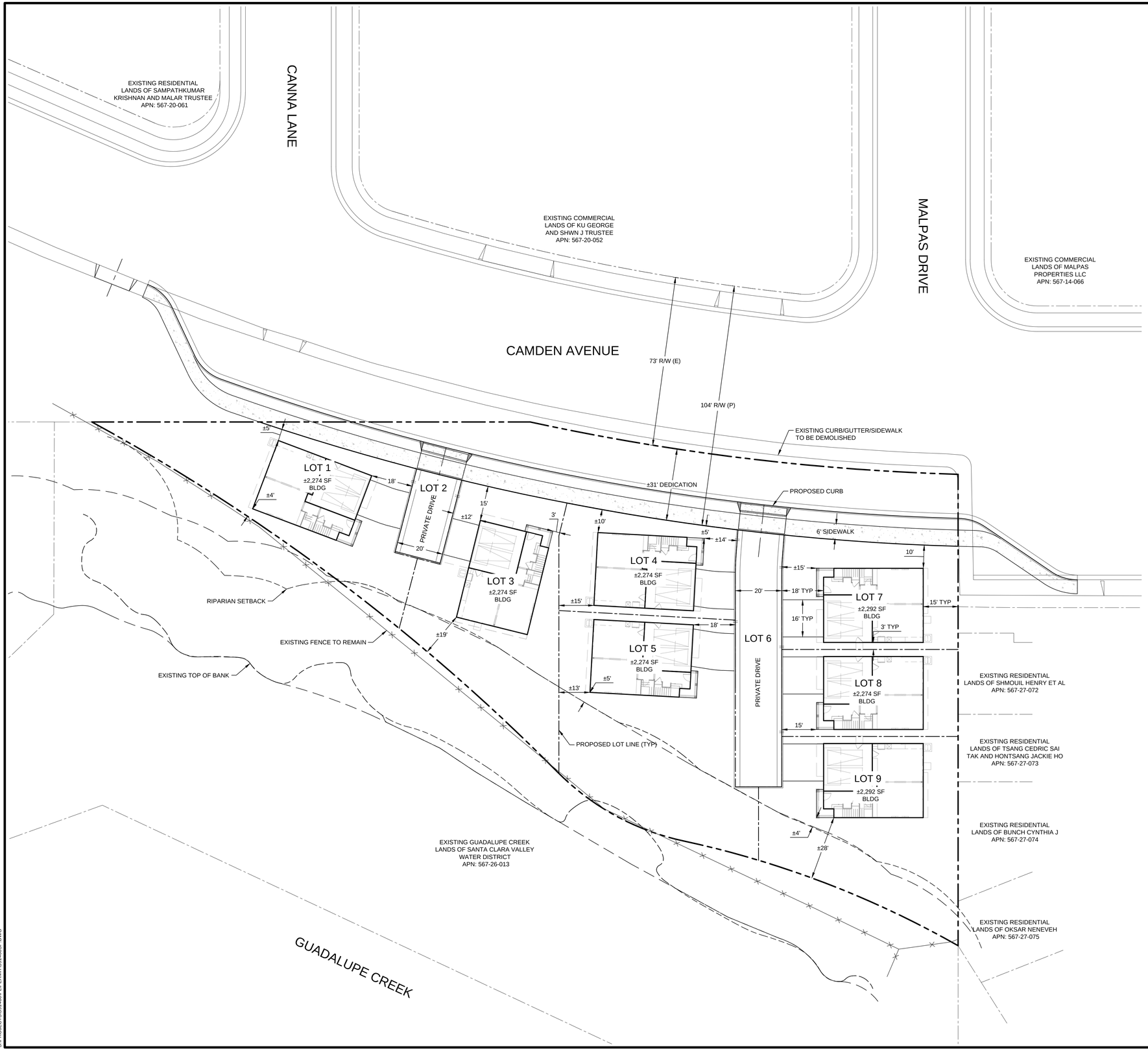
The project plans to offset impacts to the riparian buffer by installing a native oak woodland habitat planting in the riparian setback and to monitor and maintain the planting for a 5-year period to ensure it is well-established. This will provide a habitat buffer between the project development and the riparian corridor habitat, and it will result in restoring and enhancing the degraded habitat that currently exists within the buffer area for the explicit purpose of offsetting any ill-effects from the encroachment into the 100-foot riparian setback area.

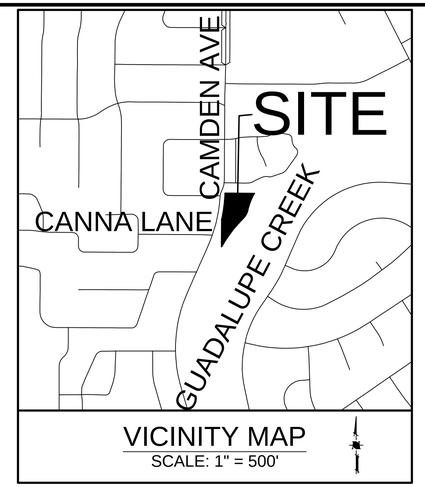
Determination

Regardless of project location, stream setback exceptions may not reduce a Category 1 stream setback to less than a distance of 50 feet from the top-of-bank and 35-feet from riparian vegetation for new development. All applicable fees must be paid for areas granted an exception.

Based on the justification provided by Mark Lazzarini of DAL Properties, LLC, the City of San Jose approves this Condition 11 exception request for the Camden Avenue Planned Development Rezoning Project (PDC21-019, PD21-006).

Figure 1. Site Map





VICINITY MAP
SCALE: 1" = 500'

LEGEND

- PROJECT BOUNDARY
- EXISTING FENCE
- RIPARIAN SETBACK
- PROPOSED BIORETENTION

ABBREVIATIONS

NOTES

1. 31' CAMDEN R/W DEDICATION PROPOSED PER CAMDEN AVENUE CONCEPTUAL PLAN PROVIDED BY CITY OF SAN JOSE.

HMH
Land Use Entitlements
Land Planning
Landscape Architecture
Civil Engineering
Utility Design
Land Surveying
Stormwater Compliance

1570 Oakland Road (408) 487-2200
San Jose, CA 95131 HMHca.com

CAMDEN AVENUE
CAMDEN AVENUE AND CANNA LANE
PLANNED DEVELOPMENT PERMIT
PD21-___

NO	DATE	DESCRIPTION

PROJECT NO:	5914.00
CAD DWG FILE:	591400SP.DWG
DESIGNED BY:	DM
DRAWN BY:	MP
CHECKED BY:	PS
DATE:	MAY 18, 2021
SCALE:	1" = 20'

SITE PLAN

3.0
OF 22

S:\PROJECTS\5914\00\PLUPER\NTS\591400SP.DWG

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