



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** March 1, 2007

Approved

*Ray Wilson*

Date

*2/3/07*

**COUNCIL DISTRICT:** 1

**SNI AREA:** Not Applicable

## SUPPLEMENTAL

**SUBJECT: PDC06-062. REZONING OF PROPERTY LOCATED AT THE TERMINUS OF DUCKETT WAY, APPROXIMATELY 420 FEET EAST OF SOUTH DE ANZA BOULEVARD FROM R-1-5 RESIDENCE ZONING DISTRICT TO A (PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 19 RESIDENCES ON A 1.82 GROSS ACRE SITE.**

### REASON FOR SUPPLEMENTAL

The subject rezoning was originally heard by the City Council on February 6, 2007. The discussion on the project's conformance to the City's Riparian Corridor Policy was discussed at length, focusing on the fact that the project only provides a 30 foot minimum setback from the riparian corridor along Calabazas Creek. The City Council deferred the project three weeks to February 27, 2007 in order for the applicant and staff to work through issues related to the riparian setback.

### RECOMMENDATION

Planning Staff, after revisiting the riparian corridor issue as directed, continues to recommend that the City Council adopt a resolution to deny the proposed rezoning, even in light of the revised plan presented by the applicant, dated February 15, 2007 (Attachment 1), for the following reasons:

1. The proposed project does not support the General Plan goals and policies related to riparian corridor preservation, protection, and restoration in that it proposes encroachments into the 75 foot setback identified by the project biologist, nor does it meet the appropriate riparian setback exception as contained in the Riparian Corridor Policy Study; and

2. The project as proposed does not conform to the General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (up to 8 du/ac); and
3. The project as designed does not qualify for consideration under the Discretionary Alternate Use Policy (Two Acre Rule) for an increase in density because the project does not conform to the minimum standards of adopted design guidelines, let alone demonstrate exceptional design.

### **OUTCOME**

Denial of the proposed rezoning would mean that the site would remain in its current state until such time that an alternative development proposal is approved.

### **EXECUTIVE SUMMARY**

At the City Council hearing on February 6, 2007, much of the discussion regarding the proposed residential rezoning focused on the issues related to conformance to the City's adopted Riparian Corridor Policy and what may be an appropriate exception to the standard 100-foot setback set forth in the policy. Staff supports a reduced setback to the 100-foot setback as recommended by the project biologist and given the unusual geometric characteristics and a disproportionately long riparian frontage. The project as revised does reduce the amount of impervious surfaces that currently exists within the riparian corridor and recommended 75-foot setback, however, the form of the new encroachments present more building mass and activity than what currently exist. The revised project with the proposed 30-foot riparian corridor setback, with an average setback of approximately 55 feet, is not sufficient to protect the remaining biological resources of the riparian corridor from the adverse effects of the encroachment.

There are reasonable development alternatives that can balance the competing goals of protecting, preserving, and restoring the riparian corridor, preserving mature trees and historic resources, minimizing impacts on adjacent single-family development, and maximizing private development opportunities. These alternatives would include a sufficient setback from the riparian corridor (60 to 75 feet), preserve a majority of the ordinance size trees on site (removal of trees to free of development opportunity on the western edge of the site), support the number of units requested by the applicant, and protect the privacy of the adjacent single-family rear-yards (by retaining a mature screen of trees, limiting the plate height of the 3<sup>rd</sup> floor and eliminating outdoor private open space at 3<sup>rd</sup> floor). If a zoning were approved that contained the development standards that supported such alternative, the design details would be worked out at the Planned Development Permit stage. For visual reference, staff has included an aerial of the site (Attachment 2).

### **BACKGROUND**

The Planning Commission on November 15, 2006 voted to recommend that the City Council deny the proposed rezoning from R-1-5 Residence Zoning District to A (PD) Planned Development Zoning District. The Planning Commission did not feel that the proposal as designed met all the

relevant goals and policies of the General Plan including the riparian corridor policies and the recommended Residential Design Guidelines. The applicant, Barry Swenson Builder, had proposed to allow up to 20 single-family residences including retention of an existing residence that upon initial review of its historic qualities rated as a high Structure of Merit.

The applicant reduced the proposed plan by one unit so that the rezoning, if approved, would allow up to 19 single family residential units including the retention of the existing residence. The proposed rezoning was originally heard by the City Council on February 6, 2007. Among other issues, the Council had extensive discussions regarding the project's conformance to the City's Riparian Corridor Policy. The Council voted to defer the project so that the applicant could continue to work with staff to develop an alternative plan that addressed various City Council concerns. The applicant submitted revised plans to staff on February 16, 2007.

## **ANALYSIS**

### **Plan Modifications**

The plans were modified from those presented to City Council at the February 6<sup>th</sup> hearing. The proposed building (Building E) on the northern portion of the site has been shifted to the west, approximately 27 feet, further away from the riparian corridor. Two parking spaces have been placed where the footprint of Building E was previously proposed and one of the two parking spaces that had been located beside Building D, has been re-located. The neck of the cul-de-sac has been widened from 22 feet curb to curb to 26 feet curb to curb in order to facilitate the re-location of 2 parking spaces previously located on the site to along the curb of the cul-de-sac.

### **Conformance of Revised Plans to Riparian Corridor Policy**

The proposed development would remove the outbuildings and much of the asphalt area surrounding the existing residence within the 75 foot riparian setback. The proposed development would replace some of that impervious surface area with new buildings, drive aisles, and parking spaces. The Council was interested in, 1) whether a reduction in impervious surface within the 75 foot riparian setback could be achieved, and 2) how the resulting site plan would work.

The revised plans include 3,920 square feet of new building area and 100 square feet of impervious paving within the 75 foot riparian setback area. Although the proposed plan would result in a decrease in the amount of impervious surface within the 75 foot riparian setback, it increases the amount of building area or three-dimensional encroachments into the 75 foot riparian setback area by 1,872 square feet, which represents a 91% increase. This information is shown in the following table:

Impervious Surface within 75' of Riparian (in square feet)

	<u>Pavement</u>	<u>Buildings</u>	<u>Total</u>
Existing:	5,353	2,048	7,401
Proposed:	100	3,920	4,020
% Change:	- 98	+ 91	- 46

The revised plan results in a 1,872 square foot increase in the amount of three-dimensional building mass within the 75 foot riparian setback, and the seldom used outbuildings in the existing encroachment create less of an impact than the frequently accessed three-story residential structures that are proposed. Currently, a total of 2,533 square feet of pervious paving is proposed within the 75 foot riparian setback, and since it is pervious, is not included in the above numbers. While pervious pavement is better than impervious, pervious developed surfaces are in no way equivalent, from a biological benefit perspective to providing the more substantial setback from the riparian edge as called out in the Riparian Corridor Policy.

Pursuant to the City Council's direction to obtain a full accounting of the impervious surface existing and proposed in the riparian corridor setback area, Staff conducted a site visit with the applicant and their biologist consultant from HT Harvey on February 20, 2007. In the context of this site visit, Staff noticed that the plan line indicating "Riparian Zone Edge" was drawn in a manner that did not fully include the dripline of trees that were in the riparian corridor (Attachment 3). As a result, the line on the plan that measures where the riparian setback should begin at the dripline of the riparian vegetation and should include the full tree canopy of some existing Live Oak and Bay trees clearly within the riparian corridor. . The consulting project biologist indicated that they pushed back the edge of the riparian corridor to the inner edge of encroachment as it was their understanding that if the corridor has been encroached upon, the corridor itself has been modified.

The determination of the riparian edge, as noted above, is explicitly defined in the Riparian Corridor Policy as the outer boundary of the existing riparian vegetation and specifies that for trees, the dripline is the outer boundary. It has not been the practice of staff to redefine the edge of the riparian corridor by deviating from using the dripline when encroachments into the corridor exist. As a result, in order for the project to be evaluated as the Riparian Corridor Policy directs, the riparian edge should be further into the project site in two specific areas than is currently shown or calculated. While staff recognizes that this is a late finding, staff is not recommending moving the riparian edge as depicted on the plans, however, given the extensive discussion by the Council on the issue of the riparian corridor, staff felt a responsibility to identify this finding at this time.

The Riparian Corridor Policy states that all development shall be separated by a minimum of 100 feet from the edge of the riparian corridor. The Policy, however, contains specific exceptions to the required minimum 100 foot setback. The following exception is appropriate to apply to this project site:

- *Sites with unusual geometric characteristics and/or disproportionately long riparian frontage.*

This exception is appropriate to apply to the proposed project because the riparian frontage cuts diagonally across the subject parcel, which is irregularly shaped. The property line along the riparian edge is the longest of the four property boundaries. This results in a larger portion of the site being covered by the setback.

It was determined by the project biologist that a reduced riparian setback of 75 feet would meet the habitat protection objectives of the Riparian Corridor Policy (Attachment 4, excerpt from the H.T. Harvey and Associates report dated June 11, 2006), and staff has been supportive of this reduced setback since June 2006. The applicant's revised proposal, although an improvement from the

previous plan, still does not provide an adequate setback per the Policy and as stated in the Initial Study does not conform to the Riparian Corridor Policy (Attachment 5). Per the information provided by the applicant related to the February 15, 2007 plan, the minimum setback proposed for the new buildings on the site remain at 30 feet and the average setback for all new development is 55.3 feet, which is substantially less than the 75-foot setback recommended by the biologist from H.T. Harvey and Associates and verified by the City's Biologist in the Environmental Services Department.

The Riparian Corridor Policy states that the potential exceptions to the 100 foot setback should be utilized only if "there is no reasonable alternative which avoids or reduces the encroachment into the setback area." In this instance, a reasonable alternatives exist which can further reduce the encroachment of the proposed project into the riparian setback area.

The following are opportunities that can reasonably be integrated into a site design that would avoid or reduce the need to encroach into the recommended 75 foot riparian corridor setback area:

- Remove existing non-native ordinance size trees along the western boundary of the property (outside of the riparian corridor and setback) and adjacent to the Water District property and future development parcels to allow for shifting of units away from the corridor. Staff recognizes that these are large trees that provide a nice screen. They are also of a condition (several have been topped and no longer have a single leader) or location that staff is concerned that within 5-10 years of occupancy, the new residents will request removal due to fears of falling limbs, root damage, and general desire for a more compatible tree with their living environment. This opportunity still retains a majority of the ordinance size trees on site and does not impact any trees within the riparian corridor.
- Reduce the size of some or all of the units allowing for site redesign as well as a reduction in required on-site parking, thus eliminating the need to place impervious surfaces or pervious pavement within the setback area. Recognizing that the applicant has a desired unit type, there is still the opportunity to reduce the size of larger units specifically by reducing the number of bedrooms that could result in less parking being required and smaller building footprints in some cases.
- Propose an alternative product type that can maintain or even increase the number of units in a mix of single-family/multi-family buildings. This option would require the applicants to rethink their program for development.

As staff stated at the February 6, 2007 Council meeting, the number of units is not the key issue at hand; the encroachment into the riparian setback is. Staff believes that there is ample opportunity to provide for the City's housing needs on this infill site that avoids precedent while maintaining and enhancing the integrity of the riparian corridor along this stretch of Calabazas Creek.

### **Residential Design Guidelines**

The revised plan has not affected any of the design issues presented previously which do not conform to the Residential Design Guidelines. In staff's opinion, a perimeter setback of less than the 70 feet, as recommended by the Residential Design Guidelines can be supported if appropriate design

measures, such as deleting the third floor balconies, are incorporated into the buildings and site to ensure adequate privacy of the adjacent single-family rear yards.

### **Use of Two Acre Rule**

The applicant's proposed project of 19 units at a net density of 11.11 dwelling units per acre exceeds the General Plan density of up to 8 dwelling units per acre associated with the Medium Low Density Residential land use designation. In order to conform to this General Plan net density requirement, the proposed project could provide up to 14 new units, including the existing residence. Application of a Discretionary Alternate Use Policy of the General Plan, "the Two Acre Rule," allows parcels of two acres or less in size to obtain General Plan conformance for proposals where the density is higher or lower than what is called for with the General Plan Land Use/Transportation Diagram designation (Attachment 6).

The General Plan specifies that the Two Acre Rule can only be applied if the project provides exceptional and innovative design solutions. The General Plan defines the Two Acre Rule's benchmark for exceptional design to include the project's ability to "exceed the minimum standards of the Zoning Ordinance and adopted design guidelines," regardless of what constraints exist on the site. The project does not adhere to the City's Riparian Corridor Policy, and as such does not meet the criteria for the Two Acre Rule and should not be considered to have achieved conformance to the General Plan.

### **POLICY ALTERNATIVES**

The following are policy alternatives for this project and the associated implications:

1. **The City Council could deny the project as proposed.** Denial of this project would not preclude the applicant from proposing a revised project in conformance with the General Plan, including conformance with density and riparian protection objectives.
2. **The City Council could approve the project as revised by the applicant in the February 15, 2007 plans with reduced impervious areas.** An approval of the project would enable the applicant to move forward with subsequent development permits with the site design as proposed, however, the City Council, in order to establish conformance with the General Plan, would need to make the findings that the project is: 1) in conformance with the General Plan Two Acre Rule, inclusive of conformance with the Council adopted Riparian Corridor Policy, and 2) that the project is of exceptional design and exceeds the minimum standards of the Residential Design Guidelines. To ensure that a revised design would not further impact adjacent residences, staff would recommend that a development standard be added that specifies a 30-foot maximum plate height for the top of the third story.
3. **The City Council could approve the project as revised by the applicant in the February 15, 2007 plans with reduced impervious areas and; 1) relocate unit 15 adjacent to unit 7 to increase the minimum riparian setback from 30 feet to approx 50 feet, 2) allow a minimum 15 foot setback on the west property line and 3) shrink the foot print of unit 8**

**to match the other unit footprints.** This alternative would enable the applicant to move forward with subsequent development permits with the site design with minimal redesign. This layout would conform much closer to the Riparian Corridor Study, allowing appropriate exceptions in the opinion of staff, and allow the findings that the project is in conformance with the General Plan Two Acre Rule. To ensure that a revised design would not further impact adjacent residences, staff would recommend that a development standard be added that prohibits third floor balconies on the north property line. Staff has discussed this concept with the applicant's representative and was going to study the concept. Staff has not been able to determine if the proposal was acceptable to the applicant and thus has not revised the staff recommendation.

4. **The City Council can suggest that the applicant apply for a General Plan Amendment to increase the General Plan's residential density of the site,** thus eliminating the need to use the "Two Acre Rule" Discretionary Alternate Use Policy which requires projects to demonstrate exceptional design and "exceed minimum standards of the Zoning Ordinance and adopted design guidelines." However, regardless of whether the "Two Acre Rule" would be required, staff would still echo the same concerns regarding riparian setbacks and setbacks of a three-story structure from single-family rear yards, as conformance with these policies and guidelines are looked for in all development.

#### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Signage has been posted at the site to notify the neighbors and public of the proposed rezoning. A community meeting was held by the applicant on August 31, 2006 at Beth David Congregation. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site and posted on the City website. The rezoning was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Since the last City Council hearing on February 6, 2007, Staff has received the attached correspondence (Attachment 7) from community members. Some of the issues mentioned include insufficient setbacks from the riparian corridor, insufficient setback from adjacent single family residences, concerns that reduced riparian setback will exacerbate flooding, and concerns that

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reduced riparian setback will prohibit the future development of a recreational trail along Calabazas Creek.

### **COORDINATION**

This project was coordinated with the Department of Public Works, Fire Department, Environmental Services Department and the City Attorney.

### **FISCAL/POLICY ALIGNMENT**

This project as proposed by the applicant is not consistent with applicable General Plan policies, including the Two Acre Rule and Riparian Corridor Policy.

### **COST SUMMARY/IMPLICATIONS**

Not applicable.

### **BUDGET REFERENCE**

Not applicable.

### **CEQA**

A Mitigated Negative Declaration adopted on November 15, 2006 indicates that the project will not result in a significant environmental impact when the identified mitigations are implemented.



JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Mike Enderby at 408-535-7806.

#### Attachments:

Attachment 1 -Revised Project Plans from Applicant dated February 15, 2007

Attachment 2 - Aerial of Project Site

Attachment 3 - Excerpt from Biotic Report prepared by H.T. Harvey

Attachment 4 - Excerpt from City Council Adopted Riparian Corridor Policy

Attachment 5 - Excerpt from City of San Jose 2020 General Plan, Alternate Discretionary Use Policies- Two Acre Rule

Attachment 6- Staff Response to Questions from Council

Attachment 7- Staff Response to Information Presented by Applicant at February 6, 2007 Council Hearing Related to Riparian Setback Approval Comparisons

Attachment 8- Staff Response to Information Presented by Applicant at February 6, 2007 Council

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Hearing Related to 3-Story Setback Approval Comparisons

Attachment 9- Public Correspondence

Attachment 10- Staff Recommended Changes to General Plan Development Notes

Attachment 11- Excerpt from Initial Study

Attachment 12- Project Chronology

cc: Erik Schoennauer, 2066 Clarmar Way, Ste. D, San Jose, CA 95128

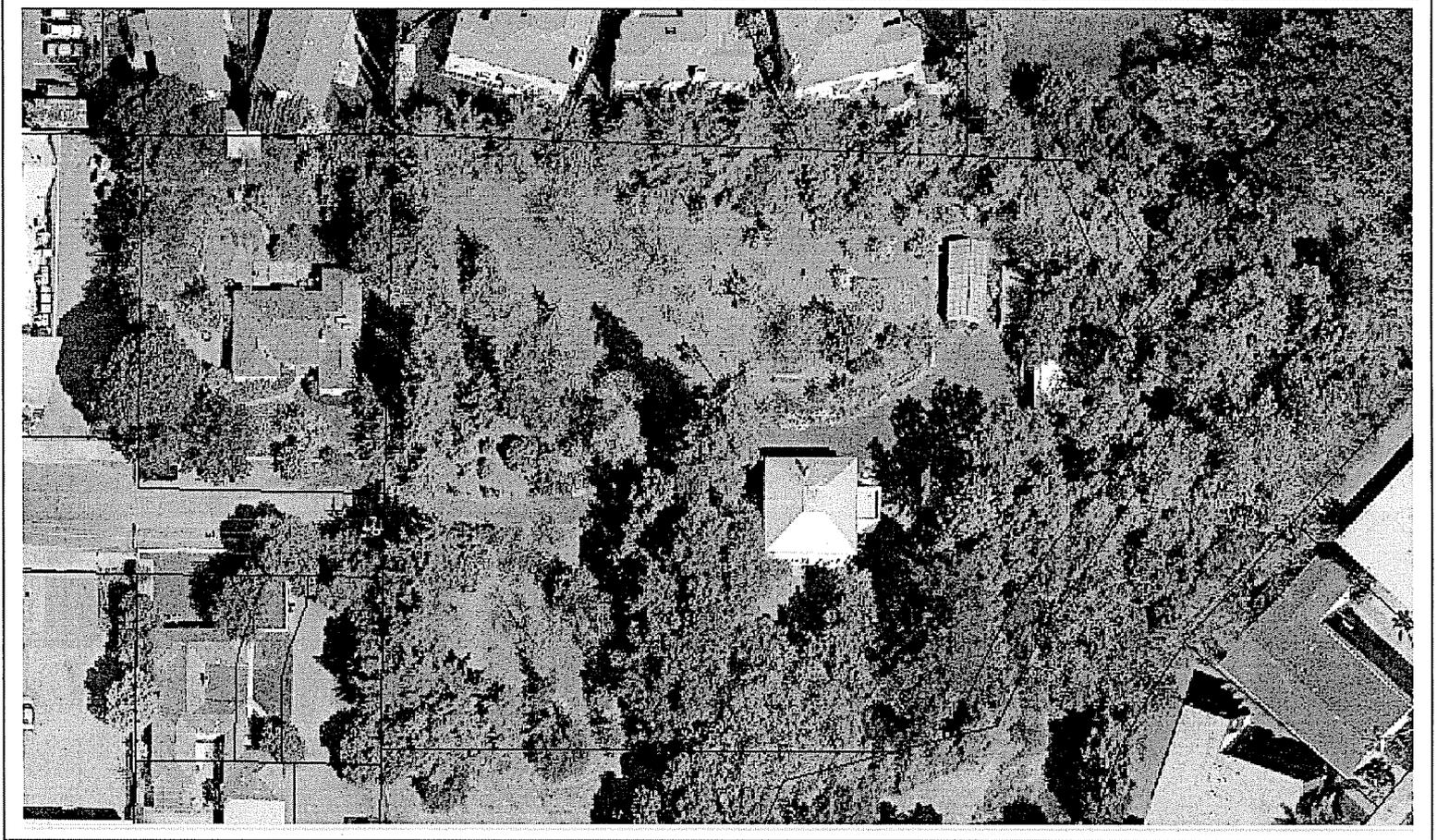
**ATTACHMENT #2**  
**AERIAL PHOTOGRAPH OF SITE**

# PDC06-062, Duckett Way Rezoning Site Aerial Photograph



Aerials flown March, 2001  
Printed March 1, 2007

# PDC06-062, Duckett Way Rezoning Site Aerial Photograph



Aerials flown March, 2001  
Printed March 1, 2007

**ATTACHMENT #3**  
**EXCERPT FROM H.T. HARVEY & ASSOCIATES**  
**FINAL BIOTIC ASSESSMENT**

achieved. The project will achieve the basic riparian habitat protection objectives listed in the RCPS for habitat value, channel erosion, and water quality. The development would not exacerbate channel erosion or further degrade water quality since it is located at least 30-feet from the edge of riparian canopy/top-of-bank on relatively flat ground and incorporates measures to protect the quality of receiving waters. These measures include standard erosion control Best Management Practices, a storm water filtration unit, and oversized underground pipes to detain storm water on-site thereby maintaining pre-development storm water discharge rates to the existing storm drain system. Storm water will be routed to the existing storm drain system along Duckett Way and no new storm water outfalls will be constructed. The project's impact on habitat values is discussed below. The proposed project meets the following exceptions to the 100-foot riparian setback listed in the RCPS:

- *“Urban infill locations where most properties are already developed and parcels are generally small.”* The site is located within an urbanized area of San Jose and is 1.82 acres in size.
- *“Instances where implementation of the project includes measures which can protect and enhance the riparian value of the corridor more than could a 100-foot setback.”* The project includes restoration of approximately 8,332 sq. ft. of riparian habitat within the setback by converting existing buildings, hardscape and non-native tree canopy to native coast live oak riparian forest.

Although closed-canopy mixed riparian forest occurs adjacent to the proposed project, the riparian habitat on and adjacent to the site is degraded by existing development. English ivy, an invasive, non-native groundcover dominates the understory and out-compete native shrub and tree seedlings. Silver wattle, an exotic tree species that can invade and degrade riparian habitat, is present at the downstream end of the site. The riparian habitat quality on-site is further degraded by existing hardscape and structures, which abut the riparian corridor along 50% of the project reach. Moreover, up and downstream of the site, riparian habitat quality abruptly diminishes; a ruderal field and commercial development occur immediately south (upstream) of the site, and State Route 85 is approximately 300 feet downstream. The closest intact riparian habitat is located approximately 2,000 feet upstream of the site. On a larger scale, the riparian woodland on site is a very small habitat island surrounded by dense development.

Such riparian habitat remnants are valuable aesthetic resources, and provide some functions and values for water quality and aquatic life. However, they are not of sufficient size or quality to support wildlife typically associated with intact riparian habitat. Furthermore, because developed areas occur immediately up- and downstream of the site, the riparian habitat is not currently acting as a wildlife corridor. Rather, common, suburban adapted wildlife species utilize the riparian habitat on-site, such as the raccoon, Mallard, and Pacific tree frog.

Therefore, a reduced setback of 75 feet is warranted along the riparian corridor and would be sufficient to protect the biological resources of the riparian corridor from the potential effects associated with the proposed project. There is approximately 7,401 sq. ft. of existing development encroachment (buildings and hardscape) within the 75-foot riparian setback. The proposed encroachment of new development within the 75-foot setback is approximately 8,643

**ATTACHMENT #4**  
**EXCERPT FROM RIPARIAN CORRIDOR**  
**POLICY**

## Guideline 1C: Setback Areas

**Background:** Development adjacent to riparian habitats generally should be set back 100 feet from the outside edge of the riparian habitat (or top of bank, whichever is greater) to reduce anticipated impacts to riparian biotic communities and hydrologic regimes. *The "riparian edge" is the outer boundary of existing riparian vegetation; for trees the dripline is the outer boundary.*

Riparian habitat values can be reduced when buildings, impervious surfaces and ornamental landscape areas are located directly adjacent to the corridor. Impacts may include: loss of groundwater recharge, reduced stormwater detention and filtration, disturbance to wildlife breeding and/or foraging from excessive noise and/or night lighting, loss of edge habitat that reduces value of the corridor for many wildlife species and the introduction of non-native plant and animal species that reduce riparian habitat quality.

The establishment of an appropriate riparian setback area between the corridor and urban development can prevent these impacts and preserve the continuity of the City's riparian environments. Setback areas, or buffer zones, also provide visual transition from developed areas to stream corridors; they allow trails and other recreational uses to occur outside high impact stream channel and riparian zones; and they can protect cultural resource sites which often occur adjacent to stream corridors.

The following setback guidelines are intended to provide basic site design guidance for new development adjacent to a riparian corridor. Setback distances for individual sites may vary if consultation with the City and a qualified biologist, or other appropriate means, indicates that a smaller or larger setback is more appropriate for consistency with riparian preservation objectives.

Specific setbacks may also vary depending upon site-specific agency requirements, such as the SCVWD standard easement/dedication

requirements for flood control purposes or the U.S. Army Corps of Engineer's application of the Clean Water Act and protection of wetlands. The setbacks described in Guideline 1C and listed in Table 3 are generally minimums; greater protection may be needed depending upon site-specific analysis of habitat conditions and the proposed development.

**Riparian Setback Area:** The riparian setback area is intended to protect riparian habitat values from direct and indirect human-induced impacts. The setback area should be sufficient to preserve/create the "edge effect" attribute of the habitat, buffer the impacts of adjacent human activities, and provide avenues for wildlife dispersal. General guidelines for minimum setback depths depending upon the proposed land use, are discussed below and listed in Table 3. Where the exact edge of the riparian corridor is not evident and/or the nature or condition of the habitat is not clear to public agency and private planners, architects, engineers, etc., a qualified biologist should be consulted to establish the location of the riparian edge and/or to advise on a more appropriate setback treatment. For private development projects, the developer should be responsible for costs associated with the work of the biologist.

**Riparian Setback Dimensions.** All buildings, other structures (with the exception of bridges and minor interpretative node structures), impervious surfaces, outdoor activity areas (except for passive or intermittent activities) and ornamental landscaped areas should be separated a minimum of 100 feet from the edge of the riparian corridor (or top of bank, whichever is greater).

**Setback Exceptions:** Exceptions to the 100 foot setback may be considered in some limited circumstances as long as basic riparian habitat protection objectives are achieved. Circumstances which may warrant consideration of setbacks less than 100 feet include:

**ATTACHMENT #5**  
**EXCERPT FROM GENERAL PLAN**

## V. LAND USE/TRANSPORTATION DIAGRAM

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30% of County median household income.

- Very Low-Income (VLI) households - household income is 31-50% of County median household income.
- Low-Income (LI) households - household income is 51-80% of County median household income.
- Moderate-Income (MI) households - household income is 80-120% of County median household income.



### Two Acre Rule

One of the goals of the General Plan is to encourage infill development. For some infill sites, physical or environmental constraints may require innovative design solutions. To further this objective, existing parcels of two acres or less may have an allowed use other than that designated on the Land Use/Transportation Diagram as follows:

- Parcels with a residential land use designation may be developed at a higher or lower density range. The appropriate density for a given site should be determined based on compatibility with surrounding land uses. Projects developed under this policy should be of exceptional design.
- Parcels with a non-residential land use designation may be developed under any residential or non-residential category.

The alternate land use allowed by this policy should be compatible with existing and planned uses on adjacent and neighboring properties. To use this policy, projects should exceed the minimum standards of the Zoning Ordinance and adopted design guidelines.

### Surplus Public/Quasi-Public and Public Parks/Open Space Land

An alternate use of property designated for Public/Quasi-Public or Public Parks and Open Space use may be approved under Planned Development zoning without an amendment to the Land Use/Transportation Diagram if such alternate use is compatible with existing and planned uses on neighboring properties and is consistent with applicable General Plan policies. The determination of such compatibility and consistency includes consideration of whether the site, in light of the overall planning for the surrounding area, would more appropriately be designated for uses of a public, quasi-public or recreational nature.

### Structures of Historical or Architectural Merit

Land uses other than those designated on the Land Use/Transportation Diagram may be allowed on sites with structures of significant historical or architectural merit if to do so would enhance the likelihood that the historic/architectural qualities would be preserved, and the use would not otherwise be incompatible with the surrounding area. Such alternate use(s) should be allowed only under Planned Development zoning.

### Live/Work Policy

This policy is intended to encourage mixed uses in appropriate non-residential or existing mixed use areas, to help achieve an incremental reduction in commute traffic, to facilitate the adaptive reuse of otherwise obsolete structures and to promote the growth of arts in the community. In furtherance of this objective, combined studio/workshop space and living quarters for artists, craftspersons, engineers, computer programmers, personal service providers, and others requiring a basic

**ATTACHMENT #6**  
**STAFF RESPONSE TO QUESTIONS FROM**  
**CITY COUNCIL**

## **Staff Response to Questions from City Council (attachment)**

*1. Why did staff take pictures from the residential street to the north? Did staff go into private yards?*

Staff felt it was important to be able to show the physical relationship of the proposed 3-story buildings to the existing single-family homes to the north to better illustrate the interface issue. Staff initially took pictures from the Triumph Court, the adjacent street to the north. A picture was used by staff at the Planning Commission hearing with the staff's estimate of the proposed building height superimposed. The building height depicted was estimated to be too tall by the applicant who provided his own version of that photo at the meeting. Subsequent to the meeting, the Planning Staff Project Manager, Reena Mathew, contacted the adjacent neighbor on Triumph Court and they welcomed her to their property to take photos of the project site from the rear yard. These photos were used for the presentation by staff at the City Council meeting to better demonstrate that the tree canopy is sparse in areas and that there will be visibility from the new units into the neighboring rear yards.

*2. Does staff typically prepare alternative site plans for projects?*

Staff routinely prepares sketches of partial or complete site plans as a visual tool to assist applicants in modifying their site plan to better conform to City design policies. Staff is highly cognizant of the developer's general need to maximize the unit count for residential project projects and strives to provide a good balance between conforming to applicable design guidelines and maximizing infill housing opportunities. Project applicants, especially those with less experience with the City's policies, often appreciate these efforts by staff in that such plans help them more easily understand how to better meet the City's objectives while maximizing the unit count or efficiency of their site. Typically, staff recommended suggestions are subsequently incorporated into the plans prepared by the developer's architect and civil engineer prior to public hearings. Therefore, only on a relatively rare occasion does staff need to share alternative site designs with the Planning Commission or City Council.

In the case of this project, at the preliminary review stage and early in the formal application review process, staff conveyed information to the applicant in writing that the project did not meet the standard of the Two Acre Rule and that the project did not conform to the Residential Design Guidelines and Riparian Corridor Policy. Since the developer's team of consultants has considerable experience with the City's development review process, staff did not prepare an alternative site plan early in the process. In this case, the applicant was not willing to modify the site design to address the concerns raised by staff. Staff prepared a site plan that was presented for the first time at the Planning Commission hearing as a visual demonstration of what a site plan could look like that made proper use of the Two Acre Rule for General Plan conformance and Riparian Corridor Policy while maximizing the unit count. All of the key elements noted as "improvements" to the design with the site plan prepared by staff were specifically

called out in the preliminary review comments and verbiage in the first comment letter to the applicant. This did not illustrate anything that wasn't previously raised with the applicant.

*3. Is there stream bank erosion occurring in the creek? What is going on the adjacent Water District property?*

Staff observed since the Council meeting that the Santa Clara Valley Water District did have a stream bank stabilization project underway on the opposite stream bank where the district has added large rock to the creek bank to protect the development and riparian vegetation on the opposite side of the creek from the project site. That work appears to have been stopped for the rainy season as a stockpile of large rock remains on the adjoining site. Additionally, barrels from some type of remediation work are located on the adjoining site. Staff has asked that the Water District have staff at the Council meeting to speak to the status of the barrels, and the plans for the property.

*4. What is the justification for the riparian setbacks presented by the applicant at the Council meeting?*

Staff has reviewed the project list received from the applicant and the council offices. Staff has prepared a chart (see attachment) with a summary version of the specific circumstances for each of those sites. As staff noted at the Council meeting, many of those sites had very specific characteristics that warranted a setback of less than 100 feet, such as sites with a shallow depth backing and other that back-up to a concrete ditch. Staff will be prepared at the meeting to have a detailed discussion for each of the sites if there are questions from the Council or public.

*5. Does the Water District oppose the project?*

The Water District prepared a project comment letter for the proposed project that addressed overland release and necessary permits from the Water District, issues that would typically be addressed in the basic site design and through later permit processes. The letter does not identify support or opposition to the project. Since the letter was issued in mid-2006, the Water District regulations have changed, and a District permit is no longer required. The District deleted their permit requirement with the understanding that San Jose would implement the Riparian Corridor Policy, as this would ensure protection and enhancement of riparian areas. Staff did receive a call from Water District executive staff asking if they should appear at the previous Council meeting to express concerns about implementation of the Riparian Corridor Study. City staff stated that it would be unnecessary for this project due to the small-scale nature of the project. Water District staff did share that a Water District Board member was asking about the project and conformance to the study.

*6. What is the historic status of the existing house on the site?*

While the DPR (State Department of Recreation Historic Evaluation form) makes a case that the property does not appear to retain sufficient historic integrity to be eligible for the California Register under Criterion 1 for its association with Santa Clara Valley agricultural patterns of development, or under Criterion 2 for its association with significant persons, the DPR does state that the house retains a high level of integrity from its original 1925 construction and it does exhibit identifying characteristics of the Colonial Revival Architectural style from that period (with some craftsman influence in the 2-over-1 divided light vertical windows). While the DPR states that the architecture is essentially too "simple" to appear eligible for the Register at this time, the Historic Evaluation Criteria (Tally) form notes that the residence may become eligible for the Register in the future, should it retain its integrity over time and/or more information regarding the property and its context become available. Since the applicants decided to not attach a garage and follow the Secretary of Interior Standards, no further revision to the report was required at this time.

This is a large house on a large property within the context of Cupertino and San Jose (though probably not within Saratoga), and as such one of the few remaining from the pre-suburban subdivision patterns of the area. More information on the builder/designer/architect could become available and the significance of the structure could increase over time with age. The house and received 62 points (67 points being City Landmark eligible, California Register eligibility could be lower), qualifying it as eligible for listing on the City of San Jose's Historic Resources Inventory as a "Structure of Merit."

Therefore, the PD Zoning Regulations should require any work on this high-ranking Structure of Merit to meet the Secretary of the Interior's Standards in order to preserve its integrity for future significance. In particular, associated parking for this structure should be detached from the main structure, either open, or covered with an open (Carport) or enclosed garage structure.

**ATTACHMENT #7**  
**RIPARIAN SETBACK COMPARISONS**

# RIPARIAN SETBACK COMPARISONS

# (ATTACHMENT)

FILE NO.	LOCATION	APPROVED RIPARIAN SETBACK	SITE SIZE	EXISTING RIPARIAN QUALITY	SITE SPECIFIC CIRCUMSTANCES RELATED TO RIPARIAN CORRIDOR
PDC01-097	West Court	20	2.2	poor	Concrete channel, affordable units, long creek frontage
PDC96-010	Sharon Drive	25	0.4	good	Very small lot, same rip. setback as previously existing structure
PDC00-125	Hampton Falls	25	0.4	low	Low quality habitat, used Two Acre Rule to REDUCE density to make project fit better
PDC04-064	Almaden Exp.	30	1.42	good	Improves upon riparian setbacks of previous PD Zoning (1990)-pre-Rip. Corridor Policy
PDC03-094	12th Street	30-100+	8.6	good	Allows large on-site Oaks (not part of rip. area) to be preserved in central common O.S. area, improve circulation element, approx. 1:1 riparian land area added to compensate for encroachment
PDC03-064	Minnesota Ave	30	0.39	good	Project is small, narrow and adjacent to lots with similar rip. setbacks
PDC04-028	Malone Rd.	40	1.17	good	Project has 3 listed heritage trees to be saved outside the riparian corridor. The adjacent rip. setbacks are similar to adjacent lots.
PDC03-071	Auzerais (Del Monte Cannery)	40	14.6	low	<ul style="list-style-type: none"> <li>Existing buildings and pavement up to top of bank to be demolished almost completely encompassed the riparian setback area</li> <li>High Density Urban Infill</li> <li>30 foot Riparian Corridor Dedication</li> <li>12-wide public trail along corridor</li> <li>No structures allowed in Riparian Setback, Passive Open space use</li> <li>Setback at Auzerais increased per Council Direction from 30 to 73 feet, Average setback increased from 50-56</li> </ul>
PDC02-104	King Rd.	50	5.4	good	Easement for trail was provided. Riparian area dedicated as park
PDC00-022	King Rd.	50-100	3.6	good	100' setback provided for ALL buildings. Project is 100% affordable
PDC99-005	San Felipe Road	50	5.8	good	50' riparian setback takes up 43% of site
PDC02-046	Santa Clara St.	50	8.3	good	Exemption for Downtown/urban, Two creek frontages, Historic buildings
PDC04-112	Hervey Ln.	62	3.8	good	Only part of the cul-de-sac bulb is within 100 setback. Buildings are ALL setback 130'+
PDC98-005	Pfeiffer Ranch Road	75-85	1.75	low	Encroachment allows continuation of existing street, but closest house has min. 85' setback and average 100' setback
PDC02-025	Foxworthy Ave	75-100	6.7	good	Average riparian setback is 100'. Only small portion of site has 75'

**ATTACHMENT #8**  
**THREE STORY SETBACK APPROVAL**  
**COMPARISONS**

# THREE STORY SETBACK APPROVAL COMPARISONS (BASED ON PROJECT LIST SUBMITTED BY DEVELOPER)

Prepared by City  
of San Jose  
Planning Division  
2/28/07

FILE NO.	LOCATION	3RD FLR. SETBACK FROM SFD REAR YARD (FT.)	LENGTH OF 3 STORY INTERFACE	PLATE HEIGHT	ADJ.USE ZONED FOR SFD?	ADJACENT USE GP DESIGNATION	REDEVELOP- MENT OF ADJ.PARCEL EXPECTED?	NOTES
PDC01-031	Willow & Delmas	30'	80'	28'	Y	8 DU/AC	N	see note 1
PDC00-052	South Keeble	35'	40'	26'	Y	8-16 DU/AC	Y	see note 2
PDC02-051	Lick Avenue	15	32'	25'	N	8-16 DU/AC	Y	see note 3
PDC06-021	Almaden & Alma	5' to 30'	45'	20'-30'	N	12-25 DU/AC	Y	see note 4
PDC01-007	North 6 <sup>th</sup> Street	10' to 30'	40'	19-29'	N	12-25 DU/AC	Y	see note 5
PDC01-103	Gish & First Street	63'	0'	27'	Y	8 DU/AC	N	see note 6
PDC02-058	Northrup Avenue	20' to 50'	40' (x4)	30'	N	8-16 DU/AC	Y	see note 7
PDC 01-038	Cinnabar & Stockton	10'	100'	40'	N	RSC	Y	see note 8
PDC96-048	Avalon Bay at Cinnabar	15'	100'+	26'	N	RSC	Y	see note 9
PDC05-059	9 <sup>th</sup> St. & Jackson	N/A	0	20'	N	8 DU/AC	Y	see note 10
PDC02-102	San Carlos & Buena Vista	N/A	0	20'	N	GC,8 DU/AC	Y	see note 11

1. Most existing SFD rear yard interface is w/new 2 story structures. Only one such yard has interface w/3 story unit.
2. Most existing SFD rear yard interface is w/new 2 story structures. Only two such yards has interface w/3 story unit but these are for (small) sides of new structure. These two adjacent properties have a GP designations of 8-16.
3. All adjacent uses are non-SFD zoning and have GP designations of 8-16. New building interface is 2.5 stories, not 3 stories.
4. All adjacent uses are non-SFD zoning and have GP designations of 12-25.
5. All adjacent uses are non-SFD zoning and have GP designations of 12-25.
6. SFD rear yard interface is w/ 2 stories not 3. The 3<sup>rd</sup> floors are setback 63 feet from adjacent rear yards and conform to RDG 2:1 setback policy.
7. All adjacent uses are non-SFD zoning and have GP designations of 8-16. New building interface in limited and well separated. Staff and PC recommended DENIAL of project due to RDG conformance.
8. All adjacent uses are non-SFD zoning and have GP designations of Res. Support to DT Core.
9. Project approved before current RDGs approved. All adjacent uses are non-SFD zoning and have GP designations of Res. Support to DT Core.
10. Adjacent uses are zoned R-2. Rezoning not required for two units, but use of Two Acre Rule would be needed as part of Site Development Permit approval.
11. Project originally identified was for a mini-storage facility. Staff believes that applicant meant to reference PDC02-102. 2.5 stories units are proposed next to R-2 zoned areas. 2 story units are proposed next to R-1-8 houses.

## *Three Story Approval Comparisons Attachment*

### Summary

At the City Council hearing on February 6, 2007, the applicant displayed a list of recently approved three-story projects adjacent to rear yards of existing single-family houses and suggested that the City had not been consistent in applying the setback standards. Strict application of the setback guidelines would yield a 2-foot setback for every 1-foot in height of a building (e.g. a 30-foot tall building should have a setback of 60 feet). Staff reviewed this list and noted that in almost all cases except for two projects that the smaller setbacks were justified because the adjoining residences had zoning and/or General Plan designations for development other than typical R-1-8 single family houses. These neighboring properties are expected to be redeveloped in the future with more intensive, higher density development that currently exists on the site and therefore adherence to a larger setback was not warranted. Noteworthy is the fact that the plate height (maximum height of the wall) for most projects on the list is generally a little lower than the 30' tall proposal for the Duckett Way project and that the building mass was typically articulated with a combination of two and three story elements.

In the case of the two exceptions on the list, one project (file PDC01-031) had 30 units proposed, but there was only one adjacent unit impacted by the new 3-story development. The new development was for a design that utilized a combination of 2 and 3 story elements in the design. The other project exception (file PDC02-058) had the short length building side oriented to adjacent existing single-family rear yards. The length of these buildings were only about 40 feet and were generally well separated from each other. Staff and the Planning Commission had recommend denial of this project due to lack of conformance to Residential Design Guidelines setbacks.

In summary, the impact on adjacent rear yards for "planned" single-family neighborhoods is more significant with the Duckett Way project than any of the projects identified on the above list. The single-family houses adjacent to this project are relatively new and based on their site's General Plan designation of Medium Low Density Residential (8 DU/AC) it is unlikely that these properties will be redeveloped in the future.

**ATTACHMENT #9**  
**PUBLIC CORRESPONDENCE**

**Mathew, Reena**

---

**From:** Beccanitas@aol.com  
**Sent:** Thursday, February 22, 2007 1:27 AM  
**To:** district1@sanjoseca.gov; Reena.Mathew@sanjoseca.gov; mayoremail@sanjoseca.gov  
**Subject:** Creek 100 FT Setback

Hello Mayor Reed, Council member Constant, and Reena Mathew:

I am writing to you to share my opinion about the proposed development on Rainbow Drive off Prospect Avenue in West San Jose. Several neighbors and concerned citizen have pointed out that this areas would be much better suited as it is, providing a recreational use to the people, as a creek trail easement. In our urban community open and natural spaces are essential refuges for the whole community. Parks and trails are where we go to recreate, explore nature, and interact with the community. Creeks are natural laboratories where our children can learn and explore. I am especially interested in the preservatioh of urban creeks and wild places, because I want to develop a curriculum that will utilize the local environment to educate students from K-12, similar to what the County has done with the Junior Ranger program.

As Representatives put in office by the people, to serve the good of the people and not big business, I urge you to protect this valuable resource for the people of San Jose. I completely understand and respect the property owner's rights, however when a communal resources is at stake there is more to consider than the rights and wants of a land owner or developer. I wholeheartedly believe that the 100 foot set back rule can not be set aside in this situation, and the proposed development should not be granted. It is in the best interest of the people to preserve the resource for public good. Buildings can be built and torn down, but our creeks are the people's resource and they can not be treated like a disposable resource. I am only one person writing to you, but I assure many people I know support the preservation of creeks and natural resources, in an urban setting especially.

I trust you will make the best decision for the community.

Sincerely,

Rebecca Schoenenberger  
1080 Cherry Ave.  
San Jose, CA 95125  
408-455-2116  
[beccanitas@aol.com](mailto:beccanitas@aol.com)

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2/27/2007

**Mathew, Reena**

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**From:** Mimi & Warren Hansen [wami62@sbcglobal.net]  
**Sent:** Saturday, February 24, 2007 7:43 PM  
**To:** Reena.Mathew@sanjoseca.gov  
**Subject:** Fwd: project number: APD06-062 1566 Duckett Way  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Begin forwarded message:

**From:** Mimi & Warren Hansen <wami62@sbcglobal.net>  
**Date:** February 24, 2007 7:36:47 PM PST  
**To:** Reena.Mathew@sanjoseca.gov  
**Subject:** project number: APD06-062 1566 Duckett Way

Dear Sir,

After studying the proposed development, we are outraged and completely opposed to this project. We are for the preservation of older homes

and would like to see this historic home as the centerpiece. It needs the land around it and do not need to be buried amongst 3 story buildings.

As we understand in the proposed project some of the balconies and porches are only 3 feet away from the historic residence. It is an absolute

crime against our California history to see this kind of development being allowed to take place. We hope this historic house will be given the respect

and treatment it deserves and be placed on a larger parcel, not crowded by three story townhouses.

Sincerely,

Warren and Mimi Hansen

2/27/2007

## Mathew, Reena

---

**From:** James.Lagassa@Sun.COM on behalf of James M Lagassa [James.Lagassa@Sun.COM]  
**Sent:** Wednesday, February 21, 2007 2:23 PM  
**To:** Reena.Mathew@sanjoseca.gov  
**Cc:** James M Lagassa  
**Subject:** Duckett Way Development Plan

Dear Reena Mathew,

I am opposed to the rezoning of 1566 Duckett Way (PD06-062) from R1-5 to APD.

I am a resident of 7168 Sharon Drive and my backyard is 100 yards downstream on Calabazas Creek from the project.

The plan should follow the city's rules and have a 100 foot setback from the creek and the three story buildings should be at least 70 feet away from my neighbors on Triumph Court. The project does not do that.

My backyard gets flooded every winter from Calabazas Creek. The Creek covers about 50 to 70 feet of my backyard. If you allow building within 100 feet of Calabazas Creek, then there will be more run-off and there will be more flooding in my backyard.

Also, there should be a large setback so that a creek trail can be built in the future. Every weekend people already hike along the existing easements from Prospect Road under the freeway to Calabazas Creek Circle. It would be a nice trail since there are lots of trees. The area is a riparian corridor.

I am opposed to the proposal for three reasons: 1 There should be a larger setback for the Triumph Court residents, 2. There should be a 100 foot setback so that my backyard doesn't get more flooding, and 3. there should be enough setback to build a creek trail in the future.

Sincerely yours,

James LaGassa  
7168 Sharon Drive  
San Jose, California  
95129  
wk # 650-786-4222  
hm # 408-252-7474

## Mathew, Reena

---

**From:** JeanAnn2@aol.com  
**Sent:** Tuesday, February 20, 2007 9:47 PM  
**To:** Reena.Mathew@sanjoseca.gov  
**Subject:** PD06-062 Scheduling

Dear Ms. Mathew

Thank-you for briefing me on the current status of PD06-062, 1566 Duckett Way. City Council Meeting February 27, 2007 item 4.9.

There are three major problems with how the City Council has chosen to handle this matter: (1) the Council hearing has been scheduled for five different dates confounding and exhausting even the most committed community members; (2) the next hearing is scheduled for the afternoon, which is not public hearing time; (3) the Council is acting as its own Planning Commission and limiting public access to the redesigned project. The Council should vote to reject the project and send it back through the normal planning process with involvement of all stakeholders.

First, this particular project has been scheduled, rescheduled, continued, or deferred by the Council FOUR times. December 5, December 12, January 23, and February 6. It is now scheduled for the afternoon of February 27. Nowhere in the online synopsis for February 6th, does it indicate that the Council's direction was that applicant was to prepare a substantially redesigned project and present it directly to Council without benefit of a community meeting nor a Planning Commission meeting. The synopsis merely suggests the matter has been continued. Council's action places the burden on the public of constantly calling Planning Staff to monitor every council action.

On a personal note, I attended the Planning Commission Meeting in November where commissioners denied the applicant 4-1-2. I was at the City Council Hearing where the matter was rescheduled. I did not realize it had been re-scheduled for 12/12 and missed the hearing. There is no quick way to find an item on Council agendas. There is no web-based online search method (that is, we can't enter PD06-062 and get a link to its hearing date). Each agenda must be downloaded or the individual planner must be contacted. As this project was scheduled and rescheduled it became more and more difficult for community members to participate. Please do not interpret the small number of attendees as a lack of interest but rather the reflection of the difficulty of participating.

Secondly, it is contrary to the idea of "open government" to schedule this next hearing for an afternoon Council meeting. The Council apparently made this decision after polling the audience. This shows a complete lack of awareness of how the public behaves after testimony at a Council hearing: they often go home. Since the public is only allowed to speak once on a matter, it is common for members to leave after they speak. Only the applicant, appellants, or staff may speak again. The public has come to learn there is no purpose in waiting for a final decision; they can learn it from the synopsis. The Council's action on this matter suggests that the public must wait to the end of Council's discussion in order to make known that they do not agree with moving items to daytime sessions. Further, the Council agenda indicates that public comments are encouraged in evening sessions, but not welcome in the afternoon. There is no way for the public to know that they may give input on this session without contacting the planner. In fact, this is a major reason that I contacted the planner. I was wondering whether I would be allowed to make any comments at this next session.

Third, Council chose to act as its own Planning Staff and Planning Commission. The Council's job is to set policy and to rule whether staff/commission have correctly interpreted policy. Since the Council directed the applicant to redesign the project, it is clear that staff and planning commissioners correctly interpreted policy. Apparently, the applicant has complained of a time delay and the Council is eliminating public access to accommodate the applicant.

If the applicant had listened to staff and to the Planning Commissioners months ago, they would have been able to redesign this project last year. It is morally wrong to limit public access in order to correct the applicant's inability to believe that planning policy is correctly interpreted by staff and their interpretations will be supported by

the City Council.

Further, when projects go through the Planning Commission both the applicant and members of the public can appeal to the City Council. In this case, will members of the public (or the applicant) have an appeal process or will this single hearing be the only hearing on the substantially redesigned project?

I believe that this project should be rejected by the Council and sent back to the planning process. A planning report should be prepared on this substantially redesigned project and distributed to stakeholders. All stakeholders should be noticed, including neighbors, property owners, Santa Clara Valley Water District, Santa Clara Valley Water District Environmental Advisory Council, Historic Landmarks Commission, Preservation Action Council, Committee for Green Foothills, Santa Clara Valley Open Space Authority, Parks and Recreation Commission, and the Creek Trail Advisory Committee. If the applicant listens to the advice of the City's professional planning staff who interpret the City policies on behalf of the Council, the project should successfully be approved by the Planning Commission and would not appear on the Council's agenda again. The Council should not act as a replacement Planning Commission.

This matter has been handled in a manner that impairs the ability of the public to participate. It has been rescheduled repeatedly, it is now scheduled for daytime hours, and the Council is acting as its own Planning Commission. The Council should vote to reject the original project and send it back through normal planning process with involvement of all stakeholders.

Please forward my comments to Planning Department Managers, Planning Commission, Councilpersons, Mayor, the City Attorney and the City's Creek Trail Committee. If this is not appropriate for you to forward as a city employee, please let me know and I will email each of them.

Sincerely,

Jean Dresden

1276 Blewett Avenue

San Jose, CA 95125

(408) 298-0275  
  
\*\*\*\*\*  
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## Mathew, Reena

**From:** JeanAnn2@aol.com  
**Sent:** Tuesday, February 20, 2007 9:42 PM  
**To:** Reena.Mathew@sanjoseca.gov  
**Subject:** PD06-062 100 Foot Setback

Dear Ms. Mathew:

Thank you for updating me on PD06-062, 1566 Duckett Way.

I urge you to hold firm with the City's 100 foot riparian setback policy.

This parcel and its 100 foot riparian setback represents a unique opportunity for the City to encourage development that will support future development of a creek trail along the Calabazas riparian corridor from Prospect Road to Rainbow Road and Calabazas Park.

Analysis of the county assessor's maps show that government agencies hold parcels and easements from Prospect to Rainbow with the exception of two parcels:

the project parcel, and another parcel about 100 yards downstream. The creek is riparian, except for two areas: (1) the first few hundred yards from Prospect Rd. and (2) when the creek goes under Hwy. 85. Downstream of the project parcel, just north of Hwy. 85, the development on Calabazas Creek Road was clearly designed to provide public access and viewscape to the riparian corridor. Apparently, this design was part of a long-term goal of creating a creek trail at some time in the future.

Interestingly, the other privately owned parcel (372-21-021) which is about 100 yards downstream from the project parcel is subject to flooding every winter according to the occupant. There are no structures on this parcel. Its topography is very similar to the project parcel and is suggestive of the importance of the 100 foot setback.

I believe it is critically important to maintain the full 100 foot setback in order to maintain the City's option to develop an important recreational option for its residents at sometime in the future just as it has for Los Gatos, Los Alamitos, Coyote, and Penitencia Creeks and the Guadalupe River.

From south to north along the west side of the creek, the parcels could form a creek trail. As you can see, all but two are held by government agencies.

From Prospect Rd.

- 1) a narrow Santa Clara Valley Water District easement road behind a shopping center: (372-20-013)
- 2) Santa Clara Valley Water District Parcel (372-20-027). 1.31 acres. Rocks are stored here, there's a road to creekside where the riparian area starts. The parcel is large enough for a public parking lot for creek access.
- 3) Project Parcel. Privately held. 1566 Duckett Way. (372-20-012). The 100 foot setback would provide space for a creek trail easement.
- 4) Santa Clara Valley Water District Parcel 372-19-041. This parcel is on both sides of the creek--west and east-- and includes the area behind the apartments on Brookvale Drive (addresses 1601 to 1649)
- 5) Private Parcel. (372-21-021). Subject to flooding. No structures. Connected to parcel 019 at 7168 Sharon Drive which has an older home from 1950's or so.
- 6) State of California Parcel 372-21-022
- 7) State of California Parcel 372-21-020
- 8) State of California Parcel 372-21-010 This one is 0.4 acres and is adjacent to freeway. It would be a good creek trail access and departure point.
- 9) West Valley Freeway State of California (R.O.S. 617/0 thru 57)
- 10) Santa Clara Valley Water District 372-14-089 Adjacent to Calabazas Creek Circle
- 11) Santa Clara Valley Water District 372-14-088 Adjacent to Calabazas Creek Circle
- 12) State of California 372-14-086 Adjacent to Calabazas Creek Circle
- 13) Santa Clara Valley Water District 372-13-062 Adjacent to Calabazas Creek Circle
- 14) Santa Clara Valley Water District 372-13-061 Adjacent to Calabazas Creek Circle
- 15) Santa Clara Valley Water District 372-13-067 Exit at Rainbow Road and Calabazas Creek Park across the street.

As you can see from this list, the opportunity exists now to shape a recreation resource in the future.

If the applicant's project is developed close to the creek this riparian corridor will be permanently inaccessible to the public. The 100 foot buffer is an absolute minimum.

Further, the flooding history of the parcel 100 yards downstream suggest that a full setback is critically important to the safety of the occupants of the proposed development.

Please let me know if you would like me to fax the assessor's maps or show you the flooding pattern in parcel 372-21-021.

I urge you to protect the 100 foot setback: for recreation, for safety, for the future.

Sincerely,  
Jean Dresden  
1276 Blewett Avenue  
San Jose, Ca 95125  
(408) 298-0275  
\*\*\*\*\*  
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**Mathew, Reena**

---

**From:** LAmes@aol.com  
**Sent:** Monday, February 26, 2007 12:10 AM  
**To:** shanlichien@yahoo.com; JeanAnn2@aol.com  
**Cc:** Reena.Mathew@sanjoseca.gov; BMarshman@sjmercury.com  
**Subject:** Re: Project #APD06-062 Duckett way

Thank you for your letter. I'm forwarding it to Reena Mathew, planner for the City of San Jose. I talked with her this evening, and she was quite pleased to hear of the neighborhood interest.

The hearing has been postponed a week: it will now be heard the following Tuesday (March 6th), at 7 PM. This will make it easier for the public to attend. (It may be a long evening: I understand there are several other controversial topics to be heard that evening.)

I also am forwarding your letter to Barbara Marshman of the San Jose Mercury News. She already knows that a bunch of us in Willow Glen are concerned about creeks, trails, parks, and habitats, but it is nice for her to see that this is a Citywide issue and not just a local matter.

I look forward to meeting you at City Hall next week!

~Larry

\*\*\*\*\*

In a message dated 2/24/2007 11:01:41 PM Pacific Standard Time, shanlichien@yahoo.com writes:

Hi, Larry and Jean,

First of all we want to extend our gratitude to both of you for your kind help in protecting our neighborhood environment, especially the creek, from being exploited. On this side of Sharon Drive many of us have decided to joined together to force the developer to reduce the impact to the least degree possible.

I also have to be honest with you that many of the residents in this neighborhood are first-generation immigrants. Not many of us have acquired this kind of experience, some even have difficulty in expressing themselves in the public. Nevertheless, we will do our best in writing to express our concerns and make presence at the hearing. It is a relief to know that we have the assistance from nice people like you.

If I can gather the email addresses from our neighbors who are willing to get involved, would you give us sort of guidance or strategy through emails before we go to the hearing? There is also a preschool/kindergarten (Future Assets) on this street. Personally I feel that the heavier traffic at De Anza Blvd at the Duckett turn-around spot will become a problem and make it unsafe place for many of the Future Assets' children. I will present the issue to the school on Monday and see what they say.

***So am I right to say that the hearing will be held at San Jose City Hall at 1:30pm on Tuesday Feb. 27? Is it the last chance we have to fight for the case? Please let me as soon as you can.***

Thank you very much and May God bless you!

Sunny Chien  
(408)257-1211 (Home number)

ChaoHo Lin  
(408)314-3196 (cellular)

2/27/2007

**Mathew, Reena**

---

**To:** Diane Farley; Farley Tim

**Subject:** RE: Undeliverable: preservation of Duckett Way

**From:** Diane Farley <[farleydeedee@mac.com](mailto:farleydeedee@mac.com)>

**Date:** February 26, 2007 3:00:52 PM PST

**To:** [mayor@sanjoseca.gov](mailto:mayor@sanjoseca.gov)

**Subject:** preservation of Duckett Way

Dear Mayor Reed( So happy I get to type that name instead on another!), I know that you are an amazingly busy man so the bottom line of what could be a long letter about preservation is simply please have your staff carefully review the proposal of the property at 1566 Duckett Way in west San Jose PD# APD06-062. There are too many houses planned and the historic mansion on the site needs to be respected and become the focal point of this development. I want San Jose to appreciate our heritage and honor our classic architectural pieces. We already have too much sameness in the city and county. Cherish our past. It is beautiful and classical. Thank you Diane Farley at 1325 Emory St. San Jose 920-0524

2/26/2007

**Mathew, Reena**

---

**From:** sunny chien [shanlichien@yahoo.com]  
**Sent:** Tuesday, February 27, 2007 9:08 AM  
**To:** Reena.Mathew@sanjoseca.gov; District1@sanjoseca.gov; District7@sanjoseca.gov; major@Sanjoseca.gov  
**Subject:** Opposing project#APD06-062, Location: 1566 Duckett Way  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Dear Sirs,

**Attn: Carabazas Creek cannot be exploited**

We are opposed to the project at 1566 Duckett Way, PDC06-062.

My husband and I bought this house at 7182 Sharon Drive end of 1997 and we moved in on Jan 1998. We live only two lots downstream from 1566 Duckett Way and our house is close to the joint where Carabazas Creek meets Highway 85.

We love this neighborhood dearly. However, there have been 2 times in the past 9 years the Carabazas Creek caused a lot of tension, actually nightmares, to us and the surrounding neighbors. The first time was Feb-Mar of 1998, when El Nino brought incessant pouring rain that turned the creek into raging water, coming out of the bank and started crawling into the flooding zones. My husband and I couldn't sleep; we took turns checking on it from our 2<sup>nd</sup> floor windows during the night just to be sure no flooding was to occur. The 2<sup>nd</sup> time was not so bad, but we were still very worried for the safety of our lives and the property.

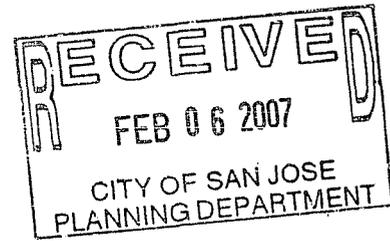
The truth is highway 85 needs to drain the accumulated rainwater through Carabazas Creek in the section between De Anza and Saratoga Ave. Here we are talking about when meeting 85 the creek becomes a under path channel. I remember clearly that at the 2 times mentioned above Highway authorities had to shut-down this section (De Anza Blvd-Saratoga Ave) for half-days simply because of the torrent water couldn't get drained quick enough and the water kept on accumulating until the lowest point became a pool, so deep that it could endanger cars and passengers. There are indications that flooding could be a problem in this area. Thus any large-scale development in this neighborhood deserves our special attention.

I strongly believe that 75 feet safe zone between the creek and any buildings or pavement should be strictly maintained to ensure the safety of all the residents along the banks and the normal functional of Highway 85. Keep those trees, keep more soil and dirt, keep the safe zones, we need them in times of urgency!!

Thank you for your attention!

Sunny Chien  
7182 Sharon Drive,  
San Jose, CA95129  
(408)257-1211

January 31, 2007



Planning, Building & Code Enforcement  
Plan Implementation Division  
200 East Santa Clara Street  
San Jose, CA 95113-1905

Greetings -

I am writing to you to express my concern regarding the project being proposed on Duckett Way. I attended one of the meetings to review the project and I am primarily concerned with two issues – density and proximity to my back yard fence.

Regarding density, I understand that the builder is asking for special consideration to build more units than what the land is zoned for. It appears to me that their plan has too many units packed in to such a small area. I applaud keeping the historic house on the property but it is a bit odd to cram a bunch of 3-story units around it. It also seems disrespectful to the property and the history of the area.

Regarding the proximity to my house, the plans call for 3-story buildings not far from my fence. The way our house is situated on our property would mean that anyone who lived in the 3-story buildings would be very close to the back of my house (where my kid's windows are). This also gives them full view of my back yard which leaves us with virtually no privacy. I understand that they will be leaving the trees along the fence line but you can still see through quite easily.

My neighbors have similar concerns. Please consider our comments when reviewing this proposal.

Respectfully –

A handwritten signature in black ink, appearing to read "S. Bonelli".

Stephen J. Bonelli  
1484 Triumph Court  
San Jose, CA 95129  
(408) 777-1204

## Prevetti, Laurel

---

**From:** Weerakoon, Ru  
**Sent:** Tuesday, February 27, 2007 7:18 PM  
**To:** Prevetti, Laurel  
**Subject:** FW: [WGNA] 100 Ft. Riparian Setback; Duckett Way

Ru Weerakoon

Senior Policy Advisor, Economic Development and Land Use

Office of Mayor Chuck Reed

San Jose City Hall | 200 E. Santa Clara St., 17th Floor | San Jose, CA 95113

408-535-4812 (T) | ru.weerakoon@sanjoseca.gov | www.sanjoseca.gov

-----Original Message-----

**From:** Bosco, Alicia  
**Sent:** Monday, February 26, 2007 11:51 AM  
**To:** Weerakoon, Ru  
**Cc:** Furman, Pete  
**Subject:** FW: [WGNA] 100 Ft. Riparian Setback; Duckett Way

Alicia Bosco  
Council Agenda Manager, Office of Mayor Chuck Reed  
City Hall | 200 E. Santa Clara St, 18th Floor | San Jose, CA 95113  
408-535-4822 | alicia.bosco@sanjoseca.gov | www.sanjoseca.gov

-----Original Message-----

**From:** Robert & Felecia Mulvany [mailto:revmulvany@sbcglobal.net]  
**Sent:** Friday, February 23, 2007 7:36 PM  
**To:** 'David Dearborn'; elist@wgna.net  
**Cc:** bmarshman@mercurynews.com; Pete.Constant@sanjoseca.gov; mayoremail@sanjoseca.gov  
**Subject:** RE: [WGNA] 100 Ft. Riparian Setback; Duckett Way

Elist,

Correct me if I am wrong but this particular project has been denied by the Planning Department. The Planning staff had reviewed the plan in detail and determined that it would not conform to planning regulations with regard to the riparian setback as well as other planning regulations. I am told by the planning staff that they have just received a revised plan from the Developer Barry Swenson that just nibbles around the edges with regard to the riparian setback.

This plan will be presented this Tuesday and maybe approved by the City Council without the planning department having ample time to review it and without the public ever see it. Is this good open government or is this just how things get done when you have the former planning director and former chief of staff as your lobbyist?

I would like to order a super size of SUNSHINE to go please....

Bob Mulvany

-----Original Message-----

From: David Dearborn [mailto:ddaytond@comcast.net]  
Sent: Friday, February 23, 2007 6:47 PM  
To: elist@wgna.net  
Cc: bmarshman@mercurynews.com; Pete.Constant@sanjoseca.gov;  
mayoremail@sanjoseca.gov  
Subject: [WGNA] 100 Ft. Riparian Setback; Duckett Way

eList..

It is not my intention to declare war on developers or property owners who happen to own property with large trees or riparian habitat.

Pete has a point. There are and can be extenuating circumstances where the rights of property owners and the public can be negotiated to the benefit of all. But it's a process. We have to be engaged in the process. Chuck Reed has opened the door, let in the light, and it's our responsibility to participate. This means we need to be informed, civil and willing to understand both sides. Without that, the process breaks down.

And yes, easy for me to say, I'm retired and have time to ask questions. But sometimes it's not the rant, the opinion or how we feel; but how we ask the right questions, share information and become part of the system.

I guess you might say it a matter of how much we care.

Just a few thoughts of an ol' retired guy.

David

## Prevetti, Laurel

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**From:** Weerakoon, Ru  
**Sent:** Tuesday, February 27, 2007 7:17 PM  
**To:** Prevetti, Laurel  
**Subject:** FW: 100 Ft. Riparian Setback; Duckett Way

Ru Weerakoon

Senior Policy Advisor, Economic Development and Land Use

Office of Mayor Chuck Reed

San Jose City Hall | 200 E. Santa Clara St., 17th Floor | San Jose, CA 95113

408-535-4812 (T) | ru.weerakoon@sanjoseca.gov | www.sanjoseca.gov

-----Original Message-----

**From:** Bosco, Alicia  
**Sent:** Monday, February 26, 2007 11:50 AM  
**To:** Weerakoon, Ru  
**Cc:** Furman, Pete  
**Subject:** FW: 100 Ft. Riparian Setback; Duckett Way

Alicia Bosco

Council Agenda Manager, Office of Mayor Chuck Reed

City Hall | 200 E. Santa Clara St, 18th Floor | San Jose, CA 95113

408-535-4822 | alicia.bosco@sanjoseca.gov | www.sanjoseca.gov

-----Original Message-----

**From:** David Dearborn [mailto:ddaytond@comcast.net]  
**Sent:** Friday, February 23, 2007 3:42 PM  
**To:** Pete.Constant@sanjoseca.gov  
**Cc:** mayoremail@sanjoseca.gov; LAmes@aol.com; JeanAnn2@aol.com; Brian@GreenFoothills.org; ddaytond@comcast.net; Beccanitas@aol.com; rpmc@nccfff.org; revmulvany@sbcglobal.net; zappelli0180@sbcglobal.net; board@wgna.net  
**Subject:** 100 Ft. Riparian Setback; Duckett Way

Re: Following up on this email sent last Wednesday morning regarding the proposed riparian setback issue on the Duckett Way project.

"Q" I know you have a lot on your plate and little time to spend on one persons questions, but with a vote coming soon it helpful to get your input on these questions before the vote.

Thank you in advance.

David Dearborn

- - - - - ( see email below ) - - - - -

Mr. Constant,

Thank you for the well researched and timely response. This is quite informative. I'm sure this project as proposed by the owners and developer would be very attractive and an asset to the area. However, I have a few

questions:

- 1) If the 30ft setback exception, vetted as it may be by prior project approvals is approved here....
  - a) Why did the planning department recommend a 75ft setback?
  - b) Will allowing a 30ft setback on this project block or restrict the future construction of a creek side trail or path?
  - c) Will allowing a 30ft setback contribute to eroding and undoing the intent of the original 100ft setback policy in other neighborhoods?
- 2) Is the exception as stated and vetted, a policy that must be followed when a developer applies for it?
- 3) If not, what are the factors that would or could cause the exception not to be approved?
- 4) And to what extent can constituents and neighborhoods work to protect that 100 foot setback policy?
  - a) residents within the a few blocks of... ?
  - b) constituents within that same district ?
  - c) other neighborhoods outside the that district?
  - d) residents city wide?

Thank you Pete for you time and enlightening response.

David

## Prevetti, Laurel

---

**From:** Weerakoon, Ru  
**Sent:** Tuesday, February 27, 2007 7:17 PM  
**To:** Prevetti, Laurel  
**Subject:** FW: [WGNA] 100 Ft. Riparian Setback; Duckett Way - Greenbelt Issues for each of our creeks/"Rivers"...

Ru Weerakoon

Senior Policy Advisor, Economic Development and Land Use

Office of Mayor Chuck Reed

San Jose City Hall | 200 E. Santa Clara St., 17th Floor | San Jose, CA 95113

408-535-4812 (T) | ru.weerakoon@sanjoseca.gov | www.sanjoseca.gov

-----Original Message-----

**From:** Bosco, Alicia  
**Sent:** Monday, February 26, 2007 11:50 AM  
**To:** Weerakoon, Ru  
**Cc:** Furman, Pete  
**Subject:** FW: [WGNA] 100 Ft. Riparian Setback; Duckett Way - Greenbelt Issues for each of our creeks/"Rivers"...

Alicia Bosco

Council Agenda Manager, Office of Mayor Chuck Reed  
City Hall | 200 E. Santa Clara St, 18th Floor | San Jose, CA 95113  
408-535-4822 | alicia.bosco@sanjoseca.gov | www.sanjoseca.gov

-----Original Message-----

**From:** Ken Miller [mailto:kenmiller@energycompliance.com]  
**Sent:** Friday, February 23, 2007 7:21 PM  
**To:** 'David Dearborn'; elist@wgna.net  
**Cc:** bmarshman@mercurynews.com; Pete.Constant@sanjoseca.gov; mayoremail@sanjoseca.gov  
**Subject:** RE: [WGNA] 100 Ft. Riparian Setback; Duckett Way - Greenbelt Issues for each of our creeks/"Rivers"...

David's point regarding the preservation of the greenbelt opportunities has been right on... In addition to the site that he's focused on, work on the Guadalupe River Corridor's requiring cooperation between many agencies in order to maintain the opportunity for a continuous use-able hiking/biking/flood zone from the Bay all the way up past Blossom Hill Road.

The U.S. Army Corps of Engineers is also currently working on Penitencia Creek on the eastside, and it, too, has opportunities for enhanced park and access/recreation opportunities provided that they're thought of in a cross jurisdiction way by US Army Corps of Engineers, the SJ Water District, City Council & Parks development.

Each of the several creeks & rivers in our immediate jurisdiction has an opportunity to become like NY's Central Park or DC's Rock Creek Park providing many miles of continuous greenbelt, recreation opportunities, and flood control.

I feel that David's focus on this particular site is like paying attention to the many nicks & cuts that can kill... as it could be a lost opportunity, if this site's lost as a continuous link...

I feel that it's important, in the grander scheme of things, that if at all possible, this particular site that David's pointed to, be thought about in a way that, in the long run, enhances both the site's value and the communities value.

I'd like to be assured that we're Not Losing the Opportunity to enhance all of us, including the site's future owners, by preserving the opportunity for a continuous parkway/greenbelt/flood zone.

My 2 cents.

Ken Miller

-----Original Message Cropped-----  
From: David Dearborn [mailto:ddaytond@comcast.net]  
Sent: Friday, February 23, 2007 6:47 PM  
To: elist@wgna.net  
Cc: bmarshman@mercurynews.com; Pete.Constant@sanjoseca.gov;  
mayoremail@sanjoseca.gov  
Subject: [WGNA] 100 Ft. Riparian Setback; Duckett Way

WGNA eList..

It is not my intention to declare war on developers or property owners who happen to own property with large trees or riparian habitat... There are and can be extenuating circumstances where the rights of property owners and the public can be negotiated to the benefit of all... We have to be engaged in the process. Chuck

...

## Taylor, Mary

---

**Subject:** Public Speaking Class  
**Location:** Hayes Mansion

**Start:** Thu 3/1/2007 8:00 AM  
**End:** Thu 3/1/2007 5:00 PM  
**Show Time As:** Out of Office

**Recurrence:** (none)

Hi Liz,

Thanks for your question about the Public Speaking Training. The 2-day course will be held at the Dolce Hayes Mansion (on 2/28-3/1) in a typical 8am - 5pm format. There will be a lunch break from 12-1 pm, so I imagine Joe could make a brief appearance at the special lunchtime commitment you mentioned...***just be sure he can re-group with his colleagues at the training by 1 pm!!*** They will be doing a lot of group work, so his participation and feedback are very critical to the process.

Please feel free to contact Morette Anderson if there are other coordination questions that arise. She has graciously taken over the logistics from this point and going forward.

Take care, Liz!!

Kelly J

The two-day Public Speaking Course will take place at the ***Dolce Hayes Mansion*** on ***Wednesday, 2/28 and Thursday, 3/1.***

In addition, you are scheduled for an individual half-hour coaching session on Friday, 3/2.

The basic itinerary for both days is as follows:

**Please arrive at 8 am for coffee and a continental breakfast; training will begin promptly at 8:30 am.**

**Lunch will be provided both days from 12-1 pm in the Silver Creek Dining Room at the Hayes.**

**The afternoon session will resume at 1 pm and include a refreshment break around 3 pm.**

Should you have other questions, please let me know.

Thanks---Morette

**ATTACHMENT #10**  
**STAFF RECOMMENDED CHANGES TO**  
**GENERAL DEVELOPMENT PLAN NOTES**

## PDC06-062 - Duckett Way Rezoning

Recommended changes to the applicant's General Development Plan notes.

Should the City Council choose to approve a project, staff would recommend that the following development standards supercede those presented by the applicant. All standards and environmental mitigation measures specified by the applicant would remain unchanged unless specifically amended below.

- Riparian setback for all new development (includes structures, parking, paving, etc.): *60 to 75'*

An exception from the above noted riparian setback is permitted for a detached garage and associated pavement serving the existing single-family detached residence at the site. The detached garage and associated pavement shall maintain the maximum riparian setback practical.

- Setback for 3-story residences from adjacent single-family rear yards to the north (in this instance, height measured from ground level to top of plate of top floor at bottom of roof, not roof peak): 30' for 30'

Alternatively, taller buildings may be considered if a setback of two (2) feet for every one (1) foot in height is proposed.

No third floor decks/balconies shall be permitted where units overlook rear yards of adjacent single-family residences.

- Min. separation of new units and historic house: 20' structure  
15' porch

**ATTACHMENT #11**  
**EXCERPT FROM INITIAL STUDY**

## Special-Status Wildlife

Project construction could take nests, eggs, young, or individuals of protected bird and mammal species. Construction disturbance during the breeding season could also result in the incidental loss of fertile bird eggs or nestlings, or the loss of young bats at maternity roosts.

**Cooper's Hawk:** Cooper's hawks, a California Species of Special Concern, may breed on the site. However, the site represents only a tiny fraction of suitable habitat regionally, and at most one pair could be affected by the project. Therefore, impacts to this species would be less than significant.

**Bats:** Reconnaissance-level surveys performed at the proposed project indicate that bats do not currently roost in buildings on site. Although it is unlikely that pallid bats would roost on site, non-special-status species of bats such as the Yuma myotis or big brown bat could roost in these buildings. Although loss of individuals of these species would not be significant, loss of a breeding colony or active maternity roost would be a significant impact.

## Riparian Corridor

Riparian corridors provide essential habitat and passageway for many wildlife species. Close proximity of riparian corridors to human activity, structures, and landscapes adversely affect wildlife use within this habitat type. Riparian corridor setbacks are the principle means of minimizing these impacts to wildlife in urban settings.

The riparian habitat on and immediately adjacent to the site contains mature closed-canopy mixed riparian forest, but Calabazas Creek upstream and downstream of the project lacks such quality habitat. The next closest intact riparian habitat is located approximately 2,000 feet upstream of the site. Due to this isolation, this riparian corridor does not function as a wildlife corridor, and offers limited habitat for wildlife.

Although a 100-foot setback for riparian corridors is generally recommended by both the CDFG and the City of San José, it is the opinion of the project biologist that a reduced setback of 75 feet for this project is warranted along the riparian corridor habitat and would be sufficient to protect the remaining biological resources of the riparian corridor from the adverse effects of the proposed project (Figure 6, above).

Currently, there is approximately 7,401 square feet of existing development within the recommended 75-foot riparian setback, which was identified by the consulting biologists as an appropriate buffer for existing habitat values. Apart from the existing house, most of this development (auxiliary buildings and pavement) is close to Calabazas Creek and would be removed for project construction. No existing native riparian vegetation, aside from several dead trees and stumps to be removed for safety reasons, would be removed for project construction.

The project proposes 8,643 square feet of new development in this area, resulting in a net increase of 1,242 square feet of encroachment into the recommended 75-foot setback. Although the existing development on site is adjacent to the riparian habitat, there are few buildings, limited pavement, and limited activities associated with existing conditions. All of

the proposed development would be sited an average 30 feet away from the riparian corridor. This increase in development within the riparian setback would be a significant impact.

The proposed project would be consistent with the guidelines of the City of San José's Riparian Corridor Policy in that it would not remove existing riparian vegetation, it would include restoration of the riparian corridor, and it would increase pervious surfaces near the creek (improving water quality). The proposed project would not be consistent with the Policy due to the reduced setback and encroachment.

In addition, the proposed project includes passive recreation within the recommended 75-foot setback. Passive recreation within the recommended setback would be limited to a small percentage of the setback area (~15 percent) and would not occur within the riparian restoration area. It would include installation of benches and spur trails for walking and sitting. Such limited passive recreation would constitute a less than significant impact on the biotic resources of the riparian corridor.

**Lighting:** Lighting associated with the proposed homes, streets and additional cars will increase the amount of artificial light that is cast onto the existing riparian habitat during the night. The project would be required to comply with mitigation measures to orient lighting away from the creek. Even with these measures, however, additional night lighting could increase predation of some wildlife species by nocturnal predators, and could reduce habitat quality for some wildlife species, especially species that are more sensitive to human disturbance. Few such sensitive species, however, are expected to be present within the riparian corridor under current conditions. Most nocturnal species expected to use the riparian habitat are common species such as striped skunks, raccoons, opossums, and non-native rats, and lighting is not expected to adversely affect these species. Therefore, this impact is less than significant because the existing urban surroundings of the site limit its value to sensitive wildlife species.

### **Mature Trees**

The proposed project would remove two ordinance-sized English walnut trees from the site. Additionally, the proposed project would remove approximately 89 other trees with diameters of less than 18 inches from the site, for a total of 91 trees to be removed. The trees to be removed include 34 orchard trees, 36 small deodar cedars, and three small native oaks.

Thirty-eight ordinance-sized trees and seven other trees would be retained on the site. The ordinance-sized trees to be retained on the property outside of the riparian corridor are listed below (refer to Figure 7 and Appendix B). Trees located in the riparian corridor would be retained or removed based on the restoration plan developed as a mitigation measure.

- Deodar cedars along the west and north borders of the site, including Number 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 42, and 43.
- Coast live oak trees near the southern border of the site (the oak grove), including Number 34, 35, 36, 37, 38, 39, and 40.
- Large coast redwood Number 44, near the existing house.

**ATTACHMENT #12**  
**PROJECT CHRONOLOGY**

## PDC06-062 - Duckett Way Rezoning - Project Chronology

- 3/15/06 Preliminary Review Application Filed – Proposal included 24 residential units and demolition of the existing historic structure.
- 3/22/06 Initial comments relayed by staff. Concerns raised regarding demolition of the historic residence, insufficient riparian setbacks, and tree preservation. Project exceeds GP density, so Two Acre Rule criteria would need to be met.
- 5/5/06 Comments on technical reports relayed by staff. Biotics report recommends 75-foot setback. The 0-60 feet proposed is not adequate. Staff recommends “a consistent 75-foot riparian setback along entire length of Calabazas Creek.” “Staff has concerns that the existing structures on site are more significant than what is claimed by the consultant.”
- 6/5/06 Planned Development Rezoning submitted. Preservation of historic structure proposed, but Secretary of the Interior’s Standards for Rehabilitation of Historic Structures are not. 30’ riparian setback proposed.
- 6/30/06 Comment letter sent to applicant. “The project as proposed does NOT conform to the City’s Riparian Corridor Policy Study.” Project exceeds GP density, so Two Acre Rule criteria would need to be met. Proposed three story structures need increased setbacks from adjacent single-family rear yards to the north and from historic residence.
- 7/06 Meeting with applicant to discuss project issues. Proposed setback is inconsistent with the Riparian Corridor Policy. Proposed treatment of historic structure (attached garage at front) is not consistent with the Secretary of the Interior’s Standards for Rehabilitation of Historic Structures. Setbacks from Residential Design Guidelines are not met.
- 8/31/06 Noticed community meeting held. Minimal turnout from the surrounding neighborhood. Traffic issues raised as one of only concerns.
- ~9/06 Applicant proposes to detach garage from historic structure, in conformance with Secretary of the Interior’s Standards for Rehabilitation of Historic Structures.
- 10/26/06 Environmental review documents, IS & MND, circulated for public comment. IS states “The proposed project would not be consistent with the [Riparian Corridor] Policy due to the reduced setback and encroachment.”
- 11/15/06 Planning Commission hearing. Staff presents site plan illustrating design features requested since Preliminary Review stage. Planning Commission recommends denial. Insufficient riparian setbacks, non-compliance with Residential Design Guidelines, and inconsistency with Two Acre Rule criteria cited as issues.

- 12/5/06 City Council defers item (at applicant's request).
- 1/9/07 City Council defers item.
- ~1/15/07 Applicant modifies plan to terminate Duckett Way within the site and reduces unit count from 20 to 19.
- 1/23/07 City Council defers item.
- 2/6/07 City Council hears item. Riparian setback discussed extensively. Project deferred for staff/applicant coordination.
- 2/27/07 City Council defers item (at staff's request).
- 3/6/07 Council hearing scheduled.