COUNCIL AGENDA: 12-5-06
ITEM: 11.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 16, 2006

COUNCIL DISTRICT: 1
SNI AREA: None

SUBJECT: PDC06-062. PLANNED DEVELOPMENT REZONING FROM R-1-5 RESIDENCE ZONING DISTRICT TO THE A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW UP TO 19 NEW SINGLE-FAMILY DETACHED ATTACHED RESIDENTIAL UNITS AND ONE EXISTING SINGLE-FAMILY RESIDENCE ON A 1.83 GROSS ACRE SITE, LOCATED ON THE TERMINUS OF DUCKETT WAY, APPROXIMATELY 420 FEET EAST OF SOUTH DE ANZA BOULEVARD (1566 DUCKETT WAY).

RECOMMENDATION

The Planning Commission voted 4-1-2, Commissioner Kamkar opposed and Commissioners Campos and Platten absent, to recommend that the City Council **deny** the proposed rezoning.

OUTCOME

Denial of the subject Planned Development Rezoning would not allow the applicant to develop 19 single-family attached residences in addition to retaining an existing single family house on the site. In the event of the denial subject Planned Development Rezoning, the subject site would remain within the R-1-5 Residence Zoning District.

BACKGROUND

On November 15, 2006, the Planning Commission held a public hearing to consider a Planned Development Rezoning from the R-1-5 Residence Zoning District to A(PD) Planned Development Zoning District to allow 19 single-family attached residences and retention of one existing house on a 1.83 gross acre site. The Director of Planning recommended denial of the project based on non-conformance with the General Plan; the proposed density of 11.11 units per acre proposed does not conform to the existing General Plan designation of Medium Low Density Residential, which calls for a maximum density of 8 dwelling units per acre. The applicant has proposed use of a Discretionary Alternate Use Policy (Two-Acre Rule) to find General Plan conformance for the higher residential density.

Staff gave an oral report during which they indicated that they were recommending denial of the proposed rezoning. Staff's presentation discussed the criteria required for use of the Two-Acre Rule, which includes providing exceptional and innovative design. Staff elaborated that General Plan sets the benchmark for the definition of exceptional design to be a project that exceeds all the City's policies and adopted design guidelines. Staff noted that the applicant's proposal does not meet the minimum setback which is called out in the City's Riparian Corridor Policy for development from the riparian area on site. Specifically, the applicant's proposal provides only a 30-foot setback from the creek, when the Riparian Corridor Policy recommends a 100-foot setback.

Staff noted that the proposal does not meet key aspects of the Residential Design Guidelines and has site design inadequacies. Most importantly, the project proposes 3 story units with a setback from existing single family backyards that is twice as small as the policy recommends. Additionally, Staff noted that the proposed project does not provide an on-site termination of Duckett Way, does not give prominence to the existing historic structure, and does not create a pedestrian inviting environment that encourages interaction between residents.

Staff then presented a site plan which included 12 attached single-family homes and retained the existing California Register eligible historic home. The site plan was presented for visualization purposes so that the audience and Commission could have an example of how the recommendations of the Riparian Corridor Policy and Residential Guidelines could be easily met on the site. The site plan, with 13 total units, also demonstrated that the current General Plan designation promotes development with a density that would meet all the City goals and policies. The site plan was designed to illustrate the design comments that were articulated in staff's initial comment letter to the applicant.

The applicant, Barry Swenson, was represented by Erik Schoennauer. Mr. Schoennauer stated that he was dismayed that Staff had a site plan, which was never presented to him prior to the hearing. In addition, he stated that Staff has never provided him any comments about the issues that were presented. Mr. Schoennauer asked the Planning Commission to look at the bigger picture of the project, rather than focus on the details that the Staff's Report indicated. He commented that the project had three main objectives: 1) riparian habitat preservation, 2) mature tree preservation, and 3) preservation of the existing historic house. Mr. Schoennauer also provided two lists detailing several projects that the City has approved that either 1) did not provide a 100 foot setback from riparian areas or 2) did not provide a 2:1 height to setback ratio for proposed three-story structures adjacent to existing single-family rear yards. He also indicated that Discretionary Alternate Use Policies of the General Plan were applied to some of those listed examples. He also claimed that the City has not approved any projects which have provided a 100 foot setback from a riparian area. Mr. Schoennauer indicated that he wanted the subject project to be fairly evaluated, given that the examples he provided illustrated that past projects had been approved that did not meet all City policies.

Two members of the community, Peter Wang and Heliena Chu, commented on the project. Mr. Wang indicated that he was representing Ms.Chu. He informed the Commission of Ms. Chu's ownership of an adjacent residence at 1560 Duckett Way and noted that her property extended to the centerline of Duckett Way; however an easement existed that allowed for the project site to utilize 20 feet for ingress and egress. Mr. Wang indicated that Ms. Chu had no desire to allow modifications to her property in order to facilitate a cul-de-sac bulb on her property as proposed by

the applicant at the entrance to the subject site. Ms. Chu indicated that she did not want additional traffic near her home next to her bedroom. Commissioner Kamkar asked if she was opposed to any development on the site or if she just preferred Staff's site plan. Ms. Chu stated that she preferred Staff's site plan which showed fewer units and the termination of Duckett Way on the applicant's site rather than adjacent to her home.

Mr. Schoennauer responded to Ms. Chu and Mr. Wang's comments by indicating that no work would need to be performed on Ms. Chu's property at this time and would only be required when Ms. Chu redeveloped the site. Mr. Schoennauer then stated that Mr. Wang contacted him earlier this year wanting information on whether Ms. Chu's property could be redeveloped. Mr. Schoennauer closed his comments by reiterating that several projects have been approved in the City which do not conform to the City's Riparian Corridor Policy and Residential Design Guidelines. He requested that a bigger picture look be given for the applicant's proposal so that a fair analysis is made.

Commissioner Kamkar asked Mr. Schoennauer if Ms. Chu's property were to redevelop, would that property be able to connect to the project's storm lines. Mr. Schoennauer stated that connections would be available for the adjacent property. Commissioner Kalra asked Mr. Schoennauer how he believed the proposed project to be of exceptional design when there was a dominance of garage doors, and Commissioner Kalra then indicated that he believed Staff's site plan did not create that same problem. Commissioner Kalra also asked Mr. Schoennauer how the fronts of the units relate to the riparian corridor. Mr. Schoennauer responded by saying that the project attempted to provide a strong relationship to all the amenities on the site and orient the units to the large permiter trees that surround the project site as well as the riparian area. Commissioner Kalra stated that he believed that the Staff's site design demonstrated a better relationship of the units to the Riparian Area, which is one of the greatest amenities on the site.

Staff began its response to comments by first indicating that Staff has provided consistent information to the applicant, emphasizing the magnitude of the project's non-conformance to the Riparian Corridor policy and Residential Design Guidelines from the project's first submittal and throughout the entire process. Yet the applicant indicated that reducing the number units below the 20 proposed was not financially feasible and therefore never provided revisions that addressed these comments from Staff.

Staff acknowledged that they did not provide the alternate site plan to the applicant prior to the night's hearing. The alternate site plan was for illustrative purposes only. Again, Staff was not recommending approval of this alternative but rather using this as an exhibit for the Planning Commission to illustrate the specific written comments given to and/or discussed with the applicant early in the review process. Staff does not usually redesign projects for applicants, but rather provides feedback to design professionals regarding an application's conformance to ordinances and polices.

Staff noted that even a hypothetical project that conformed to the standard General Plan density requirements would only obtain a favorable recommendation from Planning if it preserved the historic house and preserved as many trees as possible on the site. Staff disagreed with the applicant's assessment that they are appropriately preserving the riparian habitat area.

Staff then spoke to issues surrounding Ms. Chu's ownership of a portion of the Roadway on Duckett Way, which currently is an easement that benefits the project site for ingress and egress. Staff

indicated that although some modifications to cul-de-sac improvements would not need to occur on Ms. Chu's property until such time that her property redeveloped, the applicant's proposal, which terminates Duckett Way off-site, would require curb improvements and public utilities connections on Ms. Chu's property and would also necessitate coordination. Staff indicated that the alternative site plan shown by Staff terminates Duckett Way within the project site and would be vastly simpler to implement as there would be no need to make improvements on Ms.Chu's property.

Staff indicated that the applicant's proposal provides only private driveways which would limit public visibility of the historic residence and Calabasas Creek.

Staff also noted that Mr. Schoennauer's earlier comments about riparian setback requirements for other recent projects were not accurate and only reflected a few selected projects. The City has indeed approved projects which met the 100 feet Riparian Corridor Policy. It should be noted that in this instance staff is recommending a 75' riparian. Staff pointed out that the number of units that were being proposed by the applicant in excess of the current General Plan designation's density is the same number of units that encroach into the riparian setback area. Staff also stated that the Residential Design Guidelines were intended for suburban environments, such as this. Mr. Schoennauer's list of City projects that deviate from the 3-story setback recommendations in the Residential Design Guidelines were exclusively comprised of downtown area projects or other areas where more intensive residential development was planned on the adjacent sites. In addition, Staff explained that Mr. Schoennauer's list of projects that deviate from City policies indicated that some of those listed projects used a Discretionary Alternate Use Policy to obtain conformance to the City's General Plan. Staff clarified that this is misleading since many Discretionary Alternate Use Policies do not require that projects provide "exceptional" design. The use of the Two Acre Rule <u>does</u> require that exceptional design be evident.

Commissioner Kamkar made a motion to recommend approval of the project as proposed by the applicant. Commissioner Zito asked Commissioner Kamkar how he felt that the applicant's proposal was meeting the criteria of exceptional design needed in order to apply the use of the Two Acre Rule. Commissioner Kamkar responded that he felt that the site had a large riparian frontage which warranted an exception to the Riparian Corridor Policy, and that after looking at the applicant's colorful drawings, he felt the proposal struck the right balance. The motion for approval received no second.

Subsequently, Commissioner Dhillon made a motion to deny the project. He justified his motion by stating that he agreed with Staff's analysis and believed that the applicant's plan could be financially feasible if they reduced the number of units but made the units larger. Commissioner Zito seconded that motion. He stated that although the project has nice features, the issue at hand is use of the Two Acre Rule, which creates a much higher bar by which the project is evaluated. He also indicated that although the City of San Jose has been less diligent in the past to ensure conformance to the Riparian Corridor Policy and Residential Design Guidelines, that history is not a good reason to move forward approving projects with these deficiencies.

ANALYSIS

See original staff report (attached).

POLICY ALTERNATIVES

Not Applicable

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. A sign identifying the proposed development was placed on-site. 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 was 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.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

This project is not consistent with applicable General Plan policies and City Council approved design guidelines as noted above and as further discussed in attached staff report from the Director of Planning, Building, and Code Enforcement to the Planning Commission.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

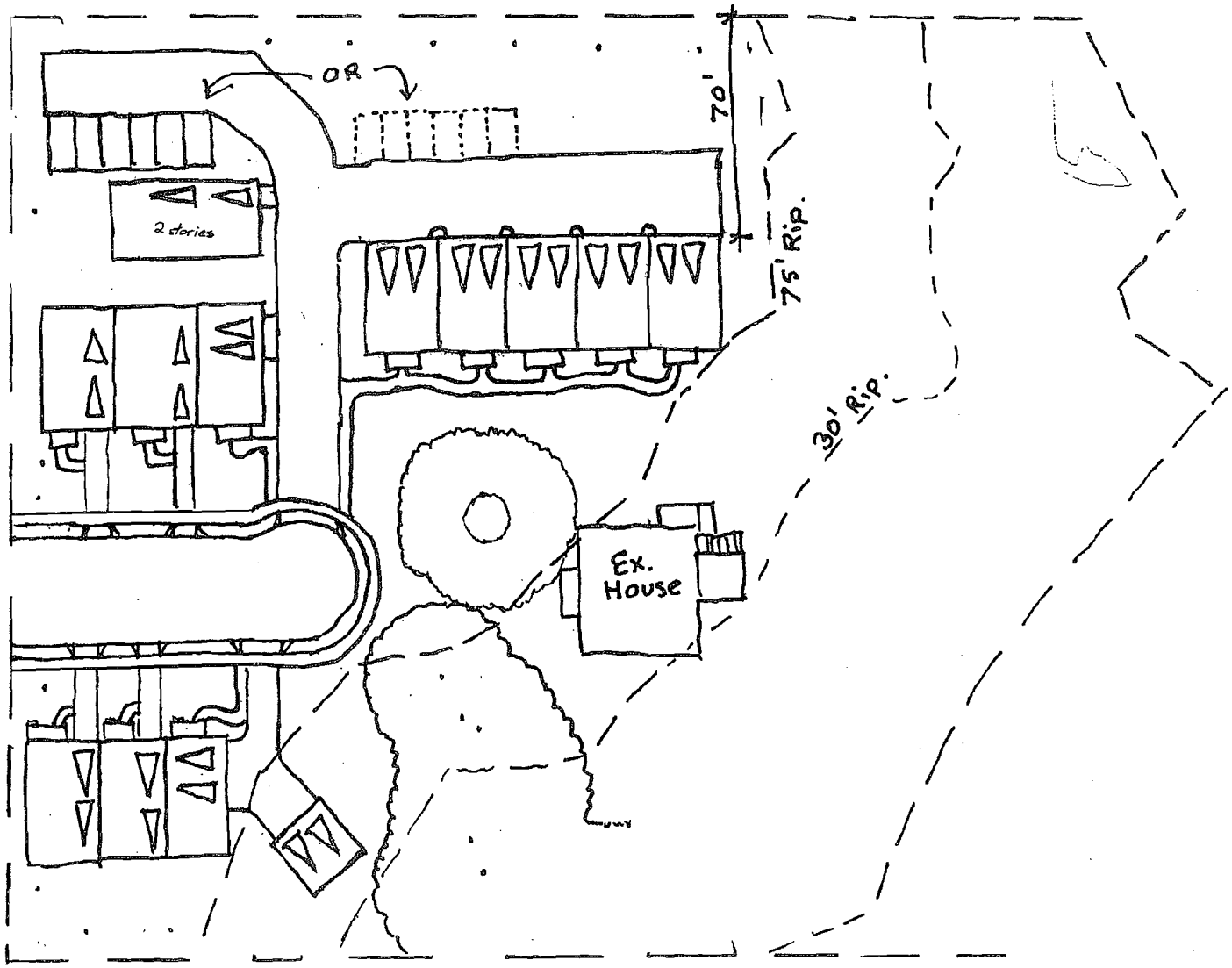
Mitigated Negative Declaration adopted on November 15, 2006.

JOSEPH HORWEDEL, SECRETARY
Planning Commission

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

cc: Applicant

ALTERNATIVE SITE PLAN THAT MEETS 8.0 DU/AC



PREPARED BY
CITY PLANNING

COUNCIL AGENDA: 12-05-06
ITEM: 11.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 14, 2006

TRANSMITTAL MEMO

COUNCIL DISTRICT: 1
SNI AREAS: None

SUBJECT: PDC06-062. LOCATED ON THE TERMINUS OF DUCKETT WAY, APPROXIMATELY 420 FEET EAST OF SOUTH DE ANZA BOULEVARD (1566 DUCKETT WAY).

The Planning Commission will hear this project on November 15, 2006. The memorandum with Planning Commission recommendations will be submitted under different cover. We hope the submittal of this staff report is of assistance in your review of this project.

JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Mike Enderby at (408) 535-7800.

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

STAFF REPORT

Hearing Date/Agenda Number
11/15/06, Item # 4.e
C.C. 12/5/06

File Number
PDC06-062

Application Type
Planned Development Rezoning

Council District
1

Planning Area
West Valley

Assessor's Parcel Number(s)
372-21-012, -014

PROJECT DESCRIPTION

Completed by: Reena V. Mathew

Location: Terminus of Duckett Way, approximately 420 feet east of South De Anza Boulevard

Gross Acreage: 1.817 | Net Acreage: 1.817 | Net Density: 11.1 DU/AC

Existing Zoning: R-1-5 | Existing Use: Single Family Estate

Proposed Zoning: A(PD) Planned Development | Proposed Use: Single-Family Attached Residential

GENERAL PLAN

Completed by: Reena V. Mathew

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DU/AC)

Project Conformance:
[☐] Yes [☒] No
[☒] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Reena V. Mathew

North:	Single-Family Residential	A(PD) Planned Development Zoning District
East:	Calabazas Creek	R-M Residential Zoning District
South:	Vacant	R-M Residential Zoning District
West:	Single-Family Residential	R-1-5 Residential Zoning/ A(PD Planned Development

ENVIRONMENTAL STATUS

Completed by: Reena V. Mathew

[☐] Environmental Impact Report found complete
[☒] Negative Declaration circulated on 10/27/06
[☐] Negative Declaration adopted on

[☐] Exempt
[☐] Environmental Review Incomplete

FILE HISTORY

Completed by: Reena V. Mathew

Annexation Title: Madera No. 31 | Date: August 1, 1980

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[☐] Approval
[☐] Approval with Conditions
[☒] Denial
[☐] Uphold Director's Decision

Date: 11/3/06

Approved by: [signature]
[☐] Action
[X] Recommendation

APPLICANT/OWNER/DEVELOPER

Libby Glass 777 North First Street, 5th Floor San Jose, CA 95112	Patricia Lenahan 6298 High Meadow Court San Jose, CA 95135

PUBLIC AGENCY COMMENTS RECEIVED **Completed by: RVM**

Department of Public Works

See Attached

Other Departments and Agencies

Santa Clara Valley Water District

GENERAL CORRESPONDENCE

Letter from Heliena Chu, owner of property at 1560 Duckett Way

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is a Planned Development Rezoning from R-1-5 Residence Zoning District to A (PD) Planned Development Zoning District to allow up to 20 residences on a 1.817 gross acre site. The proposed rezoning would retain an existing house on the site and construct 19 new single-family three-story attached garden townhouses, 18 units of which are proposed to be three-bedroom units and one of which is to be a four-bedroom unit. The project site is proposed to take access off of Duckett Way.

Single-family detached residences exist to the north of the project site. In April of 2005, the City approved a rezoning (PDC04-062) to allow development of two single family detached homes and three attached homes immediately to the west of the project site on Duckett Way. That property has a land use designation of Medium High Density Residential (12-25 DU/AC) on the San Jose 2020 General Plan Land Use/Transportation Diagram, and the approved density for the five units is 13.15 DU/AC, which is consistent with this designation. The remainder of Duckett Way consists of another single-family residence on the northern portion of the street and commercial uses that are located closer to Duckett Way's intersection with South De Anza Boulevard. Area to the south of the project site is vacant and Calabazas Creek runs along the eastern border of the site.

GENERAL PLAN CONFORMANCE

The subject property has a General Plan designation of Medium Low Density Residential (8 DU/AC). The project site is approximately 1.8 acres in size. The applicant's proposed project of 20 units at a density of 11.11 dwelling units per acre exceeds the General Plan density of 8

dwelling units per acre. The applicant has requested the application of the *Two Acre Rule,* which is a Discretionary Alternate Use Policy of the General Plan, in order to find the project in conformance with the General Plan.

The Two Acre Rule is intended to encourage infill development. Application of the Two Acre Rule allows parcels of 2 acres in size or less 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. To use this Discretionary Alternate Use Policy, various criteria need to be met. First, it must be found that the density is compatible with the surrounding land uses. Second, 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 bench mark for *exceptional* design to include the project's ability to *exceed* the minimum standards in the Zoning Ordinance and adopted design guidelines, regardless of what constraints exist on the site. As discussed in greater detail in the analysis section below, the project does not adhere to the City's Riparian Corridor Policy and key elements of the Residential Design Guidelines, and as such, the Two Acre Rule cannot be applied to the proposed project to achieve conformance to the General Plan. Staff recommends that the project reduce the number of proposed new units to 13, which in addition to the preservation of the existing residence, will allow for a density of 8 dwelling units to the acre and would support conformance to the current General Plan's designation of Medium Low Density Residential.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration circulated on October 27, 2006 indicates that the project will not result in a significant environmental impact when the identified mitigations are implemented. The Mitigated Negative Declaration addressed a multitude of issues such as agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation/traffic, and utilities and service systems. The section below highlights the key issues associated with this development. For the purposes of obtaining clearance through a Mitigated Negative Declaration under the California Environmental Quality Act, a project shall not result in significant unmitigated impacts. With the implementation of the proposed mitigation measures, which include, related mitigation for air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and noise, the project will not have a significant impact on the environment. A more comprehensive accounting of the environmental mitigation measures required as part of this project can be found in the project's Initial Study. The full text of the Initial Study is available online at:
http://www.sanjoseca.gov/planning/eir/MND.asp

Biological Resources

The impacts of the proposed rezoning have been carefully evaluated by a qualified biologist and determined not to have significant, unmitigated impacts. It should be noted that strict conformance to the City's Riparian Corridor Policy is not a threshold necessary to obtain clearance under CEQA. See additional discussion about conformance with the Riparian Corridor Policy within the analysis section of this report.

Three biotic habitats occur on the site 1) non-native herbaceous habitat/mature trees, 2) mixed riparian forest, and 3) developed, landscaped.

The project site is bordered by Calabazas Creek to the east. No special-status plant species were found or are anticipated to occur on the site. Wildlife databases report a sighting of Cooper's Hawks, a California Species of Special Concern, approximately one mile northeast of the site. It is expected that Cooper's Hawks occur at least occasionally on the site and may breed on or adjacent to the site; however the site represents only a small fraction of suitable habitat regionally, and the minimal impacts to this species are considered less than significant. The project site was determined not to have suitable habitat for other special status wildlife species.

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 less than 19 inches, for a total of 91 trees to be removed. The project is proposing to retain 38 ordinance sized trees, 22 of which are Deodar Cedar trees and 9 of which are Coast Live Oak trees.

Historic Resources

The subject site contains six existing buildings, including one two-story house, one three-car garage, one tankhouse tower, one greenhouse, and two sheds. The site was once part of a larger site that was used for orchards and farming, and at that time, the property was considered to be within the City of Cupertino. The existing residence was originally constructed in 1925 and is a Colonial Revival style house. Although the house does not appear to have been extensively altered, the condition of the auxiliary buildings in back of the house is fairly deteriorated, and thus retains a lower level of historic integrity. The house was evaluated under the City of San Jose's Historic Preservation Ordinance criteria, and received 62 points under this system, qualifying it as eligible for listing on the City of San Jose's Historic Resources Inventory as a "Structure of Merit."

The historic report prepared for the property also states that there is potential for this structure to become eligible for the California Register of Historic Places in the future. The applicant has agreed that any new associated garage building shall be detached from the main structure, to further preserve the historic integrity of the house in fitting with the Colonial Revival style. A mature oak tree is located immediately adjacent to the proposed driveway for the new garage. At the Planned Development Permit stage, the applicant will need to provide a tree report that indicates that the health of the oak tree will not be affected with the driveway and garage at their proposed locations.

ANALYSIS

The primary issues analyzed as part of this proposal include the project's conformance with the Residential Design Guidelines and the Riparian Corridor Policy Study.

<u>Site Design Issues and Conformance to Residential Design Guidelines</u>

The project proposes a housing type specified as garden townhouses in the Residential Design Guidelines.

Setback from adjacent uses. The north perimeter of the project site abuts the rear yards of adjacent single-family residences on Triumph Court. The Residential Design Guidelines call for new three-story structures to be setback from existing single family rear yards a distance that is two feet in separation for every one foot of building height (2:1 setback). Buildings E and A are 35 feet in height and are located along the north and west perimeters respectively. The proposed buildings should be setback 70 feet from the northern and western property lines to be in conformance with the Residential Design Guidelines. However the applicant has only proposed a 33-foot setback of the buildings from the northern perimeter of the project site and approximately 25 feet from the western perimeter.

In neighborhoods where redevelopment of adjacent single-family properties is reasonably foreseeable, based on the adjacent General Plan designations that allow for higher density development, the City has been slightly more lenient with respect to imposing the 2:1 setback recommendation for three-story structures. In this case, it is possible that the property to the west could eventually redevelop with structures other than traditional R-1-8 single-family detached residential, however this is probably not the case along the northerly property line. The northerly property is bordered by the rear yards of three single-family houses that were built approximately 15 years ago. It is highly unlikely that this adjacent interface will change in the foreseeable future.

Several large, tall cedar trees are planted along these perimeters and provide a natural view buffer of the proposed development by the neighboring properties. While the mature cedar trees do provide a visual buffer for the proposed development today, the trees may not outlive or continue to provide a complete level of screening of the proposed development. When the trees die or are removed for any reason, then a paltry separation between these three story buildings and the existing single family residences will exist if the applicant's site plan is implemented. Cedar trees and Pine trees such as these are highly susceptible to beetle infestation with can sometime cause rapid decline of mature trees.

In staff's opinion, the perimeter setback of 70 feet, as recommended by the Residential Design Guidelines is highly appropriate in this suburban setting along the northerly property line. The setbacks as proposed by the applicant would be acceptable if the proposed units along this edge were limited to just two stories.

Integration of Historic Structure. The applicant has proposed to retain the existing residence, which as specified in the Environmental discussion above, is a structure that has determined to be potentially eligible for the California Register of Historic Places in the future and shall be added to the City of San Jose's Historic Resources Inventory as a Structure of Merit. However, the proposed development is not designed in a manner that prominently displays the historic residence, but rather buries it amongst the proposed buildings. For instance, the proposed porches and balconies of units 10-16 are in some places located only 12 feet away from portions of the historic residence. Also, since the applicant is not terminating Duckett Way within the project site, there is only a small driveway that leads to the structure from the project's entry drive, and since it is a private drive, will only be available to those who live in the proposed development. With the current proposal, the historic residence will only be marginally visible from the private driveway.

In staff's opinion, the historic house should maintain an appropriate historic context, which includes placement on a parcel of a reasonable size and orientation worthy of a large single-

family residence. More specifically, the house should be placed on a larger parcel, not crowded by townhouses and should maintain a grand posture or position on a public street. The extension of Duckett Way as a public cul-de-sac terminating near the large existing Oak tree in front of the house would accomplish this objective. Alternatively, wrapping the cul-de-sac along the front and the northerly side of the historic residence would better highlight the grandness of the structure.

Inadequate Termination of Duckett Way. Duckett Way currently stubs as a dead-end at the subject property. This type of terminus is used as an interim design where an extension of the street is planned at a later date. Most commonly, upon review of a subsequent development proposal, staff will seek to accomplish the construction of a traditional cul-de-sac bulb to provide the appropriate extension and completed finish appearance of a public street and to facilitate a vehicular turn-around area that can be used by the public and emergency vehicles. This design also facilitates a wrap-around sidewalk for pedestrians. Staff has requested that Duckett Way be terminated with a cul-de-sac bulb on the project site in a manner as previously described. The applicant has expressed an unwillingness to terminate Duckett Way on the site itself, but has instead proposed a reduced size cul-de-sac bulb with a 25-foot radius, at the end of the existing street with a private driveway entering into the project site. Under this scenario, the traditional sidewalk linkage from the south side of the street to the north side of street would not be possible.

The applicant's proposal to terminate Duckett Way in front of the project site hinders the public's visual access to the riparian area of Calabazas Creek as well as to the historic residence. Given that these are not just project amenities, but community amenities as well, Staff believes that Duckett Way should incorporate a cul-de-sac, preferably public, on the project site itself as a proper completion of the current stubbed street.

The owner of the property at 1560 Duckett Way has submitted a letter indicating that they would like to be compensated for the increased use of the current easement. Staff does not believe this is appropriate, as the easement permits unspecified levels of ingress/egress to the subject site. However, to terminate Duckett Way as proposed by the applicant, an expanded easement or additional property be acquired from the owner of 1560 Duckett Way would be required. Therefore, the applicant must negotiate the purchase of a portion of the adjacent property or an easement over said property in order for the street bulb to be implemented as proposed. If coordination fails with the adjacent neighbors, the applicant will have to create a bulb on the project site to terminate Duckett Way, as recommended by staff, which would have several consequences for their proposed site plan. The termination of Duckett Way further into the subject site would, in addition to other benefits noted in this analysis, not require acquisition of additional land from adjacent property owners.

Inadequate Relationship of Homes to One Another. The Residential Design Guidelines stress not only on the relationship between projects and their surroundings, but they also address internal relationships. In this instance, staff believes that the internal relationship between residential units is very weak in that the front doors of the residences do not have a strong connection to one another. The majority of the units front towards the perimeter of the site, therefore, they will not promote a sense of community where owners and residents are encouraged to interact with one another. Instead, the orientation of the units towards the perimeter of the site creates a situation where minimal mixing of the residents would likely occur. While some of the units do front

towards common open space areas, these areas are passive use areas with heavy vegetation and are not likely to function as open areas of congregation for residents.

Ideally, and with most garden townhouse projects approved by the City, front doors and patios orient to the front doors and patios of units across a commonly shared open space area or paseo. This type of unit orientation is commonly referred to as "double-loaded" paseos. Alternatively, front doors and patios for garden townhouses are oriented to streets. This is quite commonly utilized in infill projects within existing neighborhoods. In either case, there is substantial visibility of the front door and patio areas to promote socialization within a neighborhood or development.

Dominance of Garage Doors. Garden townhouses are differentiated from rowhouses (another form of townhouse) in that the garages are on the opposite side of the building as the pedestrian entrances and front porches. With a garden townhouse design there is usually a very articulated and well landscaped "front" side of the building designed for primary visibility and pedestrian circulation contrasted by a decidedly vehicular oriented side which is typically far less detailed and articulated with minimal landscaping and overall dominance of garage doors. In recognizing the noticeable quality differences that the two sides of the buildings tend to offer, the City have strived to facilitate site designs that minimize the public exposure to the "less attractive" sides of the building. This is largely accomplished when the site plan provides a layout whereby a visitor can drive to, park within and/or walk to the unit entrances of the project without seeing a procession of garage doors. The City has approved several projects that accomplish this objective.

Application of the Residential Design Guidelines is intended to create a more pedestrian friendly environment, which develops strong relationships with buildings and circulation elements so that a pedestrian environment does not just exist through sidewalks but is also promoted by circulating pedestrians through the active areas of the development.

The garden townhouses, if designed effectively and in the right context, can create an active pedestrian environment. The applicant's site plan however does not provide a positive pedestrian experience because much of the pedestrian circulation between buildings in the development requires passing alleys with a procession of barren garage doors. Further, access to any guest parking stall requires the driver to pass by rows of garage doors.

Given that this site is seeking approval under the use of the Two Acre Rule, which requires exceptional design, staff feels that the design of this project does not adequately meet or exceed the intent of these guidelines.

<u>Conformance to Riparian Corridor Policy and Storm Water Run-off Issues</u>

Inadequate setback from Calabazas Creek Riparian Corridor. The City's Riparian Corridor Policy provides guidelines for appropriate interfaces with the City's creeks as well provides standards to minimize the development's impacts on the biotic resources associated with riparian areas. The Riparian Corridor Policy recommends any new development maintain a minimum setback of 100 feet from the edge of the corridor or top of bank, whichever is greater.

The stretch of Calabazas Creek that abuts the project site is unique in that there is a substantial distance between the top of bank and edge of the riparian corridor. Where the exact edge of the riparian corridor is not evident and/or the nature or condition of the habitat is not clear, the Riparian Corridor policy study recommends that a qualified biologist advise on a more appropriate setback treatment than the 100 foot minimum setback stated in the policy itself. In the case of this project, the consulting qualified biologist from H.T. Harvey and Associates recommends a 75-foot riparian setback from the edge of riparian vegetation as a threshold for significance for evaluating riparian encroachment impacts and states that no mitigation would be warranted if the project retains a 75-foot setback from the riparian vegetation. The City's Biologist in the Environmental Services Department has also walked the site and evaluated the biotics reports from H.T. Harvey and Associates. The City Biologist concurred that a 75-foot setback is appropriate.

The project as proposed is setback 30 feet from the edge of Calabazas Creek's riparian vegetation. The proposed site plan encroaches 45 feet from the 75-foot setback recommended by the consulting and City biologists. Specifically, seven additional units are located within 75 feet from the edge of the riparian corridor. Although there are a number of existing accessory structures within the 75- foot riparian setback area, these are generally low structures that have a relatively continuous canopy of trees that extend over the structures. Under the applicant's proposal, there is a net increase of driveway and structure square footage (1,242 square feet) within the riparian corridor, albeit with a greater corridor setback than the existing structures. However, the structures are three stories tall and would not lend themselves to maintaining overhanging trees canopies.

The Riparian Corridor Policy provides exceptions for reducing the minimum setback requirements, and the applicant has expressed their belief that this project qualifies for said exceptions. However, the Riparian Corridor policy states that the exceptions to the setback requirements can only be applied if it is first established that "no reasonable alternative which avoids or reduces the encroachment into the setback area exits." In the case of the proposed project, a clear reasonable alternative exists to increase the setbacks from the riparian corridor. That alternative is to reduce the number of units to conform to the maximum density for the site's current General Plan designation of Medium Low Density Residential (8 dwelling units per acre). To conform to the current General Plan designation, the unit count would need to be reduced by six units, which would leave only one unit with minimal encroachment into the 75-foot riparian setback. This unit, number 18 on the plan, could be shifted westerly, outside of the 75-foot riparian setback, with the removal of one guest parking stall. The City biologist has also stated that the proposed site plan should eliminate all units within the 75-foot setback. Another alternative available, other than allowing reductions to the 75-foot setback, would be to incorporate alternative site designs or product types that maintain the 75-foot setback; however, these site layouts would undoubtedly also reduce the proposed number of units below the proposed 20 units.

Essentially, this project is proposing to add units within the recommended 75-foot riparian setback, however, this setback reduction conflicts with the Riparian Corridor Policy in that reasonable alternatives, being conformance to the General Plan density, increase the riparian setback. The use of the Two-Acre Rule requires that the project meet or exceed all applicable development policies and guidelines, and the applicant's proposed addition of units within the riparian setback directly conflicts with the Riparian Corridor Policy. Therefore, the same units

that necessitate the use of the Two-Acre Rule contradict that Discretionary Alternate Use Policy in that those additional units create a deviation from the Riparian Corridor Policy.

Lack of Public Access to the Riparian Corridor. The Riparian Corridor Policy Study states that all new development should orient buildings and street patterns to provide views of the riparian area and that roadway segments should be maintained open to the corridor for public viewing, access and visibility for safety and protection of the corridor environment. The site plan as proposed does not conform to this aspect of the Riparian Corridor Policy, as it does not provide public access or visibility to Calabazas Creek's riparian corridor. In particular, there are no public streets proposed with the project. Only alleys behind units and sidewalks that run along front doors connect to view corridors of the creek area, and these areas would not be open to the public.

Storm water run-off issues. The project has provided a conceptual storm water plan to insure its compliance with the City's Post-Construction Urban Runoff Management Policy (6-29) and the Post-Construction Hydromodification Management Policy (8-14). The site uses best management practices, including pervious pavers and directed downspouts; however most of the storm water on the site is being treated by a CDS mechanical unit. In the event of severe storms, the emergency overland release is proposed to flow directly to Calabazas Creek. However, the Santa Clara Valley Water District has indicated (see attached memo) that no overland release into the Creek beyond historical levels is acceptable. The applicant has not modified the proposal to accommodate the Santa Clara Valley Water District's requirements, which requires demonstration that the proposed project will not increase the historical volumes of water that discharge to the creek or requires the site be re-graded so that overland release into Calabazas Creek does not occur. This issue could be resolved through re-grading of the driveway areas, however, in accordance with the Santa Clara Valley Water District requirements; this re-design should be implemented in any project approval.

PUBLIC OUTREACH

A community meeting was held by the applicant on August 31, 2006 at Beth David Congregation. Approximately eight members of the community attended the meeting. Project-related comments included concerns regarding additional traffic on South De Anza Boulevard, requests for either an elongated left turn lane on South De Anza Boulevard for turning onto Duckett Way or a street light at that intersection, concerns regarding the expanded use of an easement on Duckett Way benefiting the project site but located on the adjacent property at 1560 Duckett Way, feedback about the architecture, and comments on pricing of the proposed homes.

Signage has been posted at the site to notify the neighbors and public of the proposed rezoning. Notices of the public hearing before the Planning Commission and City Council were published, posted on the City of San Jose website and distributed to the owners and tenants of all properties located within 1,000 feet of the project site. A notice indicating the public review period of Draft Mitigated Negative Declaration (MND) for the project was also mailed to property owners and tenants within 1,000 feet of the project site. Both the MND and copies of this staff report were posted on the City web site. Staff has been available to discuss the project with members of the public.

CONCLUSION

The proposed project, at a density of 11.1 dwelling units per acre, does not conform to the existing General Plan designation of Medium Low Density Residential (8 DU/AC).The applicant intends to achieve General Plan conformance by using one of the Discretionary Alternate Use Policies of the General Plan, the Two Acre Rule. As discussed above, the proposed project fails to achieve the criteria needed for the application of the Two Acre Rule because the project does not meet the city's minimum standards in regards to the Riparian Corridor Policy Study and key elements of the Residential Design Guidelines. Although the project site does have physical and environmental constraints due to the presence of a historic structure, Calabazas Creek, and several ordinance sized trees, staff believes, that a project design that is built at a density of 8 DU/AC, in accordance with the existing General Plan designation, could easily address these constraints and meet the City's design objectives.

The applicant has expressed that reducing the unit count below 20 units is not an "economically feasible" option. The issue of economic feasibility however is not an issue related to the constraints of the site because if the applicant duly researched the current General Plan designation, they would have negotiated a price that equated to a density of 8 dwelling unit per acre, rather than a much higher price.

In addition, Staff believes that the proposed project's positive attributes which consist of preservation of ordinance-sized trees and the existing residence, would be standard criteria for recommending approval of any project located on this site including projects that meet the basic General Plan density requirements. These two preservation issues do not compensate for the proposal's lack of adherence to the City's adopted Riparian Corridor Policy and Residential Design Guidelines. If this project were not proposing use of the Two-Acre Rule Discretionary Alternate Use Policy, staff would still recommend an increased setback from the riparian corridor.

RECOMMENDATION

Staff recommends denial of the proposed project for the following reasons:

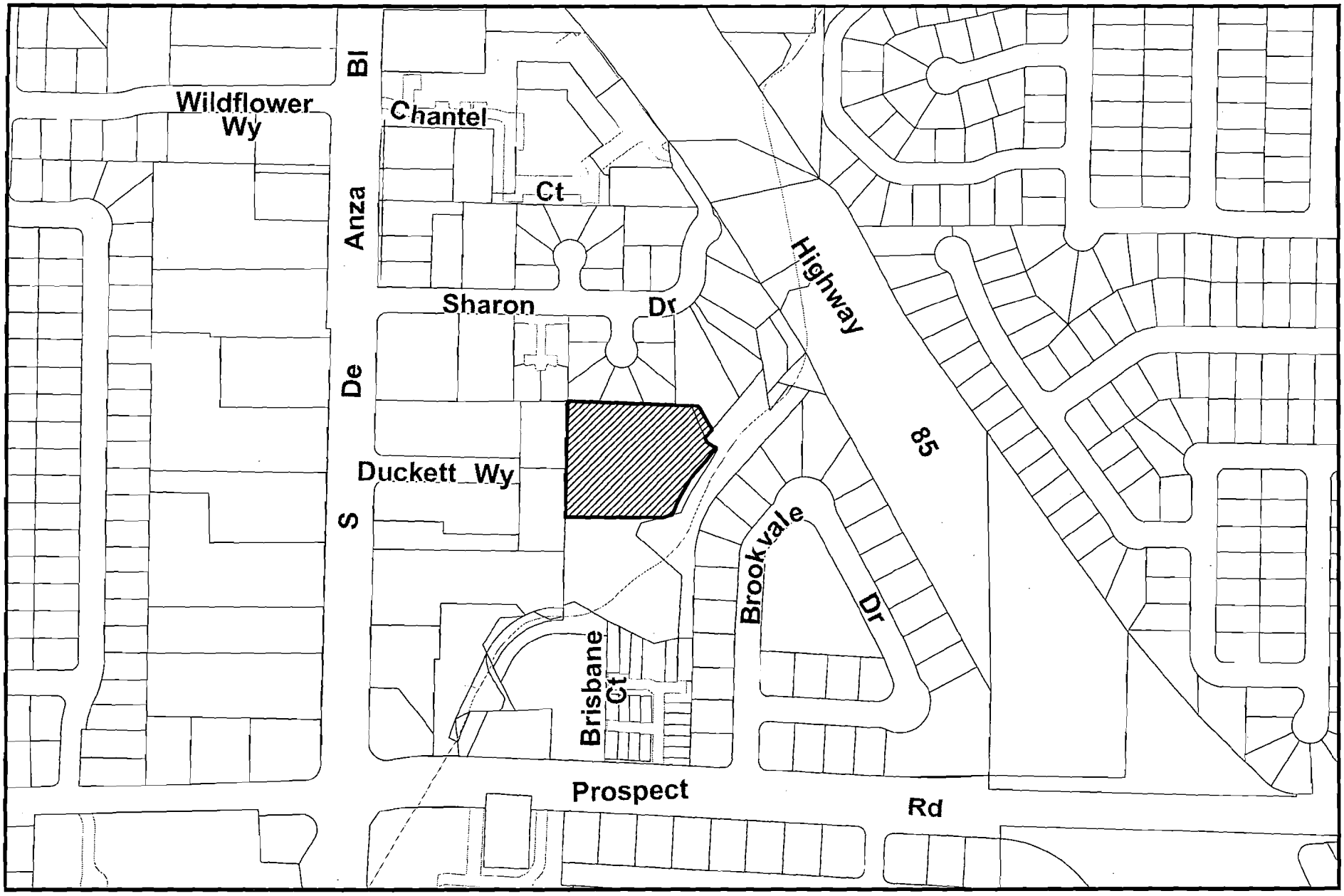
1. The project does not conform to the General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC).

2. The project does not conform to the City's Riparian Corridor Policy Study.

3. The project layout does not conform to the City's Residential Design Guidelines.

Attachments:
Location Map
Public Works Final Memo
Santa Clara Valley Water District Memo
Letter from Heliena Chu, owner of property at 1560 Duckett Way

cc: owner



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Scale: 1"= 300'
Noticing Radius: 500 feet

File No: PDC06-062

District: 1

Quad No: 96

5750 ALMADEN EXPWY
SAN JOSE, CA 95118-3686
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File: 31150
Calabazas Creek

July 3, 2006

Mr. Avril Baty
Department of Planning, Building
and Code Enforcement
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

Subject: City File No. PDC06-062, Planned Development Rezoning

Dear Mr. Baty:

The Santa Clara Valley Water District (District) has reviewed the land use plan and the preliminary site plan for the proposed Planned Development to allow up to 19 new single-family attached units and one single-family residence located on the terminus of planned Duckett Way, approximately 420 feet east of South De Anza Boulevard.

The site borders the Distrtict fee title right of way and Calabazas Creek traverses through the site on the easterly side of the property. According to the Federal Emergency Management Agency Flood Insurance Rate Map, easterly side of the property is within Zone A2, areas of 100-year flood where the base flood elevations are known. The base flood elevations range from 285 feet to 290 feet over the length of the easterly side of the property. The District recommends that structures be elevated above the base flood elevation.

The proposed rezoning from R1-5 Residence Zoning District to the A(PD) Planned Development Zoning District would allow up to 19 new single-family attached residential units and one existing single-family residence and cause an increase in impervious areas, thereby resulting in increased runoff. Site design measures should be incorporated in the development to reduce impervious areas and the amount of runoff from developed areas of the site.

In accordance with District Ordinance 83-2, a District permit is required if the property improvements are proposed within 50 feet of the top of the creek bank.

The development should be designed so that there is no overbank drainage into the channel. Storm water should be dispersed through the sites landscaped areas and directed into the City storm drain system.

To maintain ecological compatibility with any existing riparian species and ensure genetic specificity in the watershed, please refer to the enclosed informational brochures when designing the on-site landscaping.

To prevent pollutants from construction activity, including sediments, from reaching the creek, please follow the Santa Clara Urban Runoff Pollution Prevention Program's recommended Best

Management Practices for construction activities, as contained in "Blueprint for a Clean Bay," and the "California Storm Water Best Management Practice Handbook for Construction."

Postconstruction water quality mitigation needs to be implemented. The design of the project area should incorporate water quality mitigation measures such as those found in the "Start at the Source-Design Guidance manual for Stormwater Quality Protection," prepared for the Bay Area Stormwater management Agencies Association.

Because the site is greater than 1 acre, the developer must file a Notice of Intent to comply with the State's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity with the State Water Resources Control Board. The developer must also prepare, implement, and maintain a Storm Water Pollution Prevention Plan and provide measures to minimize or eliminate pollutant discharges from construction activities, the parking lot, and landscaping areas after construction.

In accordance with District Ordinance 90-1, the owner should show any existing well(s) on the plans. The well(s) should be properly maintained or destroyed in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or destruction of any wells.

When development plans become available, please submit two sets of plans for our review and issuance of a permit. The submittal should include construction, grading and drainage, fencing, topography, landscaping, and irrigation plans for engineering review.

Please reference District File No. 31150 for future correspondence regarding this project. If you have any questions or comments, you can contact me at (408) 265-2607, extension 2731.

Sincerely,

Usha Chatwani

Usha Chatwani, P.E.
Associate Civil Engineer
Community Projects Review Unit

Enclosure: Design Guide Sheets 1 through 5
cc: B. Goldie, S. Tippets, U. Chatwani, W. Jones, E. Hayes, File (2)
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OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

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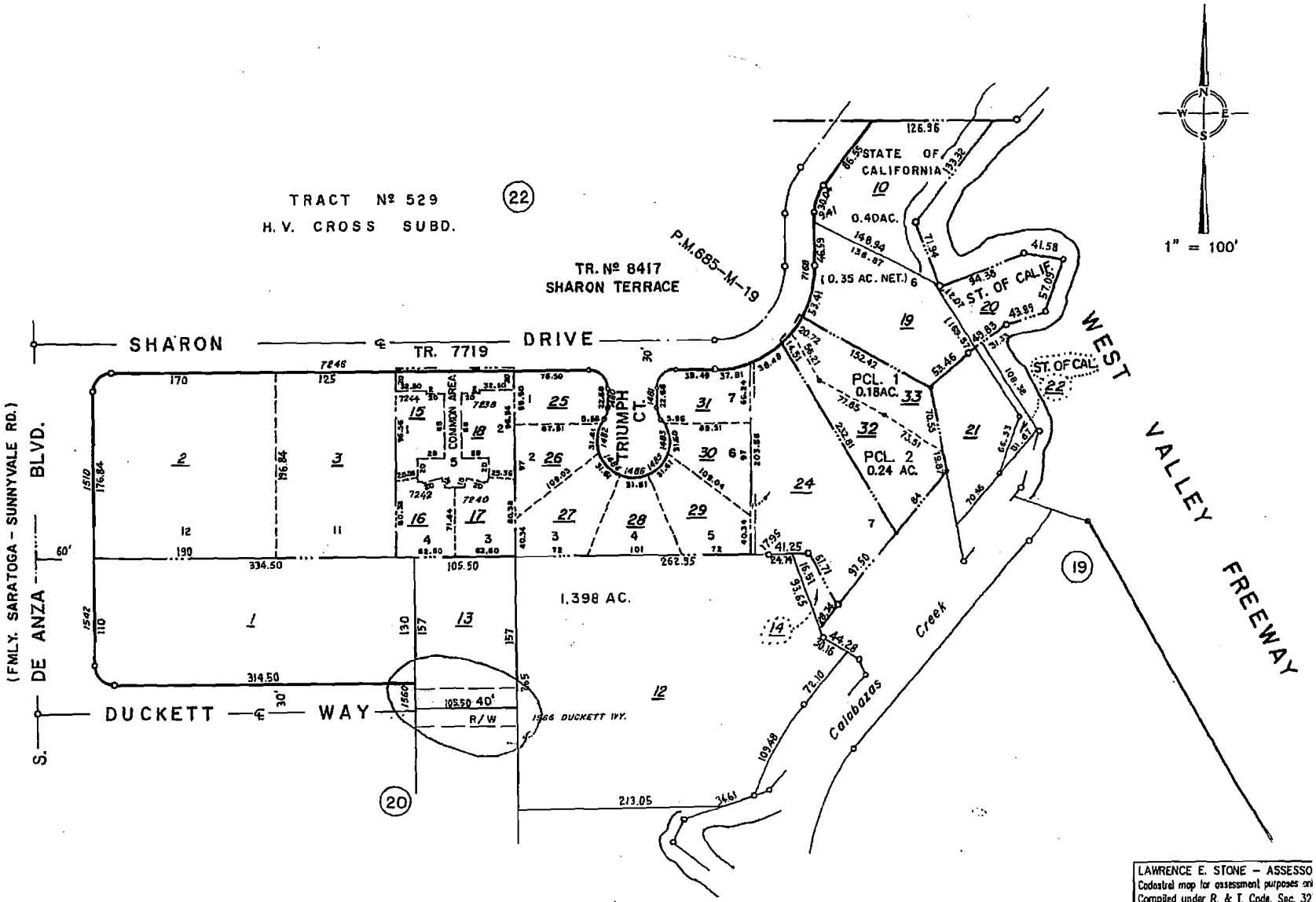

LAWRENCE E. STONE – ASSESSO
Cadastral map for assessment purposes on
Compiled under R. & T. Code, Sec. 32
Effective Roll Year 2006–2007

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Reena Mathew
Planning and Building

FROM: Michael Liw
Public Works

SUBJECT: **FINAL RESPONSE TO DEVELOPMENT APPLICATION**

DATE: 11/06/06

PLANNING NO.:	PDC06-062
DESCRIPTION:	Planned Development Rezoning from R-1-5 Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to 19 new single-family attached residential units and one existing single-family residence on a 1.83 gross acre site
LOCATION:	Terminus of Duckett Way, approximately 420 feet east of South De Anza Boulevard
P.W. NUMBER:	3-18090

Public Works received the subject project on 11/03/06 and submits the following comments and requirements.

Project Conditions:

Public Works Clearance for Building Permit(s): Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

1. **Construction Agreement**: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

2. **Off-Site Coordination**: The proposed driveway improvements shown on the site plan will affect APN 372-21-013. This will require coordination with the adjacent property owner. If the applicant is unable to obtain the necessary rights from the adjacent property owner the project will need to be redesigned to show the improvements solely within their parcel. This shall occur prior to PD permit approval.

3. **Storm**:
   a) The post-development overland release flows to Calabazas Creek is greater than the pre-development flows. A permit from the Santa Clara Valley Water District will be required prior to approval of the PD Permit.

b) The release path must be paved.
c) On-site ponding must be less than one foot.
d) Finished floor elevations must be one foot higher than overland release elevation.

4. **Transportation**: This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes 19 units of Single Family attached.

5. **Flood: Zone D, Portion in Zone A2, Elevation varies from 287' to 290' 1929 National Geodetic Vertical Datum (NGVD):** Although majority of the property is shown on the Federal Emergency Management Agency's Flood Insurance Rate Map to be in Zone D, a portion of the property is within the 100-year floodplain (Zone A2). Proposed structures are not within Flood Zone A2 and have finish floors elevated above 290' 1929 NGVD.

6. **Stormwater Runoff Pollution Control Measures**: This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29 -or- the project shall provide an Alternative Measure, where installation of post-construction treatment control measures are impracticable, subject to the approval of the Director of Planning, Building & Code Enforcement.
   a) The project's preliminary Stormwater Control Plan and numeric sizing calculations have been reviewed. At PD stage, submit the final Stormwater Control Plan and numeric sizing calculations.
   b) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

7. **Stormwater Peak Flow Control Measures**: Projects that are required to install treatment control measures are encouraged to comply with the requirements of the City's Post-Construction Hydromodification Management Policy (City Council Policy 8-14) to control the project's hydromodification impacts that can cause increased erosion and other impacts to beneficial uses of local rivers, streams and creeks.

   It is recommended that the project install treatment control measures that have flow-control benefits such as bioretention facilities, infiltration trenches, filter strips, and vegetated swales.

8. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

9. **Parks:** In accordance with the Parkland Dedication and Park Impact Ordinances (SJMC 19.38/14.25), the park impact fee will be due for any additional living units that are built.

10. **Street Improvements**:
    a) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
    b) Construct curb, gutter, sidewalk and street section along Duckett Way frontage.
    c) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
    d) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

11. **Complexity Surcharge (In-Fill)**: This project has been identified as an in-fill project, and as such is subject to the following: Based on established criteria, the public improvements associated with this project have been rated medium complexity. An additional surcharge of 25% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage

12. **Electrical**: Install electrolier(s) on the project frontage to the satisfaction of the Director of Public Works.

13. **Private Streets**:
    a) Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
    b) The plan set includes details of private infrastructure improvements. The details are shown for information only; final design shall require the approval of the Director of Public Works.

14. **Referrals**: This project should be referred to Santa Clara Valley Water District.

Please contact the Project Engineer, Mirabel Aguilar, at (408) 535-6822 if you have any questions.

Michael Liw
Senior Civil Engineer
Transportation and Development Services Division

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