

From: [Keyon, David](#)
To: [Gerry Haas](#); [Andy Wang](#)
Cc: [Bethany Windle](#); [Hill, Shannon](#); [Downtown West Project](#)
Subject: Re: Downtown West review
Date: Tuesday, April 13, 2021 5:57:52 PM
Attachments: [BOSTON PROPERTIES Final SSE.pdf](#)
[App B-2 Riparian Setback Assessment.pdf](#)

Hi Gerry,

I would like to clarify the applicability of Condition 11 to the Downtown West (Google Project), specifically in light of recent direction regarding the Boston Properties project upstream from the project on the Guadalupe River (attached) and guidance from the Habitat Agency on the previous development proposal on the site in 2016.

In your February 10 email, you stated that the City's 2016 approval of a 30-foot setback from the top of the wall along the Guadalupe River conflicted with the Habitat Plan Condition 11. However, recent guidance from the Habitat Agency on the Boston Properties suggests that the Condition 11 riparian setbacks would not apply from the Guadalupe River for this site. Is this the case?

Staff also did some research and found a Biological Assessment on the presence of riparian habitat during the environmental review process for the prior development proposal on the site in 2016, referred to as the Delmas Avenue Mixed Use Project (also attached). This assessment quotes a March 8, 2016 email from Edmund Sullivan, Executive Director of the Habitat Agency, stating that Condition 11 did not apply and the project was exempt from Habitat Plan coverage (see page 9 of attached memo).

Unfortunately, we couldn't find the original email sent to former City staff, but is the determination quoted from Ed Sullivan in the attached memo from Huffman-Broadway Group in line with your understanding, especially in light of recent guidance on other projects such as Boston Properties?

Please note that since publication of the Draft EIR, Google modified the project to increase setbacks for new buildings adjacent to the Guadalupe River to 50-feet and proposes a 35-foot setback between the top of wall along the Guadalupe River and new roadways.

Thank you for your direction on this.

David Keyon

Principal Planner, Environmental Review
City of San Jose
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From: Gerry Haas <gerry.haas@scv-habitatagency.org>
Sent: Friday, February 12, 2021 5:54 PM
To: Andy Wang <wangan@google.com>
Cc: Bethany Windle <bethanywindle@google.com>; Keyon, David <david.keyon@sanjoseca.gov>
Subject: RE: Downtown West review

[External Email]

That would work on the second issue. Dual purposing the pedestrian pathway and open space would not technically be a request to build a road within the setback and should be fine. David would need to agree, as well.

We'll talk next week.

Gerry

From: Andy Wang <wangan@google.com>
Sent: Friday, February 12, 2021 5:42 PM
To: Gerry Haas <gerry.haas@scv-habitatagency.org>
Cc: Bethany Windle <bethanywindle@google.com>; Keyon, David <david.keyon@sanjoseca.gov>
Subject: Re: Downtown West review

Thank you for this update, Gerry. I appreciate your attentiveness on this! We'll of course look forward to hearing back next week.

On the second issue: I should clarify that the project will require that new roadways be outside the 35-foot setback (and new buildings would be set back further, at 50 feet or more). Since there would be no new roadway within the 35-foot setback from the top of channel, emergency vehicle access as currently contemplated would be permitted over the planned open space area and/or pedestrian pathway within the 35 feet.

Bethany and I would be happy to chat more about this by phone on Tuesday if you think that could clear up any confusion as well.

Thanks, and have a great long weekend.

On Fri, Feb 12, 2021 at 2:27 PM Gerry Haas <gerry.haas@scv-habitatagency.org> wrote:

|

Hello Andy,

thanks for clarifying the information request. I've just let David know that we have been in discussion with the Wildlife Agencies about the 35-foot setback issue and we are very close to a determination that should resolve the first issue. I may not hear back from them until early next week, but will reach out to you the moment I do hear from them.

The second issue seems to be challenging because technically only pedestrian trails/paths are allowed within the setback, not new roads (even if just an emergency access). Please see Page 6-53 - Exemptions for the list of allowable uses within a stream setback:
<https://scv-habitatagency.org/DocumentCenter/View/128/Chapter-6-Conditions-on-Covered-Activities-and-Application-Process>

Once I have clarity on the 35-foot setback issue, I'll reach out to David to set up another meeting with all of us to discuss the process moving forward.

Regards,

Gerry Haas

Conservation Planner
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From: Andy Wang <wangan@google.com>
Sent: Wednesday, February 10, 2021 9:49 PM
To: Gerry Haas <gerry.haas@scv-habitatagency.org>
Cc: Bethany Windle <bethanywindle@google.com>
Subject: Re: Downtown West review

Thanks for your note, Gerry, and certainly appreciate what it means to juggle a heavy workload!

On your question regarding the two issues: you are correct, with minor nuances on both questions. The material we sent over does explain them each a bit more, but in short:

- On the first issue: we're seeking confirmation on our approach to reusing and renovating existing buildings that are within the 35-foot setback from Los Gatos Creek. Our definition of renovation is premised on the reuse of existing foundations. We're seeking confirmation that the Habitat Agency agrees that such a definition would be within the bounds of the Habitat Plan's contemplation of the continued use of existing buildings within the 35-foot setback. Additionally, to the extent we pursue new building footprint (i.e. new foundations), these would occur outside of the 35-foot setback.
- On the second issue: you'll find that our development, on a site that is currently developed, proposes new buildings and a roadway set back 35 feet from the Guadalupe River top of channel. On this issue, we're not questioning the setback; rather, we're seeking confirmation on two components that are designed to be within the 35-foot setback due to

the complexity of many components at this site. The components within the 35-foot setback are: a pedestrian pathway only (not vehicular pathway), and emergency vehicle access.

Again, these are described a bit more in the material we sent over late last week, although I hope that this explanation clarifies the questions a bit more. I'm more than happy to discuss more, including by phone if we could provide more detail or answer any follow-up questions you and your executive officer may have.

Much appreciated,
Andy

Thanks much,
Andy

On Wed, Feb 10, 2021 at 1:55 PM Gerry Haas <gerry.haas@scv-habitatagency.org> wrote:

Hi Andy,

I've looked over this and there is quite a bit to unpack, and with our current workloads, I simply haven't had time to complete a response. You mention two issues, and I want to make sure I understand them both. As I recall, the first issue is the definition of "reuse" or "redevelop" when applied to existing structures within the 35-foot setback from Guadalupe Creek. The second issue is the requirement for setbacks to apply to the sections of Guadalupe Creek that consist of a concrete-lined engineered channel. If this is the correct understanding of the two issues, please confirm today, and I will discuss them both with our Executive Officer first thing tomorrow morning.

Please also bear in mind the existing language in the Habitat Plan for Condition 11: "Regardless of project location, stream setback exceptions may not reduce a Category 1 stream setback to less than a distance of 50 feet for new development or 35 feet for existing or previously developed sites with legal buildings and uses." Recall that the San Jose City Council approved the Habitat Plan in 2013, which is in conflict with the Council's action to approve a 30-foot setback from Guadalupe Creek in 2016, three years after the Habitat Plan became effective.

Regards,

Gerry Haas

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From: Andy Wang <wangan@google.com>
Sent: Tuesday, February 09, 2021 4:40 PM
To: Gerry Haas <gerry.haas@scv-habitatagency.org>
Cc: Bethany Windle <bethanywindle@google.com>
Subject: Re: Downtown West review

Good afternoon Gerry,

I thought I'd check in with you to see whether you've had a chance to review the material we sent over last week, and whether you have any sense of timing for feedback from your end. We have a number of documents that we'd like to begin to finalize and your input in the near term will be vital. Bethany and I would be happy to chat further if at all helpful as well.

Much appreciated!
Andy

On Fri, Feb 5, 2021 at 10:09 AM Andy Wang <wangan@google.com> wrote:

Good morning Gerry,

Thank you for your time the other day. As discussed I've attached a few figures here to aid your review. We've included on each figure a narrative as well. As supplemental reference, I've included the city staff report for the previous project entitled on the site depicted on the last page.

We do happen to have an internal design meeting with key consultants early next week, and if at all possible it would be very helpful if we could get your clarification on these two areas by the end of day Monday, Feb 8.

Thanks again!
Andy



Andy Wang | Senior Development Manager
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Sunnyvale, CA | [626.922.0436](tel:626.922.0436)

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Santa Clara Valley Habitat Plan

CONDITION 11 EXCEPTION REQUEST

Date	April 5, 2021
Subject	Stream and Riparian Setback Condition (Condition 11) Exception for South Almaden Office Project (Boston Properties), City of San Jose (#SP20-005)
Recommendation	No Recommendation
Reviewed By	Gerry Haas, Conservation Planner

The Santa Clara Valley Habitat Agency provided a recommendation on April 7, 2020 to the City of San Jose to *not approve* a Condition 11 Exception Request for a 0-foot minimum setback and to consider approval of a reduction to the 35-foot setback for the South Almaden Office (Boston Properties) Project. This memo **overrides the April 7, 2020 recommendation.**

The property is currently developed with a City owned asphalt parking lot located adjacent to the Guadalupe River and Guadalupe River Trail easement immediately west of the project site. Based on the conceptual plans and aerial images, it appears the existing parking lot extends to the west property line of the site, meaning the entire parcel is currently developed with impervious surfaces. The Project proposes demolition of the existing parking lot and subsequent construction of an office/commercial building with underground parking. The footprint of the proposed building will occupy all existing developed areas of the site with a stream setback distance of as little as 0-feet from the edge of the riparian corridor. Based on the Layout & Material Plan (L-201), it appears several wood bridges/viewing platforms, pedestrian and restricted fire access paths, landscaping, bioretention areas, and proposed upgrades to the Guadalupe River Trail are proposed on the parcel and within the existing Trail easement. It is unclear whether these proposed features extend further into the setback area than does existing development.

Habitat Plan Coverage

In order for a project to be considered covered by the Habitat Plan, it must impact land cover of some type. Therefore, redevelopment projects which are located entirely within an existing developed footprint, regardless of the distance from a stream or riparian corridor *are not subject* to the Habitat Plan. However, if the proposed project affects any wildlife and/or plant species covered by the Habitat Plan, or any sensitive land covers, including riparian, stream, or wetland land covers on the property, then coverage under the Habitat Plan is required. Projects that are not subject to

the Habitat Plan because they do not meet the criteria outlined in Section 2.3.2 of the Plan are *not* exempt from compliance with the ESA or CESA.

As proposed, the majority of this project would not be subject to the Habitat Plan because it will not affect new land cover. The only feature that appears to be covered by the Habitat Plan is an off-site bridge extending from the proposed building to the opposite bank of Guadalupe Creek. This feature would be covered by the Habitat Plan and would be subject to land cover fees if constructed.

Habitat Plan Conditions

Condition 11- Stream and Riparian Setbacks applies to all covered activities that may impact streams. This includes all development inside the urban service area where a stream or the stream setback overlaps any portion of the parcel on which a covered activity is being implemented.

Section 6.2 of the Plan provides *exemptions* from certain covered activities from complying with conditions (Page 6-3). Notably, projects that do not affect land cover are exempt, as mentioned above.

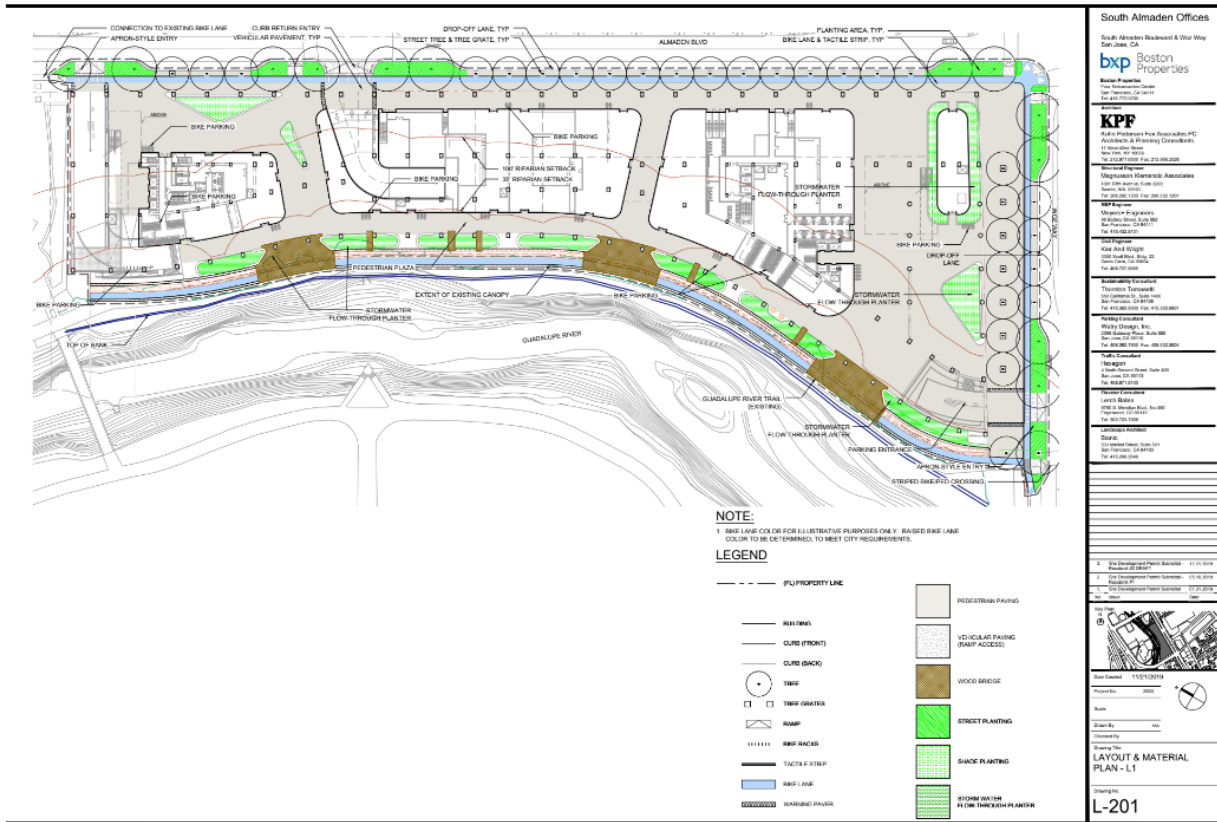
Exemptions

Section 6.3 of the Plan provides for exemptions to Condition 11 stream setbacks (page 6-53) including, but not limited to, covered activities that require work within or adjacent to streams, such as bridges, outfall installation and maintenance, recreational trails, replacement of utilities that result in no new permanent disturbance to the riparian corridor, and stream crossings essential to provide a means of access to a parcel or facility (see Exemptions for a full list). If a covered activity qualifies for an exemption, a stream setback is not applied and compliance with this condition is not required. However, other conditions may still apply and the project is still required to pay all applicable fees (e.g., land cover fee, wetland fee).

Revised Determination

Based on the conceptual plans and information provided for the Stream Setback Exception request, it appears the existing pavement extends to the property line and the proposed development would *not increase impervious surface area* within the required minimum 35-foot Stream Setback. The lone exception to the redevelopment within the existing footprint would be a bridge stream crossing providing a means of access to the parcel. Because this particular feature is exempt from Condition 11 there is no need for a stream setback exception request. And because the remainder of the site is not subject to Condition 11 by virtue of no new impacts to land cover, the entire project is not subject to Condition 11, and a Stream Setback Exception Request is not required by the Habitat Plan.

Figure 1. Site Map



Huffman-Broadway Group, Inc.

ENVIRONMENTAL REGULATORY CONSULTANTS

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18 April 2016

Jason R. Rogers, AICP
Division Manager, Planning, Building & Code Enforcement
Planning Division
City of San José
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

Subject: Biological Assessment Regarding Presence / Absence of Riparian Habitat, Delmas Mixed Use Project Site, San José, California

Dear Mr. Rogers:

As requested, this letter and its attachments provide a biological assessment that addresses the proposed Delmas Mixed Use Project Site (“Site”) and whether riparian habitat is present along the Guadalupe River adjacent to the Site, and, if so, what would be an appropriate setback from the river in consideration of existing biological conditions and City policy regarding riparian setbacks. The Site is an approximately 8.5-acre property in downtown San José that is bordered respectively on the east and west by the Guadalupe River and Los Gatos Creek (Attachment 1, Figures 1a, 1b, and 2). West Santa Clara Street forms the northern border of the Site. West San Fernando Street and the San Fernando VTA light rail station and tracks comprise the southern boundary. Delmas Avenue bifurcates the Site.

This study was conducted in response to a City of San José (City) planning staff request to address the following questions:

1. Is the Project Site itself riparian habitat?
2. Is the Guadalupe River adjacent to the Project Site riparian habitat?
3. If riparian habitat is present in the vicinity of the Site, what is an appropriate setback if other than the 100-foot setback from riparian habitat recommended in the City’s 2040 General Plan as the “standard to be achieved”?
 - a. Where would a setback begin (edge of wall, center line of channel, opposite bank, or other (i.e., what is technically appropriate)?
 - b. If development were to occur below a riparian setback area (e.g., for underground parking):
 - i. Would the area under the setback be considered habitat?
 - ii. What is an appropriate setback?

- iii. Where would a setback begin (edge of wall, center line of channel, opposite bank, or other (i.e., what is technically appropriate)?

This analysis first describes the Project Site and determines on the basis of its currently developed amenities and location that it is not riparian habitat. The remaining sections describe the adjacent Guadalupe River segment, identify criteria for assessing whether this segment of the river is riparian habitat, and if so, what setback may be appropriate.

PROJECT SITE

This section describes the Site's current land uses; describes the concrete retaining wall that separates the Site from the river; presents top of bank and river spillway elevation data; and presents current FEMA mapping.

Current Site Development / Land Use. The Project Site is 16 to nearly 21 feet above and separated from the adjacent Guadalupe River by a concrete retaining wall. The Site is developed with a paved parking lot and several buildings. The building at 374 West Santa Clara Street is the former home of the San José Water Company. This approximately 15,900-square-foot building was constructed in 1934. Deemed eligible for the National Register of Historic Places in 1990, it became a City of San José Landmark in 1991 (No. HL 91-57). Site development planning includes renovation and repurposing of this building, which is within 10 to 12 feet of the concrete retaining wall. In the City's current general plan, *Envision San José 2040* (2040 Plan), designated land use for the Site is "Downtown" (DT).

Concrete Retaining Wall. The concrete retaining wall that forms the eastern boundary of the Site is part of the Downtown Guadalupe River Flood Control Project, completed in 2004-2005 to provide 100-year flood protection benefits. The 340-million-dollar project "had the goal of combining effective flood protection with attractive parks and open space in the downtown area" (<http://explore.museumca.org/creeks/1400-OBGuadalupe.html>). The wall is one of the key engineering features of the project, as described in Muncy et al. 2010 (<http://ussdams.com/proceedings/2010Proc/1101-1108.pdf>):

A 300-foot-long, 25-foot-high concrete retaining wall backed by 5-foot-diameter, 60-foot-deep post-tensioned concrete drilled piers. The wall is within 5 feet of a two-story historical building and was designed to meet strict deflection limits.

Attachment 3 includes photos of the retaining wall.

Top of Bank and River Spillway Elevation Data. Huffman-Broadway Group, Inc. (HBG) completed a biological top of bank study at the Project Site in August 2015 (HBG 2015) and concluded that the top of bank onsite for the Guadalupe River is the top of the retaining wall at

the 85-foot NAVD 88¹ contour line (see Figures 3 and 4). No evidence of wetlands or other water bodies was observed onsite.

Kier & Wright (2015) prepared a topographic survey of the Site and adjacent river channel. Three cross sections with elevations for the retaining wall and the river channel are presented in Attachment 2. The following table summarizes elevation data obtained along Kier & Wright's cross sections and demonstrates the 16- to nearly 21-foot vertical distance between the top of bank onsite and the spillway elevation on the west side of the river adjacent to the Site.

Channel Cross Section Location	West Side Top of Bank / Wall (ft)*	West Side River Spillway Elevation (ft)*	Low Flow Channel / Riverbed (ft)*	East Side River Walkway Elevation (ft)*	East Side Top of Bank (ft)*
South End	85.0	66.0	65.0	64.8	86.8
Central	87.2	66.5	64.3	66.1	84.7
North End	81.3	65.3	65.0	64.8	83.7

* Elevation datum is NAVD 88.

FEMA Mapping. FEMA mapping on Figures 5 and 6 illustrates that the Guadalupe River segment adjacent to the Site will contain a 100-year flood within the channel. Figure 5 shows that the Zone A 100-year floodplain is mapped as extending onto the eastern fringe of the Site from the Guadalupe River; however, the Flood Insurance Rate Map (Figure 6) has the following note: "1% annual chance flood discharge contained in channel" (FIRM 06085C0234H, May 18, 2009). The northern portion of the Site is in flood Zone X, the zone between the limits of the 100-year and 500-year floods; the southern part of the Site is not shown to be within any flood zone (Figure 6). Given the Site's location atop the retaining wall, the associated channel improvements to this segment of the river for flood control, and the corresponding notation on the FIRM that Zone A flood discharge would be contained in the channel, the potential for flooding onsite appears to be *de minimis*, which further substantiates the lack of riparian conditions on the Project Site.

CONCLUSION: Riparian habitat is not present on the Project Site. The presence of the retaining wall and the Site's location atop the 16- to nearly 21-foot-high wall provide demonstrable physical evidence of its separation from the river. Furthermore, the buildings onsite and the paved parking lot, which covers the entire remainder of the property, provide hardscape that eliminates the possibility of any riparian habitat on the Project Site.

¹ NAVD 88: North American Vertical Datum of 1988.

ADJACENT GUADALUPE RIVER SEGMENT CONDITIONS

The segment of the Guadalupe River adjacent to the eastern boundary of the Project Site is a component of the Downtown Guadalupe River Flood Control Project described above. The 2040 Plan designates land in the Guadalupe River corridor adjacent to and east of the Project Site as “Open Space, Parklands and Habitat.” Here, on the west bank of the river (adjacent to the site) the concrete spillway abuts the concrete retaining wall, providing no riparian vegetation nor area where it may voluntarily emerge, as seen in the photos in Attachment 3. The concrete channel of the river has a cobble-lined low-flow channel in the center. The riverbed was dry at the time of HBG’s top of bank investigation in August 2015, but evidence of surface water flow was observed: driftlines of woody debris and trash, sediment deposits, and water staining along the riverbed and banks. Attachment 3 includes photos showing the dry channel. Photos that show water and low weedy vegetation and algal bloom in the river adjacent to the Site are presented in the “San Francisco Bay Area Parks, Recreation, and Travel” photo blog by Ron Horii, a docent for the Santa Clara Parks and Recreation Department, which is online at <http://www.rhorii.com/GRPG/GRPG2.html>. Those photos demonstrate that vegetation in the river, when present, is not riparian.

The east bank of the Guadalupe River across from the Project Site is an integral part of the Downtown Guadalupe River Flood Control Project, with top of bank elevations (see table above) similar to those on the west bank adjacent to the Site. The east side of the river segment is developed with a portion of the paved mixed-use Guadalupe River Trail and park system and a series of stair-stepped concrete terraces landscaped with flood-tolerant species, including some species that may occur in riparian areas.

The following sections define the City’s riparian corridor definitions and policy, which are used to determine if this segment of the river would be classified as riparian.

CITY RIPARIAN CORRIDOR AND SETBACK POLICY

To address the City’s riparian habitat and setback questions, HBG reviewed three documents that currently define the City of San José’s riparian corridor policy:

- the City’s 1999 *Riparian Corridor Policy Study*
- the *Santa Clara Valley Habitat Plan* (the “*Habitat Plan*”)
- *Envision San José 2040 General Plan*, the City’s current General Plan (the “2040 Plan”).

The City’s policy of protecting riparian corridors is summarized in a June 5, 2015, Memorandum to the Community & Economic Development Committee from Harry Freitas, Director of the City’s Department of Planning, Building & Code Enforcement:

Protection of riparian corridors from development provides many benefits to the

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City including but not limited to protecting the habitat of endangered species, maintaining or improving water quality, reducing impacts from urban runoff and flooding, preserving urban forests, and enhancing green open space. The City's current riparian policies and requirements, as embodied in the General Plan and Habitat Plan, generally require at least a 100-foot setback for development projects. (City of San José 2015a)

The memo notes, however, that exceptions exist to the 100-foot setback policy.

The following paragraphs describe the three documents on which the City bases its riparian corridor policies and whether the Project Site, based on its location, would be subject to a riparian setback. Because the 2040 Plan relies on the *Riparian Corridor Policy Study* and the *Habitat Plan* to define the riparian corridor and the establishment of riparian setbacks, the requirements of these key policy documents are described first.

Riparian Corridor Policy Study (1999)

<https://www.sanjoseca.gov/DocumentCenter/Home/View/376>

The *Riparian Corridor Policy Study* ("Study") analyzed streams and riparian corridors within the City and addressed in detail how development should protect and preserve these corridors. Following its completion, the recommendations and guidance in the Study have been implemented through the development review process to include, generally, a 50- to 100-foot setback for new development adjacent to a riparian corridor, lighting that is compatible with habitats in riparian corridors, and measures to protect water quality and fish and wildlife habitats.

The Study defined "riparian corridor" as follows

For purposes of this study, a riparian corridor includes any defined stream channels including the area up to the bank full-flow line, as well as all riparian (streamside) vegetation in contiguous adjacent uplands. Characteristic woody riparian vegetation species could include (but are not limited to): willow, *Salix* sp.; alder, *Ainus* sp.; box elder, *Acer negundo*, Fremont cottonwood, *Populus fremontii*; bigleaf maple, *Acer macrophyllum*; western sycamore, *Platanus racemosa*; and oaks, *Quercus* sp. Stream channels include all perennial and intermittent streams shown as a solid or dashed blue line on USGS topographic maps, and ephemeral streams or "arroyos" with well-defined channels and some evidence of scour or deposition. (Study, page 3)

The Study, however, acknowledges that "there is no accepted standard riparian corridor definition" and notes that, "Since riparian corridors may provide habitat for endangered species

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and/or Species of Special Concern, they are often referred to as 'sensitive resource/wildlife habitat areas'" (Study, page 3). The Study identifies the Guadalupe River as one of the two major watercourses in the Santa Clara Valley (page 13), but does not specify that all 19 miles of the river are riparian.

The "Riparian Values" section of the Study includes the following, which emphasizes the natural vegetated and wildlife habitat aspects of a riparian habitat:

The streams within the City of San José are a valuable natural resource supporting a diversity of habitats and a great variety of aquatic and terrestrial resources. Several distinct habitats occur along the stream corridors, such as riparian, freshwater marsh, salt-brackish water marsh, and transitional upland habitats. Numerous species of plants, fish, and wildlife occur within the riparian corridors, including several species identified as sensitive by State and Federal resource agencies. Streams and riparian corridors are also a valuable visual/aesthetic resource, open space and recreational resources, and often are the City's densest urban forest resources.

Riparian systems provide very important habitat for aquatic invertebrates, fish, amphibians, birds and mammals. A number of species are dependent on a healthy riparian community for survival. Riparian habitat widths are necessary to maintain some breeding bird populations. (Study, page 2)

The Study included separately a map-based inventory of the City's riparian corridors, with a set of maps that was available at City offices but not included with the Study itself. Given that the Study was first published in 1994 and revised in 1999, the Guadalupe River in the ensuing 15-22 years has been – and continues to be – modified by major flood protection projects.

Chapter 3 of the Study, "Riparian Corridor Development Guidelines," provides guidelines for the following riparian habitat types in both natural and modified channels (Page 29):

- oak-sycamore riparian forest;
- cottonwood-willow riparian forest;
- grassland-ruderal;
- freshwater marsh and salt-brackish marsh;
- ornamental landscaping-urban forest; and
- herbaceous riparian.

However, in describing the applicability of the guidelines, the Study states on page 29:

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These guidelines generally do not apply to bare modified earthen channels, modified concrete-rock channels, or modified channels-underground culverts when these channels contain little or nothing of riparian value. (HBG italics)

Using the classification system in the Study, the Guadalupe River segment adjacent to the Site closely matches the “modified concrete-rock channel” type of riverbed that provides “little or nothing of riparian value.” This channel type is described on Figure 9 of the Study:

Generally this channel type is devoid of vegetation.... Concrete and rock-lined channels provide limited wildlife value, particularly for riparian-associated species.... The concrete or rock-lined channel precludes the establishment of vegetation and, as such, limits its value to fisheries.... Sensitive Species: None. (Study, page 25)

In other words, the river segment adjacent to the Site does not have the “riparian values” identified above and stated in the Study on page 2: it is not a “natural resource supporting a diversity of habitats and a great variety of aquatic and terrestrial resources,” which may include “riparian, freshwater marsh, salt-brackish water marsh, and transitional upland habitats.”

Development Guideline 1C, “Setback Areas,” finds that “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*” (Study, page 31; HBG italics). Further, the setback guideline explains:

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. (Study, page 31)

The configuration of the Guadalupe River flood control segment adjacent to the Site, with its concrete spillway abutting the concrete retaining wall, provides no riparian vegetation nor area where it may voluntarily emerge. Similarly, vegetation within the shallow low-flow channel in the center of the spillway was sparse and weedy during HBG’s August 2015 Site visit. The Ron Horii photos cited above were taken when there was water in the channel, dominated by algal bloom, with no riparian vegetation observed. The mixed use trail along the east bank of the river encourages “human activities,” which, together with the lack of “riparian habitat values” for terrestrial and aquatic wildlife along the river segment, is likely to discourage “a healthy riparian community” for wildlife, although, as part of the City’s designated Guadalupe River Park & Gardens “grand park” (2040 Plan Goal PR-5.1, Chapter 4, p.53), it serves as a substantial

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and inviting downtown recreation area for people. And although the east bank of the river across from the Site has landscaping that enhances the trail, including some species that may be found in riparian areas, its primary function is as part of the Downtown Guadalupe River Flood Control Project system.

Comparison of the river segment adjacent to the Site with the Study's definitions of riparian corridor and riparian values found that the area does not meet riparian corridor / habitat values or criteria, and, because the Study's Development Guidelines for setback areas apply only to areas adjacent to *riparian* habitat, and not to areas such as the concrete and rock Guadalupe River channel segment adjacent to the Site, it is concluded that the Guadalupe River segment that abuts the Site is not riparian habitat and thus riparian setback criteria would not apply, particularly given the physical separation of the Site from the river.

CONCLUSION: On the basis of the riparian criteria and values described in the Riparian Corridor Study, the segment of the Guadalupe River adjacent to the Project Site is not riparian habitat and therefore, the setback requirements of the City's Riparian Corridor Policy Study would not apply to the Project Site along the Guadalupe River flood control channel.

Santa Clara Valley Habitat Plan (2012)
[\(<http://scv-habitatagency.org/178/Final-Habitat-Plan>\)](http://scv-habitatagency.org/178/Final-Habitat-Plan)

The *Santa Clara Valley Habitat Plan (Habitat Plan; ICF International 2012)* is both a habitat conservation plan (HCP) intended to fulfill the requirements of the federal Endangered Species Act and a natural community conservation plan to fulfill the requirements of the California Natural Community Conservation Planning Act (NCCP Act). The plan was prepared by ICF in a collaborative effort by the "Local Partners": County of Santa Clara (County), the Santa Clara Valley Water District (SCVWD), the Santa Clara Valley Transportation Authority (VTA) and the cities of Gilroy, Morgan Hill, and San José. The San José City Council adopted the *Habitat Plan* on January 29, 2013.

The *Habitat Plan* provides a framework for promoting the protection and recovery of natural resources, including endangered species, while streamlining the permitting process for planned development, infrastructure, and maintenance activities. The *Habitat Plan* allows the Local Partners to receive endangered-species permits for activities and projects they conduct and for those under their jurisdiction. Eighteen animal and plant species are covered by the *Habitat Plan*.

The Santa Clara Valley Habitat Agency (Habitat Agency) is the agency primarily responsible for executing the requirements of the *Habitat Plan*, federal and state endangered species permits, and the Implementing Agreement (the legal document between the Wildlife Agencies and Co-

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Permittees to implement the Plan). The City of San José, among others, is responsible for *Habitat Plan* compliance with respect to private development projects within its jurisdiction and for ensuring that its own public projects are carried out in conformance with the Plan.

The *Santa Clara Valley Habitat Plan* defines “riparian habitat” as follows:

Riparian habitat or riparian vegetation. Riparian vegetation is associated with river, stream, or lake banks and floodplains. Riparian vegetation is also defined by USFWS (2009) as plant communities contiguous to and affected by surface and subsurface hydrologic features of perennial or intermittent lotic and lentic water bodies (i.e., rivers, streams, lakes, or other watercourses). Riparian areas have one or both of the following characteristics: 1) distinctively different vegetation than adjacent areas, 2) species similar to adjacent areas but exhibiting more vigorous or robust growth forms due to the greater availability of surface and subsurface water. (*Habitat Plan*, page 6-46)

In an email dated March 8, 2016, to Kelsey Steffen, Planner/Environmental Review at the City of San José, Edmund Sullivan, Executive Officer at the Habitat Agency, wrote:

Based on my review of project specifics, the Habitat Agency has determined that Condition 11 does not apply to the Delmas Avenue Mixed Use Project along the Guadalupe River because the site is currently 100% imper[v]ious surface up to and including the levy [sic] wall. In fact, we believe this project is exempt from Habitat Plan coverage with only Nitrogen fees possibly applying.

Condition 11, Stream and Riparian Setbacks, is described in Section 6.6 of the *Habitat Plan*. The Plan states:

This condition applies to all covered activities that may impact streams. This includes all development inside the urban service area where a stream or the stream setback overlaps any portion of the parcel on which a covered activity is being implemented.” (*Habitat Plan*, page 6-44)

However, “covered activities” are:

Those activities addressed in the Plan and for which the Permittees will seek a Natural Community Conservation Planning Act take permit pursuant to Section 2835 of the California Natural Community Conservation Planning Act, and an incidental take permit pursuant to Section 10 of the federal Endangered Species Act. (*Habitat Plan*, Appendix A, Glossary)

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CONCLUSION: The Habitat Agency has determined that *Habitat Plan Condition 11*, which addresses stream and riparian setbacks, does not apply to the Project. In other words, the Habitat Agency has found that the Project is not a “covered activity,” as defined in the *Habitat Plan*; that the Project will not “impact streams”; and therefore, since Condition 11 is not applicable, a riparian setback is not required for the Project Site.

Envision San José 2040 General Plan (2011)
[\(<https://www.sanJoseca.gov/index.aspx?nid=1737>\)](https://www.sanJoseca.gov/index.aspx?nid=1737)

The Envision San José 2040 General Plan (2040 Plan) includes a Goal, Policies, and Actions to protect and enhance riparian corridors in the City. The Goal for Riparian Corridors (ER-2) in Chapter 3, Environmental Leadership, of the 2040 Plan is to:

Preserve, protect, and restore the City’s riparian resources in an environmentally responsible manner to protect them for habitat value and recreational purposes.²

The 2040 Plan seeks to ensure that new development projects “adjacent to riparian corridors in San José are consistent with the City’s *Riparian Corridor Policy Study* and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP)” (Policy ER-2.1); the *Santa Clara Valley Habitat Plan* discussed above satisfies that criterion. The 2040 Plan recommends “... that a *100-foot setback from riparian habitat* is the standard to be achieved in all but a limited number of instances, only *where no significant environmental impacts would occur*” (Policy ER-2.2; HBG italics). The 2040 Plan also advises that new development projects are to be designed to protect adjacent riparian habitat from the biological impacts of “lighting, exotic landscaping, noise, and toxic substances into the riparian zone” (Policy ER-2.3), and endorses restoration of riparian habitat through planting of native plants and removal of exotic/invasive species (Policy ER-2.5).

The two documents the 2040 Plan relies upon in defining riparian policy are the 1999 *Riparian Corridor Policy Study* and the *Santa Clara Valley Habitat Plan*. Analysis herein has resulted in findings that riparian setback requirements of the City’s *Riparian Corridor Policy Study* and the

² The 2040 General Plan includes the following Riparian Corridor Action item:

Develop a City Council Policy based on the City’s Riparian Corridor Policy Study and HCP/NCCP to successfully implement the riparian goals and policies of the Envision General Plan, which recognizes that a 100-foot setback is the standard to be achieved in all but a limited number of instances, where no significant environmental impacts would occur. (Chapter 3, ER-2.6, page 28)

To implement this action item, development of a Riparian Corridor Policy / Ordinance Study Work Plan is ongoing through various City committees.

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Habitat Agency are not applicable to the Project Site because the adjacent Guadalupe River flood control channel does not meet riparian corridor or habitat criteria.

CONCLUSION. The City’s recommendation for 100-foot setback from riparian habitat is not applicable for the Project Site; riparian habitat is not present in the adjacent river segment and no significant environmental impacts would occur.

APPROPRIATE BELOW GROUND STREAM SETBACK

The City requested an analysis of the potential for a riparian setback if development were to occur below ground surface, for example, for an underground parking garage, at the Project Site. However, the above analysis using riparian habitat criteria from the 1999 Riparian Corridor Study and the *Santa Clara Valley Habitat Plan* determined that the segment of the Guadalupe River adjacent to the Site is not riparian habitat and therefore no riparian setback would be necessary on the Project Site.

CONCLUSION: The analysis is applicable to the below grade portion of the Site; no riparian setback would be required.

CONCLUSIONS

The conclusions in the previous sections are carried forward below:

- Riparian habitat is not present on the Project Site. The presence of the retaining wall and the Site’s location atop the 16- to nearly 21-foot-high wall provide demonstrable physical evidence of its separation from the river. Furthermore, the buildings onsite and the paved parking lot, which covers the entire remainder of the property, provide hardscape that eliminates the possibility of any riparian habitat on the Project Site.
- On the basis of the riparian criteria and values described in the *Riparian Corridor Policy Study*, the segment of the Guadalupe River adjacent to the Project Site is not riparian habitat and therefore, the setback requirements of the City’s *Riparian Corridor Policy Study* would not apply to the Project Site along the Guadalupe River flood control channel.
- The Habitat Agency has determined that *Habitat Plan* Condition 11, which addresses stream and riparian setbacks, does not apply to the Project. In other words, the Habitat Agency has found that the Project is not a “covered activity,” as defined in the *Habitat Plan*; that the Project will not “impact streams”; and therefore, since Condition 11 is not applicable, a riparian setback is not required for the Project Site.

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- The two documents the 2040 Plan relies upon in defining riparian policy are the 1999 *Riparian Corridor Policy Study* and the *Santa Clara Valley Habitat Plan*. Analysis herein has resulted in findings that riparian setback requirements of the City's *Riparian Corridor Policy Study* and the Habitat Agency are not applicable to the Project Site because the adjacent Guadalupe River flood control channel does not meet riparian corridor or habitat criteria. Therefore the City's recommendation for 100-foot setback from riparian habitat is not applicable for the Project Site; riparian habitat is not present in the adjacent river segment and no significant environmental impacts would occur.
- The analysis using riparian habitat criteria from the 1999 *Riparian Corridor Policy Study* and the *Santa Clara Valley Habitat Plan*, which determined that the segment of the Guadalupe River adjacent to the Site is not riparian habitat and therefore that no riparian setback would be necessary, is applicable to the below grade portion of the Site; and no riparian setback would be required for development below grade.

As a qualified biologist as defined in the *Habitat Plan*,³ I, Terry Huffman, do not believe, on the basis of my review of the technical information and relevant policy documents described above and my observations at the Project Site and its vicinity, that there would be a significant biological impact to this segment of the Guadalupe River if new project development were to occur above or below ground surface at the Project Site.

If you have any questions, please feel free to contact Terry Huffman at 415.385.1045 or thuffman@h-bgroup.com.

Sincerely,



Terry Huffman, PhD
Wetlands Regulatory Scientist



Tunstall Lang
Senior Environmental Specialist

Attachments: Attachment 1. Figures
Attachment 2. Project Site Cross Sections
Attachment 3. Representative Photos

Literature Cited

City of San José. 1999. *Riparian Corridor Policy Study*. Prepared by: The Habitat Restoration

³ Qualified biologists are those biologists who have the experience, education, and training necessary to perform the tasks described in this Plan accurately and in an unbiased fashion. (*Habitat Plan*, page 6-93)

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ATTACHMENT 1

Figures

Figure 1a	Project Location
Figure 1b	Topographic Mapping of the Delmas Mixed Use Project Site Provided by Kier & Wright Engineers and Surveyors with HBG Study Sites Shown
Figure 2	2015 High Resolution Google Earth Image of the Delmas Mixed Use Project Site, San Jose, CA
Figure 3	Topographic Top of Bank Boundary, Delmas Mixed Use Project Site, San Jose, CA
Figure 4	Top of Bank Boundary with Edge of Tree Canopy Drip Line Shown, Delmas Mixed Use Project Site, San Jose, CA
Figure 5	FEMA Floodplain Boundary, Delmas Mixed Use Project Site, San Jose, CA
Figure 6	FEMA Flood Insurance Rate Map, Delmas Mixed Use Project Site, San Jose, CA

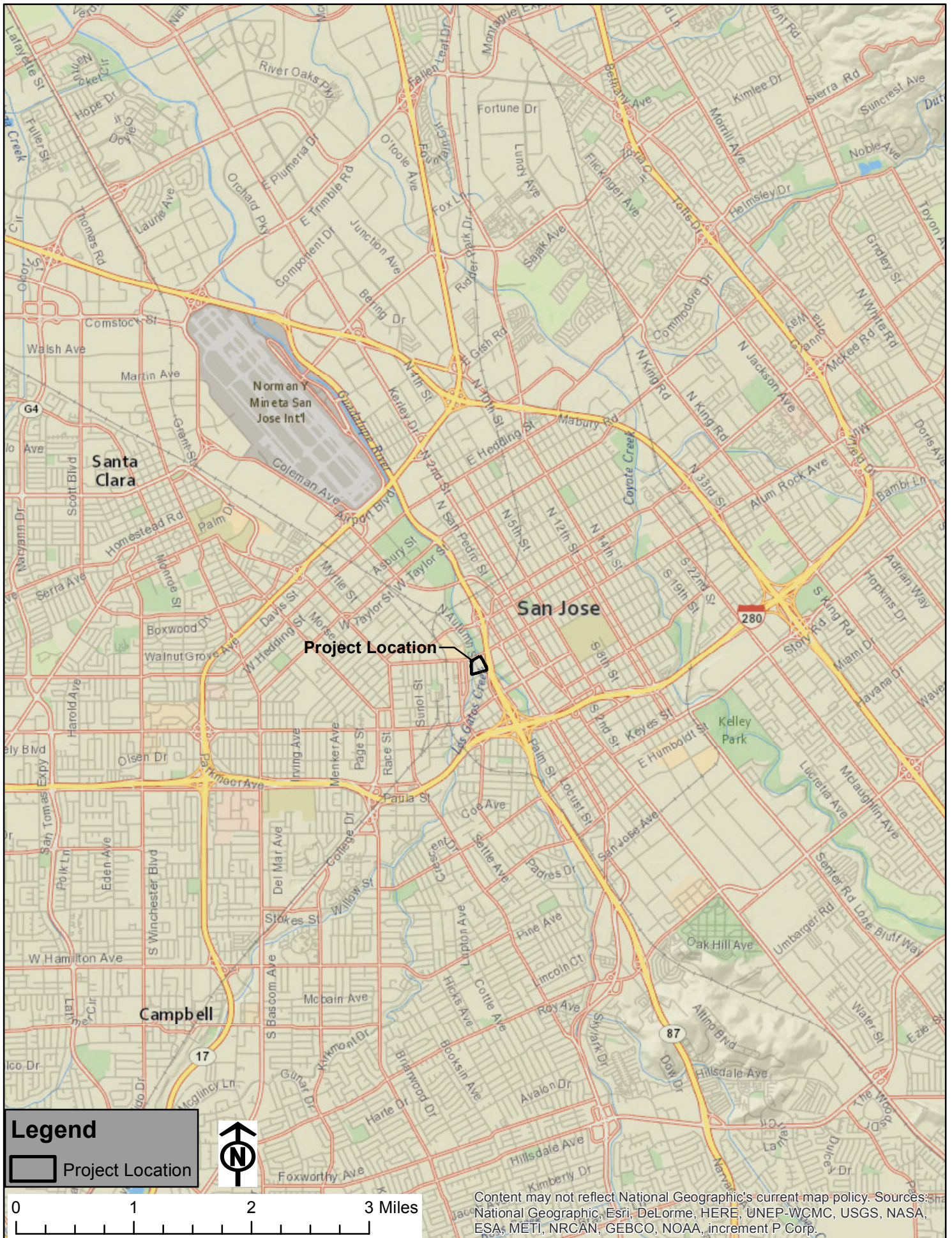


Figure 1a. Project Location

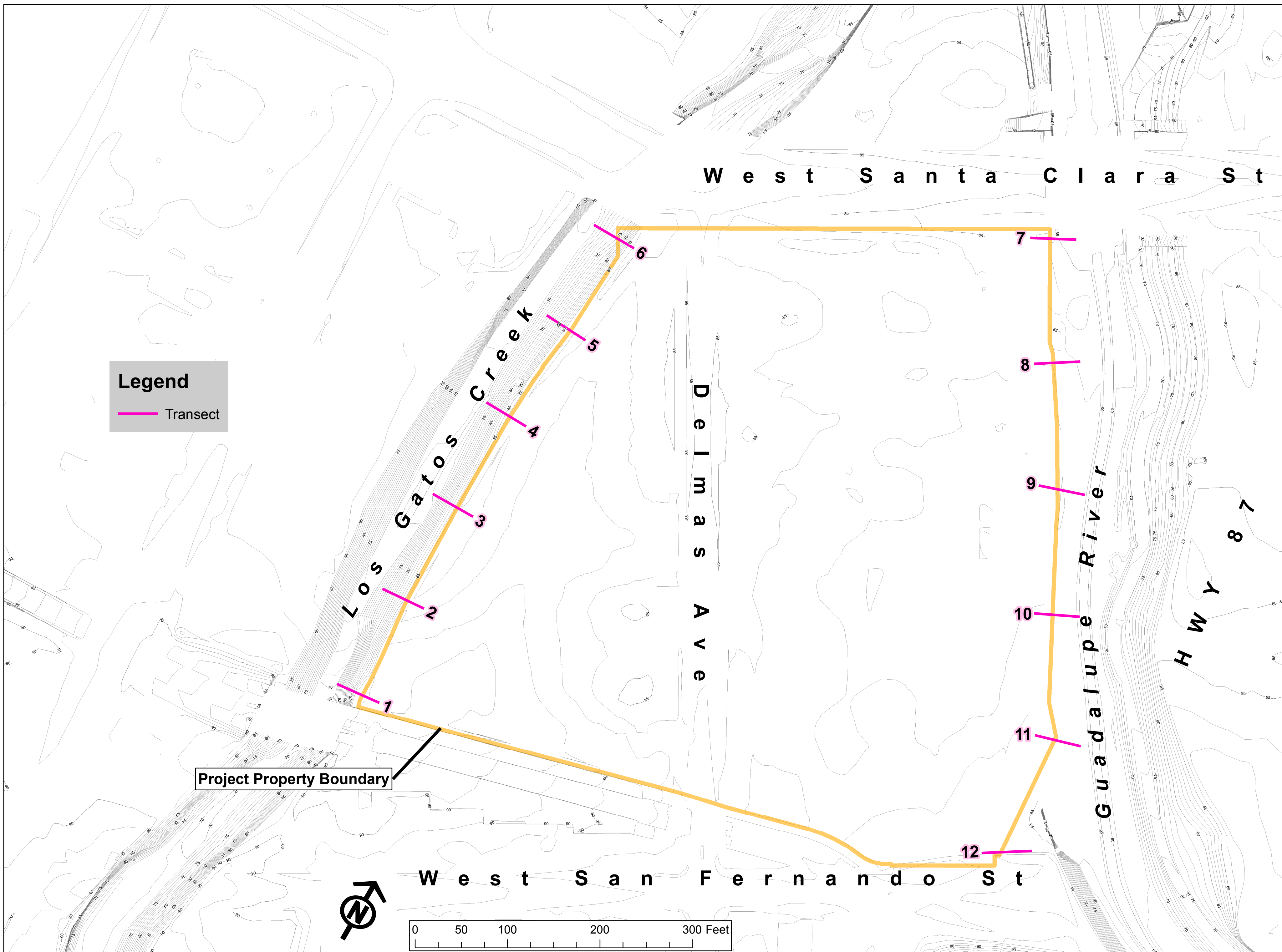
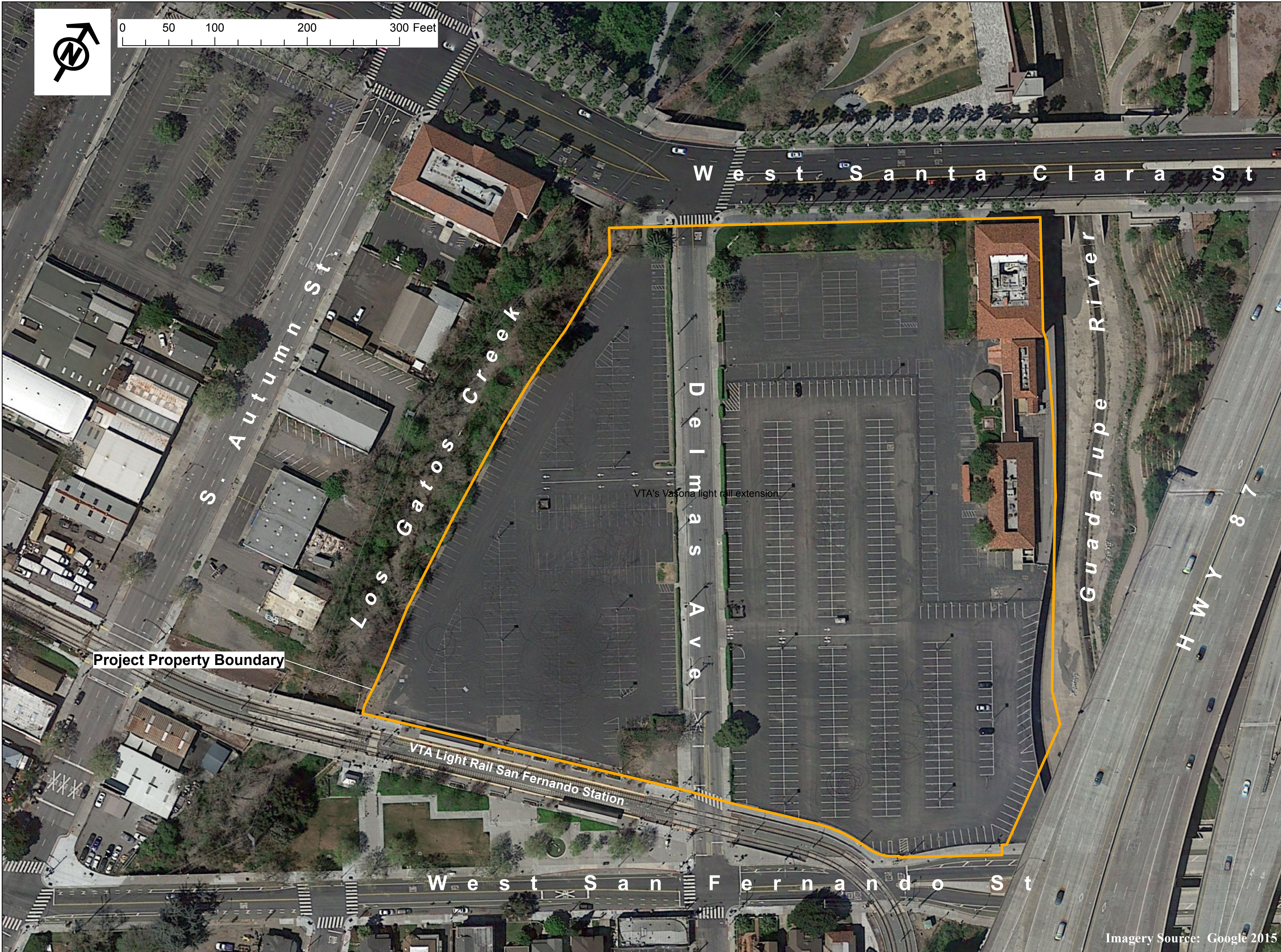


Figure 1b. Topographic Mapping of the Delmas Mixed Use Project Site Provided by Kier & Wright Civil Engineers and Surveyors



0 50 100 200 300 Feet



Project Property Boundary

VTA's Vasona light rail extension

Imagery Source: Google 2015

Figure 2. 2015 High Resolution Google Earth Image of the Delmas Mixed Use Project Site, San Jose, CA

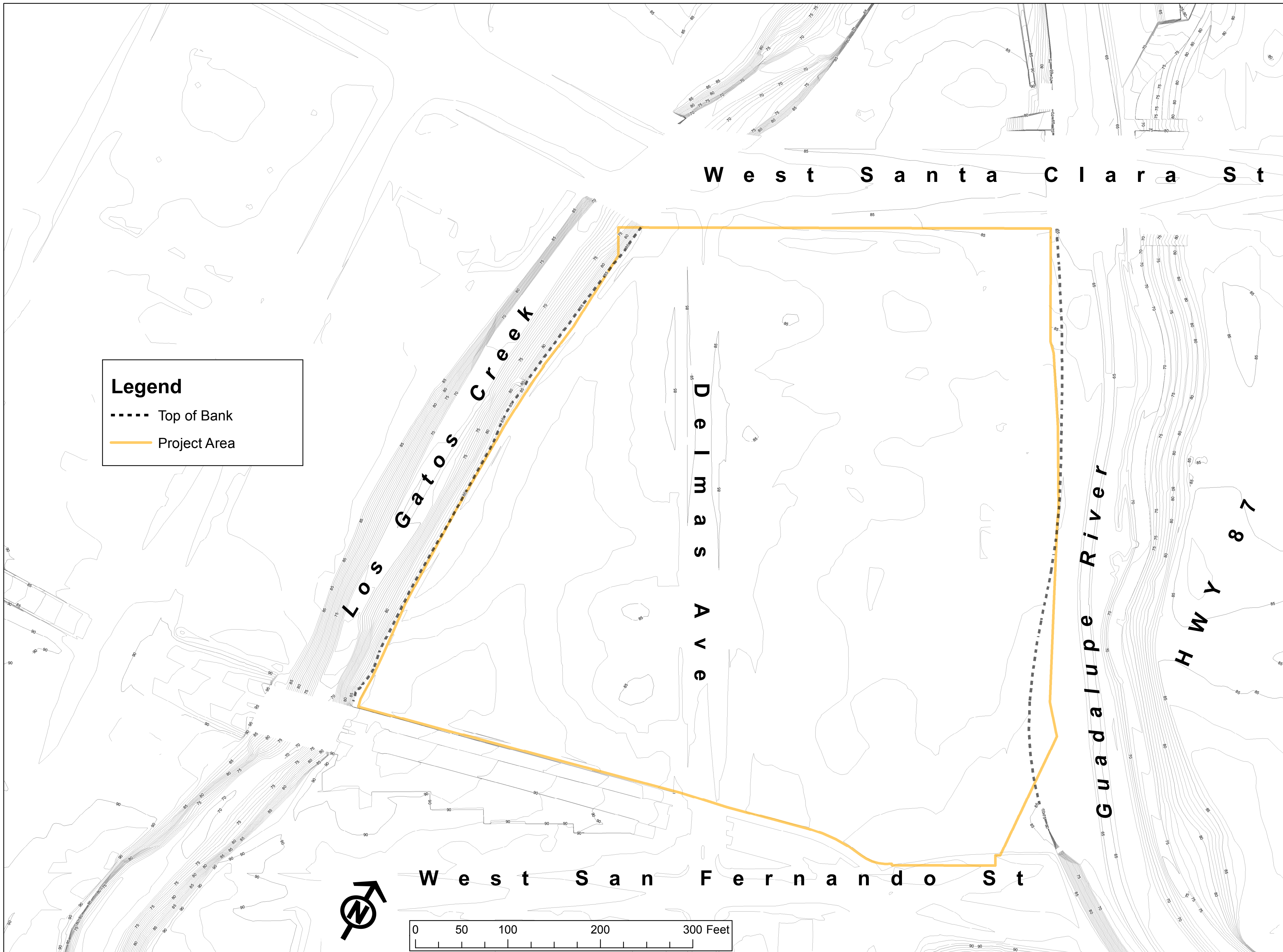


Figure 3. Topographic Top of Bank Boundary, Delmas Mixed Use Project Site, San Jose, CA

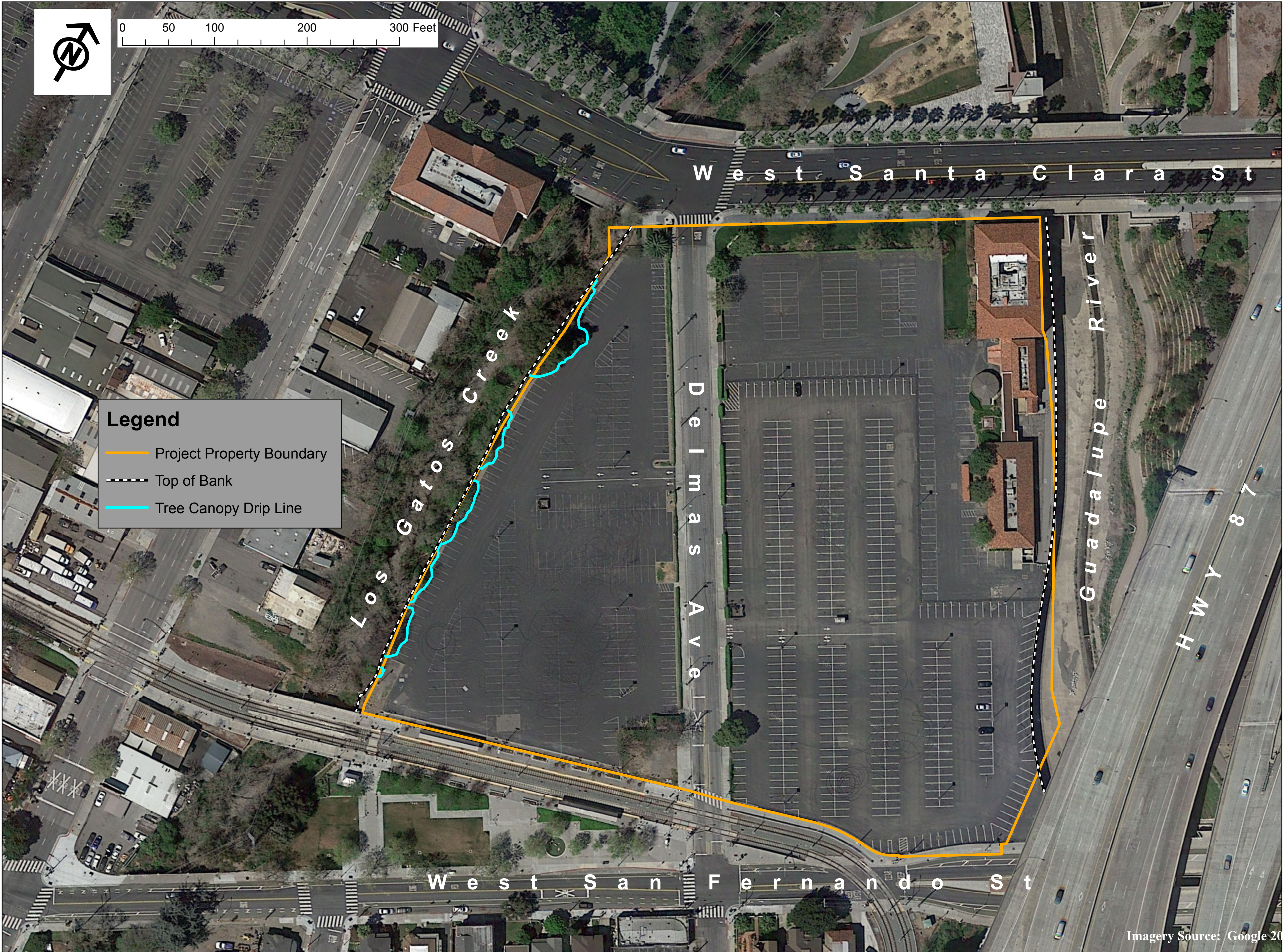


Figure 4. Top of Bank Boundary with Edge of Tree Canopy Drip Line Shown, Delmas Mixed Use Project, San Jose, CA

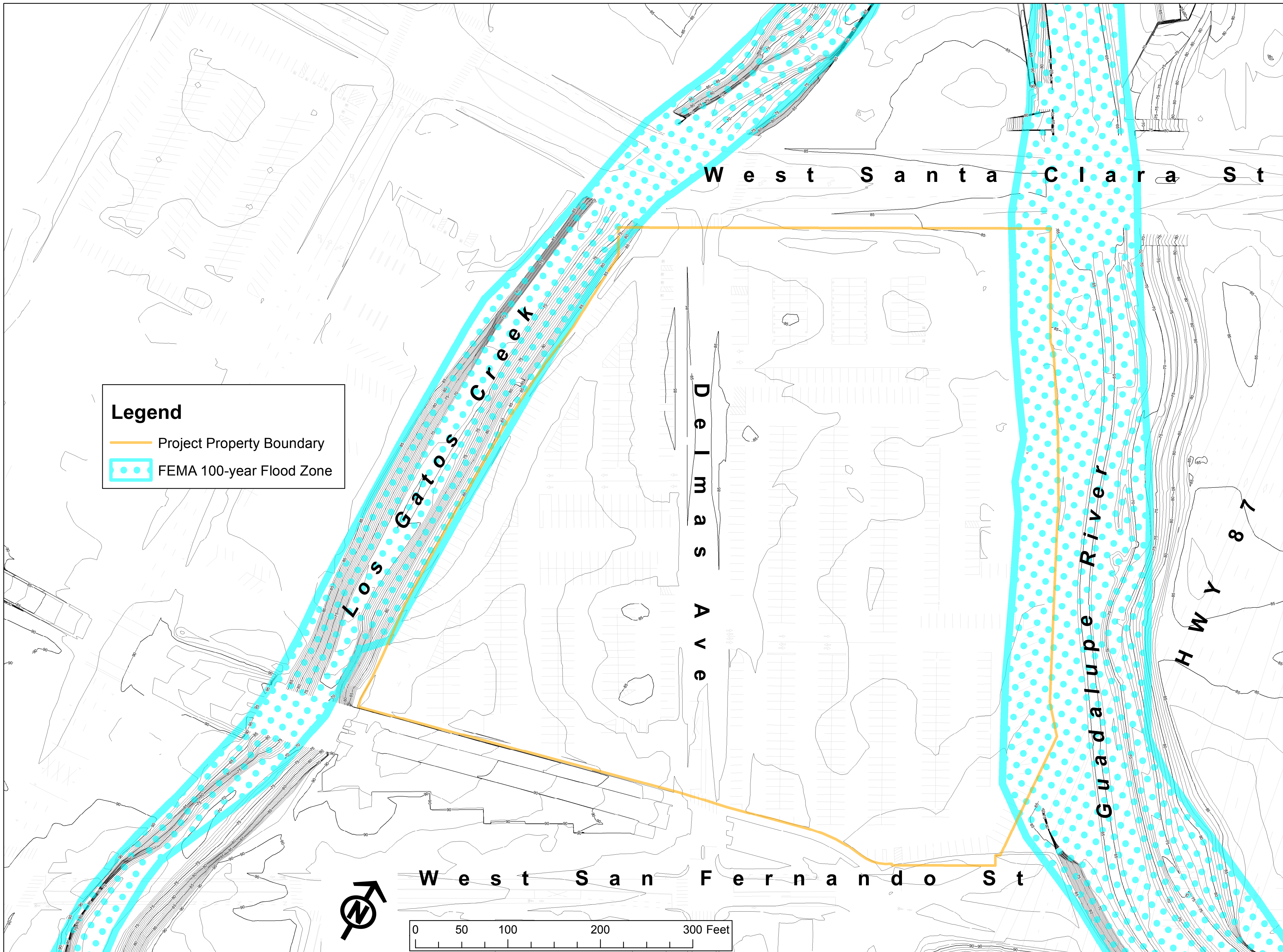


Figure 5. FEMA Floodplain Boundary, Delmas Mixed Use Project Site, San Jose, CA

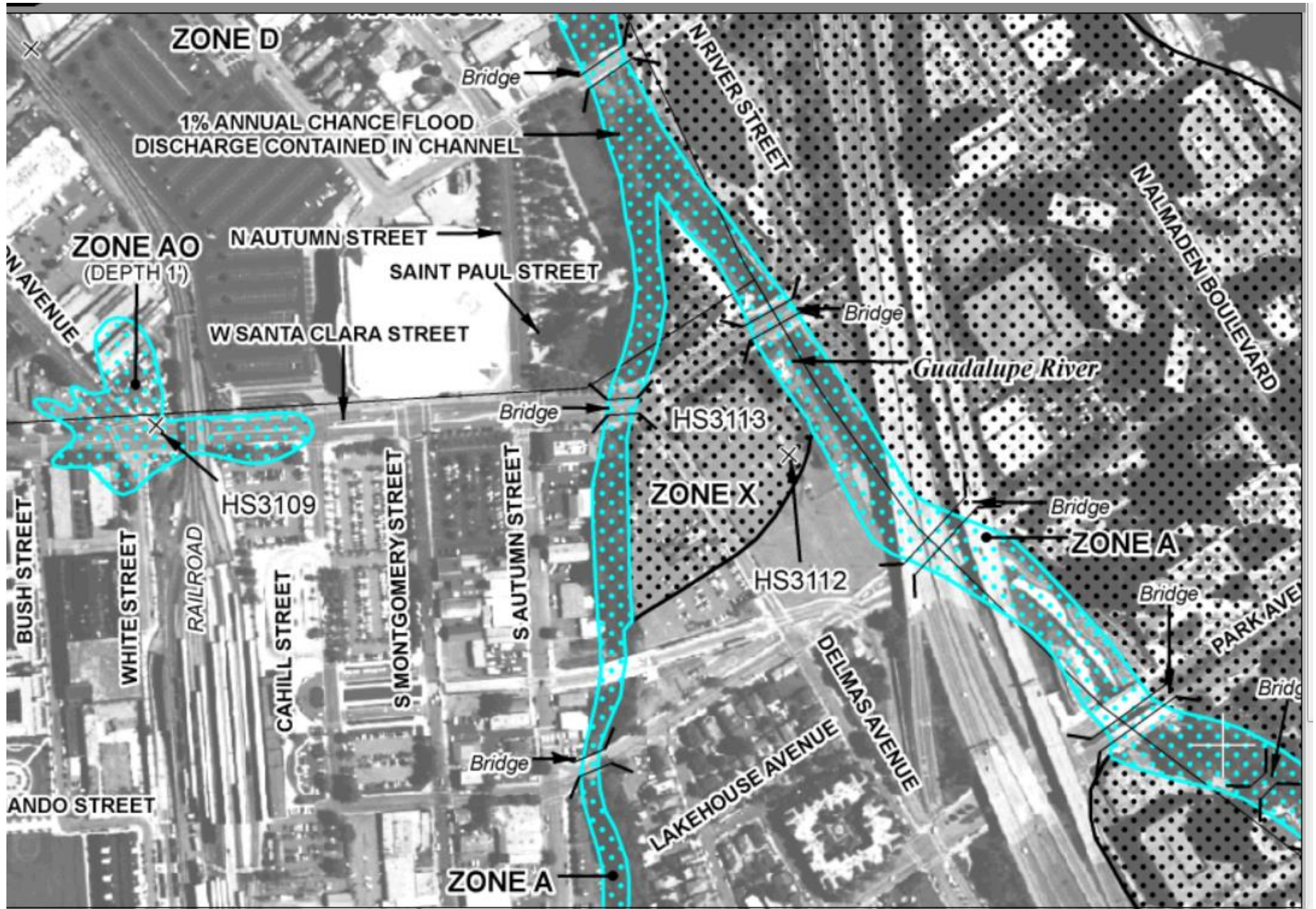
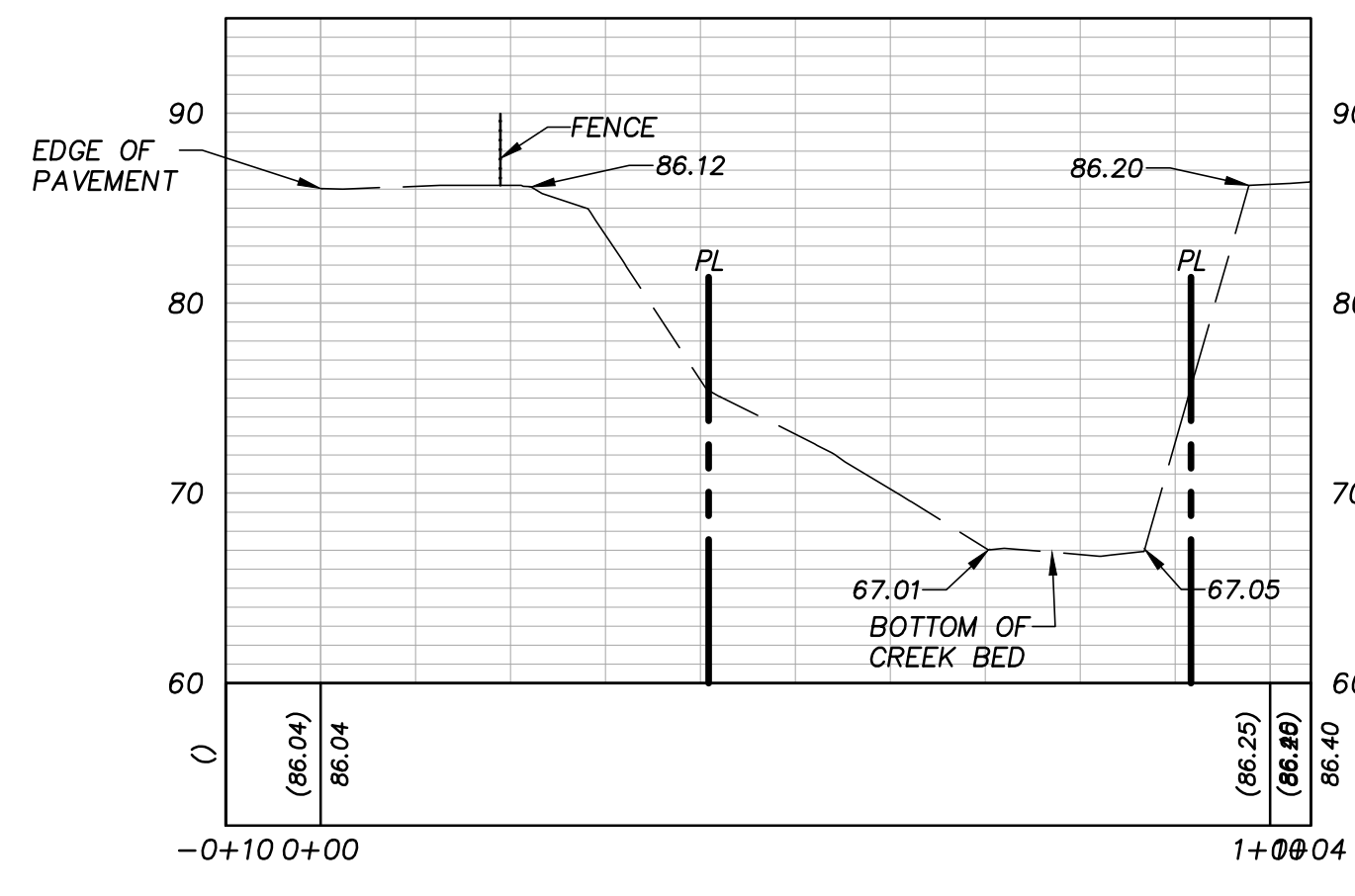


Figure 6. FEMA Flood Insurance Rate Map, Delmas Mixed Use Project Site, San José, California (Portion of FIRM 06085C0234H, May 18, 2009)

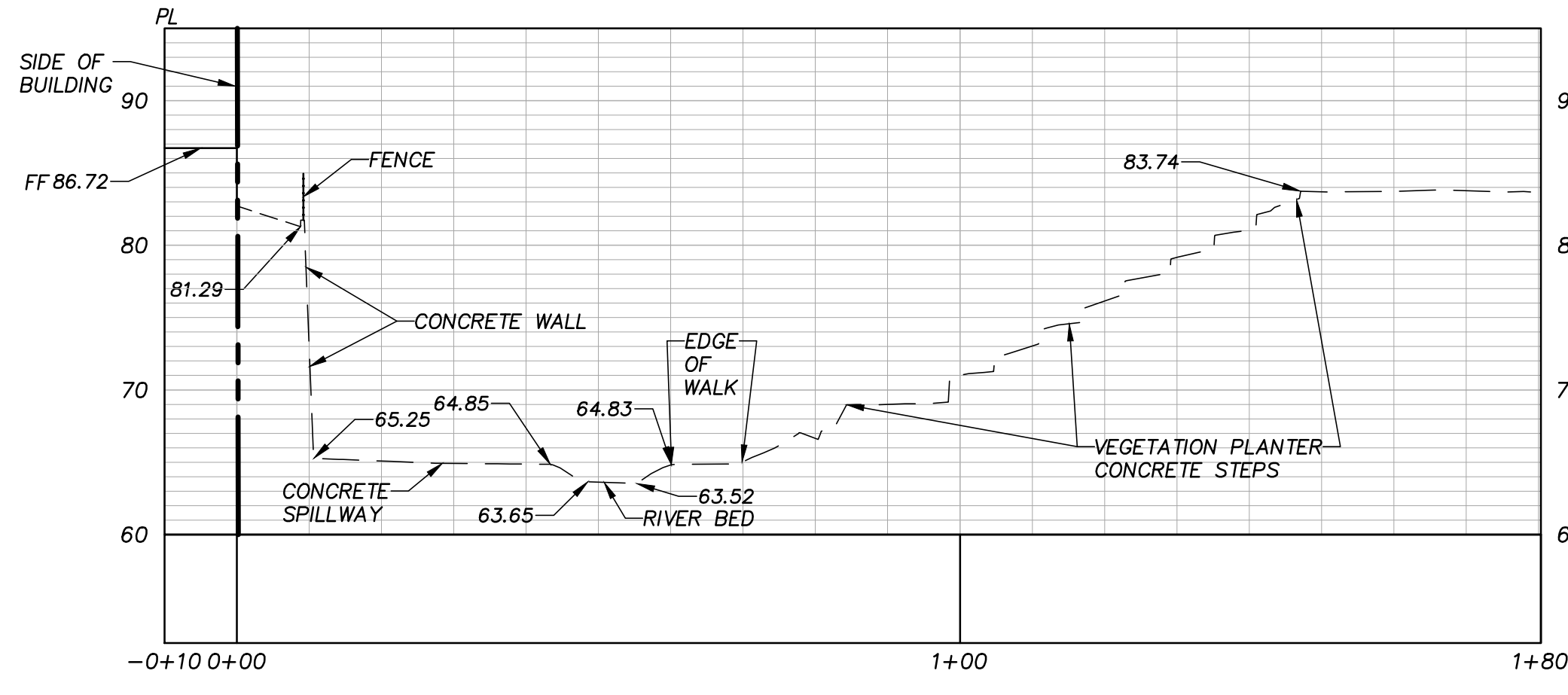
ATTACHMENT 2
Project Site Cross Sections



PROFILE
1" = 20' HORIZ.
1" = 10' VERT.

NORTH LOS GATOS CREEK

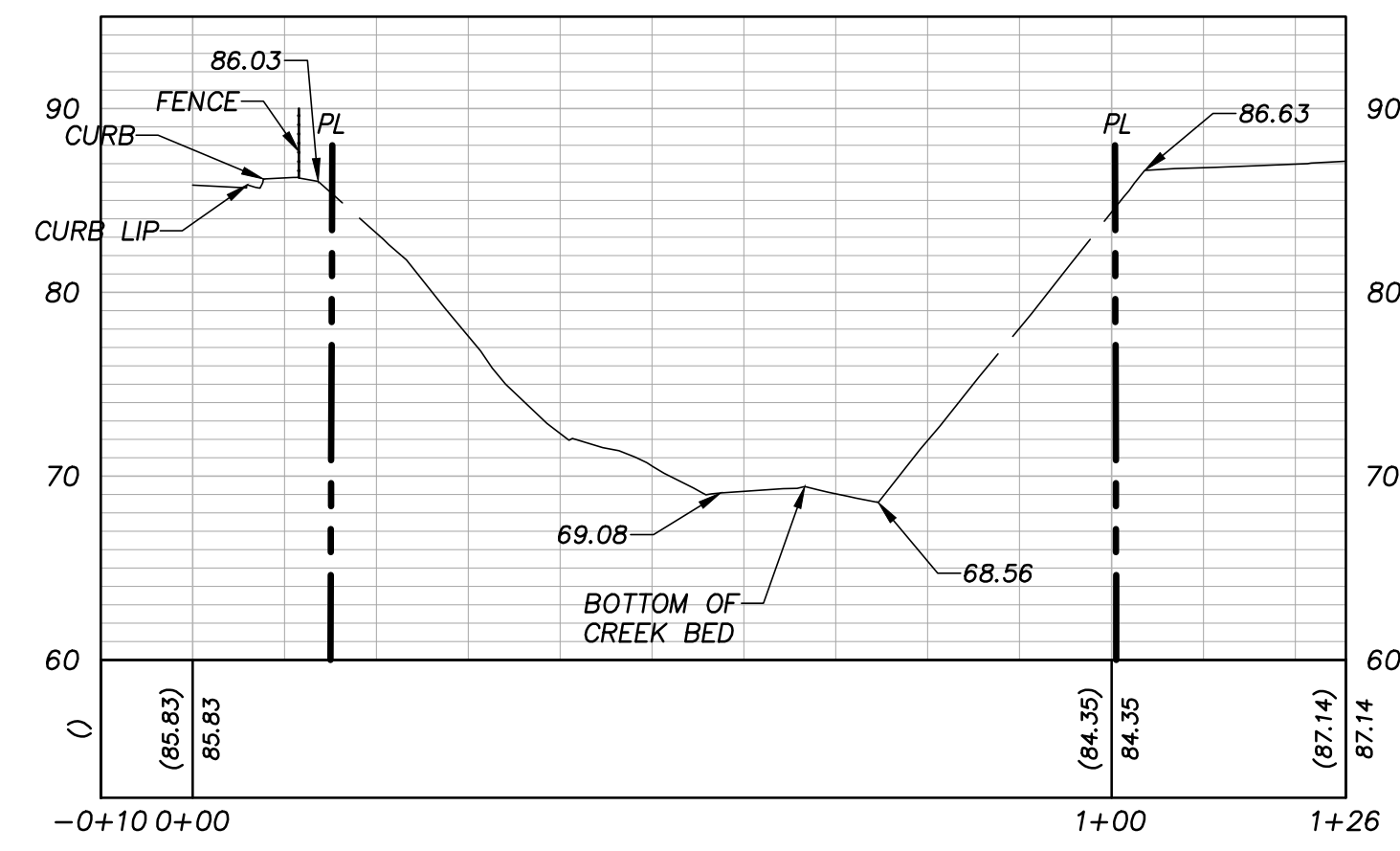
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PROFILE
1" = 20' HORIZ.
1" = 10' VERT.

NORTH GUADALUPE RIVER

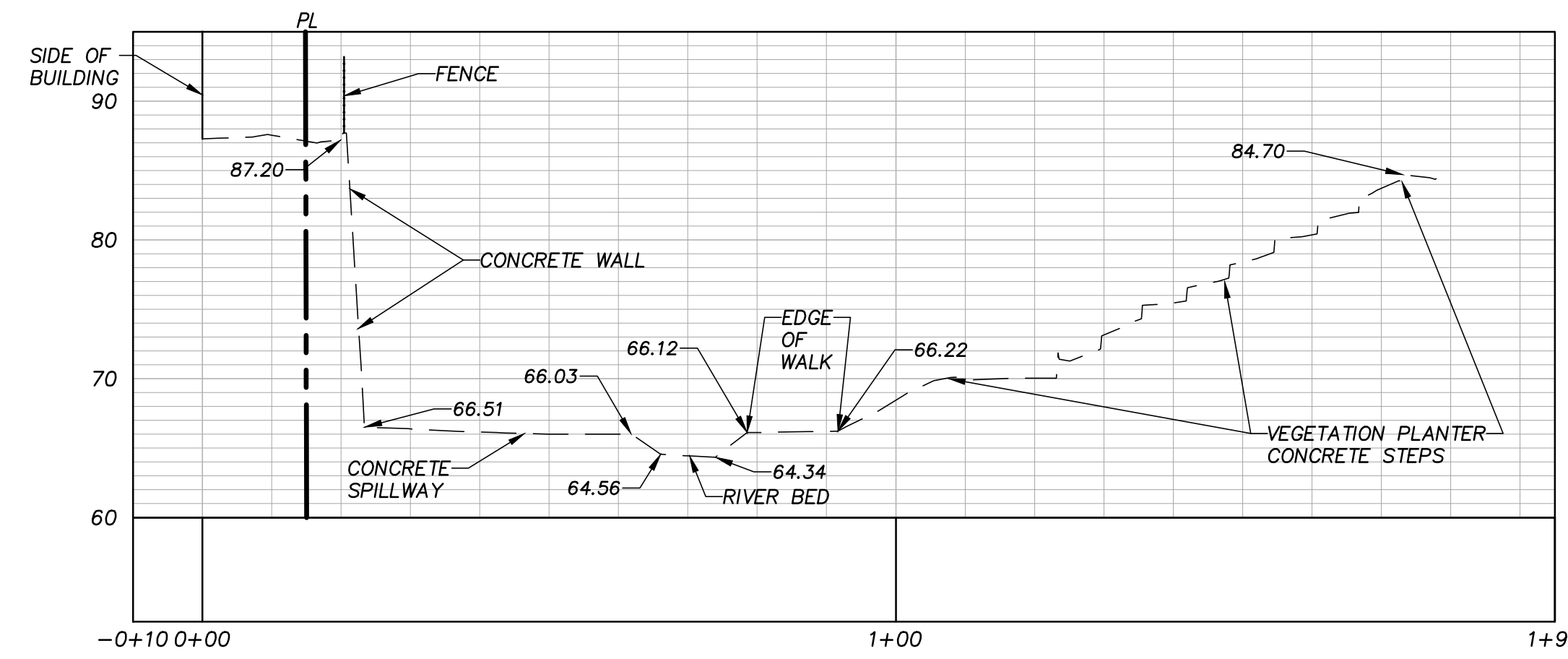
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PROFILE
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1" = 10' VERT.

MID LOS GATOS CREEK

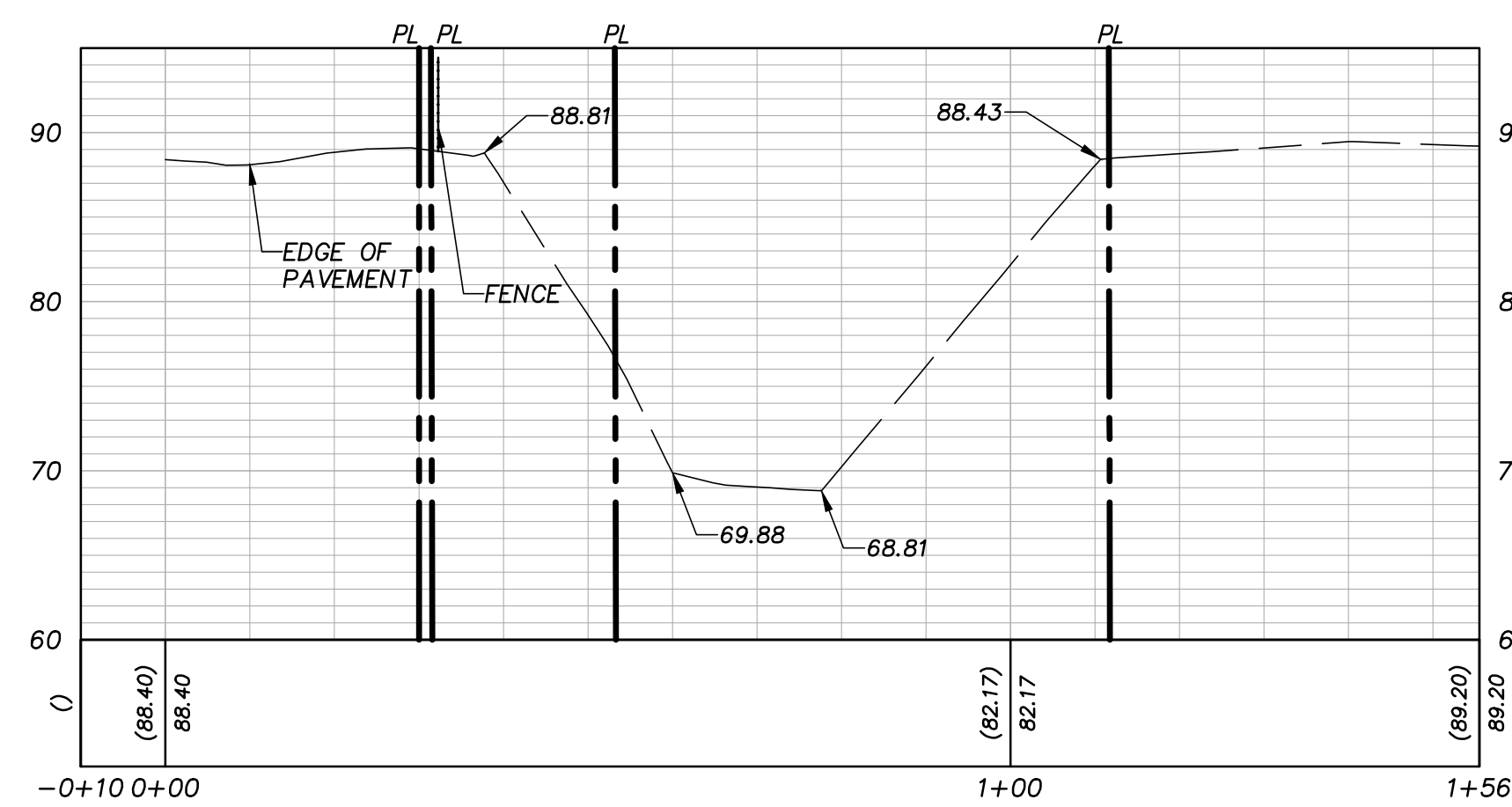
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PROFILE
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1" = 10' VERT.

MID GUADALUPE RIVER

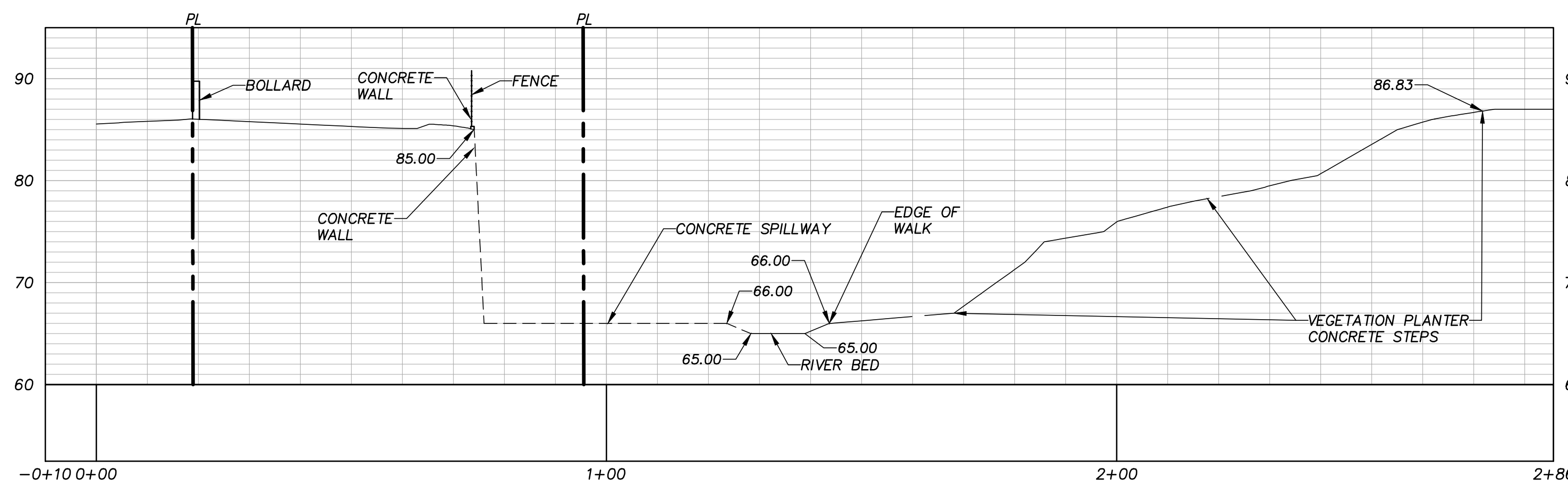
5



PROFILE
1" = 20' HORIZ.
1" = 10' VERT.

SOUTH LOS GATOS CREEK

3



PROFILE
1" = 20' HORIZ.
1" = 10' VERT.

SOUTH GUADALUPE RIVER

6

NO.	BY	NO.	REVISION

KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 2850 Collier Canyon Road
 Livermore, California 94551
 Phone (925) 245-8788
 Fax (925) 245-8796

SECTIONS
 OF
 374/384 WEST SANTA CLARA STREET
 FOR
 TRAMMELL CROW COMPANY
 SAN JOSE, CALIFORNIA

DATE	SEPT., 2015
SCALE	NA
SURVEYOR	RASHI
DRAFTER	REG
JOB NO.	A15597-1
SHEET	C2
OF	2 SHEETS

Z:\2015\A15597-1\Temp\15-A15597-1-CR-SECTIONS 3.dwg 9/24/15 04:15:36 PM cweiff

ATTACHMENT 3
Representative Photos



1. Guadalupe River, looking south. Concrete floodwall and existing buildings at Project site west of river. Portion of Guadalupe River Trail and landscaped riverbank east of river.



2. Concrete floodwall on west side of Guadalupe River abuts existing buildings at Project site.



3. Looking west from landscaped east bank of Guadalupe River toward Project site.
Buildings onsite visible in upper right of photo.