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**Microsoft San José City Data Center 4
Biological Resources Report**

Project #4658-01

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List of Abbreviated Terms

Airport	Norman Y. Mineta San José International Airport
BMPs	best management practices
Cal-IPC	California Invasive Plant Council
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CNDDDB	California Natural Diversity Database
CNPS	California Native Plant Society
CRPR	California Rare Plant Rank
CWA	Clean Water Act
EFH	Essential Fish Habitat
FESA	Federal Endangered Species Act
FMP	Fisheries Management Plan
kW	kilowatt
LSAA	Lake and Streambed Alteration Agreement
MBTA	Migratory Bird Treaty Act
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
OHW	ordinary high water
Porter-Cologne	Porter-Cologne Water Quality Control Act
RWQCB	Regional Water Quality Control Board
SCVHA	Santa Clara Valley Habitat Agency
SWRCB	State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
Valley Water	Santa Clara Valley Water District
VegCAMP	Vegetation Classification and Mapping Program
VHP	Santa Clara Valley Habitat Plan

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Section 1. Introduction

This report describes the biological resources present on the Microsoft San José Data Center 04 and 06 project site, as well as the potential biological impacts of proposed development activities and measures necessary to reduce these impacts to less-than-significant levels under the California Environmental Quality Act (CEQA). This assessment is based on the project maps and description provided to H. T. Harvey & Associates by David J. Powers & Associates through July 2022.

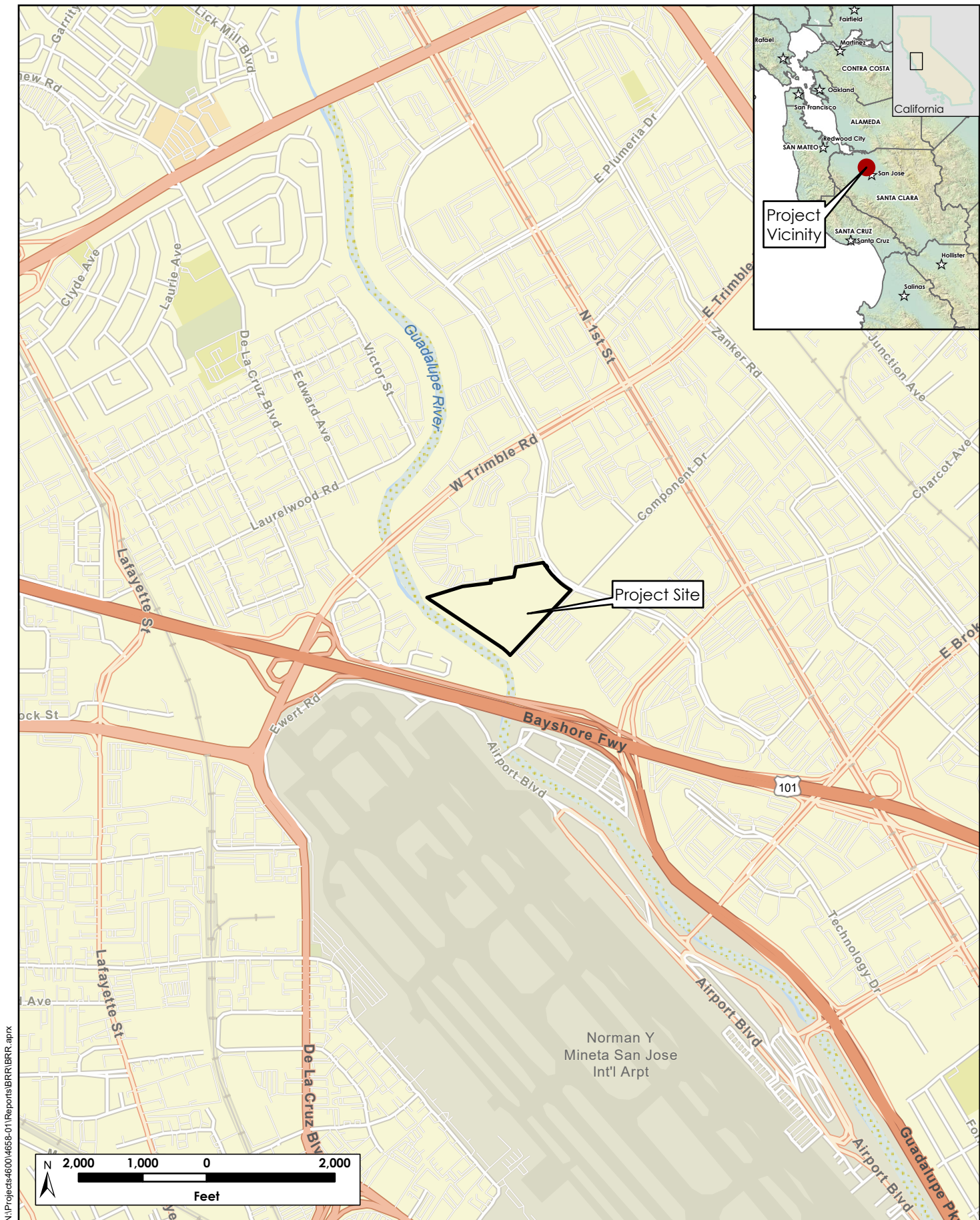
1.1 Project Location

The project site is located at 350 and 370 West Trimble Road in San José, California (Figures 1 and 2). The 22.3-acre site is currently undeveloped, and the Guadalupe River flows south to north along the southwest boundary of the project site. Surrounding areas consist of dense urban development in San José, several undeveloped vacant parcels to the northeast, and the Norman Y. Mineta San José International Airport (Airport) across U.S. Highway 101 to the south. The project site is located on the *Milpitas, California* 7.5-minute United States Geological Survey (USGS) quadrangle.

1.2 Project Description

The project will develop two four-story, 136-foot tall, approximately 315,639 square-foot data center buildings (SJ04 and SJ06); emergency backup generating facilities; reclaimed water storage and a support building; building cooling equipment; a substation and switchyard; two alternate potential distribution transmission lines; ancillary support facilities; and associated surface parking on the project site. The total maximum electrical demand of the data center will be 97.8 megawatts. Primary access to the site would be provided via a new driveway entrance from Orchard Parkway and a secondary entrance via an easement with the property located immediately to the north.

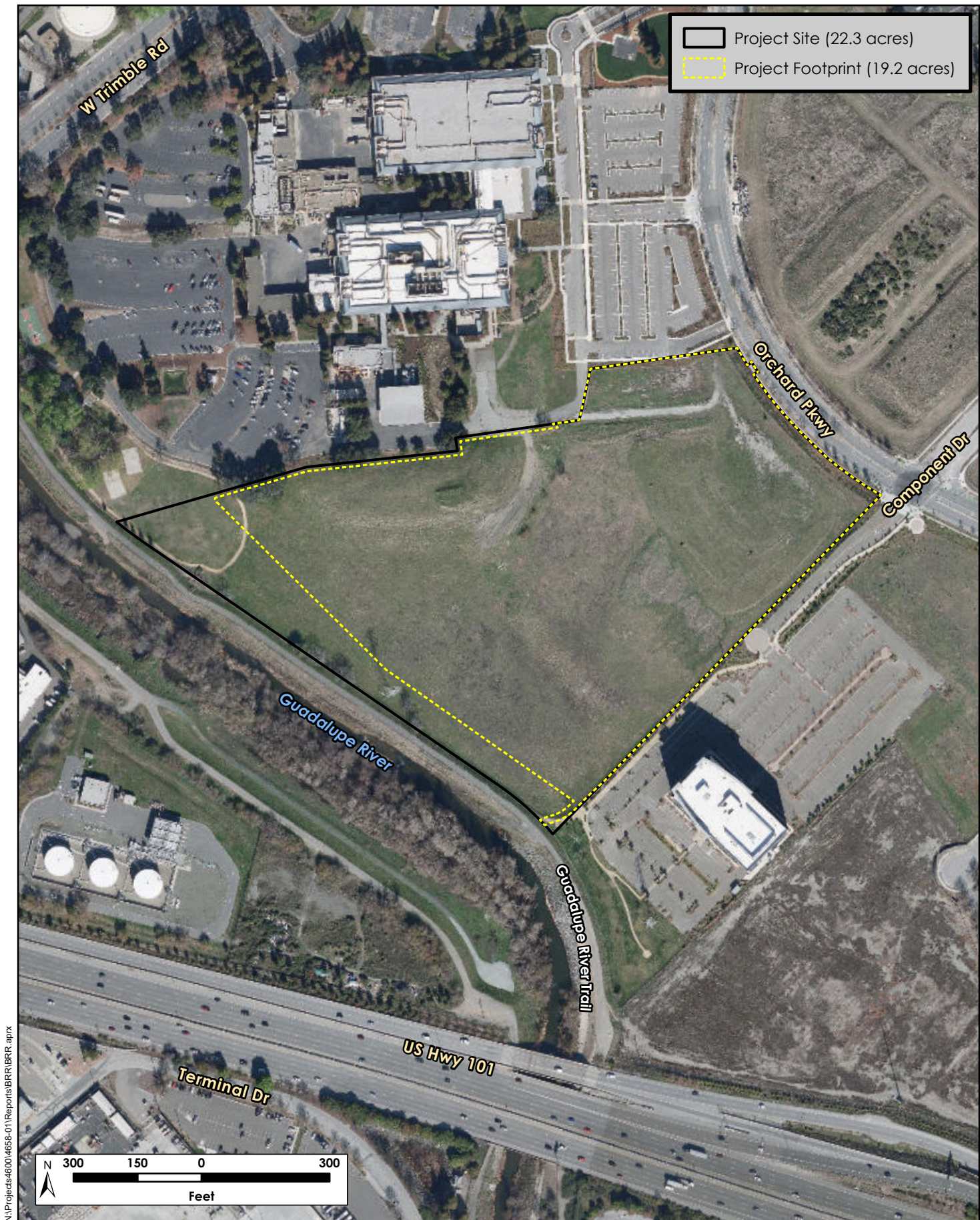
The project will incorporate a total of 36 diesel-fired emergency backup generators. Each data center building will include 16 generators distributed in four generator rooms, with one room on each floor dedicated to support the emergency electricity needs of that floor, for a total of 32 3,000-kilowatt (kW) generators. In addition, one 500-kW administrative generator will be located in each building, and two 800-kW storage tank area generators will be located at the water storage tank yard. The purpose of the backup generating facilities is to provide electrical power to support data center operations in the event of loss of electrical service from the local electric utility provider, Pacific Gas & Electric Company. The backup generators will run for short periods throughout the year for testing and maintenance purposes (limited to no more than 50 hours annually per generator), and otherwise will not operate unless there is a disturbance or interruption of the utility supply. The frequency and duration of power interruptions are unknown, but they are expected to be infrequent and limited in duration. Scheduled testing and maintenance of the generators includes one 2-hour long annual test and 30-



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Figure 1. Vicinity Map
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Figure 2. Project Site
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minute long monthly tests, with maintenance activities occurring concurrently with testing, for a total of 8 hours of planned testing and maintenance for each generator per year.

The project will also include the construction of new domestic water, recycled water, fire water, sanitary sewer, and fiber interconnections on the project site in new underground pipes and conduits that extend from the site to existing City infrastructure systems located immediately adjacent to the site along Orchard Parkway.

The project proposes to remove 19 existing trees on the site, 11 of which are ordinance-sized trees as defined by the City of San José. The removal of trees will be mitigated in accordance with the provisions of the San José Municipal Code by planting new trees on the project site as part of the landscape design.

The project also includes the creation of a Class I bike path along the project's southeastern property line. The bike path will extend from Orchard Parkway along the site's southeastern boundary, for eventual connection with the existing Guadalupe River Trail along the site's southwestern boundary. The project will fund and construct the portion of the bike path located on the project site. The portions of the bike path that are located on land owned by the City, the Santa Clara Valley Water District (Valley Water), or other land owners will be funded, permitted and constructed by the other land owners.

The project site is located within the Santa Clara Valley Habitat Plan (VHP) permit area, and the proposed project is a *covered project* under the VHP (ICF International 2012). As a result, the proposed project is required to implement conservation measures specified by VHP conditions. Thus, all applicable VHP conditions (see Section 6.1) are considered part of the proposed project description rather than as mitigation measures.

Section 2. Methods

2.1 Background Review

Prior to conducting field work, H. T. Harvey & Associates ecologists reviewed the project description, plans, and maps provided by David J. Powers & Associates through July 2022; aerial images (Google Inc. 2022); a USGS topographic map; the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDDB) (2022); the *370 W. Trimble Road Planned Development Rezoning Initial Study/Addendum to the Final Program Environmental Impact Report for the North San José Development Update and the Final Program Environmental Impact Report for the Envision San José 2020 General Plan* (City of San José 2017), the City of San José's General Plan *Envision San José 2040* (City of San José 2020); habitat and species information from the VHP (ICF International 2012); and other relevant reports, scientific literature, and technical databases. For the purposes of this report, the *project vicinity* is defined as the area within a 5-mile radius surrounding the project site.

In addition, for plants, we reviewed all species on current California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1A, 1B, 2A, and 2B lists occurring in the project region, which is defined as the *Milpitas, California* USGS 7.5-minute quadrangles and surrounding eight quadrangles (*Newark, Niles, La Costa Valley, Mountain View, Calaveras Reservoir, Cupertino, San Jose West, and San Jose East*). Quadrangle-level results are not maintained for CRPR 3 and 4 species, so we also conducted a search of the CNPS Inventory records for these species occurring in Santa Clara County (CNPS 2022). In addition, we queried the CNDDDB (2022) for natural communities of special concern that occur on the project site, and we perused records of birds reported in nearby areas, such as at the Airport and along the Guadalupe River Trail, on eBird (Cornell Lab of Ornithology 2022) and on the South-Bay-Birds List Serve (2022).

2.2 Site Visits

H. T. Harvey & Associates has a long history of performing burrowing owl (*Athene cunicularia*) surveys in the immediate vicinity of the project site. Since the late 1990s, and continuing to the present, we have performed burrowing owl surveys for various owners of this property and/or adjacent properties along Orchard Parkway. In addition to our experience on this site for the past two decades, reconnaissance-level field surveys of the project site were conducted to provide an updated description of existing conditions for this particular project by H. T. Harvey & Associates plant ecologist Jill Pastick, M.S., on August 30, 2020, and wildlife ecologist Craig Fosdick, M.S., on June 2 and September 4, 2020. H. T. Harvey & Associates senior plant ecologist Katie Gallagher, M.S., and wildlife ecologist Zachary Hampson conducted an additional reconnaissance-level field survey of the project site on July 21, 2022 to confirm the results of the 2020 surveys. The purpose of all these surveys was to provide an impact assessment specific to the proposed construction of the project, as described above. Specifically, surveys were conducted to (1) assess existing biotic habitats and plant and animal communities on the project site, (2) assess the project site for its potential to support special-status species and

their habitats, and (3) identify potential jurisdictional and sensitive habitats, such as waters of the U.S./state and riparian habitat.

Because the proposed project is a covered project under the approved VHP (ICF International 2012), VHP mapping of land cover types was field-verified and modified as necessary based upon site conditions observed during the surveys. In addition, because the reach of the Guadalupe River adjacent to the project site is mapped by the VHP as potentially suitable nesting habitat for the tricolored blackbird (*Agelaius tricolor*), C. Fosdick and Z. Hampson conducted a habitat survey to determine whether any potential nesting substrate for tricolored blackbirds was present within 250 feet of the project site, per Condition 17 of the VHP. In addition, they conducted a focused survey for (1) suitable burrowing owl roosting and nesting habitat (i.e., burrows of California ground squirrels [*Otospermophilus beecheyi*]) on and within 250 feet of the project site, (2) evidence of previous raptor nesting activity (i.e., large stick nests), (3) potential bat roosting habitat, and (4) nests of the San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*).

Due to the close proximity of the Guadalupe River to the project site, J. Pastick and K. Gallagher mapped the limits of the riparian canopy and the top of bank on the northeast side of the river using a sub-meter GPS in the field. In addition, they conducted targeted surveys for Congdon's tarplant (*Centromadia parryi* var. *congdonii*) on the project site during the August 30, 2020 and July 21, 2022 surveys. Biotic habitats and the top of bank are shown on Figure 3. The limits of the riparian canopy are not shown on Figure 3 because they do not extend beyond of the top of bank and hence do not influence the project's riparian setback.



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Figure 3. Land Cover Map
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Section 3. Regulatory Setting

Biological resources on the project site are regulated by a number of federal, state, and local laws and ordinances, as described below.

3.1 Federal Regulations

3.1.1 Clean Water Act

The Clean Water Act (CWA) functions to maintain and restore the physical, chemical, and biological integrity of waters of the U.S., which include, but are not limited to, tributaries to traditionally navigable waters currently or historically used for interstate or foreign commerce, and adjacent wetlands. Historically, in non-tidal waters, U.S. Army Corps of Engineers (USACE) jurisdiction extends to the ordinary high water (OHW) mark, which is defined in Title 33, Code of Federal Regulations, Part 328.3. If there are wetlands adjacent to channelized features, the limits of USACE jurisdiction extend beyond the OHW mark to the outer edges of the wetlands. Wetlands that are not adjacent to waters of the U.S. are termed “isolated wetlands” and, depending on the circumstances, may be subject to USACE jurisdiction. In tidal waters, USACE jurisdiction extends to the landward extent of vegetation associated with salt or brackish water or the high tide line. The high tide line is defined in 33 Code of Federal Regulations Part 328.3 as “the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide.” If there are wetlands adjacent to channelized features, the limits of USACE jurisdiction extend beyond the OHW mark or high tide line to the outer edges of the wetlands.

Construction activities within jurisdictional waters are regulated by the USACE. The placement of fill into such waters must comply with permit requirements of the USACE. No USACE permit will be effective in the absence of Section 401 Water Quality Certification. The State Water Resources Control Board (SWRCB) is the state agency (together with the Regional Water Quality Control Boards [RWQCBs]) charged with implementing water quality certification in California.

Project Applicability: The project site does not support wetland or aquatic habitats. The Guadalupe River, located off-site to the southwest, is considered waters of the U.S. based the presence of an OHW mark, regular flow, and direct hydrologic connectivity to the San Francisco Bay. The wetlands associated with Guadalupe River occur within the OHW mark. These jurisdictional wetlands and waters are located approximately 56 feet outside of the project site. As a result, the project will avoid direct and indirect impacts to wetlands or waters subject to the CWA, and a permit from the USACE would not be required for the project.

3.1.2 Rivers and Harbors Act

Section 10 of the Rivers and Harbors Act of 1899 prohibits the creation of any obstruction to the navigable capacity of waters of the U.S., including discharge of fill and the building of any wharfs, piers, jetties, and other

structures without Congressional approval or authorization by the Chief of Engineers and Secretary of the Army (33 U.S.C. 403).

Navigable waters of the U.S., which are defined in 33 CFR, Part 329.4, include all waters subject to the ebb and flow of the tide, and/or those which are presently or have historically been used to transport commerce. The shoreward jurisdictional limit of tidal waters is further defined in 33 CFR, Part 329.12 as “the line on the shore reached by the plane of the mean (average) high water.” It is important to understand that the USACE does not regulate wetlands under Section 10, only the aquatic or open waters component of bay habitat, and that there is overlap between Section 10 jurisdiction and Section 404 jurisdiction. According to 33 CFR, Part 329.9, a waterbody that was once navigable in its natural or improved state retains its character as “navigable in law” even though it is not presently used for commerce as a result of changed conditions and/or the presence of obstructions. Historical Section 10 waters may occur behind levees in areas that are not currently exposed to tidal or muted-tidal influence, and meet the following criteria: (1) the area is presently at or below the mean high water line; (2) the area was historically at or below mean high water in its “unobstructed, natural state”; and (3) there is no evidence that the area was ever above mean high water.

As mentioned above, Section 404 of the CWA authorizes the USACE to issue permits to regulate the discharge of dredged or fill material into waters of the U.S. If a project also proposes to discharge dredged or fill material and/or introduce other potential obstructions in navigable waters of the U.S., a Letter of Permission authorizing these impacts must be obtained from the USACE under Section 10 of the Rivers and Harbors Act.

Project Applicability: The Guadalupe River contains current Section 10 waters approximately 2.6 miles to the northwest of the project site, along the river’s lower reaches where it is subject to tidal influence. However, no current or historical Section 10 Waters are present within or close to the project site. Therefore, a Letter of Permission from the USACE is not required.

3.1.3 Federal Endangered Species Act

The Federal Endangered Species Act (FESA) protects federally listed wildlife species from harm or *take*, which is broadly defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.” *Take* can also include habitat modification or degradation that directly results in death or injury of a listed wildlife species. An activity can be defined as *take* even if it is unintentional or accidental. Listed plant species are provided less protection than listed wildlife species. Listed plant species are legally protected from take under the FESA only if they occur on federal lands.

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) have jurisdiction over federally listed, threatened, and endangered species under FESA. The USFWS also maintains lists of proposed and candidate species. Species on these lists are not legally protected under FESA, but may become listed in the near future and are often included in their review of a project.

Project Applicability: No federally listed or candidate plant or animal species occur on the site. The federally threatened Central California Coast steelhead (*Oncorhynchus mykiss*) is known to occur in the Guadalupe River immediately adjacent to the project site; however, due to the presence of an approximately 8-foot tall levee between the site and the river, project activities are not expected to directly or indirectly affect this species.

3.1.4 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act governs all fishery management activities that occur in federal waters within the United States' 200-nautical-mile limit. The Act establishes eight Regional Fishery Management Councils responsible for the preparation of fishery management plans (FMPs) to achieve the optimum yield from U.S. fisheries in their regions. These councils, with assistance from NMFS, establish Essential Fish Habitat (EFH) in FMPs for all managed species. Federal agencies that fund, permit, or implement activities that may adversely affect EFH are required to consult with NMFS regarding potential adverse effects of their actions on EFH, and respond in writing to recommendations by NMFS.

Project Applicability: The Pacific Fisheries Management Council has designated EFH for the Pacific Coast Salmon FMP within the Guadalupe River adjacent to the project site due to the presence of the Chinook salmon (*Oncorhynchus tshawytscha*). However, due to the presence of a tall levee between the site and the river, project activities are not expected to directly or indirectly affect this species.

3.1.5 Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA), 16 U.S.C. Section 703, prohibits killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. The MBTA protects whole birds, parts of birds, and bird eggs and nests, and it prohibits the possession of all nests of protected bird species whether they are active or inactive. An *active* nest is defined as having eggs or young, as described by the USFWS in its June 14, 2018 memorandum "Destruction and Relocation of Migratory Bird Nest Contents". Nest starts (nests that are under construction and do not yet contain eggs) and inactive nests are not protected from destruction.

Project Applicability: All native bird species that occur on the project site are protected under the MBTA.

3.2 State Regulations

3.2.1 Porter-Cologne Water Quality Control Act

The SWRCB works in coordination with the nine RWQCBs to preserve, protect, enhance, and restore water quality. Each RWQCB makes decisions related to water quality for its region, and may approve, with or without conditions, or deny projects that could affect waters of the state. Their authority comes from the CWA and the Porter-Cologne Water Quality Control Act (Porter-Cologne). Porter-Cologne broadly defines waters of the state as "any surface water or groundwater, including saline waters, within the boundaries of the state." Because Porter-Cologne applies to any water, whereas the CWA applies only to certain waters, California's jurisdictional

reach overlaps and may exceed the boundaries of waters of the U.S. For example, Water Quality Order No. 2004-0004-DWQ states that “shallow” waters of the state include headwaters, wetlands, and riparian areas. Moreover, the San Francisco Bay Region RWQCB’s Assistant Executive Director has stated that, in practice, the RWQCBs claim jurisdiction over riparian areas. Where riparian habitat is not present, such as may be the case at headwaters, jurisdiction is taken to the top of bank.

On April 2, 2019, the SWRCB adopted the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State*. In these new guidelines, riparian habitats are not specifically described as waters of the state but instead as important buffer habitats to streams that do conform to the State Wetland Definition. The *Procedures* describe riparian habitat buffers as important resources that may both be included in required mitigation packages for permits for impacts to waters of the state, as well as areas requiring permit authorization from the RWQCBs to impact.

Pursuant to the CWA, projects that are regulated by the USACE must also obtain a Section 401 Water Quality Certification permit from the RWQCB. This certification ensures that a proposed project will uphold state water quality standards. Because California’s jurisdiction to regulate its water resources is much broader than that of the federal government, proposed impacts on waters of the state require Water Quality Certification even if the area occurs outside of USACE jurisdiction. Moreover, the RWQCB may impose mitigation requirements even if the USACE does not. Under the Porter-Cologne, the SWRCB and the nine regional boards also have the responsibility of granting CWA National Pollutant Discharge Elimination System (NPDES) permits and Waste Discharge Requirements for certain point-source and non-point discharges to waters. These regulations limit impacts on aquatic and riparian habitats from a variety of urban sources.

Project Applicability: No waters of the state or riparian habitat occur on the project site. Adjacent to the project site, waters of the state include all potential waters of the U.S., including the Guadalupe River and its associated wetlands. The RWQCB will also consider the riparian vegetation and areas of the riparian banks above OHW and below top of bank to be important buffers to waters of the state associated with the river (Figure 3). No impacts to waters of the state waters or riparian habitat will result from the project because no work is proposed adjacent to or within the Guadalupe River channel or the riparian corridor, and a Section 401 permit or Waste Discharge Requirement from the RWQCB would not be required.

3.2.2 California Endangered Species Act

The California Endangered Species Act (CESA; California Fish and Game Code, Chapter 1.5, Sections 2050-2116) prohibits the take of any plant or animal listed or proposed for listing as rare (plants only), threatened, or endangered. In accordance with CESA, the CDFW has jurisdiction over state-listed species (Fish and Game Code 2070). The CDFW regulates activities that may result in *take* of individuals (i.e., “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”). Habitat degradation or modification is not expressly included in the definition of *take* under the California Fish and Game Code. The CDFW, however, has interpreted *take* to include the “killing of a member of a species which is the proximate result of habitat modification.”

Project Applicability: No suitable habitat for any state-listed plant or animal species occurs on or near the project site. For example, the aforementioned habitat surveys for the tricolored blackbird determined that no suitable nesting habitat is present on or within 250 feet of the project site. Therefore, no state-listed plants or animals are reasonably expected to occur on or near the project site.

3.2.3 California Environmental Quality Act

CEQA is a state law that requires state and local agencies to document and consider the environmental implications of their actions and to refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. CEQA requires the full disclosure of the environmental effects of agency actions, such as approval of a general plan update or the projects covered by that plan, on resources such as air quality, water quality, cultural resources, and biological resources. The State Resources Agency promulgated guidelines for implementing CEQA known as the State CEQA Guidelines.

Section 15380(b) of the State CEQA Guidelines provides that a species not listed on the federal or state lists of protected species may be considered rare if the species can be shown to meet certain specified criteria. These criteria have been modeled after the definitions in the FESA and the CESA and the section of the California Fish and Game Code dealing with rare or endangered plants and animals. This section was included in the guidelines primarily to deal with situations in which a public agency is reviewing a project that may have a significant effect on a species that has not yet been listed by either the USFWS or CDFW or species that are locally or regionally rare.

The CDFW has produced three lists (amphibians and reptiles, birds, and mammals) of “species of special concern” that serve as “watch lists”. Species on these lists are of limited distribution or the extent of their habitats has been reduced substantially, such that threat to their populations may be imminent. Thus, their populations should be monitored. They may receive special attention during environmental review as potential rare species, but do not have specific statutory protection. All potentially rare or sensitive species, or habitats capable of supporting rare species, are considered for environmental review per the CEQA Section 15380(b). The CNPS, a non-governmental conservation organization, has developed CRPRs for plant species of concern in California in the CNPS Inventory of Rare and Endangered Plants. The CRPRs include lichens, vascular, and non-vascular plants, and are defined as follows:

- CRPR 1A Plants considered extinct.
- CRPR 1B Plants rare, threatened, or endangered in California and elsewhere.
- CRPR 2A Plants considered extinct in California but more common elsewhere.
- CRPR 2B Plants rare, threatened, or endangered in California but more common elsewhere.
- CRPR 3 Plants about which more information is needed - review list.

- CRPR 4 Plants of limited distribution-watch list.

The CRPRs are further described by the following threat code extensions:

- .1—seriously endangered in California;
- .2—fairly endangered in California;
- .3—not very endangered in California.

Although the CNPS is not a regulatory agency and plants on these lists have no formal regulatory protection, plants appearing as CRPR 1B or 2 are, in general, considered to meet CEQA’s Section 15380 criteria, and adverse effects to these species may be considered significant. Impacts on plants that are listed by the CNPS on CRPR 3 or 4 are also considered during CEQA review, although because these species are typically not as rare as those of CRPR 1B or 2, impacts on them are less frequently considered significant.

Compliance with CEQA Guidelines Section 15065(a) requires consideration of natural communities of special concern, in addition to plant and wildlife species. Vegetation types of “special concern” are tracked in Rarefind (CNDDDB 2022). Further, the CDFW ranks sensitive vegetation alliances based on their global (G) and state (S) rankings analogous to those provided in the CNDDDB. Global rankings (G1–G5) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas S rankings are a reflection of the condition of a habitat within California. If an alliance is marked as a G1–G3, all of the associations within it would also be of high priority. The CDFW provides the Vegetation Classification and Mapping Program’s (VegCAMP’s) currently accepted list of vegetation alliances and associations (CDFW 2022).

Project Applicability: All potential impacts on biological resources will be considered during CEQA review of the project in the context of this biological resources report. Project impacts are discussed in Section 6 below.

3.2.4 California Fish and Game Code

Ephemeral and intermittent streams, rivers, creeks, dry washes, sloughs, blue line streams on USGS maps, and watercourses with subsurface flows fall under CDFW jurisdiction. Canals, aqueducts, irrigation ditches, and other means of water conveyance may also be considered streams if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife. A *stream* is defined in Title 14, California Code of Regulations Section 1.72, as “a body of water that follows at least periodically or intermittently through a bed or channel having banks and that supports fish and other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation.” Using this definition, CDFW extends its jurisdiction to encompass riparian habitats that function as a part of a watercourse. California Fish and Game Code Section 2786 defines *riparian habitat* as “lands which contain habitat which grows close to and which depends upon soil moisture from a nearby freshwater source.” The lateral extent of a stream and associated riparian habitat that would fall under the jurisdiction of CDFW can be measured in several ways, depending on

the particular situation and the type of fish or wildlife at risk. At minimum, CDFW would claim jurisdiction over a stream's bed and bank. Where riparian habitat is present, the outer edge of riparian vegetation is generally used as the line of demarcation between riparian and upland habitats.

Pursuant to California Fish and Game Code Section 1603, CDFW regulates any project proposed by any person that will “substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds.” California Fish and Game Code Section 1602 requires an entity to notify CDFW of any proposed activity that may modify a river, stream, or lake. If CDFW determines that proposed activities may substantially adversely affect fish and wildlife resources, a Lake and Streambed Alteration Agreement (LSAA) must be prepared. The LSAA sets reasonable conditions necessary to protect fish and wildlife, and must comply with CEQA. The applicant may then proceed with the activity in accordance with the final LSAA.

Certain sections of the California Fish and Game Code describe regulations pertaining to protection of certain wildlife species. For example, Code Section 2000 prohibits take of any bird, mammal, fish, reptile, or amphibian except as provided by other sections of the code.

The California Fish and Game Code Sections 3503, 3513, and 3800 (and other sections and subsections) protect native birds, including their nests and eggs, from all forms of take. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered *take* by the CDFW. Raptors (e.g., eagles, hawks, and owls) and their nests are specifically protected in California under Code Section 3503.5. Section 3503.5 states that it is “unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.”

Bats and other non-game mammals are protected by California Fish and Game Code Section 4150, which states that all non-game mammals or parts thereof may not be taken or possessed except as provided otherwise in the code or in accordance with regulations adopted by the commission. Activities resulting in mortality of non-game mammals (e.g., destruction of an occupied nonbreeding bat roost, resulting in the death of bats), or disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), may be considered *take* by the CDFW.

Project Applicability: CDFW jurisdiction under Section 1602 of the California Fish and Game Code would extend up to the top of bank of the Guadalupe River adjacent to the project site. There will be no project impacts on riparian habitat subject to CDFW jurisdiction because no work is proposed within the top of bank of the Guadalupe River channel. Therefore, a CDFW LSAA would not be required for the project.

Most native bird, mammal, and other wildlife species that occur on the project site and in the immediate vicinity are protected under the California Fish and Game Code. Project impacts on these species are discussed in Section 6.

3.2.5 State Water Resources Control Board Stormwater Regulation

Construction Phase. Construction projects in California causing land disturbances that are equal to 1 acre or greater must comply with state requirements to control the discharge of stormwater pollutants under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended and administratively extended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of best management practices (BMPs) to protect water quality until the site is stabilized.

Standard permit conditions under the Construction General Permit requires that the applicant utilize various measures including: on-site sediment control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors. Additionally, the Construction General Permit does not extend coverage to projects if stormwater discharge-related activities are likely to jeopardize the continued existence, or result in take of any federally listed endangered or threatened species.

Post-Construction Phase. In many Bay Area counties, including Santa Clara County, projects must also comply with the California RWQCB, San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit (Water Board Order No. R2-2015-0049, as amended). This permit requires that all projects implement BMPs and incorporate Low Impact Development practices into the design that prevent stormwater runoff pollution, promote infiltration, and hold/slow down the volume of water coming from a site. In order to meet these permit and policy requirements, projects must incorporate the use of green roofs, impervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors.

Project Applicability. The project will comply with the requirements of the NPDES Statewide Storm Water Permit and Statewide General Construction Permit. Therefore, construction-phase activities would not result in detrimental water quality effects on biological or regulated resources.

3.3 Local Regulations

3.3.1 City of San José Tree Ordinance

The City of San José promotes the health, safety, and welfare of the city by regulating the planting, removal, and maintenance of trees in the city. The City provides tree protection under the Municipal Code Section 13.28 (street trees, hedges, and shrubs), 13.32 (tree removal controls), and 13.44.220 (damaging park property). The Municipal Code details permit requirements for tree related work, including removal, pruning, and planting. Removal of trees within the street right-of-way are subject to tree removal permitting by the City of San José. Street trees are located in the public right-of-way between the curb and the sidewalk. Pruning or removal of street trees is illegal without a permit issued by the City. Replacement trees are required for the removal of

ordinance-size street trees. A single trunk tree qualifies as an ordinance-size tree if it measures 38 inches or more in circumference at 4.5 feet above ground (approximately 12 inches diameter at breast height). A multi-trunk tree qualifies as ordinance-size if the combined measurement of each trunk circumference (at 4.5 feet above ground) adds up to 38 inches or more. As part of the permit application, it is required to contact the planning division with regard to the replacement of ordinance-size trees.

Removal of trees on private property, commercial, and industrial properties are also subject to tree removal permitting by the City of San José. A permit is required to remove a tree of “any size” from a commercial and industrial property. A separate “permit adjustment application” is required to be filed for non-ordinance-sized trees that will be removed from commercial and industrial properties. As part of the permit application it is required to contact the City’s planning division with regard to the replacement of trees on private, commercial and industrial properties.

Project Applicability: Ordinance-sized trees are present on the project site. A tree survey may be required in order to (1) identify any trees that may potentially need to be trimmed or removed for some portion of project implementation, and (2) site project activities to minimize tree impacts. The project will comply with the City of San José’s tree replacement guidelines and policies for any trees that need to be removed.

3.3.2 City of San José Riparian Corridor Protection and Bird-Safe Design Policy

Measures to protect riparian corridors are provided in the City’s *Riparian Corridor Policy Study* (City of San José 1999), which was incorporated into the City’s *Envision San José 2040 General Plan* (City of San José 2020); the Zoning Code (Title 20 of the San José Municipal Code); and the City Council-adopted VHP, specifically Condition 11. The term *riparian corridor* as defined by the City means any defined stream channel, including the area up to the bank full-flow line, as well as all characteristic streamside vegetation in contiguous adjacent uplands.

In 2016, the City released Council Policy 6-34 to provide guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. Council Policy 6-34 indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 feet from the riparian corridor. However, Council Policy 6-34 also indicates that a reduced setback may be considered under limited circumstances, including the existence of legal uses within the minimum setback, and utility or equipment installations or replacements that involve no significant disturbance to the riparian corridor during construction and operation and that generate only incidental human activity.

Project Applicability: A riparian corridor associated with the Guadalupe River is located immediately adjacent to the project site. The project would need to comply with the City’s riparian corridor policy, which includes guidance for allowable uses within riparian setbacks as well as bird-safe design for new buildings and structures.

3.3.3 Santa Clara Valley Habitat Plan

The VHP (ICF International 2012) provides a framework for promoting the protection and recovery of natural resources, including endangered and threatened species, while streamlining the permitting process for planned development, infrastructure, and maintenance activities. The VHP allows the County of Santa Clara, Valley Water, the Santa Clara Valley Transportation Authority, and the cities of Gilroy, Morgan Hill, and San José (collectively, the Local Partners or Permittees) to receive endangered species permits for activities and projects they conduct and those under their jurisdiction. The Santa Clara Valley Open Space Authority also contributed to VHP preparation. The VHP will protect, enhance, and restore natural resources in specific areas of Santa Clara County and contribute to the recovery of endangered species. Rather than separately permitting and mitigating individual projects, the VHP evaluates natural-resource impacts and mitigation requirements comprehensively in a way that is more efficient and effective for at-risk species and their essential habitats.

The VHP was developed in association with the USFWS and CDFW and in consultation with stakeholder groups and the general public. The USFWS has issued the Permittees a 50-year permit that authorizes incidental take of listed species under FESA, while CDFW has issued a 50-year permit that authorizes take of all covered species under the Natural Community Conservation Planning Act. This approach allows the Permittees to streamline future mitigation requirements into one comprehensive program. In addition to obtaining take authorization for each participating agency's respective activities, the cities and County will be able to extend take authorization to project applicants under their jurisdiction.

The USFWS and CDFW will also provide assurances to the Permittees that no further commitments of funds, land, or water will be required to address impacts on covered species beyond that described in the VHP to address changed circumstances. In addition to strengthening local control over land use and species protection, the VHP provides a more efficient process for protecting natural resources by creating new habitat reserves that will be larger in scale, more ecologically valuable, and easier to manage than the individual mitigation sites created under the current approach.

The VHP and associated documents are approved and adopted by the six Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Transportation Authority, and Valley Water).

Project Applicability. The project is located within the VHP permit area. Therefore, project activities are considered covered under the VHP and are required to comply with VHP conditions (ICF International 2012).

Section 4. Environmental Setting

4.1 General Project Area Description

The project site is located in San José in Santa Clara County, California (Figure 1). The climate in the project vicinity is coastal Mediterranean, with most rain falling in the winter and spring. Mild cool temperatures are common in the winter. Hot to mild temperatures are common in the summer. Climate conditions in the vicinity include a 30-year average of approximately 14.6 inches of annual precipitation with a monthly average temperature range from 50.0°F to 69.0°F (PRISM Climate Group 2022). Elevations on the project site range from 27–32 feet above mean sea level (Google Inc. 2022). The Natural Resource Conservation Service has mapped three soil units on the project site: (1) Urbanland-Campbell complex, 0–2% slopes, (2) Campbell silt loam, 0–2% slopes, and (3) Urbanland-Elder complex, 0–2% slopes (Natural Resource Conservation Service [NRCS] 2022). The Urbanland-Campbell and Urbanland-Elder complexes are found on basin floors, and are composed of disturbed and human transported material (Urbanland soil series), and very deep, well-drained soils that formed in alluvium from mixed rock sources (Elder and Campbell series). Campbell silt loam soils are very deep, moderately well-drained soils on alluvial fans formed in gravelly alluvium from metamorphic and sedimentary rocks, and/or alluvium from metavolcanics (NRCS 2022).

4.2 Land Cover

As described above, biotic habitats on the project site were classified according to the land cover classification system described in the VHP (ICF International 2012), with modifications based upon site conditions verified during the 2020 and 2022 field surveys. The reconnaissance-level surveys identified two land cover types on the project site: urban-suburban (i.e., developed/landscaped) and California annual grassland (Figure 3). These land cover types are described in detail below. Plant species observed during the reconnaissance survey are listed in Appendix A.

4.2.1 California Annual Grassland

Vegetation. California annual grassland (20.9 acres) is the dominant land cover type on the project site, and extends from the Guadalupe River Trail to Orchard Parkway (Photos 1 and 2, Appendix B) (Figure 3). This habitat has been regularly mown for decades. During our surveys, vegetation in the California annual grassland was 10–40 inches tall and dense with a very thick thatch layer from accumulated vegetation debris. This habitat type is dominated by nonnative grasses such as wild oat (*Avena fatua*) and ripgut brome (*Bromus diandrus*), as well as weedy forbs such as Russian thistle (*Salsola tragus*), wild radish (*Raphanus sativus*), broadleaved pepperweed (*Lepidium latifolium*), and salsify (*Tragopogon* sp.). Large patches of Italian thistle (*Carduus pycnocephalus*) and milk thistle (*Silybum marianum*) were observed throughout the grassland. Large clusters of coyote brush (*Baccharis pilularis*) individuals were on non-native fill within the project area. A line of red willow (*Salix laevigata*), black walnut (*Juglans hindsii*), and Fremont cottonwood (*Populus fremontii*) grows along a small dirt road that extends partway from the northern project boundary southwest towards the Guadalupe River Trail. Herbaceous

vegetation in the understory of these trees was similar to that of the annual grassland elsewhere on the project site. The grassland contained a number of species ranked by the California Invasive Plant Council (Cal-IPC) as being moderately or highly invasive, discussed in Section 5.3.5.

Wildlife. Wildlife use of grasslands on the project site is limited by human disturbance (e.g., due to mowing), the limited extent of the grassland area, and the isolation of this habitat from more extensive grasslands in the region (i.e., in the Diablo Range to the east). As a result, some of the wildlife species associated with extensive grasslands in the South Bay, such as the grasshopper sparrow (*Ammodramus savannarum*), are absent from the grasslands on the project site. Many of the wildlife species that occur in this grassland area occur primarily in adjacent developed or riparian areas and use the grasslands on the project site for foraging. Such species include the house finch (*Haemorrhous mexicanus*), bushtit (*Psaltiriparus minimus*), and lesser goldfinch (*Spinus psaltria*), which forage on seeds in grassland areas, and the black phoebe (*Sayornis nigricans*), cliff swallow (*Petrochelidon pyrrhonota*), and Mexican free-tailed bat (*Tadarida brasiliensis*), which forage aerially over grassland habitats for insects.

Burrows of California ground squirrels were observed in small numbers (one burrow was observed during the June 2020 survey, three burrows were observed during the September 2020 survey, and four burrows were observed during the July 2022 survey) on the project site during the site visits. This fossorial mammal species is an important component of grassland communities, providing a prey base for diurnal raptors and terrestrial predators and providing burrows that can be used by burrowing owls. Other rodent species that can potentially occur in the grassland habitat on the project site include the Botta's pocket gopher (*Thomomys bottae*), California vole (*Microtus californicus*) and deer mouse (*Peromyscus maniculatus*). Diurnal raptors such as red-tailed hawks (*Buteo jamaicensis*) and red-shouldered hawks (*Buteo lineatus*) forage for these small mammals over grasslands during the day, and at night nocturnal raptors, such as barn owls (*Tyto alba*), will forage for nocturnal rodents, such as deer mice.

Several reptile species regularly occur in grassland habitats, including the western fence lizard (*Sceloporus occidentalis*), gopher snake (*Pituophis catenifer*), and southern alligator lizard (*Elgaria multicarinata*). Burrows of California ground squirrels provide refuges for these reptile species, as well as for common amphibians that may occur in adjacent riparian habitat such as the western toad (*Anaxyrus boreas*) and Pacific tree frog (*Hyla regilla*). Mammals such as the native striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and black-tailed jackrabbit (*Lepus californicus*), as well as the nonnative Virginia opossum (*Didelphis virginiana*) and feral cat (*Felis catus*) use the grassland habitats on the project site for foraging.

4.2.2 Urban-Suburban

Vegetation. A portion of the project site consists of existing developed areas, including paved and gravel pedestrian paths, associated landscape vegetation, and a turf lawn area (Photos 2 and 3, Appendix B). These developed areas fall within the VHP urban-suburban land cover type (Figure 3). Landscaped vegetation within these areas consist of ornamental trees, shrubs, and groundcovers common to the region, including turf, London plane (*Platanus x hybrida*), rosemary (*Salvia rosmarinus*), and others.

Wildlife. The urban-suburban areas of the project site serve as wildlife habitat only in a very limited capacity, and most wildlife species that occur in these areas are tolerant of frequent human disturbances. Species that use these areas include the nonnative European starling (*Sturnus vulgaris*), rock pigeon (*Columba livia*), house mouse (*Mus musculus*), and Norway rat (*Rattus norvegicus*), as well as the native raccoon and striped skunk. Western fence lizards commonly occur in urban-suburban areas, and may bask on road or parking lot surfaces in order to raise their body temperature. Bird species including the American crow (*Corvus brachyrhynchos*), California scrub-jay (*Apelocoma californica*), Anna's hummingbird (*Calypte anna*), California towhee (*Melospiza crissalis*), bushtit, and dark-eyed junco (*Junco hyemalis*) will nest and forage in landscape vegetation. Large trees adjacent to the project site provide potential nesting sites for raptors, such as red-shouldered hawks and Cooper's hawks (*Accipiter cooperii*), although no old, existing raptor nests were observed within or adjacent to the project site during the site visit.

4.3 Adjacent Habitat Areas

The project site is adjacent to the Guadalupe River, which supports mixed riparian forest and woodland habitat just outside the southwestern boundary of the project site.

The eastern top of bank of the Guadalupe River adjacent to the project site is well-defined by the Guadalupe River Trail (Photos 5 and 6, Appendix B). Within the banks of the Guadalupe River, mixed riparian forest and woodland habitat is characterized by moderately dense canopy, including a mix of native and nonnative mature trees, and an understory of smaller trees, saplings, shrubs, herbaceous species, and grasses. Riparian trees present within this habitat are mostly native and include red willow, Fremont cottonwood, black walnut, and coast live oak as well as nonnative London planes. The majority of the tree cover is composed of black walnut and willow, with minor canopy branch die back, including a few standing snags of dead individual trees. Understory shrubs include poison oak (*Toxicodendron diversilobum*) and Himalayan blackberry. Herbaceous species observed in the understory include common annual grassland species such as ripgut brome, wild oats, prickly lettuce (*Lactuca serriola*), and Cornish mallow (*Lavatera cretica*). Along the edge of the channel bed of the Guadalupe River, herbaceous wetland vegetation is present, characterized by species such as bristly ox-tongue (*Helminthotheca echioides*), floating primrose willow (*Ludwigia peploides*), fiddleleaf dock (*Rumex pulcher*), water mint (*Mentha aquatica*), and rough cocklebur (*Xanthium strumarium*) (Photos 5 and 6, Appendix B).

Riparian habitats in California generally support exceptionally rich animal communities and contribute disproportionately to landscape-level species diversity. The presence of perennial flow and abundant invertebrate fauna provide foraging opportunities and the diverse habitat structure provides cover and breeding opportunities for many species along this reach of the Guadalupe River. Many bird species that are attracted to herbaceous vegetation and aquatic habitats along the river are expected to move past the project site when flying to, from, or along the Guadalupe River. The numbers of these birds moving through the site will vary by time of year and by species. Many birds, such as waterfowl, often tend to move in large groups, while other species, such as migrating landbirds, will move through individually or in smaller flocks. Local bird numbers also vary by time of year, as many birds form small to large flocks during winter and migration, and occur in more widely spaced pairs during the breeding season.

We consider the riparian habitat along this reach of the Guadalupe River to be of moderately high quality for birds. The large numbers of mature trees and native trees and presence of dense understory vegetation in some areas contribute positively to the value of this habitat for birds. However, the relatively narrow width of the riparian canopy, regularly disturbed nature of the stream channel (for stream maintenance/flood prevention purposes), and trampling/disturbance of this habitat from homeless encampments negatively affect the quality of this habitat for birds. This riparian habitat is also somewhat fragmented due to the surrounding high-density urban development and the presence of bridges, road crossings, and channelization along nearby portions of the river, and therefore lacks connectivity to higher-quality riparian habitats in the region. In addition, many feral cats are present along this reach of the river, and these cats will prey upon native birds. Nevertheless, songbirds that migrate along the Pacific Flyway and travel through the site vicinity are expected to be attracted to this reach of the Guadalupe River, and this habitat is used fairly heavily by migrating birds. Further, this reach of the Guadalupe River is used regularly by resident birds that are present in the vicinity year-round and are attracted to the riparian habitat for foraging and nesting opportunities. Although eBird, a database of bird sightings curated by Cornell University's Laboratory of Ornithology, has no "hotspot" for the segment of river between Highway 101 and Trimble Road adjacent to the project site, approximately 148 bird species have been recorded in the segment immediately downstream (between Trimble Road and Montague Expressway), demonstrating the high bird diversity associated with habitats along this general region of the Guadalupe River (Cornell Lab of Ornithology 2022).

Reptiles such as the gopher snake, western fence lizard, and southern alligator lizard also are present in the riparian habitat along the Guadalupe River. Amphibians such as the arboreal salamander (*Aneides lugubris*) occur in the leaf litter in this habitat and the native Pacific tree frog is also known to be present. Urban-adapted mammals, such as the native raccoon and striped skunk, as well as the nonnative Virginia opossum, Norway rat, black rat, feral cat, and eastern gray squirrel (*Sciurus carolinensis*), reside in riparian habitat and adjacent habitats along the Guadalupe River.

4.4 Wildlife Movement

Wildlife movement within and in the vicinity of the project site takes many forms, and is different for the various suites of species associated with these lands. Bird and bat species move readily over the landscape in the project vicinity, foraging over and within both natural lands and landscaped areas. Mammals of different species move within their home ranges, but also disperse between patches of habitat. Generally, reptiles and amphibians similarly settle within home ranges, sometimes moving to central breeding areas, upland refugia, or hibernacula in a predictable manner, but also dispersing to new areas. Some species, especially among the birds and bats, are migratory, moving into or through the project vicinity during specific seasons. Aside from bats, there are no other mammal species in the vicinity of the site that are truly migratory. However, the young of many mammal species disperse from their natal home ranges, sometimes moving over relatively long distances in search of new areas in which to establish.

Movement corridors are segments of habitat that provide linkage for wildlife through the mosaic of suitable and unsuitable habitat types found within a landscape while also providing cover. On a broader level, corridors also function as paths along which wide-ranging animals can travel, populations can move in response to environmental changes and natural disasters, and genetic interchange can occur. In California, environmental corridors often consist of riparian areas along streams, rivers, or other natural features.

Due to the density of development in the project region and the lack of continuous, well-vegetated pathways through the City, there are currently no well-defined movement corridors for mammals or reptiles within or through the project site. Wildlife species may move through the area using cover and refugia as they find them available. However, most dispersal by wildlife species in the region likely occurs along higher-quality habitats, such as the Guadalupe River corridor to the southwest, and along the edge of the Bay to the north.

The Guadalupe River, which eventually drains to the open waters of the San Francisco Bay, and its associated riparian corridor adjacent to the site serves as a movement corridor for several common and special-status species of birds, fish, mammals, reptiles, and amphibians in the project vicinity. In addition, a number of birds, mammals, reptiles, and amphibians utilize the riparian corridor of the Guadalupe River for movement purposes, as it provides sufficient vegetative cover preferred by these species when navigating across the landscape. Specifically, migratory passerines, rabbits, striped skunks, raccoons, Pacific treefrogs, and alligator lizards, amongst other species, are expected to move along this corridor adjacent to the project site.

In summary, the project site is not a particularly important area for movement by non-flying wildlife, and it does not contain any high-quality corridors allowing dispersal of such animals through the City. However, the Guadalupe River located immediately east of the site provides a corridor for wildlife species to disperse north and south through San José.

Section 5. Special-Status Species and Sensitive Habitats

CEQA requires assessment of the effects of a project on species that are protected by state, federal, or local governments as “threatened, rare, or endangered”; such species are typically described as “special-status species”. For the purpose of the environmental review of the project, special-status species have been defined as described below. Impacts on these species are regulated by some of the federal, state, and local laws and ordinances described in Section 3 above.

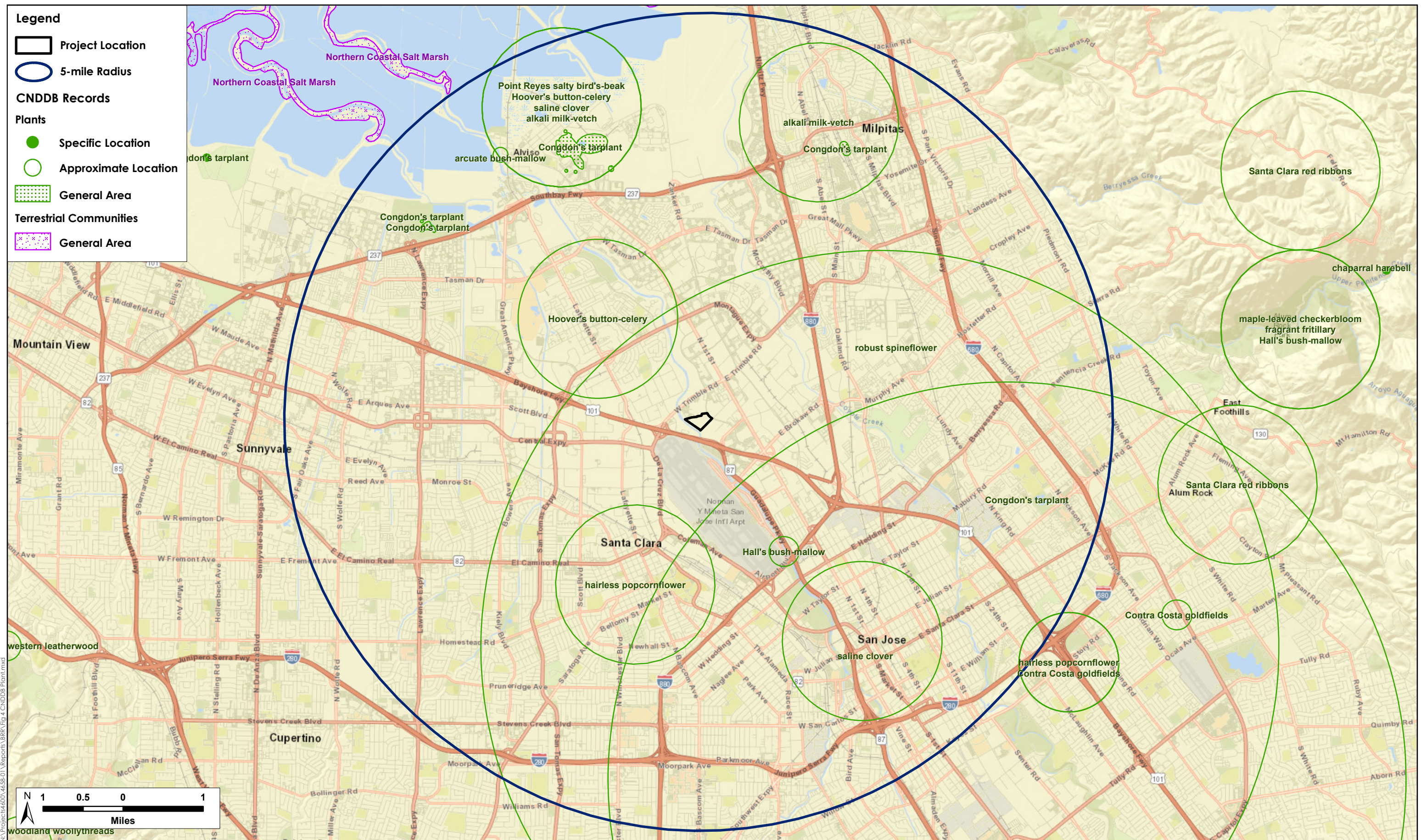
For purposes of this analysis, “special-status” plants are considered plant species that are:

- Listed under FESA as threatened, endangered, proposed threatened, proposed endangered, or a candidate species.
- Listed under CESA as threatened, endangered, rare, or a candidate species.
- Listed by the CNPS as CRPR 1A, 1B, 2, 3, or 4.

For purposes of this analysis, “special-status” animals are considered animal species that are:

- Listed under FESA as threatened, endangered, proposed threatened, proposed endangered, or a candidate species.
- Listed under CESA as threatened, endangered, or a candidate threatened or endangered species.
- Designated by the CDFW as a California species of special concern.
- Listed in the California Fish and Game Code as fully protected species (fully protected birds are provided in Section 3511, mammals in Section 4700, reptiles and amphibians in Section 5050, and fish in Section 5515).

Information concerning threatened, endangered, and other special-status species that potentially occur on the project site was collected from several sources and reviewed by H. T. Harvey & Associates biologists as described in Section 2.1 above. Figure 4 depicts CNDDB records of special-status plant species in the general vicinity of the project site and Figure 5 depicts CNDDB records of special-status animal species. These generalized maps show areas where special-status species are known to occur or have occurred historically.



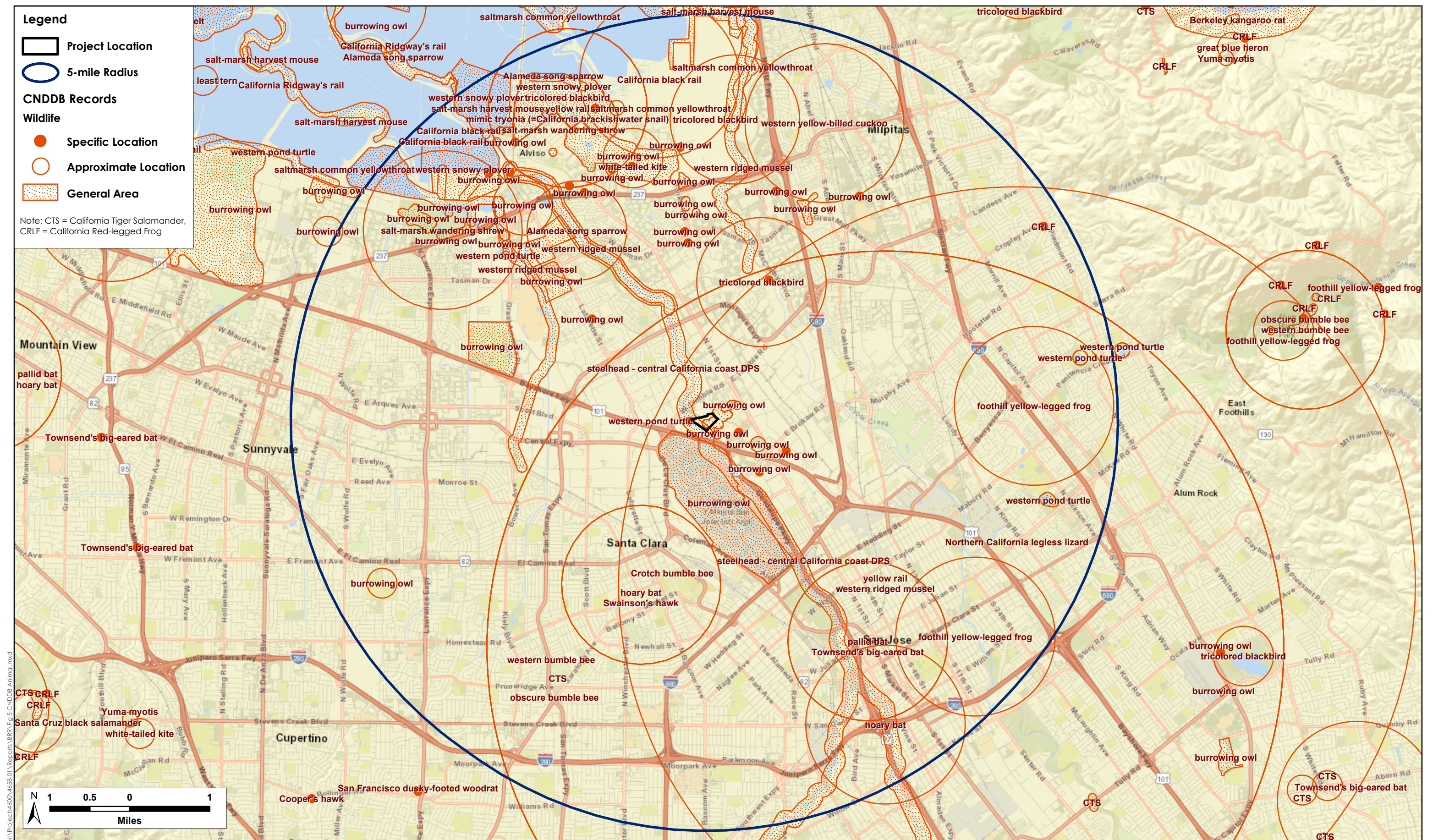


Figure 5. CNDDDB-Mapped Records of Special-Status Animals

Microsoft San José City Data Center 4 Biological Resources Report (4658-01)

September 2022

5.1 Special-Status Plant Species

The CNPS (2022) and CNDDB (2022) identify 73 special-status plant species as potentially occurring in at least one of the nine USGS 7.5-minute quadrangles containing or surrounding the project site for species in CRPR 1 and 2, or in Santa Clara County for CRPR 3 and 4 species. Of the 73 potentially occurring special-status plant species, all but one were determined to be absent from the project site for at least one of the following reasons: (1) absence of suitable habitat types; (2) lack of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range of the project site; and/or (4) the species is presumed extirpated from the project region. Many species are known to occur in marsh habitat associated with the San Francisco Bay to the northwest, or serpentine and alkaline soils associated with the Diablo Range to the northeast where outcrops of serpentine geology and soils are present. Serpentine soils do not occur within or adjacent the project site. Project activities will be largely be restricted to previously developed areas and California annual grassland that has been previously disturbed by regular mowing.

Suitable habitat, edaphic requirements, and elevation range are present on the project site for only one special-status plant species, Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*). Congdon's tarplant has been documented by the CNDDB in the project vicinity (Figure 4) and can persist in disturbed grasslands. An expanded discussion of this species is provided below.

Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*). Federal Listing Status: None; State Listing Status: None; CRPR: 1B.1. Congdon's tarplant is an annual herb in the composite family (Asteraceae) that is endemic to California. It has a variable blooming period extending from May through November. Congdon's tarplant occurs in valley and foothill grassland habitat, floodplains, and swales, particularly those with alkaline substrates; and in disturbed areas with nonnative grasses such as wild oat, ripgut brome, Italian rye grass (*Festuca perennis*), and seaside barley (*Hordeum marinum*) (Baldwin et al. 2012, CNDDB 2022, CNPS 2022). Congdon's tarplant occurs in Alameda, Contra Costa, Monterey, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, and Solano Counties (CNDDB 2022). In Santa Clara County, populations occur in ruderal grassland at Moffett Federal Airfield; in ruderal grassland and seasonal wetland habitats within Sunnyvale Baylands Park; in annually disked ruderal grassland in Alviso, north of Highway 237 and east of North First Street; and in ruderal grassland along railroad tracks in Milpitas.

Four occurrences of Congdon's tarplant are recorded on CNDDB (2022) within 5 miles of the project site: Occurrences #17, #18, #40, and #41. The closest record to the project site is Occurrence #40, which is a historical population from a general area recorded as "eastern San José", which is presumed extinct due to the level of development in this area (CNDDB 2022). The remaining three occurrences are located more than 3 miles north and northwest of the project site, north of State Route 237. Record #18 occurs at the Sunnyvale Baylands Park in relatively high-quality grassland habitat, while records #17 and 41 occur in highly disturbed, ruderal grassland habitat, similar to that observed on the project site.

The California annual grassland habitat located on the project site provides some suitable habitat for Congdon's tarplant, though the soils on the site are not alkaline, which Congdon's tarplant prefers. Due to the lack of alkaline soils, high herbaceous vegetation cover, and regular disturbance from mowing, the habitat on the project site is considered only marginally suitable for this species (CNPS 2022).

Because of the potential for this species' occurrence on the project site, targeted surveys for Congdon's tarplant were conducted on August 19, 2020 by H. T. Harvey & Associates plant ecologist J. Pastick and on July 21, 2022 by H. T. Harvey & Associates senior plant ecologist Katie Gallagher, M.S. Prior to conducting the surveys, H. T. Harvey & Associates ecologists visited a reference population at Sunnyvale Baylands Park in Sunnyvale, California (CNDDDB Occurrence #18) in 2020 and 2022 to confirm that the species was blooming and identifiable, thereby documenting that this survey was conducted during the appropriate time of year. The focused survey area included all areas of California annual grassland on the project site. No Congdon's tarplant was observed in this area. Thus, Congdon's tarplant is determined to be absent from the project site.

5.2 Special-Status Animal Species

The legal status and likelihood of occurrence on the project site of special-status animal species known to occur, or potentially occurring, in the surrounding region are presented in Table 1. Most of the special-status species listed in Table 1 are not expected to occur on the project site because it lacks suitable habitat, is outside the known range of the species, and/or is isolated from the nearest known extant populations by development or otherwise unsuitable habitat.

The following special-status species that are present in less urbanized settings in the South Bay, or in specialized habitats in the South Bay, are absent from the project site due to a lack of suitable habitat and/or isolation of the site from populations by urbanization: the Bay checkerspot butterfly (*Euphydryas editha bayensis*), Crotch bumble bee (*Bombus crotchii*), western bumble bee (*Bombus occidentalis*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), foothill yellow-legged frog (*Rana boylei*), bald eagle (*Haliaeetus leucocephalus*), riffle sculpin (*Cottus gulosus*), least Bell's vireo (*Vireo bellii pusillus*), San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), American badger (*Taxidea taxus*), San Joaquin kit fox (*Vulpes macrotis mutica*), and mountain lion (*Puma concolor*). While bald eagles may fly over the project site at times, none are expected to nest in, or make regular/heavy use of, any resources on the project site. No nests of San Francisco dusky-footed woodrats were observed on the project site during the focused surveys on June 2, 2020 or July 21, 2022, and this species is also determined to be absent.

No aquatic habitats to support special-status fish species are present on the project site; however, the site is located adjacent to the Guadalupe River, which provides habitat for the Central California Coast steelhead, Central Valley fall-run Chinook salmon, Pacific lamprey (*Entosphenus tridentatus*), Sacramento hitch (*Lavinia exilicauda exilicauda*), and Central California roach (*Lavinia symmetricus symmetricus*). These special-status species will not be directly or indirectly affected by project activities due to the presence of an approximately 8-foot tall

levee in between the project site and the Guadalupe River. As a result, these species are not discussed further in this report.

A number of special-status bird species can occasionally occur on the project site as nonbreeding foragers (i.e., they do not nest on the site). These are the Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), tricolored blackbird (*Agelaius tricolor*), golden eagle (*Aquila chrysaetos*), and peregrine falcon (*Falcon peregrinus anatum*). The pallid bat (*Antrozous pallidus*), a California species of special concern, may also forage on the project site. These species are not expected to nest, roost, or breed in or immediately adjacent to the project site due to a lack of suitable nesting, roosting, or breeding habitat, and will be affected very little, if at all, by the proposed project. In addition, the grasshopper sparrow, a bird species that is considered a California species of special concern only when it is nesting, may occur occasionally in grasslands on the project site as a nonbreeding transient, forager, or migrant, but no suitable nesting habitat for this species occurs on the project site. Because the Bryant's savannah sparrow and grasshopper sparrow are only considered species of special concern when nesting, they are not "special-status species" when they occur as a nonbreeding visitor to the site.

Similarly, the monarch butterfly (*Danaus plexippus*) may occur on the project site as a nonbreeder, especially during spring and fall migration. However, no milkweeds (*Asclepias* spp.), which provide this species' larval hostplant, were detected on the site during the 2020 or 2022 reconnaissance surveys, so monarchs are not expected to breed on the site. Similarly, this species is not known to form wintering roosts anywhere in Santa Clara County, so this species would occur only as an occasional nonbreeding visitor, in low numbers.

The yellow warbler (*Setophaga petechia*) and San Francisco common yellowthroat (*Geothlypis trichas sinuosa*) can potentially nest in riparian habitat along the Guadalupe River adjacent to the project site. Although these species will not be directly affected by project activities, there is some potential for project activities to result in indirect effects on nesting individuals due to their close proximity to the project site. Individuals of either species will also occasionally occur on the project site as nonbreeding foragers.

The burrowing owl, western pond turtle, loggerhead shrike (*Lanius ludovicianus*), and white-tailed kite (*Elanus leucurus*), are addressed in greater detail in Table 1 below because these species can potentially breed or occur on or immediately adjacent to the project site and/or may be significantly impacted by project construction (see Section 6 *Impacts and Mitigation Measures* below).

Table 1. Special-status Animal Species, Their Status, and Potential Occurrence on the Project Site

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Federal or State Endangered, Threatened, or Candidate Species			
Bay checkerspot butterfly (<i>Euphydryas editha bayensis</i>)	FT, VHP	Native grasslands on serpentine soils. Larval host plants are <i>Plantago erecta</i> and/or <i>Castilleja exserta</i> or <i>C. densiflora</i> .	Absent. No suitable native grasslands, serpentine soils, or larval host plants to support this species were identified on the project site during the reconnaissance-level survey, and the VHP does not map suitable habitat on the project site (ICF International 2012). Determined to be absent.
Monarch butterfly (<i>Danaus plexippus</i>)	FC	Requires milkweeds (<i>Asclepias</i> spp.) for egg-laying and larval development, but adults obtain nectar from a wide variety of flowering plants in many habitats. Individuals congregate in winter roosts, primarily in Mexico and in widely scattered locations on the central and southern California coast.	Absent as Breeder. The monarch butterfly occurs on the project site as a migrant, and small numbers of individuals may forage on the project site, especially during spring and fall migration. No current or historical overwintering sites are known in Santa Clara County.
Crotch bumble bee (<i>Bombus crotchii</i>)	SC	Open grassland and scrub habitats.	Absent. Although the species was historically found throughout the southern two-thirds of California, including the project vicinity, it is not expected to occur on the site due to recent range contractions and the absence of relatively undisturbed grassland and scrub from the project vicinity. Determined to be absent.
Western bumble bee (<i>Bombus occidentalis</i>)	SC	Meadows and grasslands with abundant floral resources.	Absent. Although the species was historically found throughout much of central and northern California, including the project vicinity, it is not expected to occur on the site due to recent range contractions. Determined to be absent.
Central California Coast steelhead (<i>Oncorhynchus mykiss</i>)	FT	Cool streams with suitable spawning habitat and conditions allowing migration between spawning and marine habitats.	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for steelhead, and this species is absent from the project site. However, steelhead are known to occur in the Guadalupe River immediately adjacent to the project site (Smith 2013). This reach of the Guadalupe River functions as a migration corridor for individuals traveling between the San Francisco Bay and spawning and rearing habitat farther upstream.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
California tiger salamander (<i>Ambystoma californiense</i>)	FT, ST, VHP	Vernal or temporary pools in annual grasslands or open woodlands.	Absent. Populations located on the Santa Clara Valley floor have been extirpated due to habitat loss, and the species is now considered absent from the majority of the Valley floor, including the project site (H. T. Harvey & Associates 1999a, 2012, Valley Water 2011). No recent records of California tiger salamanders are located anywhere in the project vicinity (CNDDDB 2022). Determined to be absent.
California red-legged frog (<i>Rana draytonii</i>)	FT, CSSC, VHP	Streams, freshwater pools, and ponds with emergent or overhanging vegetation.	Absent. No aquatic habitat to support this species occurs in the project site. The VHP maps the Guadalupe River adjacent to the site as breeding habitat for California red-legged frogs (ICF International 2012). However, this species has been extirpated from the majority of the project region, including the entire urbanized Santa Clara Valley floor, due to development, the alteration of hydrology of its aquatic habitats, and the introduction of nonnative predators such as nonnative fishes and bullfrogs (H. T. Harvey & Associates 1997, Valley Water 2011). Determined to be absent.
Foothill yellow-legged frog (<i>Rana boylei</i>)	FPT, SE, VHP	Partially shaded shallow streams and riffles with a rocky substrate. Occurs in a variety of habitats in coast ranges.	Absent. No aquatic habitat to support this species occurs in the project site. The VHP maps the Guadalupe River adjacent to the site as secondary habitat for foothill yellow-legged frogs (ICF International 2012). However, this species has been extirpated from valley floor areas of Santa Clara County, and is no longer known to occur along the County's streams below major reservoirs, including Calero and Almaden Reservoirs which are located upstream of the project (H. T. Harvey & Associates 1999b). Determined to be absent.
Bald eagle (<i>Haliaeetus leucocephalus</i>)	SE, SP	Occurs mainly along seacoasts, rivers, and lakes; nests in tall trees or in cliffs, occasionally on electrical towers. Feeds mostly on fish.	Absent. Nests and forages in the region primarily at inland reservoirs. No suitable nesting or foraging habitat is present in the project site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Least Bell's vireo (<i>Vireo bellii pusillus</i>)	FE, SE, VHP	Nests in heterogeneous riparian habitat, often dominated by cottonwoods and willows.	Absent. This species has not been recorded nesting along the Guadalupe River, which does not provide high-quality nesting habitat, or anywhere in the project vicinity. The only breeding records in Santa Clara County are from Llagas Creek southeast of Gilroy in 1997 and the Pajaro River south of Gilroy in 1932 (Rottenborn 2007a). Otherwise, records in the County of potential least Bell's vireos include 1–2 singing males along lower Llagas Creek in May 2001 (CNDDDB 2022), a singing male in June 2006 along Coyote Creek near the Coyote Creek Golf Club (H. T. Harvey & Associates 2007; not seen, so subspecies not confirmed), and a singing male on May 23, 2016 in Alviso (Jeffers, pers. comm.). The VHP does not map suitable habitat for this species as occurring within or adjacent to the project site (ICF International 2012). Although the abundance and distribution of this species may increase as core populations increase, it is unlikely to be more than a rare and very locally occurring breeder along southern Santa Clara County streams (south of the project site). Determined to be absent.
Tricolored blackbird (<i>Agelaius tricolor</i>)	ST, VHP	Nests near fresh water in dense emergent vegetation.	Absent as Breeder. In Santa Clara County, has bred in only a few scattered locations, and is absent from, or occurs only as a nonbreeder in, most of the County (Rottenborn 2007b). Typically nests in extensive stands of tall emergent herbaceous vegetation in non-tidal freshwater marshes and ponds. No suitable nesting habitat is present on the project site or along the Guadalupe River adjacent to the project site; this species (whose colonies are loud and conspicuous) has never been recorded nesting within or adjacent to the project site, and high levels of adjacent disturbance likely preclude nesting by this species. Thus, this species is expected to occur only in low numbers, and only occasionally, as a nonbreeding forager.
San Joaquin kit fox (<i>Vulpes macrotis mutica</i>)	FE, ST, VHP	Annual grassland or mixed shrub and grassland habitats throughout low, rolling hills and in valleys.	Absent. This species has not been recorded within, and is not expected to occur within, the project site. The closest area of potential occurrence (based on VHP mapping) is approximately 35.7 miles southeast of the project site in the vicinity of Pacheco Creek and the uppermost reaches of the Pajaro River, where it may occur infrequently and in low numbers during dispersal (ICF International 2012). Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Mountain lion (<i>Puma concolor</i>) Southern California/Central Coast ESU	SC	Has a large home range size and occurs in a variety of habitats. Natal dens are typically located in remote, rugged terrain far from human activity. May occasionally occur in areas near human development, especially during dispersal.	Absent. In the project region, mountain lions occur primarily in the Santa Cruz Mountains and the Diablo Range. This species is not expected to occur on the project site owing to high levels of human activity and the project's location in urbanized San José. Determined to be absent.
California Species of Special Concern			
Central Valley fall-run Chinook salmon (<i>Oncorhynchus tshawytscha</i>)	CSSC	Cool rivers and large streams that reach the ocean and that have shallow, partly shaded pools, riffles, and runs.	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Chinook salmon, and this species is absent from the project site. This species did not spawn historically in South Bay streams; however, small numbers have been detected in the Guadalupe River (Leidy 2007). The reach of the Guadalupe River adjacent to the project site typically functions as a migration corridor for individuals traveling between the San Francisco Bay and higher-quality spawning habitat farther upstream. However, Chinook salmon may attempt spawning in this reach if they are unable to access higher-quality habitat upstream due to seasonally low flows.
Pacific lamprey (<i>Entosphenus tridentatus</i>)	CSSC	Medium- and large-sized, low-gradient cold rivers and streams, with a wide range of habitats (e.g., gravel, low-gradient riffles).	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Pacific lamprey, and this species is absent from the project site. This species is known to be present in the Guadalupe River adjacent to the project site (Leidy 2007). Spawning is expected to occur primarily in cooler water; ammocoetes may be present in warmer areas farther downstream.
Central California roach (<i>Lavinia symmetricus symmetricus</i>)	CSSC	Generally found in small streams, they are well adapted to intermittent watercourses (e.g., tolerant of high temperatures and low oxygen levels).	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Central California roach, and this species is absent from the project site. This species is known to be present in the Guadalupe River (Leidy 2007). It occurs widely, often in unshaded pools with warm temperatures, and is expected to occur within the Guadalupe River adjacent to the project site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Sacramento hitch (<i>Lavinia exilicauda exilicauda</i>)	CSSC	Warm, lowland, waters including clear streams, turbid sloughs, lakes, and reservoirs. Has a high tolerance for varying stream conditions and water temperature.	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Sacramento hitch, and this species is absent from the project site. This species is known to be present in the Guadalupe River (Leidy 2007). It has a high tolerance of stream conditions and water temperatures it is expected to occur adjacent to the project site.
Riffle sculpin (<i>Cottus gulosus</i>)	CSSC	Permanent, cool, headwater streams with an abundance of riffles and rocky substrates.	Likely Absent from Adjacent Waters. Riffle sculpin are widespread and locally abundant in the region, typically within cooler reaches near stream headwaters, and have historically been detected in the Guadalupe River (Leidy 2007). Warmer conditions along the reach of the Guadalupe River adjacent to the site likely preclude the presence of this species.
Southwestern pond turtle (<i>Actinemys pallida</i>)	CSSC, VHP	Permanent or nearly permanent water in a variety of habitats.	May be Present. No suitable aquatic habitat is present on the project site, and breeding populations of southwestern pond turtles have been extirpated from most urbanized areas in the region. However, individuals of this long-lived species still occur in urban streams and ponds in the Santa Clara Valley, including the Guadalupe River immediately adjacent to the project site, where one was observed in 1997 (CNDDDB 2022), although none were observed during the 2020 or 2022 site visits. Potentially suitable nesting habitat for southwestern pond turtles is present in grassland areas on the project site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Burrowing owl (<i>Athene cunicularia</i>)	CSSC, VHP	Nests and roosts in open grasslands and ruderal habitats with suitable burrows, usually those made by California ground squirrels.	May be Present. No records of burrowing owls are known from the project site, but burrowing owls have been known to occur on the undeveloped properties adjacent to the site. The closest known record of a burrowing owl to the project site was a wintering owl detected approximately 215 feet to the southeast (in an area that is now developed) by H. T. Harvey & Associates on January 14, 2013 (H. T. Harvey & Associates 2013). The most recent record of a wintering owl near the project site was a single owl detected on the undeveloped property to the northeast by a Santa Clara Valley Habitat Agency biologist on December 4, 2015 (City of San José 2016). The most recent record of a pair of nesting burrowing owls near the project site was detected at the Pacific Gas & Electric substation on Component Drive approximately 1,415 feet to the northeast on June 2, 2015 (H. T. Harvey & Associates 2015). In addition, owls have been known to nest, roost, and forage approximately southwest of the project site on the Airport airfield for decades (Albion Environmental, Inc. 1997) and continue to be present in these areas year-round (Santa Clara Valley Habitat Agency 2018, U.S. Department of Agriculture 2018). At the time of the June 2020, September 2020, and July 2022 site visits, the grassland habitat on the project site provided suitable foraging habitat for owls, but only very marginal nesting and roosting habitat due to the small numbers of California ground squirrel burrows present (one burrow was observed during the June 2020 survey, three burrows were observed during the September 2020 survey, and four burrows were observed during the July 2022 survey) and the approximately 10–40-inch tall grassland vegetation. No owls were detected on the project site or surrounding areas within 250 feet during the 2020 or 2022 surveys. In addition, no owls have been detected within 0.5 mile of the site during comprehensive surveys for this species in recent years, and due to the distance between the site and the nearest owl locations, the site is not considered to provide foraging habitat for any known breeding pairs of this species (Santa Clara Valley Habitat Agency 2022). If burrowing owls occur on the site at all, they are expected to occur as occasional migrants or dispersants rather than breeders or regular foragers.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Loggerhead shrike (<i>Lanius ludovicianus</i>)	CSSC (nesting)	Nests in tall shrubs and dense trees; forages in grasslands, marshes, and ruderal habitats.	May be Present. Nests (or at least formerly nested) in a number of locations around the South Bay where open grassland, ruderal, or agricultural habitat with scattered brush, chaparral, or trees provides perches and nesting sites (Bousman 2007a), though populations have declined in recent years as suitable habitat has been increasingly developed. Potentially suitable nesting habitat for loggerhead shrikes is present in dense shrubs and trees on the project site, although no loggerhead shrikes or active shrike nests were detected during the June 2020 or July 2022 site visits. Up to one pair of loggerhead shrikes could potentially nest on the project site. Nonbreeding individuals may forage in low numbers in grasslands throughout the project site year-round.
Yellow warbler (<i>Setophaga petechia</i>)	CSSC (nesting)	Nests in riparian woodlands.	May be Present in Adjacent Areas. No suitable nesting habitat for yellow warblers is present on the project site. However, suitable riparian nesting habitat for this species is present adjacent to the site along the Guadalupe River. Yellow warblers forage along the Guadalupe River in large numbers during migration, and up to one or two pairs of yellow warblers can potentially nest adjacent to the project site.
San Francisco common yellowthroat (<i>Geothlypis trichas sinuosa</i>)	CSSC	Nests in herbaceous vegetation, usually in wetlands or moist floodplains.	May be Present in Adjacent Areas. No suitable nesting habitat for common yellowthroats is present on the project site. Suitable nesting and foraging habitat for common yellowthroats is present in the herbaceous vegetation and floodplain riparian habitat along the Guadalupe River adjacent to the site, and one to two pairs of this species may nest and forage within this habitat.
Grasshopper sparrow (<i>Ammodramus savannarum</i>)	CSSC (nesting)	Nests and forages in grasslands, meadows, fallow fields, and pastures.	Absent as Breeder. Known to occur in the region primarily in grasslands and less frequently disturbed agricultural habitats, mostly in the foothills. This species does not breed on grassland on the Santa Clara Valley floor. Small numbers of individuals may forage in grasslands in the project site during migration.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Bryant's savannah sparrow (<i>Passerculus sandwichensis alaudinus</i>)	CSSC	Nests in pickleweed dominant salt marsh and adjacent ruderal habitat.	Absent as Breeder. In the South San Francisco Bay, nests primarily in short pickleweed-dominated portions of diked/muted tidal salt marsh habitat and in adjacent ruderal habitats (Rottenborn 2007c). No suitable nesting habitat occurs in the project site. Individuals of several savannah sparrow subspecies, including <i>alaudinus</i> , may forage on the project site during migration and winter.
Pallid bat (<i>Antrozous pallidus</i>)	CSSC	Forages over many habitats; roosts in caves, rock outcrops, buildings, and hollow trees.	Absent as Breeder. Historically, pallid bats were likely present in a number of locations throughout the project region, but their populations have declined in recent decades. This species has been extirpated as a breeder from urban areas close to the Bay, as is the case in the project site. No suitable roosting habitat is present in the project site, and no known maternity colonies of this species are present within or adjacent to the project site. There is a low probability that the species occurs in the site vicinity at all due to urbanization; however, individuals from more remote colonies could potentially forage in the project site on rare occasions.
Townsend's big-eared bat (<i>Corynorhinus townsendii</i>)	CSSC	Roosts in caves and mine tunnels, and occasionally in deep crevices in trees such as redwoods or in abandoned buildings, in a variety of habitats.	Absent. No known extant populations of the Townsend's big-eared bat occur on the Santa Clara Valley floor. Suitable breeding habitat is not present in the project site, and no colonies are known from the site vicinity. Determined to be absent.
San Francisco dusky-footed woodrat (<i>Neotoma fuscipes annectens</i>)	CSSC	Nests in a variety of habitats including riparian areas, oak woodlands, and scrub.	Absent. Suitable habitat for this species is present along the Guadalupe River adjacent to the project site. However, with the exception of records along Coyote Creek and along the edges of the Valley, San Francisco dusky-footed woodrats are not known to occur in the more urbanized portions of Santa Clara County (H. T. Harvey & Associates 2010). Determined to be absent.
American badger (<i>Taxidea taxus</i>)	CSSC	Burrows in grasslands and occasionally in infrequently disked agricultural areas.	Absent. Known to occur in the project region primarily in extensive grasslands and agricultural habitats, mostly in the foothills. Suitably extensive grasslands or agricultural habitats are not present within or near the project site, and the grasslands on the project site are isolated from more extensive grasslands in the foothills to the east and the mountains to the northwest by high-density urban development. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
State Fully Protected Species			
American peregrine falcon (<i>Falco peregrinus anatum</i>)	SP	Forages in many habitats; nests on cliffs and tall bridges and buildings.	Absent as Breeder. Peregrine falcons are known to nest on City Hall in downtown San José, but are not known or expected to nest in the project site due to a lack of suitable habitat. Nevertheless, the peregrine falcon may occur in the project site as an occasional forager.
Golden eagle (<i>Aquila chrysaetos</i>)	SP	Breeds on cliffs or in large trees (rarely on electrical towers); forages in open areas.	Absent as Breeder. No suitable nesting habitat for golden eagles is present on the project site. Nevertheless, this species may occur in the project site as an occasional forager.
White-tailed kite (<i>Elanus leucurus</i>)	SP	Nests in tall shrubs and trees; forages in grasslands, marshes, and ruderal habitats.	Absent as Breeder (May Breed in Adjacent Areas). Potentially suitable nesting habitat for this species is present immediately adjacent to the project site in trees along the Guadalupe River, with suitable foraging habitat present in grasslands on the project site. However, no kites were observed during the June 2020 or July 2022 site visits. White-tailed kites may occur on the project site as occasional foragers year-round.

Key to Abbreviations:

Status: Federally Endangered (FE); Federally Threatened (FT); Federal Candidate for Listing (FC); Federally Proposed as Threatened (FPT); State Endangered (SE); State Threatened (ST); State Candidate (SC); State Fully Protected (SP); California Species of Special Concern (CSSC); Santa Clara Valley Habitat Plan Covered Species (VHP).

5.3 Sensitive Natural Communities, Vegetation Alliances, and Habitats

Natural communities have been considered part of the Natural Heritage Conservation triad, along with plants and animals of conservation significance, since the state inception of the Natural Heritage Program in 1979. The CDFW determines the level of rarity and imperilment of vegetation types, and tracks sensitive communities in its Rarefind database (CNDDDB 2022). Global rankings (G) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas state (S) rankings are a reflection of the condition of a habitat within California. Natural communities are defined using NatureServe's standard heritage program methodology as follows (Faber-Langendoen et al. 2012):

G1/S1:	Critically imperiled
G2/S2:	Imperiled
G3/S3:	Vulnerable.
G4/S4:	Apparently secure
G5/S4:	Secure

In addition to tracking sensitive natural communities, the CDFW also ranks vegetation alliances, defined by repeating patterns of plants across a landscape that reflect climate, soil, water, disturbance, and other environmental factors (Sawyer et al. 2009). If an alliance is marked G1-G3, all of the vegetation associations within it will also be of high priority (CDFW 2022). The CDFW provides VegCAMP's currently accepted list of vegetation alliances and associations (CDFW 2022).

Impacts on CDFW sensitive natural communities, vegetation alliances/associations, or any such community identified in local or regional plans, policies, and regulations, must be considered and evaluated under CEQA (Title 14, Division 6, Chapter 3, Appendix G of the California Code of Regulations). Furthermore, aquatic, wetland and riparian habitats are also protected under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the USACE, RWQCB, CDFW, and/or the USFWS.

5.3.1 Sensitive Natural Communities

A query of sensitive habitats in the CNDDDB (2022) identified two sensitive natural communities as occurring within the nine 7.5-minute USGS quadrangles containing or surrounding the project site: (1) sycamore alluvial woodland (Rank G1/S1.1) and (2) northern coastal salt marsh (Rank G3/S3.2). No riparian habitat occurs on the project site. Additionally, neighboring mixed riparian woodland and forest habitat occurring along the Guadalupe River adjacent to the project site does not meet the definition of sycamore alluvial woodland, which is dominated by western sycamore (*Platanus racemosa*), and occurs within braided, depositional channels of

intermittent streams, usually with cobble or boulder substrate (Holland 1986). Similarly, no marsh habitat was mapped during the survey; therefore, no northern coastal salt marsh occurs on the project site.

5.3.2 Sensitive Vegetation Alliances

The majority of the project site is dominated by wild oats and *Bromus* sp. and would be considered “Wild oats and annual brome grasslands (*Avena* spp. – *Bromus* spp.)” alliance (CDFW 2022). This alliance does not have a global or state ranking, but because it is defined by dominance of nonnative species, is not considered sensitive by VegCAMP. No sensitive alliances occur on the project site.

5.3.3 CDFW Riparian Habitat

Due to its rarity and disproportionately high habitat values and functions to wildlife, the CDFW considers riparian habitat to be sensitive. As described above in Section 3.2.4, the CDFW would likely claim jurisdiction over areas at, and below, the top of bank lines on either side of Guadalupe River regardless of the vegetative composition of these areas. Riparian habitat associated with the Guadalupe River corridor does not occur on the project site, nor would it be directly or indirectly impacted by project activities.

5.3.4 Sensitive Habitats (Waters of the U.S./State)

No waters or wetlands of the U.S./state occur on the project site.

5.3.5 Nonnative and Invasive Species

Several nonnative, invasive plant species occur on the project site (Appendix A). Of these, the following have a rating of “limited” invasiveness (considered invasive but their ecological impacts are minor on a statewide level and their reproductive biology and other attributes result in low to moderate rates of invasiveness) according to the Cal-IPC (2022): curly dock (*Rumex pulcher*), bristly ox-tongue, milk thistle, Russian thistle (*Salsola* sp.), California burclover (*Medicago polymorpha*), wild radish, smilo grass (*Stipa miliacea*), ribwort plantain (*Plantago lanceolata*), redstem filaree (*Erodium cicutarium*), and charlock mustard (*Sinapis arvensis*). The following species have a “moderate” rating, indicating that they have substantial and apparent-but generally not severe-ecological impacts on physical processes, plant and animal communities, and vegetation structure, and that their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment would be generally dependent upon ecological disturbance: wild oats, ripgut brome, Italian thistle, fennel (*Foeniculum vulgare*), Mexican fan palm (*Washingtonia robusta*), black mustard (*Brassica nigra*), Harding grass (*Phalaris aquatica*), summer mustard (*Hirschfeldia incana*), and blue gum (*Eucalyptus globulus*). Species with a “high” invasive rating by the Cal-IPC have the potential to cause severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment, and most are widely distributed ecologically (Cal-IPC 2022). On the project site, the following species with a “high” rating were observed: English ivy (*Hedera helix*), broadleaved pepperweed, yellow starthistle (*Centaurea solstitialis*), Himalayan blackberry, and red brome (*Bromus rubens*). Broadleaved pepperweed, and yellow starthistle were observed commonly throughout the northwest portion of the California annual grassland land cover and on the northeastern side of the

Guadalupe River levee on the project site. English ivy was observed adjacent to and within the urban-suburban land cover type on the project site, where it is maintained as a landscaping ground cover. Due to their ubiquity in the region, and the fact that proposed project activities are expected to clear and develop all areas where populations of invasive species are located, project activities are not expected to result in the spread of nonnative and invasive plant species.

Section 6. Impacts and Mitigation Measures

CEQA and the State CEQA Guidelines provide guidance in evaluating impacts of projects on biological resources and determining which impacts will be significant. The Act defines “significant effect on the environment” as “a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.”

Appendix G of State CEQA Guidelines provides a checklist of other potential impacts to consider when analyzing the significance of project effects. The impacts listed in Appendix G (Chapter IV) may or may not be significant, depending on the level of the impact. For biological resources, these impacts include whether the project would:

- A. “have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service”
- B. “have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service”
- C. “Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means”
- D. “interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites”
- E. “conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance”
- F. “conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan”

Potential impacts on biological resources as a result of the proposed project were systematically evaluated at the project level. These impacts were first evaluated to qualitatively describe how proposed project activities could impact biological resources, and whether impacts would be temporary (i.e., occurring only during project construction and the period immediately following) or permanent. Impacts were then evaluated with the application of any applicable VHP conditions (see below) with which the proposed project must comply to determine whether the impacts were significant (and thus required mitigation) even with VHP compliance.

6.1 Santa Clara Valley Habitat Plan

The proposed project is classified as an “Urban Development” project, which is a “covered project” under the VHP (ICF International 2012). Urban Development projects include private development projects within the planning limits of urban growth in San José. The Santa Clara Valley Habitat Agency (SCVHA) leads the implementation of the VHP, which is a regional partnership between the CDFW, the USFWS, and six local partners, including Valley Water, the County of Santa Clara, the Santa Clara Valley Transportation Authority, and the Cities of San José, Gilroy, and Morgan Hill. The VHP was adopted in 2013 by all local participating agencies, and permits were issued from the USFWS and CDFW. The VHP is both a habitat conservation plan and natural community conservation plan, or HCP/NCCP. The planning document helps private and public entities plan and conduct projects and activities in ways that lessen impacts on natural resources, including specific threatened and endangered species. The VHP identifies regional lands (called reserves) to be preserved or restored to the benefit of at-risk species, and describes how reserves will be managed and monitored to ensure that they benefit those species. In providing a long-term, coordinated planning for habitat restoration and conservation, the VHP aims to enhance the viability of threatened and endangered species throughout the Santa Clara Valley.

The VHP defines measures to avoid, minimize, and mitigate impacts on covered species and their habitats while allowing for the implementation of certain *covered projects*. Chapter 6 of the VHP includes detailed and comprehensive conditions to avoid and minimize impacts on the 18 “covered species” (nine animal species and nine plant species) included in the plan area, which consists of 519,506 acres, or approximately 62% of Santa Clara County. These conditions are designed to achieve the following objectives:

- provide avoidance of certain covered species during implementation of covered activities throughout the project site;
- prevent take of individuals of certain covered species from covered activities as prohibited by law (e.g., take of fully protected species);
- minimize impacts on natural communities and covered species where conservation actions will take place; and
- avoid and minimize impacts on jurisdictional wetlands and waters throughout the study area to facilitate project-by-project wetland permitting.

In conformance with the VHP, project proponents are required to pay impact fees in accordance with the types and acreage of habitat or “land cover” impacted, and to implement conservation measures specified by the VHP. Land cover impacts are used because it is the best predictor of potential species habitat, and is applicable to all of the covered species (with the exception of the burrowing owl). The SCVHA has mapped the following three fee zones in the VHP area: (1) rangeland and natural lands, (2), agricultural and valley floor lands, and (3) small vacant sites (SCVHA 2022). The following areas are exempt from land cover fees:

- all development that occurs on land mapped by the VHP as urban-suburban, landfill, reservoir (excluding dams), or agriculture developed land cover types;
- urban development in Fee Zones A–C on parcels less than 0.5 acre;
- additions to structures within 50 feet of an existing structure that result in less than 5,000 feet of impervious surface so long as there is no effect on wetland or serpentine land cover types; and
- construction of recreational facilities within the reserve system.

Additional fees in-lieu of providing compensatory mitigation are imposed for projects that impact serpentine habitat, wetlands, and burrowing owls, and for certain projects that result in atmospheric nitrogen emissions, although in some cases, project proponents may provide land to restore or create habitats protected by the VHP in lieu of payment of fees.

The project is located within the VHP Urban Service Area for the City of San José (Figure 6). In regards to the VHP's land cover fee zones, the project site falls entirely within Urban Areas (No Land Cover Fee) (Figure 6). The project site also does not include lands mapped as occupied burrowing owl nesting habitat, and no burrowing owl fee applies (this is discussed in greater detail under *Condition 15. Western Burrowing Owl* and Section 6.2.5 below). Nevertheless, the project will pay VHP burrowing owl fees, consistent with the SCVHA's Voluntary Fee Payments Policy, for the permanent loss of ostensibly suitable, but currently unoccupied, burrowing owl foraging habitat to offset cumulative impacts (this is discussed in greater detail in Section 6.8 *Cumulative Impacts* below). The project will also engender an anticipated 532 operational vehicle trips per month by personnel visiting the facilities and may therefore be required to pay fees for nitrogen emissions.

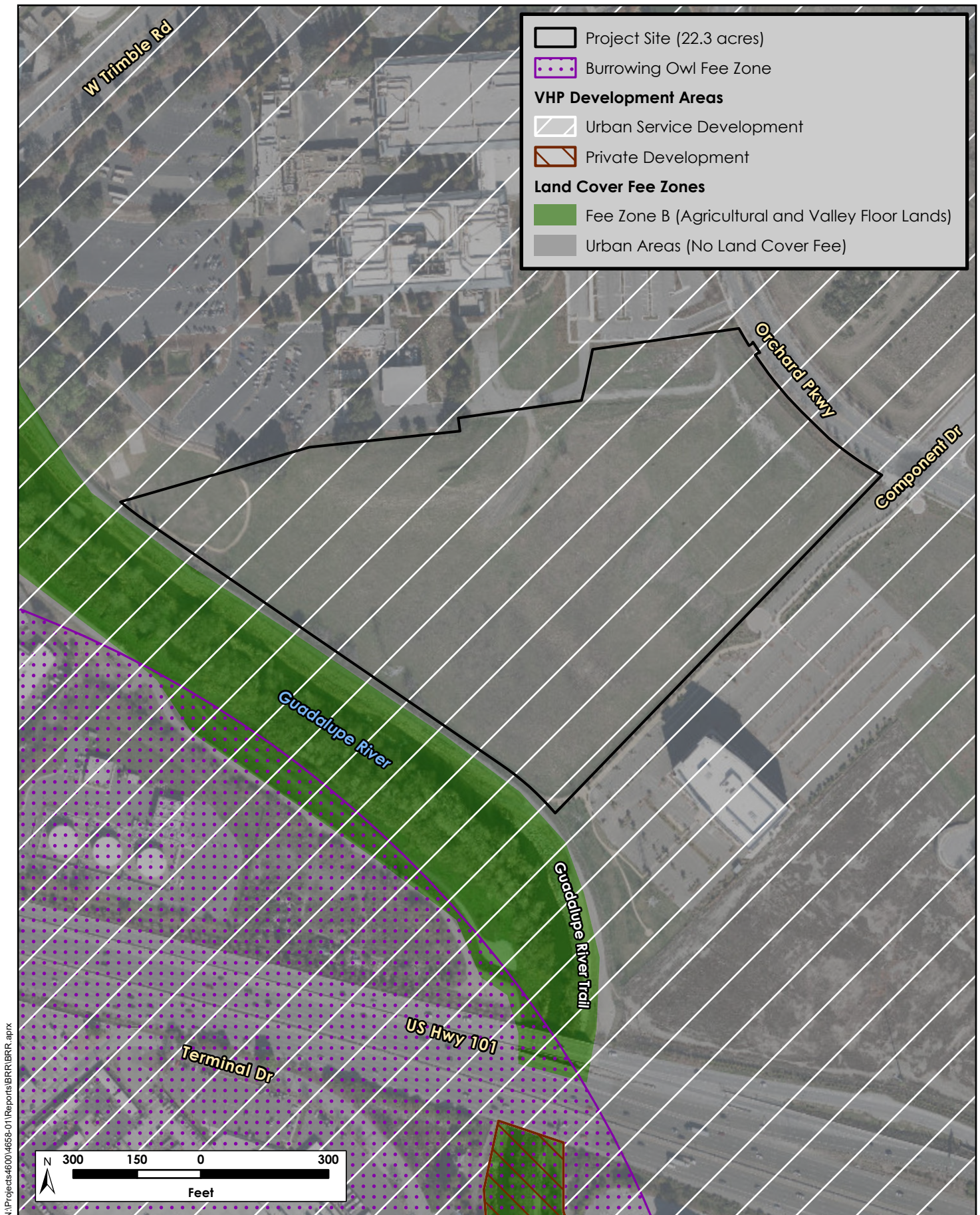
The impact assessment in Section 6.2 below summarizes the types of applicable fees and conservation measures that are required by the VHP. VHP conditions that apply to the proposed project are as follows:

Condition 1. Avoid Direct Impacts on Legally Protected Plant and Wildlife Species

Several wildlife species that occur in the project vicinity are protected under state and federal laws. Some of these animal species are listed as fully protected under the California Fish and Game Code (e.g., the white-tailed kite), and eagles are protected under the Bald and Golden Eagle Protection Act. Further, all native bird species and their nests are protected under the MBTA and California Fish and Game Code. Actions conducted under the VHP must comply with the provisions of the MBTA and California Fish and Game Code.

Condition 3. Maintain Hydrologic Conditions and Protect Water Quality

Condition 3 applies to all projects and identifies a set of programmatic BMPs, performance standards, and control measures to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during project construction. These requirements include preconstruction, construction site, and post-construction actions. Preconstruction conditions are site design planning approaches that protect water quality by preventing and reducing the adverse impacts of stormwater pollutants



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and increases in peak runoff rate and volume. They include hydrologic source control measures that focus on the protection of natural resources. Construction site conditions include source and treatment control measure to prevent pollutants from leaving the construction site and minimizing site erosion and local stream sedimentation during construction. Post-construction conditions include measures for stormwater treatment and flow control.

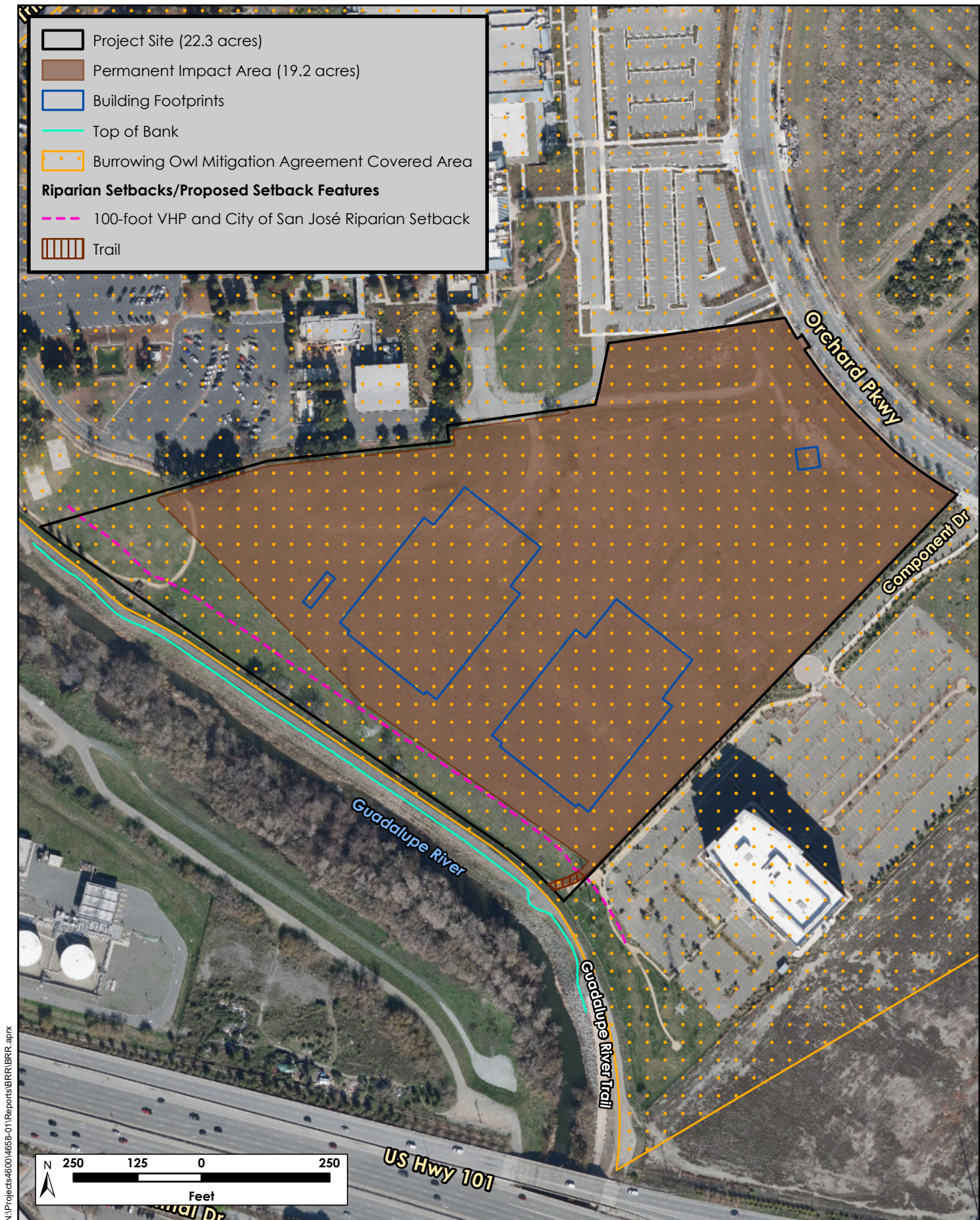
Condition 11. Stream and Riparian Setbacks

Condition 11 applies to covered projects that may affect streams and associated riparian vegetation within the VHP plan area. This condition requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors. The standard required setback for the reach of Guadalupe River (a Category 1 stream) on the project site is 100 feet from the top of bank because the slope of the project site is less than 30%, no areas 35 feet from the edge of riparian vegetation extend past the 100-foot buffer, and the project site is located inside of VHP-designated urban service areas. However, some exemptions may be applicable depending on the nature of the channel. Further, as described in Section 3.3.2, City Council Policy 6-34 provides guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that may provide for riparian protection, including those contained in the Council-adopted VHP, and calls for a setback of 100 feet from the edge of riparian canopy rather than from top of bank (or 35 feet from edge of canopy) in accordance with VHP Condition 11. Because the riparian canopy does not extend beyond the top of bank of the Guadalupe River adjacent to the project site, the City and VHP riparian setbacks are the same (Figure 7).

Condition 15. Western Burrowing Owl / Burrowing Owl Mitigation Agreement

Condition 15 requires the implementation of measures to avoid and minimize direct impacts on burrowing owls, including pre-construction surveys, establishment of 250-foot non-disturbance buffers around active nests during the breeding season (February 1 through August 31), establishment of 250-foot non-disturbance buffers around occupied burrows during the nonbreeding season, and construction monitoring. Pre-construction surveys for burrowing owls are required by the VHP in areas mapped as breeding habitat. As mentioned above, additional fees in-lieu of providing compensatory mitigation are imposed for VHP covered projects that impact burrowing owls.

Agilent Technologies, Inc., a former owner of the project property, entered into a mitigation agreement with the CDFW (Ref. No. 1802-2000-073-03) in 2001 that provided for the purchase of off-site burrowing owl habitat in other, less developed and protected areas in the region to offset the loss of habitat on the property (inclusive of all 26.7 acres on the project site). A copy of the mitigation agreement is provided in Appendix C, and the area covered by the mitigation agreement is shown on Figure 7. Although burrowing owls have not been recorded with certainty on the project site, the larger area covered by Agilent's mitigation agreement was formerly occupied by two pairs of nesting burrowing owls and one resident adult burrowing owl. Portions of this larger area have since been developed, and portions remain undeveloped. The purpose of the mitigation



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H. T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 7. Project Impacts
Microsoft San José City Data Center 4 Biological Resources Report (4658-01)
September 2022

agreement was to offset the loss of burrowing owl habitat and provide for survival of the species in other areas. Agilent Technologies, Inc. provided mitigation at a ratio of 6.5 acres of burrowing owl habitat for each pair and single burrowing owl displaced from the area in conformance with CDFW (then the California Department of Fish and Game) mitigation requirements at that time, for a total of 19.5 acres.

Provisions within Chapters 6 and 9 of the VHP exempt a project proponent from its conditions and/or fees provided the proponent provides to the Implementing Agency (here, the City of San José) written confirmation from the CDFW and USFWS, as applicable, that specifically refers to the activity and states that such activity is not likely to result in take of any state or federally listed species, and will not preclude the successful implementation of the conservation strategy of all covered species (ICF International 2012). In a letter dated November 15, 2012 to the City of San José, the CDFW confirmed that the terms of the mitigation agreement have been fulfilled and, per the terms of the agreement, that CDFW requires no additional mitigation for impacts on burrowing owls on the project site. According to the CDFW, “any determination by the City regarding the property that was formerly the Agilent project area will not affect the City’s ability to successfully implement the conservation strategy for the western burrowing owl described in the VHP and will not change the strategy.” A copy of the letter is provided in Appendix C. The project proponent is not required to provide a letter from the USFWS, as the burrowing owl is not a federally listed species.

Exhibit A: Corrections, Clarifications, and Updates to the Santa Clara Valley Habitat Plan (HCP/NCCP), dated April 4, 2013, Section 1.2 Errata, 1.2.3, states that the implementation of the VHP will not add or remove any of the rights and obligations to any development agreement between the Implementing Agency (here, the City of San José) and a private applicant. The provision applies to any development agreement that was entered into and adopted prior to the operative date of the VHP and remains consistent with the City of San José’s land use approvals for the project. The valid Development Agreement for the property was adopted in 2004, prior to the 2013 operative date of the VHP. For this reason, the 2012 VHP did not map the project site within a Burrowing Owl Fee Zone (ICF International 2012). Both the mitigation agreement and the letter from CDFW provide sufficient documentation to the City of San José that the proposed development of the project site, in conformance with the mitigation agreement, will not preclude the successful implementation of the conservation strategy for the burrowing owl. Therefore, the project is not subject to the fees or requirements of Condition 15. Nevertheless, the project will pay VHP burrowing owl fees, consistent with the SCVHA’s Voluntary Fee Payments Policy, as mitigation for the permanent loss of ostensibly suitable, but currently unoccupied, burrowing owl foraging habitat to offset cumulative impacts under CEQA (this is discussed in greater detail in Section 6.8 *Cumulative Impacts* below).

The mitigation agreement states that the take of individual owls is prohibited per the California Fish and Game Code (Section 3503.3), and that no burrowing owls would be evicted from burrows during the nesting season (defined as February 1 to August 31). The eviction of burrowing owls outside the nesting season may be permitted as a means to avoid take, pending evaluation of eviction plans and receipt of formal written approval from the CDFW authorizing the eviction. The project shall adhere to these requirements to avoid and minimize impacts on burrowing owls during project construction.

Condition 17. Tricolored Blackbird

This condition applies to projects that are located within 250 feet of any riparian, coastal, and valley freshwater marsh and helps to protect tricolored blackbirds by prescribing preconstruction surveys, construction buffer zones, biological monitoring, and other requirements. If a project is located within 250 feet of habitat mapped as pond by the VHP, a qualified biologist must confirm that the pond land cover type is present. If a qualified biologist verifies that the project area is within 250 feet of pond habitat, a qualified biologist must conduct a field investigation to identify and map potential nesting substrate. If suitable nesting substrate is identified, avoidance and minimization measures must be implemented (see pages 4-43 to 4-44 of the VHP).

Although tricolored blackbirds have never been recorded nesting on or near the project site, the proposed project is located within 250 feet of an area (i.e., the Guadalupe River) mapped by the VHP as suitable nesting habitat for the tricolored blackbird (ICF International 2012). Therefore, per Condition 17 of the VHP, H. T. Harvey & Associates wildlife ecologist C. Fosdick, M.S., conducted a field investigation to identify and map potential nesting substrate for tricolored blackbirds on June 2, 2020, and H. T. Harvey & Associates wildlife ecologist Z. Hampson, B.S., conducted a similar investigation on July 21, 2022. No suitable vegetation for nesting by tricolored blackbirds was present along the Guadalupe River within 250 feet of the project site due to predominance by woody riparian vegetation and shorter ruderal vegetation, and the absence of large stands of emergent vegetation or other tall, dense herbaceous vegetation. Thus, no tricolored blackbird nesting colonies are expected to occur on or within 250 feet of the site, and no additional surveys or avoidance and minimization measures pertaining to this species are required.

6.2 Impacts on Special-Status Species: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS (Less than Significant with Mitigation)

6.2.1 Impacts on California Annual Grassland and Associated Common Plant and Wildlife Species (Less than Significant)

Proposed project activities would result in 18.6 acres¹ of permanent impacts on California annual grassland habitat on the project site. These impacts would reduce the extent of vegetation within the impact area and would result in a reduction in abundance of some of the common plant and wildlife species that occur on the site. However, the area of California annual grassland to be impacted occurs in a location in San José that has been subject to disturbance and fragmentation in the past and is embedded within a highly developed urban area, such that these areas do not provide regionally rare or especially high-value habitat for native vegetation or wildlife, or special-status species aside from the burrowing owl (discussed in Section 6.2.5 below). In addition,

¹ 18.6 acres is the acreage of permanent impacts within California annual grassland habitat on the project site. The project's permanent impact area is shown on Figure 7, and the extent of California annual grassland habitat on the site is shown on Figure 3.

California annual grassland is abundant and widespread regionally and is not particularly sensitive, and the habitat on the project site is not especially valuable (from the perspective of providing important plant or wildlife habitat [again, aside from habitat for the burrowing owl discussed in Section 6.2.5]) or an exemplary occurrence of this habitat type. Therefore, impacts on this habitat are considered less than significant. Further, because the number of individuals of any common plant or animal species within this habitat, and the proportion of these species' regional populations that could be disturbed, is very small, the project's impacts would not substantially reduce regional populations of these species. Thus, these impacts do not meet the CEQA standard of having a *substantial* adverse effect, and would not be considered significant under CEQA.

6.2.2 Impacts on Water Quality and Special-Status Fish (No Impact)

No direct impacts are proposed within the bed and banks of the Guadalupe River, which flows adjacent to the project site, and no indirect impacts on the Guadalupe River, water quality within the channel, or fish species inhabiting the river are expected to occur as a result of project activities.

The project site is separated from the river by an approximately 8-foot tall levee, and any fuel leaks or spills on the project site would be well contained by that levee. The project includes the construction of new pathways on the northeastern slope of the levee connecting the site with the Guadalupe River Trail; however, the existing Trail covers the top of the levee, and therefore all project impacts will occur on the sloped northeastern side of the levee (i.e., any fuel leaks or spills associated with work on these pathways would drain downslope to the project site, rather than into the river). No outfalls from the site to the Guadalupe River are proposed as part of the project. Thus, the project will have no impact on water quality within the Guadalupe River or special-status fish species within the river channel.

Additionally, the project shall comply with all VHP conditions, including Condition 3, which requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during construction. Construction projects in California causing land disturbances that are equal to 1 acre or greater must comply with state requirements to control the discharge of storm water pollutants under the NPDES *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended and administratively extended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of BMPs to protect water quality until the site is stabilized. Standard permit conditions under the Construction General Permit require that the applicant utilize various measures including: on-site sediment control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors.

In many Bay Area counties, including Santa Clara County, projects must also comply with the California Regional Water Quality Control Board, San Francisco Bay Region, Municipal Regional Stormwater National

Pollutant Discharge Elimination System Permit (Water Board Order No. R2-2015-0049). This permit requires that all projects implement BMPs and incorporate Low Impact Development practices into the design to prevent stormwater runoff pollution, promote infiltration, and hold/slow down the volume of water coming from a site after construction has been completed. In order to meet these permit and policy requirements, projects must incorporate the use of green roofs, impervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors.

6.2.3 Impacts on Nonbreeding Special-Status Invertebrates, Birds, and Mammals (Less than Significant)

Several special-status invertebrate, bird, and mammal species may occur on the project site as nonbreeding migrants, transients, or foragers, but they are not known or expected to breed or occur in large numbers within or near the project impact area. These are the monarch butterfly, tricolored blackbird, Bryant's savannah sparrow, grasshopper sparrow, American peregrine falcon, golden eagle, and pallid bat.

The monarch butterfly (a federal candidate) may forage in the site vicinity, especially during spring and fall migration, but is not expected to breed or overwinter on the project site due to a lack of suitable habitat. The tricolored blackbird (a state threatened species and covered under the VHP) is not expected to occur within or close to the project site as a breeder due to the absence of suitable habitat, but individuals may occur occasionally as foragers during the nonbreeding season. The Bryant's savannah sparrow (a California species of special concern) breeds in marshes along the San Francisco Bay to the north, and individuals may forage in California annual grassland on the project site during the nonbreeding season. Similarly, the grasshopper sparrow (a California species of special concern) breeds in expansive grassland habitats in the foothills, and individuals may occasionally forage in grasslands in the project site during migration. The American peregrine falcon and golden eagle (state fully protected species) are not expected to breed in the project site due to a lack of suitable nesting habitat, though individuals of these species may occasionally forage in the project site in small numbers. The pallid bat (a California species of special concern) may occur on the project site as an occasional forager, but is not expected to breed on the project site due to a lack of suitable habitat, and there are no known maternity colonies in the project site. Nevertheless, individuals from more remote colonies could potentially forage over open grasslands in the project site on rare occasions.

Activities under the proposed project would have some potential to impact foraging habitats and/or disturb individuals of these species. Construction activities might result in a temporary direct impact through the alteration of foraging patterns (e.g., avoidance of work sites because of increased noise and activity levels during maintenance activities) but would not result in the loss of individuals, as individuals of these species would fly away from any construction areas or equipment before they could be injured or killed. Further, the project site does not provide important foraging habitat used regularly or by large numbers of individuals of any of these species. As a result, impacts of the project will have little impact on these species' foraging habitat and no substantive impact on regional populations of these species. Therefore, this impact would be less than significant.

6.2.4 Impacts on the Yellow Warbler, San Francisco Common Yellowthroat, Loggerhead Shrike, and White-Tailed Kite (Less than Significant)

The yellow warbler and San Francisco common yellowthroat (California species of special concern) could potentially nest immediately adjacent to the project impact areas; the yellow warbler may nest in riparian trees along the Guadalupe River, and the San Francisco common yellowthroat may nest in herbaceous riparian vegetation along the Guadalupe River. The white-tailed kite (a state fully protected species) may nest in trees along the Guadalupe River or in landscape areas adjacent to the project site. The loggerhead shrike (a California species of special concern) may nest in trees or shrubs within or adjacent to the project site. These four species are assessed together because the potential impacts of the project on these species would be similar.

Based on site observations, the areal extent of suitable habitats within and adjacent to the project site, and known nesting densities of these species, it is likely that no more than 1–2 pairs of yellow warblers and San Francisco common yellowthroats, and one pair of loggerhead shrikes and white-tailed kites, could potentially nest within or immediately adjacent to the project site. The project would not result in the loss of suitable nesting or foraging habitat for the yellow warbler and San Francisco common yellowthroat, as no activities are proposed within the bed and banks of the Guadalupe River. The project would result in the permanent loss of suitable nesting and foraging habitat for the loggerhead shrike, and suitable foraging habitat for the white-tailed kite. In addition, activities that occur during the nesting season and cause a substantial increase in noise or human activity near active nests may result in the abandonment of active nests (i.e., nests with eggs or young). Heavy ground disturbance, noise, and vibrations caused by project activities could potentially disturb nesting and foraging individuals and cause them to move away from work areas.

The project is expected to increase the number of human users of the Guadalupe River trail, potentially subjecting nesting special-status birds within the riparian corridor to increased human disturbance. However, this trail is already heavily used by pedestrians and cyclists, and use of the riparian habitat along the river by homeless already introduces human disturbance within the riparian habitat. The increase in users of the Guadalupe River trail as a result of this project is not expected to contribute substantially to human disturbance of special-status birds that nest within the Guadalupe River corridor.

Given the abundance of these species in the region, project impacts on 1–2 pairs of yellow warblers, San Francisco common yellowthroats, loggerhead shrikes, and white-tailed kites would represent a marginal impact on their regional populations. Therefore, neither the potential loss of individual yellow warblers, San Francisco common yellowthroats, loggerhead shrikes, or white-tailed kites, nor the disturbance of nesting and foraging habitat, would rise to the CEQA standard of having a *substantial* adverse effect, and these impacts would thus not constitute a significant impact on these species or their habitat under CEQA. All native bird species, including loggerhead shrikes, are protected from direct take by federal and state statutes, and the project shall comply with VHP Condition 1 either by restricting work to the non-nesting season (September 1 through January 31) or by conducting preconstruction surveys prior to project activities and maintaining appropriate buffers around active nests of protected birds.

6.2.5 Impacts on the Burrowing Owl (Less than Significant)

The project may impact burrowing owls as a result of the temporary and permanent removal of nesting and foraging habitat, as well as disturbance to or direct impacts on individuals during construction. Impacts on burrowing owls resulting from development of the property was previously analyzed in the original *North San José Development Policies Update Draft Program Environmental Impact Report* (City of San José 2005) as well as the Agilent Final EIR. These impacts were determined to be significant and unavoidable in those analyses due to the absence of sufficient replacement habitat to offset the cumulative loss of remaining burrowing owl habitat in the north San José area in combination with other projects in the region. This cumulative impact, along with mitigation to reduce this impact to less-than-significant levels under CEQA, is disclosed in Section 6.8, and the project-specific impact is discussed below.

Burrowing owl habitat surveys completed on the site in 2020 per VHP Condition 15 requirements and a follow-up breeding-season survey in 2022 did not detect burrowing owls or signs of burrowing owl presence on or within 250 feet of the project site during the breeding season (for 2020 and 2022) or nonbreeding season (for 2020). As discussed in Section 5.2 above, no records of burrowing owls are known from the project site, but burrowing owls have historically occupied the larger undeveloped area formed by the project site and adjacent parcels (shown on Figure 7 as the area covered by the mitigation agreement). The closest known record of a burrowing owl to the project site was a wintering owl detected approximately 215 feet to the southeast (in an area that is now developed) by H. T. Harvey & Associates on January 14, 2013 (H. T. Harvey & Associates 2013). The most recent record of a wintering owl near the project site was a single owl detected on the undeveloped property to the northeast by a SCVHA biologist on December 4, 2015 (City of San José 2016). The most recent record of nesting burrowing owls near the project site was detected at the Pacific Gas & Electric substation on Component Drive approximately 1,415 feet to the northeast on June 2, 2015 (H. T. Harvey & Associates 2015). In addition, owls have been known to nest, roost, and forage approximately southwest of the project site on the Airport airfield for decades (Albion Environmental, Inc. 1997) and continue to be present in these areas year-round, although no nesting on the airfield has occurred within 0.5 mile of the project site in more than 3 years (SCVHA 2021, U.S. Department of Agriculture 2018). Based on these data, there is no evidence that burrowing owls currently occupy the project site or adjacent undeveloped properties, or that owls occur close enough to the project site to regularly use the site as foraging habitat. However, because burrowing owls occupy nearby areas at the Airport airfield, and because migrant burrowing owls from populations outside the Bay area occur in the region during migration and winter, it is possible that occasional dispersants or migrants could occur on the project site.

The project will result in the permanent loss of 18.6 acres (see footnote 1 above) of unoccupied but ostensibly suitable nesting, roosting, and foraging habitat for burrowing owls on the project site (Figure 7). Currently, the grasslands on the project site provide potential foraging habitat for owls, as well as suitable nesting and roosting habitat where burrows of California ground squirrels are present. However, these grasslands likely have limited value to burrowing owls as nesting, roosting, or foraging habitat due to the tall height of the vegetation (approximately 10–40 inches), the limited numbers of burrows present (only one burrow was observed during

the June 2020 survey, three burrows were observed during the September 2020 survey, and four burrows were observed during the July 2022 survey), and the lack of burrowing owl occupancy of areas close enough to the site (i.e., within 0.5 mile) to regularly forage within these areas. Nevertheless, as the availability of grassland habitat used for nesting in the South San Francisco Bay area continues to dwindle because of development, the South Bay nesting population of burrowing owls faces extirpation caused by lack of sufficient suitable nesting habitat and nesting-season foraging habitat, isolation from other populations and habitat areas, and demographic effects (such as difficulty in finding mates and inbreeding) resulting from low population sizes. The loss of burrowing owl habitat on the project site has been mitigated previously via the purchase of off-site burrowing owl habitat in other, less developed and protected areas in the region, as discussed under Condition 15 in Section 6.1 above and documented in a mitigation agreement with the CDFW (Ref. No. 1802-2000-073-03) (Appendix C). Because the existing grassland habitat on the project site and on adjacent properties (i.e., within the mitigation agreement area) is unoccupied by nesting burrowing owls, yet the loss of this habitat has been mitigated previously, it is our opinion that the loss of this habitat would not rise to a level of significance under CEQA on a project-specific basis because mitigation to reduce the project-specific impact has already been provided. However, the mitigation that was provided per the CDFW mitigation agreement consisted of the purchase of credits in a conservation bank outside the South Bay, so that the mitigation did not directly benefit the South Bay burrowing owl population. As a result, this loss of habitat was previously disclosed as a significant and unavoidable impact due to the cumulative loss of burrowing owl habitat in the South Bay region in the original *North San José Development Policies Update Draft Program Environmental Impact Report* (City of San José 2005) as well as the Agilent Final EIR. Section 6.8 below discusses this cumulative impact and describes a mitigation measure to reduce the project's contribution to cumulative impacts to a less-than-significant level under CEQA. To offset cumulative impacts under CEQA, the project will pay VHP burrowing owl fees, consistent with the SCVHA's Voluntary Fee Payments Policy, as mitigation for the permanent loss of ostensibly suitable, but currently unoccupied, burrowing owl foraging habitat (this is discussed in greater detail in Section 6.8 *Cumulative Impacts* below).

Some of the burrowing owls that occur in the project vicinity during the nonbreeding season likely represent migrants or wintering owls from nesting populations outside the San Francisco Bay area. Project activities will also result in a reduction in available habitat for these birds. However, burrowing owls are known to occur more widely in the South San Francisco Bay region in winter than they do during the nesting season, using habitats within Coyote Valley and adjacent foothills that are not used for nesting by birds within the South Bay nesting population (ICF International 2012). Given the vast extent of grassland and ruderal habitat within the foothills of the Diablo Range and Santa Cruz Mountains (and to some extent on the valley floor in southern Santa Clara County) that provide suitable wintering habitat for owls, the loss of habitat on the project site is not expected to have a substantial impact on populations of burrowing owls that winter in the South Bay but nest outside the region.

Individual burrowing owls may be affected during construction activities, if present on or very close to the site. Because they roost underground, burrowing owls may be killed or injured during development activities from trampling or compaction of burrows by construction personnel or equipment if appropriate protective

measures (which are incorporated into the project as required by the project's mitigation agreement and the VHP) are not implemented. Construction activities that occur in close proximity to active burrows may disturb owls to the point of abandoning their burrows.

The project would adhere to the requirements of the mitigation agreement described under *Condition 15. Western Burrowing Owl and Burrowing Owl Mitigation Agreement* in Section 6.1 above, which will help to reduce project impacts on burrowing owls and their habitat. Applicable measures from the mitigation agreement are as follows:

- No burrowing owls shall be evicted from burrows during the nesting season (February 1 through August 31). Eviction outside the nesting season may be permitted as a means to avoid take, pending evaluation of eviction plans and receipt of formal written approval from the CDFW authorizing the eviction.
- A protected area 250 feet in radius, within which no new activity shall be permissible, shall be maintained between project activities and nesting burrowing owls or individual resident burrowing owls. This protected area shall remain in effect between February 1 and August 31, or, at CDFW's discretion and based upon monitoring evidence, until any young owls are foraging independently. In the non-nesting season (September 1 through January 31), a protected area 165 feet in radius, within which no new activity shall be permissible, shall be maintained between project activities and burrows occupied by burrowing owls. Any development within these protected radii shall be approved beforehand in a Memorandum of Understanding or Mitigation agreement with the CDFW. Notwithstanding anything to the contrary in this paragraph, the CDFW has the discretion to contract the nesting season period based on evidence the CDFW deems satisfactory.
- If accidental take occurs, the applicant shall contact the CDFW immediately.

To support compliance with these measures, and per the requirements of the City of San José, the project shall conduct preconstruction surveys for burrowing owls per the methodology provided in Condition 15 of the VHP, as follows:

- Prior to any ground disturbance related to covered activities, a qualified biologist shall conduct preconstruction surveys in all suitable habitat areas as identified during habitat surveys. The purpose of the preconstruction survey is to document the presence or absence of burrowing owls on the project site, particularly in areas within 250 feet of construction activity.
- To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of 3 hours. The survey shall begin 1 hour before sunrise and continue until 2 hours after sunrise (for 3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. Additional time may be required for large project sites. A minimum of two surveys shall be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed shall be counted and their locations shall be mapped.
- Surveys shall conclude no more than two calendar days prior to construction. Therefore, the project proponent must begin surveys no more than four days prior to construction (two days of surveying plus up to two days between surveys and construction). To avoid last-minute changes in schedule or contracting

that may occur if burrowing owls are found, the project proponent may also conduct a preliminary survey up to 14 days before construction. This preliminary survey may count as the first of the two required surveys as long as the second survey concludes no more than two calendar days in advance of construction.

With implementation of these measures, development of the project site would not conflict with local policies or regional plans or ordinances protecting burrowing owls.

In summary, the permanent loss of 18.6 acres of unoccupied suitable nesting, roosting, and foraging habitat for burrowing owls on the project site are considered less than significant under CEQA on a project-specific basis because compensatory mitigation for habitat impacts has already been provided. The project is also not expected to have a substantial impact on populations of burrowing owls that winter in the South Bay but nest outside the region; wintering burrowing owls in the South Bay have been found in a variety of grassland habitats (e.g., in the foothills of the Santa Clara Valley), and therefore suitable habitat for wintering burrowing owls from nesting populations outside the region is relatively abundant. The project would adhere to the requirements of the mitigation agreement described under *Condition 15. Western Burrowing Owl and Burrowing Owl Mitigation Agreement* in Section 6.1 above, and conduct preconstruction surveys for burrowing owls per the methodology provided in Condition 15 of the VHP to avoid impacts on individual burrowing owls during project construction. In conclusion, project impacts on burrowing owls are less than significant under CEQA on a project-specific basis. The permanent loss of 18.6 acres of unoccupied habitat, which was previously disclosed as a significant and unavoidable impact on burrowing owls due to the cumulative loss of habitat in the region in the original *North San José Development Policies Update Draft Program Environmental Impact Report* (City of San José 2005) as well as the Agilent Final EIR, is discussed in Section 6.8 below along with a mitigation measure to reduce this impact to a less-than-significant level.

6.2.6 Impacts on the Southwestern Pond Turtle (Less than Significant)

Southwestern pond turtles occurring along the Guadalupe River may nest in adjacent grasslands on the project site or disperse across these areas. Project activities may disturb upland habitat used for nesting. Individual turtles or their eggs that are present in the work areas may be harmed or killed due to crushing by construction personnel or equipment, or as a result of desiccation or burying (e.g., during grading). Although pond turtles are widespread in the project region, the species is not particularly abundant, and the loss of individuals could reduce the viability of a population to the extent that it would be extirpated.

The VHP does not provide species-level avoidance and minimization measures for the southwestern pond turtle. Nevertheless, the project would adhere to the general conditions of the VHP described in Section 6.1 above, which will help to reduce proposed project impacts on the southwestern pond turtle and its habitats. Applicable VHP Conditions that will minimize potential project impacts on the western pond turtle are Conditions 3 and 11. Because the project will comply with all relevant VHP conditions, impacts on the southwestern pond turtle will be less than significant under CEQA.

6.2.7 Impacts due to Bird Collisions (Less than Significant with Mitigation)

Under existing conditions, terrestrial land uses and habitat conditions in areas surrounding the project site consist primarily of developed areas such as commercial and residential buildings (primarily of one or two stories), parking lots, and roads, with the exception of the project site and several adjacent properties to the northeast, which are undeveloped with California annual grassland vegetation. Away from the Guadalupe River, vegetation in most of the surrounding areas is absent or very limited in extent, and consists primarily of nonnative landscape trees and shrubs. Nonnative vegetation supports fewer of the resources required by native birds than native vegetation, and the structural simplicity of the vegetation (without well-developed ground cover, understory, and canopy layers) further limits resources available to birds (Anderson et al. 1977, Mills et al. 1989). Thus, although some bird species will regularly use the vegetation in the project site and surrounding developed areas, they typically do so in low numbers, and particularly rare species or species of conservation concern are not expected to occur in the project site. As a result, the number of individual landbirds that inhabit and regularly use vegetation on the project site at any given time is low under existing conditions.

Under proposed conditions, the project site may provide habitat of greater value to landbirds compared to existing conditions due to the addition of landscape trees on the site. Based on the preliminary landscape plan, proposed vegetation includes unknown numbers of native blue oaks (*Quercus douglasii*), locally nonnative Santa Cruz Island ironwoods (*Lyonothamnus floribundus*), and nonnative strawberry trees (*Arbutus compacta*) and sweet osmanthus (*Osmanthus fragrans*) that will be planted around parking areas and buildings on the project site, as well as a mix of native and nonnative shrub and ground cover vegetation. Thus, the future landscape vegetation that will be planted on the site is expected to provide somewhat greater habitat structure and foraging opportunities for landbirds compared to the existing grassland vegetation, primarily due to the presence of more trees on the site compared to existing conditions.

As discussed in Section 4.3, riparian habitats along the Guadalupe River adjacent to the project site support relatively high bird diversity and abundance, and songbirds that migrate along the Pacific Flyway disperse and forage along the Guadalupe River in relatively large numbers (Cornell Lab of Ornithology 2022, South-Bay-Birds List Serve 2022). Resident birds that are present in the vicinity year-round are similarly attracted to this riparian habitat in relatively large numbers for foraging and nesting opportunities compared to regional populations (Cornell Lab of Ornithology 2022, South-Bay-Birds List Serve 2022). Although many of these birds are initially attracted to the riparian habitat along the river and do much of their foraging there, these birds also disperse outward from the river looking for other foraging, nesting, or roosting sites. During more than 100 hours of observation along the Guadalupe River between the project site and Montague Expressway, H. T. Harvey & Associates ornithologist Steve Rottenborn has frequently observed a variety of species, including both migrants and residents, moving between the riparian corridor and landscaping trees in adjacent commercial and industrial properties. Therefore, on the project site, we expect birds to move between the riparian habitat along the Guadalupe River and planted landscape vegetation on the project site (i.e., toward the proposed buildings) to look for feeding and resting opportunities in landscape vegetation.

It has been well documented that glass windows and building façades can result in injury or mortality of birds due to birds' collisions with these surfaces (Klem 2009, Sheppard and Phillips 2015). Because birds do not perceive glass as an obstruction the way humans do, they may collide with glass when the sky or vegetation is reflected in glass (e.g., they see the glass as sky or vegetated areas); when transparent windows allow birds to perceive an unobstructed flight route through the glass (such as at corners); and when the combination of transparent glass and interior vegetation (such as in planted atria) results in attempts by birds to fly through glass to reach that vegetation. The greatest risk of avian collisions with buildings occurs in the area within 40–60 feet of the ground because this is the area in which most bird activity occurs (San Francisco Planning Department 2011, Sheppard and Phillips 2015). Very tall buildings (e.g., buildings 500 feet or more high) may pose a threat to birds that are migrating through the area, particularly to nocturnal migrants that may not see the buildings or that may be attracted to lights on the buildings (San Francisco Planning Department 2011).

Some migrating landbirds are expected to disperse from the riparian habitat along the Guadalupe River into the project site from the southwest. As a result, the highest potential for bird collisions with new buildings is with glazing that faces the Guadalupe River (i.e., the southwest façades of Buildings SJ04 and SJ06). In addition, rows of trees that extend alongside and in between the proposed buildings provide connectivity between the habitat along the Guadalupe River and portions of the project site located farther to the northeast (Figure 8). Therefore, there is some potential for collisions of moderate numbers of birds with glazed areas of all building façades (as outlined on Figure 8 below) due to the connectivity of this landscape vegetation with the Guadalupe River. No glazing is included on the proposed substation, and birds are not expected to collide with this building.

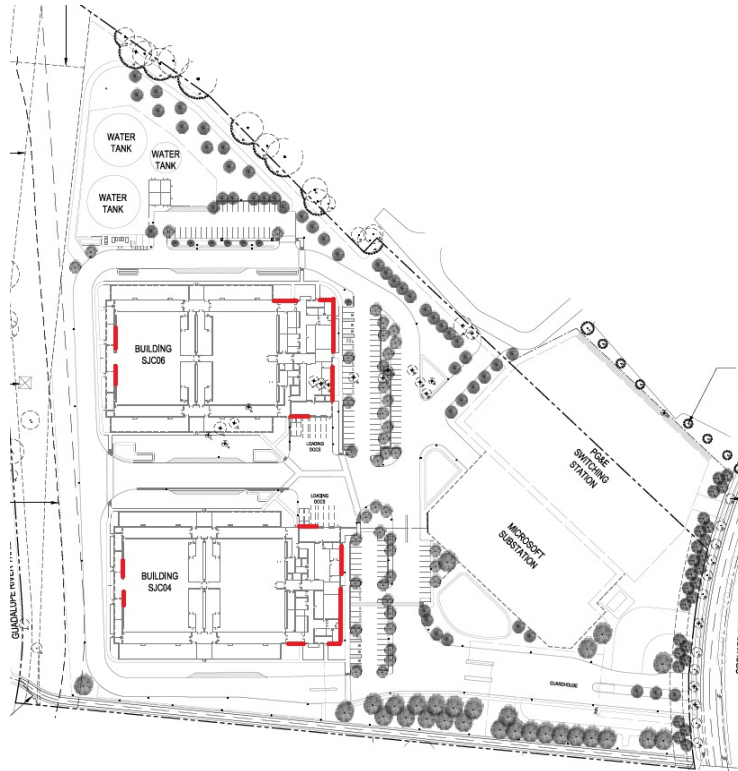


Figure 8. Project Site Plan Showing the Proposed Building Locations and Landscape Trees to Be Planted on the Site. Glazed Façade Areas Are Identified in Red.

There is potential for birds to collide with glazed façade areas of the SJ04 and SJ06 buildings for the following reasons:

- Songbirds utilizing habitat along the Guadalupe River may disperse outward looking for other foraging, nesting, or roosting sites. If glass is present on the facades of these buildings, birds making such movements are unlikely to be able to distinguish these façades as solid features to avoid and, as a result, some of these birds are expected to collide with the buildings.
- Under the project, trees and other landscaping will be present adjacent to glass façades of buildings on the project site. Such vegetation is expected to attract birds. Once birds are using that vegetation, they may not perceive the glass as a solid structure. Vegetation will be reflected in the glass of the buildings' façades, potentially causing birds to attempt to fly in to the reflected "vegetation" and strike the glass. As a result, some birds that are attracted to the trees and other landscaping that are adjacent to the glass façades are expected to collide with the glass.
- Reflections of the sky in glass façades may be perceived by birds as an open flight path (i.e., the sky) rather than solid glass, and birds may then collide with the facades.

- Night lighting associated with new buildings has some potential to disorient birds, especially during inclement weather when night migrating birds descend to lower altitudes. As a result, some birds moving through the project site at night may be disoriented by night lighting and potentially collide with buildings.

Thus, some of the birds using adjacent riparian habitats are expected to occasionally collide with the new buildings, resulting in injury or death. Buildings are estimated to result in the mortality of an estimated 365 to 988 million birds per year, or 2–9% of all North American birds, with low-rise buildings such as the proposed project accounting for the mortality of an estimated 62–664 million birds (median 246 million) each year (Loss et al. 2014). Most birds that are vulnerable to collisions with low-rise buildings are migrants that move through during the spring and fall (Loss et al. 2014). However, certain groups of birds are also more vulnerable to collisions, including hummingbirds, swifts, waxwings, warblers, nuthatches, tits, and creepers (Loss et al. 2014), all of which occur in the riparian habitat along the Guadalupe River either as migrants or year-round residents. Considering the close proximity of the Guadalupe River, relatively large numbers of birds compared to other areas of San José and surrounding areas can potentially be attracted to the site over the long term. As a result, construction of the project can potentially result in the mortality of large numbers of birds relative to the size of regional populations, and enough individuals of common bird species can potentially strike the buildings over the long term to result in a significant impact according to CEQA. Mitigation Measures BIO-1 and BIO-2 below would incorporate bird-safe design elements into the project design, and reduce this impact to a less-than-significant level and support project compliance with the bird-safe design guidance provided in the City's Riparian Corridor Protection and Bird-Safe Design Policy.

Mitigation Measure BIO-1. Implement Bird-Safe Building Design. Due to the potential for bird collisions with the SJ04 and SJ06 buildings, the project shall implement the following bird-safe building design considerations:

- Reduce the extent of glass on building facades, to the extent feasible (as determined in consultation with the City and consistent with any City building design standards and California Building Code requirements).
- Reduce or eliminate the visibility of plants behind glass.
- All glazing used on the building facades shall have a reflectivity index of no more than 20%.
- No more than 10% of the surface area of the combined façades for the SJ04 and SJ06 buildings shall have untreated glazing between the ground and 60 feet above ground. Bird-safe glazing treatments may include fritting, netting, permanent stencils, frosted glass, exterior screens, physical grids placed on the exterior of glazing or ultraviolet patterns visible to birds. Vertical elements of the window patterns should be at least 0.25 inch wide at a maximum spacing of 4 inches or have horizontal elements at least 0.125 inch wide at a maximum spacing of 2 inches.
- Avoid free-standing clear glass walls, skywalks, transparent building corners, glass enclosures (e.g., greenhouses) on rooftops, and free-standing clear glass railings where feasible. If any such features are included in the project design, all glazing used in any such features shall be 100% treated as specified above. These features shall be treated to a height of 60 feet above grade. Features located more than 60 feet above

grade are not required to be treated. For transparent glass corners, the required treatment area extends horizontally from a building corner as far the corner as it is possible to see through the corner to the other side of the building.

- Landscaping, including planted vegetation and water features, shall be designed to minimize the potential for collisions adjacent to glazed building facades. For example, vegetation providing particularly valuable resources to birds (such as fruits) shall be planted away from glass facades, and vegetation in general shall be planted in such a way that it is not clearly reflected in windows. Water features shall be located away from building exteriors to reduce the attraction of birds toward glazed facades.

Due to the potential for night lighting to disorient birds, the project shall implement the following bird-safe design considerations for all new interior and exterior lighting on the project site:

- Minimize exterior lighting to the extent feasible, except as needed for safety/security. All exterior lights shall be shielded and directed toward facilities on the project site to ensure that light is not directed upward or outward toward the Guadalupe River.
- Occupancy sensors or other switch control devices shall be installed on interior lights, with the exception of emergency lights or lights needed for safety/security purposes. If occupancy sensors are not active, these lights shall be programmed to shut off during non-work hours and between 10:00 p.m. and sunrise.
- To the extent consistent with the normal and expected operations of commercial uses under the project, take appropriate measures to avoid use of unnecessary lighting at night. Such measures may include the installation of motion-sensor lighting, automatic light shut-off mechanisms, downward-facing exterior light fixtures, the use of Dark-Sky-compliant lighting², and others.

6.2.8 Impacts due to Increased Lighting (Less than Significant with Mitigation)

Many animals are sensitive to light cues, which influence their physiology and shape their behaviors, particularly during the breeding season (Ringer 1972, de Molenaar et al. 2006). Artificial light has been used as a means of manipulating breeding behavior and productivity in captive birds for decades (de Molenaar et al. 2006), and has been shown to influence the territorial singing behavior of wild birds (Longcore and Rich 2004, Miller 2006, de Molenaar et al. 2006). While it is difficult to extrapolate results of experiments on captive birds to wild populations, it is known that photoperiod (the relative amount of light and dark in a 24-hour period) is an essential cue triggering physiological processes as diverse as growth, metabolism, development, breeding behavior, and molting (de Molenaar et al. 2006). This holds true for birds, mammals (Beier 2006), and other taxa as well, suggesting that increases in ambient light may interfere with these processes across a wide range of species, resulting in impacts on wildlife populations.

² Exterior lighting fixtures that meet the International Dark-Sky Association's standards for artificial lighting minimize glare while reducing light trespass and skyglow, and are required to be fully shielded and minimize the amount of blue light in the nighttime environment (International Dark-Sky Association 2020).

Artificial lighting may indirectly impact mammals and birds by increasing the nocturnal activity of predators like owls, hawks, and mammalian predators (Negro et al 2000, Longcore and Rich 2004, DeCandido and Allen 2006, Beier 2006). The presence of artificial light may also influence habitat use by rodents (Beier 2006) and by breeding birds (Rogers et al. 2006, de Molenaar et al. 2006), by causing avoidance of well-lit areas, resulting in a net loss of habitat availability and quality.

Although the literature has shown how an increase in artificial lighting may indirectly affect birds, mammals, fish, and nesting sea turtles, little is known about potential effects of artificial lighting on many species of amphibians and reptiles, including freshwater turtles (Perry et al. 2008). Southwestern pond turtles most likely exhibit physiological and behavioral responses in the presence of novel artificial light sources. However, few studies have revealed any conclusive data on what the impacts may be from artificial lighting in urban environments on adjacent habitats where freshwater turtles may occur (Perry et al 2008). To our knowledge, no specific studies have been conducted that have attempted to elucidate pond turtle responses to an increase in artificial lighting conditions in their natural aquatic habitats. Southwestern pond turtles are primarily active during the day, spending the majority of their time basking on haul-out structures, such as patches of floating vegetation and logs near the edges or in the middle of their aquatic habitats, where they can quickly escape if threatened (Jennings and Hayes 1994). Some crepuscular and nocturnal movements have been observed by the species, but pond turtles typically take refuge at the bottom of aquatic habitats, burying themselves in muddy bottoms or dense vegetation during the night, and thus, in our opinion, would not be significantly affected by an increase in artificial light conditions.

The project will result in the construction of buildings and other features (e.g., pedestrian walkways and open space areas) that will increase the amount of lighting within and around the project site. Lighting from the project would be the result of light fixtures illuminating buildings, building architectural lighting, and parking lot and pedestrian lighting. Depending on the location, direction, and intensity of exterior lighting, this lighting can potentially spill into adjacent natural areas, thereby resulting in an increase in lighting compared to existing conditions. Areas to the northwest, northeast, and southeast are primarily developed urban habitats that do not support sensitive species that might be significantly impacted by illuminance from the project. However, the riparian and wetland habitats along the Guadalupe River provide suitable habitat for a variety of wildlife species, including sensitive species such as the San Francisco common yellowthroat, and are close enough to the project site to be affected by an increase in lighting.

The existing Guadalupe River levee, which is approximately 8 feet above grade on the project site, separates the project site from the Guadalupe River. This existing barrier is expected to limit the spill of lighting between the project site and the Guadalupe River to some extent. However, light from tall buildings (potentially up to 135 feet tall) that will be constructed under the project could spill over this barrier and increase lighting in these adjacent natural areas.

The species inhabiting the sensitive habitats along the Guadalupe River are already habituated to the existing artificial illuminance from a variety of urban and natural light sources that are found nearby. However, due to

the ecological importance of the riparian and aquatic habitats of the Guadalupe River and the fish and wildlife communities they support, substantial increases in illuminance of the Guadalupe River and its associated riparian and aquatic habitats could result in a potentially significant impact under CEQA by disrupting the natural behaviors of the species using these habitats. Although there is agreement throughout the literature that increases in illuminance can affect wildlife behavior, as described above, there is no quantitative level of illuminance increase (above ambient light) that is agreed upon as a threshold for significant impacts to animals. In our professional opinion, Mitigation Measure BIO-1 above would reduce this impact to a less-than-significant level under CEQA.

6.2.9 Nitrogen Deposition Impacts (Less than Significant)

Several special-status plant and animal species that are absent from the project site and its vicinity occur on serpentine substrates in hills on either side of the Santa Clara Valley. These species include the Bay checkerspot butterfly and a number of rare plants, including the VHP-covered Tiburon Indian paintbrush (*Castilleja affinis* var. *neglecta*), coyote ceanothus (*Ceanothus ferrisiae*), Mount Hamilton thistle (*Cirsium fontinale* var. *campylon*), Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), and most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*).

The USFWS has identified critical habitat for the federally threatened Bay checkerspot butterfly (73 FR 50406) south of U.S. Route 101 and Yerba Buena Road in San José, approximately 9.0 miles southeast of the project site (Unit 6 at Communications Hill) (USFWS 2008). The conservation of critical habitat is considered essential for the conservation of the Bay checkerspot butterfly, and this serpentine habitat also supports serpentine-associated rare plant species (including the VHP-covered species listed above). Nonnative grasses have been reported to increase in these habitats, crowding out native rare plants as well the native larval host plants needed by the Bay checkerspot butterfly, due to increased nitrogen deposition from human sources throughout San José and the greater Bay Area.

Nitrogen deposition contribution estimates in Santa Clara County were made as a part of the development of the VHP (ICF International 2012). About 46% of nitrogen deposition on habitat areas of concern for the base years (2005–2007) was estimated to come from existing development and traffic generated locally within the VHP study area, which includes all of San José. The remainder of Santa Clara County was estimated to contribute a substantially smaller amount (17% of the nitrogen deposition) while the other eight Bay Area counties account for about 11%. Nitrogen deposition modeling completed for future years (2035 and 2060) as a part of the VHP process assumed that urban and rural development in the County and broader San Francisco Bay Area is expected to increase air pollutant emissions due to an increase in passenger and commercial vehicle trips and other new industrial and nonindustrial sources.

Construction of the project will result in an estimated 532 new operational vehicle trips per month to the project site. Providing new office space in San José (which is housing rich) may reduce some vehicle trips currently

occurring to other cities in the region and thus reduce NOx emissions to some extent. Nevertheless, these new vehicle trips will result in an increase in NOx emissions, which in turn will contribute to the effects of nitrogen deposition on the serpentine grassland ecosystem. To mitigate this impact, a conservation strategy in the VHP includes collection of fees within the VHP area based upon the generation of new vehicle trips to fund acquisition and management of serpentine grasslands in the Coyote Ridge area and elsewhere in the foothills along the Santa Clara Valley. The goal of this strategy is to improve the viability of existing populations of the Bay checkerspot butterfly and rare plants, increase the number of populations, and expand the geographic distribution to ensure the long-term persistence of serpentine-associated species in the VHP area.

A nexus study was completed for the VHP to assist with identifying appropriate fees to fund measures in the VHP. The nitrogen deposition fee was calculated and adopted based on VHP costs related to mitigating the impacts of airborne nitrogen deposition from covered activities in the VHP area. The amount of the fee is based on the number of new daily vehicle trips generated by a covered activity. The fee-per-vehicle-trip is a surrogate that captures the overall effects of a project, recognizing that vehicle trips are not the only source of a project's NOx emissions. Due to an increase in NOx emissions under CEQA, the project shall be required to pay nitrogen deposition fees, which will then be used to fund the acquisition and management of habitat for the serpentine-associated species potentially impacted by nitrogen deposition. As a result, the project's nitrogen deposition impacts will be less than significant under CEQA.

6.2.10 Impacts due to Increased Noise Levels (Less than Significant)

There is some potential for wildlife inhabiting the riparian habitat along the Guadalupe River to vacate areas closer the project site due to increased noise levels from the 36 proposed diesel-fired emergency generators to be constructed on the site. These wildlife individuals may be exposed to increased competition from conspecifics already occupying the area to which they are displaced and/or increased levels of predation because of unfamiliarity with the new area or lack of sufficient cover.

According to the project's noise study, measured ambient noise levels on the project site are 51–59 decibels (dBA) throughout the day; however, these levels likely rise to 65 dBA along the Guadalupe River and within adjacent areas of the project site due to the site's close proximity to the Airport (Environmental Systems Design, Inc. 2022). Following construction, generator noise levels as measured from the southwestern property line (adjacent to the Guadalupe River Trail) are anticipated to be 57.3 dBA during normal operating conditions (i.e., when no generators are operating), and as high as 62.7 dBA when the generators are operating (Environmental Systems Design, Inc. 2022).

As discussed under Section 1.2 *Project Description* above, the backup generators will run for short periods for testing and maintenance purposes (anticipated as 8 hours per year, and limited to no more than 50 hours per year), and otherwise will not operate unless there is a disturbance or interruption of the utility supply. The frequency and duration of power interruptions are unknown, but are expected to be infrequent and of limited duration.

Measured existing ambient noise levels on the project site (51–59 dBA) are expected to be similar to existing ambient noise levels following construction (57.3 dBA for the southwestern property line along the Guadalupe River) when the generators are not operating. When the generators are operating, the noise level along the southwestern property line is expected to increase to 62.7 dBA. However, this is similar to (and less than) the expected maximum ambient noise level for this location due to its close proximity to the Airport (65 dBA) (Environmental Systems Design 2022). Wildlife that occur along the Guadalupe River are acclimated to the existing noise levels within this habitat, including periodic increases to an estimated 65 dBA due to aircraft. Also, as noted in the discussion for lighting above, the presence of the levee in between the project site and the Guadalupe River will block some noise from detection by wildlife that use the riparian corridor. Thus, given the limited anticipated duration of generator operation on an annual basis, as well as the expected 62.7 dBA noise level when the generators are operating, wildlife inhabiting areas along the Guadalupe River adjacent to the site are not expected to be substantially affected by increased noise levels following project construction, and this impact is less than significant under CEQA.

6.3 Impacts on Sensitive Communities: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFW or USFWS (Less than Significant with Mitigation)

6.3.1 Impacts on Riparian Habitat or Other Sensitive Natural Communities (No Impact)

The CDFW defines sensitive natural communities and vegetation alliances using NatureServe’s standard heritage program methodology (CDFW 2022), as described above in Section 5.3. Aquatic, wetland, and riparian habitats are also protected under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the USACE, RWQCB, CDFW, and/or the USFWS (see Section 6.4 below). Project impacts on sensitive natural communities, vegetation alliances/associations, or any such community identified in local or regional plans, policies, and regulations, were considered and evaluated.

The Guadalupe River flows from south to north adjacent to, but not through, the project site. The entirety of ground-disturbing project impacts will occur outside of the riparian corridor and northeast of the Guadalupe River Trail, on the far side of the levee from the riparian habitat. Thus, the proposed project will have no direct permanent or temporary impacts on riparian habitat.

6.3.2 Impacts Due to Encroachment into the Stream/Riparian Buffer (Less than Significant)

As described above, City policies and regulations, including the Envision San Jose 2040 General Plan (City of San José 2020), the Zoning Code (Title 20 of the San Jose Municipal Code), and the City Council-adopted VHP, specifically Condition 11, include measures meant to limit development and protect sensitive riparian resources. City Council Policy 6-34 (issued August 3, 2016) provides guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. The policy indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top

of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 feet from the riparian corridor defined by the outer edge of riparian vegetation.

For the purposes of this project, the City's riparian setback extends 100 feet landward from the outer edge of the top of bank of the Guadalupe River, which was demarcated using methods developed and approved by resource and regulatory agencies with jurisdiction within such channels (i.e., CDFW, USACE, and RWQCB); this 100-foot setback includes a portion of the project site nearest the river (Figure 7). The setback is applicable to all proposed development with the exception of the proposed trails; trails are an allowable use in a riparian setback and are therefore exempt from the riparian setback requirements. In contrast, urban development, including new hardscape and landscaping along the southwestern edge of the project site, is not exempt from riparian setback requirements. Council Policy 6-34 explains that the City's riparian setback requirements supplement the VHP-required riparian setbacks on Category 1 streams on parcels with slopes less than 30%, for which the VHP requires a setback of 35 feet from the riparian canopy or 100 feet from top of bank, whichever is greater. In the case of this project, the VHP setback and the City's setback are identical, being set at 100 feet from the top of bank (Figure 7).

Under the proposed project, the only proposed modification within the 100-foot riparian setback is the construction of a bike trail within a small area of the setback (<0.1 acre) that would extend from Orchard Parkway to the existing Guadalupe River Trail at the top of the levee (Figure 7). Currently, this area is composed of California annual grassland habitat that is disturbed by regular mowing. Otherwise, no structures or new hardscape will be constructed within the 100-foot VHP and City riparian setback, and no planting of landscape vegetation is proposed. These plans are consistent with the VHP and the City of San José's General Plan *Envision San José 2040* (City of San José 2020), which allow trails within riparian setbacks, and this modification would not require a setback exception. No temporary impacts within the 100-foot setback are proposed during the course of construction.

Because the proposed modifications within the setback are consistent with the VHP and City policies, no landscape vegetation will be planted within the setback area, and no permanent or temporary impacts will occur within the setback other than the construction of the bike trail, impacts due to encroachment along the riparian corridor along the Guadalupe River would be less than significant under CEQA.

6.4 Impacts on Wetlands: Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means (No Impact)

Wetlands and other waters of the U.S./state are present adjacent to the project site within the Guadalupe River corridor. The project design avoids all direct and indirect impacts on state or federally protected wetlands and aquatic habitats by limiting project impacts to the northeastern side of the Guadalupe River Trail, on the far

side of the levee from wetland habitats. Thus, no wetland habitat will be impacted directly or indirectly by the project.

6.5 Impacts on Wildlife Movement: Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites (Less than Significant)

For many species, the landscape is a mosaic of suitable and unsuitable habitat types. Environmental corridors are segments of land that provide a link between these different habitats while also providing cover. Development that fragments natural habitats (i.e., breaks them into smaller, disjunct pieces) can have a twofold impact on wildlife: first, as habitat patches become smaller they are unable to support as many individuals (patch size); and second, the area between habitat patches may be unsuitable for wildlife species to traverse (connectivity).

The Guadalupe River and the associated riparian corridor provide an important movement pathway for both aquatic and terrestrial wildlife species, connecting the associated wetlands to the San Francisco Bay. Songbirds that migrate along the Pacific Flyway disperse and forage along the Guadalupe River in relatively large numbers. Common, urban-adapted species such as raccoons and striped skunks may use the vegetation along the river to move north and south through the San José area. Small mammals, such as mice and shrews, will also use this vegetation to move between habitats. Common species of reptiles and amphibians, such as Pacific treefrogs, and alligator lizards, amongst other species, are also expected to move along this corridor adjacent to the project site. Proposed project development along the river will not result in any loss of aquatic, wetland, or riparian habitat along the Guadalupe River or in any substantial reduction in the value of the Guadalupe River corridor for wildlife movement. The project is expected to increase the number of human users of the Guadalupe River trail, potentially subjecting animals within the riparian corridor to increased human disturbance. However, this trail is already heavily used by pedestrians and cyclists, and use of the riparian habitat along the river by homeless already introduces human disturbance within the riparian habitat. The increase in users of the Guadalupe River trail as a result of this project is not expected to contribute substantially to human disturbance of animals using the Guadalupe River corridor. Thus, aquatic and terrestrial species would continue to be able to move north to south along the Guadalupe River following project development. Therefore, the project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites, and this impact is determined to be less than significant.

6.6 Impacts due to Conflicts with Local Policies: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance (Less than Significant)

6.6.1 Impacts Due to the Removal of Ordinance-Sized Trees (Less than Significant)

The project proposes to remove 19 existing trees on the site, 11 of which are ordinance-sized trees as defined by the City of San José, and the project proponent will submit a permit application for tree removal. In accordance with the provisions of the San José Municipal Code, the Standard Permit Conditions listed below would be implemented by the project.

Standard Permit Conditions

Trees impacted by the project will be replaced in accordance with all applicable laws, policies or guidelines, including Chapter 13 of the San José Municipal Code, General Plan policies MS-21.4, MS-21.5, MS-21.6, and CD-1.24, and City tree replacement ratios outlined in Table 2 below. Following the removal of trees on the site, a greater number of trees will be planted on the project site following construction.

Table 2. City of San José Standard Tree Replacement Ratios

Diameter of Tree to Be Removed	Type of Tree to be Removed ¹			Minimum Size of Each Replacement Tree
	Native	Nonnative	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon container
19 up to 38 inches	3:1	2:1	none	15-gallon container
Less than 19 inches	1:1	1:1	none	15-gallon container

¹x:x = tree replacement to tree loss ratio; Trees greater than 38" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

Where applicable, the project proponent will implement a Tree Protection Plan and include measures to implement during project construction to minimize impacts to trees to remain. The measures include marking trees to remain in place in project plans and have tree protection zones established around the canopy drip line zone to avoid serious injury or loss.

Table 2 shows tree replacement ratios required by the project proponent. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures would be implemented during the final design phase of the project, to the satisfaction of the City Arborist and the Director of Planning, Building and Code Enforcement:

- During the final design phase, the size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
- The project may pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance with the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

With the incorporation of the above measures to insure compliance with the City of San José tree ordinance, any potential impacts related to conflict with local policies or ordinances protecting trees would be less than significant.

6.7 Impact due to Conflicts with an Adopted Habitat Conservation

Plan: Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan (Less Than Significant)

The City of San José is a signatory to the VHP, which is a Habitat Conservation Plan and Natural Community Conservation Plan. As described in Section 6.1, the project is considered a “covered project” under the VHP. All VHP-covered species that may be affected by the proposed project are discussed in this report, including the burrowing owl (Section 6.2.5 above) and southwestern pond turtle (Section 6.2.6 above). Similarly, impacts on sensitive habitats, such as stream and serpentine habitats for which the VHP requires specific impact fees, are discussed in this report. The project will apply for VHP coverage and will adhere to all applicable VHP Conditions during project implementation, with the exception of parts of Condition 15, as discussed in Sections 6.1 and 6.2.5 above. Conditions applicable to the proposed project include Conditions 1 (avoid direct impacts to legally protected plant and wildlife species), 3 (maintain hydrologic conditions and protect water quality), 11 (stream and riparian setbacks), and 17 (tricolored blackbird). Therefore, the proposed project would not be in conflict with the VHP.

The proposed project would not be in conflict with any other adopted habitat conservation plans or natural community conservation plans, or with any other approved local, regional, or state habitat conservation plans or natural community conservation plans. Thus, impacts associated with conflicts between the proposed project and any adopted habitat conservation plan or natural community conservation plan are less than significant.

VHP Condition 11 requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors. The standard required setback for the reach of the Guadalupe River (a Category 1 stream) adjacent to the project site is 100 feet from the top of bank (Figure 7). The project would result in encroachment within the standard VHP stream setback as described under Section 6.3.2 *Impacts due to Encroachment into the Stream/Riparian Corridor*. However, as discussed in that section, the proposed modifications within the setback are consistent with the VHP and City policies, and no mitigation measures are necessary to reduce impacts due to encroachment to less-than-significant levels under CEQA.

Construction disturbance and project tree removal during the avian breeding season (February 1 through August 31 inclusive, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests. Because such an impact would conflict with Condition 1 of the VHP, it would be considered a significant impact under CEQA. Mitigation Measures BIO-2 and BIO-3 would be implemented to reduce impacts due to conflicts with Condition 1 of the VHP to a less-than-significant level.

Mitigation Measure BIO-2. Nesting-Season Avoidance. To the extent feasible, commencement of construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to commence outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code would be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31, inclusive.

Mitigation Measure BIO-3. Preconstruction/Pre-disturbance Surveys and Buffers. If it is not possible to schedule commencement of construction activities and/or tree removal between September 1 and January 31, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. These surveys shall be conducted no more than seven days prior to the initiation of demolition or construction activities, including tree removal and pruning. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code shall be disturbed during project implementation.

6.8 Cumulative Impacts (Less than Significant with Mitigation)

Cumulative impacts arise due to the linking of impacts from past, current, and reasonably foreseeable future projects in the region. Future development activities in the City of San José and development activities covered by the VHP will result in impacts on the same habitat types and species that will be affected by the proposed project. The proposed project, in combination with other projects in the area and other activities that impact the species that are affected under the project, could contribute to cumulative effects on special-status species. Other projects in the area include both development and maintenance projects that could adversely affect these species and restoration projects that will benefit these species.

The cumulative impact on biological resources resulting from the project in combination with other projects in the region would be dependent on the relative magnitude of adverse effects of these projects on biological resources compared to the relative benefit of impact avoidance and minimization efforts prescribed by planning documents, CEQA mitigation measures, and permit requirements for each project; compensatory mitigation

and proactive conservation measures associated with each project, and the benefits to biological resources accruing from the VHP. In the absence of such avoidance, minimization, compensatory mitigation, and conservation measures, cumulatively significant impacts on biological resources would occur.

However, the San José General Plan contains conservation measures that would benefit biological resources, as well as measures to avoid, minimize, and mitigate impacts on these resources and the VHP includes numerous conservation measures to offset adverse effects on covered activities. Many projects in the region that impact resources similar to those impacted by the proposed project will be covered activities under the VHP and will mitigate impacts on sensitive habitats and many special-status species through that program, which will require payment of fees for habitat restoration. Further, the project would implement a number of BMPs and mitigation measures to reduce impacts on both common and special-status species, as described above. Thus, with the exception of the burrowing owl (for which mitigation is provided via a mitigation agreement instead of through the VHP) the project will not contribute to substantial cumulative effects on biological resources.

As discussed in section 6.2.5 above, the project will result in the permanent loss of 18.6 acres (see footnote 1 above) of unoccupied suitable nesting, roosting, and foraging habitat for burrowing owls on the project site. Impacts on burrowing owls resulting from development of the property were previously analyzed in the original *North San José Development Policies Update Draft Program Environmental Impact Report* (City of San José 2005) as well as the Agilent Final EIR. Although compensatory mitigation was provided in accordance with a CDFW mitigation agreement, that mitigation consisted of the purchase of credits in a conservation bank outside the South Bay, so that the mitigation did not directly benefit the South Bay burrowing owl population. As a result, these impacts were determined to be significant and unavoidable due to the absence of sufficient replacement habitat in the South Bay region to offset the cumulative loss of remaining burrowing owl habitat in the north San José area in combination with other projects in the region. Thus, when viewed in the context of the original project site as part of the *North San José Development Policies Update Draft Program Environmental Impact Report* (City of San José 2005) and Agilent Final EIR, the loss of 18.6 acres of burrowing owl habitat on the project site would remain significant under CEQA, as disclosed in those EIRs, due to the absence of sufficient replacement habitat to offset the cumulative loss of remaining burrowing owl habitat in the north San José area in combination with other projects in the region. However, feasible mitigation for this impact that will directly benefit the South Bay burrowing owl population has been made available since the preparation of the previous EIRs for the project site due to the adoption of the VHP, to which the City of San José is signatory. The implementation of Mitigation Measure BIO-4 below will reduce the project's cumulative impacts on burrowing owls to less-than-significant levels under CEQA.

Mitigation Measure BIO-4. Pay VHP Burrowing Owl Fees for Permanent Impacts on California Annual Grassland. The project will pay VHP burrowing owl fees for the permanent loss of 18.6 acres of California annual grassland that provides ostensibly suitable, but currently unoccupied, burrowing owl foraging habitat. These fees shall be paid to the SCVHA prior to those impacts occurring.

Even though the project is not subject to compliance with VHP Condition 15 due to the project's inclusion in the Agilent mitigation agreement with CDFW, payment of VHP burrowing owl fees would be appropriate to reduce the project's contribution to cumulative impacts on burrowing owls to less-than-significant levels under CEQA because these fees would directly benefit burrowing owls in the South Bay region. This mitigation approach is consistent with the SCVHA's Voluntary Fee Payments Policy, which states that such voluntary burrowing owl fees paid as mitigation "will be applied toward burrowing owl management agreements, burrowing owl habitat management and monitoring, as well as burrowing owl habitat restoration and land acquisition." The SCVHA will be able to use these voluntary fees, in conjunction with fees from other projects, to successfully conserve South Bay burrowing owl populations. Thus, VHP fees are appropriate to compensate for direct, indirect, and cumulative impacts on burrowing owls as a result of the project.

The Voluntary Fee Payments Policy does not require non-covered projects that pay voluntary fees to the SCVHA to comply with VHP Conditions (SCVHA 2014). Thus, the project is not required to adopt the requirements of VHP Condition 15 related to the passive relocation of burrowing owls in order to compensate for its contribution to cumulative impacts via the payment of burrowing owl impact fees.

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Appendix A. Plants Observed

Family	Scientific Name	Common Name	Native; Cal-IPC Status ¹
Asteraceae	<i>Tragopogon</i> sp.	Salsify	Nonnative
Apiaceae	<i>Conium maculatum</i>	Poison hemlock	Nonnative; M
Apiaceae	<i>Foeniculum vulgare</i>	Fennel	Nonnative; M
Araliaceae	<i>Hedera helix</i>	English ivy	Nonnative; H
Arecaceae	<i>Washingtonia robusta</i>	Mexican fan palm	Nonnative; M
Asparagaceae	<i>Agave americana</i>	Century bush	Nonnative
Asparagaceae	<i>Hesperaloe parviflora</i>	Red yucca	Nonnative
Asphodelaceae	<i>Phormium tenax</i>	New Zealand flax	Nonnative
Asteraceae	<i>Baccharis pilularis</i>	Coyote brush	Native
Asteraceae	<i>Carduus pycnocephalus</i>	Italian thistle	Nonnative; M
Asteraceae	<i>Centaurea solstitialis</i>	Yellow starthistle	Nonnative; H
Asteraceae	<i>Crepis vesicaria</i> ssp. <i>taraxacifolia</i>	Weedy hawksbeard	Nonnative
Asteraceae	<i>Erigeron bonariensis</i>	Flax-leaved horseweed	Nonnative
Asteraceae	<i>Erigeron canadensis</i>	Canadian horseweed	Native
Asteraceae	<i>Helminthotheca echioides</i>	Bristly Ox-tongue	Nonnative; L
Asteraceae	<i>Lactuca serriola</i>	Prickly lettuce	Nonnative
Asteraceae	<i>Pseudognaphalium luteoalbum</i>	Jersey cudweed	Nonnative
Asteraceae	<i>Silybum marianum</i>	Milk thistle	Nonnative; L
Asteraceae	<i>Sonchus oleraceus</i>	Common sow thistle	Nonnative
Asteraceae	<i>Xanthium strumarium</i>	Rouch Cocklebur	Native
Boraginaceae	<i>Amsinckia intermedia</i>	Common fiddleneck	Native
Brassicaceae	<i>Brassica nigra</i>	Black mustard	Nonnative; M
Brassicaceae	<i>Hirschfeldia incana</i>	Summer mustard	Nonnative; M
Brassicaceae	<i>Lepidium latifolium</i>	Broadleaved pepperweed	Nonnative; H
Brassicaceae	<i>Raphanus sativus</i>	Wild radish	Nonnative; L
Brassicaceae	<i>Sinapis arvensis</i>	Charlock mustard	Nonnative; L
Chenopodiaceae	<i>Chenopodium murale</i>	Wall-growing pigweed	Nonnative
Chenopodiaceae	<i>Salsola</i> sp.	Russian thistle	Nonnative; L
Convolvulaceae	<i>Convolvulus arvensis</i>	Field bindweed	Nonnative
Cupressaceae	<i>Juniperus</i> sp.	Juniper	Nonnative
Cupressaceae	<i>Sequoia sempervirens</i>	Coast redwood	Native
Cyperaceae	<i>Bolboschoenus</i> sp.	Bulrush	Native
Cyperaceae	<i>Cyperus eragrostis</i>	Tall flatsedge	Native
Euphorbiaceae	<i>Euphorbia</i> sp.	Spurge sp.	Nonnative
Fabaceae	<i>Acacia melanoxylon</i>	Blackwood acacia	Nonnative; L
Fabaceae	<i>Cercis canadensis</i>	Eastern redbud	Nonnative
Fabaceae	<i>Genista monspessulana</i>	French broom	Nonnative; H
Fabaceae	<i>Medicago polymorpha</i>	California burclover	Nonnative; L
Fabaceae	<i>Melilotus albus</i>	White sweetclover	Nonnative
Fabaceae	<i>Melilotus indicus</i>	Small melilot	Nonnative

Family	Scientific Name	Common Name	Native; Cal-IPC Status ¹
Fagaceae	<i>Quercus agrifolia</i>	Coast live oak	Native
Geraniaceae	<i>Erodium cicutarium</i>	Redstem filaree	Nonnative; L
Ginkgoaceae	<i>Ginkgo biloba</i>	Ginkgo	Nonnative
Juglandaceae	<i>Juglans hindsii</i>	California black walnut	Native
Juncaceae	<i>Juncus effusus</i>	Common rush	Native
Lamiaceae	<i>Mentha aquatica</i>	Water mint	Nonnative
Lamiaceae	<i>Mentha suaveolens</i>	Apple mint	Nonnative
Lauraceae	<i>Umbellularia californica</i>	Bay laurel	Native
Malvaceae	<i>Lavatera cretica</i>	Cornish mallow	Nonnative
Malvaceae	<i>Malva</i> sp.	Cheeseweed sp.	Nonnative
Myrtaceae	<i>Eucalyptus globulus</i>	Blue gum	Nonnative; M
Oleaceae	<i>Ligustrum japonicum</i>	Wax leaf ligustrum	Nonnative
Onagraceae	<i>Epilobium brachycarpum</i>	Panicled willow herb	Native
Onagraceae	<i>Ludwigia peploides</i>	Floating primrose-willow	Nonnative; H
Onagraceae	<i>Oenothera elata</i>	Hooker's evening primrose	Native
Pinaceae	<i>Pinus</i> sp.	Pinus sp.	Nonnative
Plantaginaceae	<i>Kickxia elatine</i>	Sharp point fluellen	Nonnative
Plantaginaceae	<i>Plantago lanceolata</i>	Ribwort plantain	Nonnative; L
Platanaceae	<i>Platanus x hispanica</i>	London plane	Nonnative
Poaceae	<i>Avena fatua</i>	Wild oats	Nonnative; M
Poaceae	<i>Avena</i> sp.	Wild oats	Nonnative; M
Poaceae	<i>Bromus diandrus</i>	Ripgut brome	Nonnative; M
Poaceae	<i>Bromus rubens</i>	Red brome	Nonnative; H
Poaceae	<i>Elymus condensatus</i>	Giant wild-rye	Native
Poaceae	<i>Hordeum murinum</i> ssp. <i>Leporinum</i>	Hare barley	Nonnative; M
Poaceae	<i>Bromus</i> sp.	Brome sp.	Nonnative
Poaceae	<i>Phalaris aquatica</i>	Harding grass	Nonnative; M
Poaceae	<i>Polypogon monspeliensis</i>	Rabbitsfoot grass	Nonnative; L
Poaceae	<i>Stipa miliaceae</i>	Smilo grass	Nonnative; L
Polygonaceae	<i>Polygonum aviculare</i>	Prostrate knotweed	Nonnative
Polygonaceae	<i>Rumex crispus</i>	Curly dock	Nonnative; L
Rhamnaceae	<i>Ceanothus</i> sp.	Ceanothus	Nonnative
Rosaceae	<i>Prunus persica</i>	Pear	Nonnative
Rosaceae	<i>Rosa californica</i>	California rose	Native
Rosaceae	<i>Rubus armeniacus</i>	Himalayan blackberry	Nonnative; H
Salicaceae	<i>Populus fremontii</i>	Fremont poplar	Native
Salicaceae	<i>Salix exigua</i>	Sandbar willow	Native
Salicaceae	<i>Salix laevigata</i>	Red willow	Native
Salicaceae	<i>Salix lasiolepis</i>	Arroyo willow	Native
Solanaceae	<i>Datura stramonium</i>	Jimson weed	Nonnative
Typhaceae	<i>Typha latifolia</i>	Broadleaf cattail	Native
Ulmaceae	<i>Ulmus parvifolia</i>	Chinese elm	Nonnative
Urticaceae	<i>Urtica dioica</i>	Stinging nettle	Native

Family	Scientific Name	Common Name	Native; Cal-IPC Status ¹
Verbenaceae	<i>Verbena litoralis</i>	Seashore vervain	Nonnative
¹ . Cal-IPC status (Cal-IPC 2022): L = Limited. These species are invasive but their ecological impacts are minor on a statewide level or there was not enough information to justify a higher score. M = Moderate. These species have substantial and apparent-but generally not severe-ecological impacts on physical processes, plant and animal communities, and vegetation structure. H = High. These species have severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment. Most are widely distributed ecologically.			

Appendix B. Photos of the Project Site



Photo 1. California annual grassland habitat on the project site.



Photo 2. California annual grassland habitat on the project site.



Photo 3. The transition between California annual grassland habitat and urban-suburban areas at the northern edge of the site.



Photo 4. The urban-suburban recreational field in the site's western corner adjacent to the Guadalupe River levee.



Photo 5. Top of bank along the east side of the Guadalupe River. This riparian corridor is located adjacent to the project site.



Photo 6. Grassland and wetland habitat along the east bank of Guadalupe River, and mixed riparian woodland and forest habitat along the Guadalupe River, adjacent to the project site.

Appendix C. Burrowing Owl Mitigation Agreement

MITIGATION AGREEMENT

between

AGILENT TECHNOLOGIES, INC.

and the

CALIFORNIA DEPARTMENT OF FISH AND GAME

Ref. No. 1802-2000-073-3

This Mitigation Agreement ("Agreement") is made and entered into by and between Agilent Technologies, Inc. ("Agilent") and the California Department of Fish and Game (the "Department"), a Department of the State of California, collectively "the Parties."

The purpose of this Agreement is to mitigate significant environmental impacts to the Western burrowing owl (*Athene cunicularia*), caused by development at property owned by Agilent (Exhibit B) at 350 Trimble Road, San Jose, California (the "Project"). The Western burrowing owl is a State designated Species-of-Special-Concern.

RECITALS

- A. WHEREAS, Agilent proposes to engage in development of a site occupied by 2 nesting pairs of burrowing owls and one resident adult burrowing owl. Agilent proposes to mitigate for impacts to burrowing owls and habitat essential for their survival which occurs on the parcel proposed for development; and
- B. WHEREAS, Agilent has agreed that significant environmental impacts to Western burrowing owl habitat may occur as a result of development; and whereas the Department is a responsible agency under the California Environmental Quality Act (CEQA); and
- C. WHEREAS, Agilent and the Department have reached agreement on acceptable ways to mitigate the significant environmental impacts to Western burrowing owl habitat; and
- D. WHEREAS, Agilent will mitigate Western burrowing owl habitat at a ratio of 6.5 acres of owl habitat for every pair of burrowing owls or single burrowing owl displaced from the project area; and
- E. WHEREAS, the Department is trustee for the fish and wildlife resources of the State of California and has jurisdiction over the conservation and protection of fish, wildlife, and native plants, and the habitat necessary for biologically sustainable populations thereof pursuant to California Fish and Game Code Section 1802; and
- F. WHEREAS, Western burrowing owls and/or their habitat occurs on the parcel identified

for development; and

G. WHEREAS, Agilent's proposed development may result in permanent impacts to habitat occupied by two nesting pairs of burrowing owls and one adult burrowing owl; and

H. WHEREAS, the Department desires, consistent with the policies of California Fish and Game Code Section 1802, that there is permanent protection for burrowing owls and their habitat to assure the conservation, restoration, and long-term survival of this species; and

I. WHEREAS, Agilent agrees to undertake the mitigation measures set forth in this Agreement to offset the adverse impacts to burrowing owls caused by the Project; and

J. WHEREAS, the Project will not be allowed to result in the take of individual burrowing owls, which is prohibited by Fish and Game Code Section 3503.5, and whereas measures will be implemented to assure that no take will occur through the eviction of burrowing owls from the proposed development site during the non-nesting season (September 1 to January 31),

NOW THEREFORE, the Parties agree as follows:

1. NOTIFICATION.

Agilent intends to pursue development opportunities upon execution of this Agreement. This Agreement serves as notification that Agilent intends to commence development activities at its facility in San Jose, California.

2. RESPONSIBLE PARTY.

By execution of this Agreement, Agilent is notifying the Department that Ms. Barrie Simpson, Agilent Technologies, Inc., 350 Trimble Road, San Jose, CA 95131, TEL:(408) 435-4183, or his/her designee, is responsible for overseeing compliance with this Agreement.

3. EVICITION OF OWLS, BUFFER ZONES AND REPORTING OF TAKE

Agilent agrees to comply with the following restrictions during development of the Project:

- A. No burrowing owls will be evicted from burrows during the nesting season (February 1 through August 31). Eviction outside the nesting season may be permitted as a means to avoid take, pending evaluation of eviction plans and receipt of formal written approval from the Department authorizing the eviction.
- B. A protected area 75 meters (250-foot) in radius, within which no new activity will be permissible, will be maintained between Project activities and nesting burrowing owls or individual resident burrowing owls. This protected area will remain in effect between February 1 and August 31, or, at the Department's

discretion and based upon monitoring evidence, until any young owls are foraging independently. In the non-nesting season (September 1 through January 31), a protected area 50 m (165 feet) in radius, within which no new activity will be permissible, will be maintained between Project activities and burrows occupied by burrowing owls. Any development within these protected radii will be approved beforehand in a Memorandum of Understanding or Mitigation agreement with the Department. Notwithstanding anything to the contrary in this paragraph, the Department has the discretion to contract the nesting season period based on evidence the Department deems satisfactory.

C. If accidental take occurs, Agilent will contact the Department immediately.

4. ACQUISITION OF HABITAT LANDS.

A. Agilent agrees to acquire and preserve an area of 19.5 acres of existing burrowing owl foraging and breeding Habitat Management (HM) lands. Alternatively, 19.5 acres of suitable habitat not currently sustaining a burrowing owl population but that (at Agilent's expense, and pending approval by the Department) can be suitably modified to become HM lands may be provided. This acreage is based on 6.5 acres of habitat for each of the two pairs of burrowing owls and one single burrowing owl resident in the project area during the year 2000.

B. HM lands acquired by Agilent shall be transferred to the Department in fee title, or preserved through a conservation easement or a declaration of deed restriction that is approved by the Department. In lieu of transfer to the Department, the HM lands may be transferred to a non-profit corporation or public entity approved by the Department under terms approved by the Department. Agilent agrees to obtain the Department's approval of the HM lands for their biological suitability prior to approval under this agreement or any transfer.

C. In lieu of HM lands acquired directly by Agilent as mitigation for project impacts, acquisition of HM lands through a Department-approved mitigation bank, and in an acreage amount acceptable to the Department, will serve as approved mitigation.

5. LAND RATIO REQUIREMENT.

The required HM lands acreage is based upon the agreement between Agilent and the Department that the development site is utilized for foraging and/or breeding habitat by two pairs of burrowing owls and one single adult burrowing owl, and that one acceptable method of mitigating impacts to burrowing owls and their habitat is off-site preservation of existing burrowing owl habitat in an amount sufficient to sustain the displaced birds or an equivalent population of burrowing owls.

6. CONDITIONS OF HABITAT ENHANCEMENT.

A. The HM lands must comprise existing burrowing owl habitat, or Agilent must undertake habitat enhancement measures. Enhancement measures intended to fulfill suitability requirements for HM lands must be reviewed and approved by the Department. Agilent agrees

to demonstrate that the HM lands are suitable for burrowing owl mitigation by providing information that shows burrowing owl distribution on the proposed HM lands or in the vicinity. The total acreage of HM lands protected through this Agreement may exceed the 19.5 acres required, because areas of the HM lands that are not suitable for burrowing owls will not be applied to the total mitigation requirement. Any HM lands protected for the purposes of this Agreement must include areas on-site where burrowing owls can breed successfully. Agilent will be responsible for creating breeding habitat (artificial burrows) on the HM lands if it is determined to be necessary by the Department. Agilent agrees to provide the Department a recent preliminary title report and Level I environmental report for the HM lands. All documents conveying HM lands and all conditions of title are subject to the approval of the Department, the Department of General Services and, if applicable, the Fish and Game Commission.

B. Agilent agrees to acquire 19.5 acres of HM lands within 18 months of the full execution of this Agreement. This requirement will forever mitigate impacts to burrowing owl habitat caused by development activities from Agilent's Project.

C. If Agilent fails to complete the acquisition of 19.5 acres of HM lands within 18 months, or fails to perform other duties identified in this Agreement within the time periods specified, the Department, at its option, may demand that Agilent cure its breach forthwith. The Department may draw upon the security to complete the required acquisition, enhancement and management of HM lands and may pursue other remedies if Agilent fails to cure its breach upon demand.

7. FUNDING REQUIREMENTS FOR MITIGATION LANDS.

A. Agilent shall enhance burrowing owl habitat on the HM lands if the species is not already found on the HM lands, and if the Department approves proposed enhancements as a means of fulfilling suitability requirements on lands not presently suitable. In addition, Agilent shall be responsible for initial protection and enhancement measures on the HM lands; these measures may include but are not limited to fencing, trash clean-up, artificial burrow creation, grazing or mowing, and any habitat restoration deemed necessary by the Department. Alternatively, as its exclusive obligation to enhance owl habitat on HM lands, Agilent may fund the Department's initial protection and enhancement activities on the HM lands by providing the Department a check in the amount of \$20,000 drawn from a banking institution located with California. Any unobligated funds for initial protection and enhancement of the HM lands shall be returned to Agilent upon completion of all such activities.

B. Agilent agrees to provide the Department (or non-profit corporation or other public entity, as applicable) with a check in the amount of \$40,000 to establish an endowment for the long-term management of the HM lands. Agilent shall transfer these funds to the Department, or its designee, upon the Department's approval of the biological suitability of the HM lands, exceptions and conditions of title, and acquisition by the Department or an agent approved by the Department of HM lands as provided herein. The funds shall be in the form of a check drawn from a banking institution located within California. Such funding shall be used as principal for a permanent capital endowment. Interest from this amount shall be available for operations, management and protection of the HM lands acquired pursuant to this Agreement.

Operation, management and protection activities may include reasonable administrative overhead, biological monitoring, improvements to biological carrying capacity, law enforcement measures, and any other actions designed to protect or improve the habitat values of the HM lands. Money received by the Department pursuant to this provision shall be deposited in a special account established pursuant to Government Code Section 16370. The Department may pool the endowment with other endowments for the operation, management and protection of HM lands for local populations of the Western burrowing owl.

C. Agilent agrees to reimburse the Department for reasonable expenses incurred as a result of the approval and implementation of this Agreement, including costs of title and documentation review, expenses incurred from other state agency reviews and reasonable overhead directly related to this agreement. The Parties estimate that this Agreement will create an additional cost to the Department of up to \$3,000 per HM lands acquisition transaction processed regardless of the number of acres in each transaction.

D. Agilent plans to proceed with the Project prior to fully performing the mitigation described in this Agreement. Agilent therefore agrees to secure the performance of its mitigation duties by providing the Department with security in the amount of \$414,000, by depositing the same in a Department-approved escrow account at Chase Manhattan Bank in San Francisco within 10 working days from the date of full execution of this Agreement. If Agilent has not fully performed its duties and obligations under this agreement within 18 months of the execution of this Agreement, Agilent shall pay the Department the estimated cost of performing any unperformed obligation. In the event that Agilent does not pay such a sum to the Department within 10 days' written notice of such an amount being due, the Department may draw upon the deposit provided pursuant to this Agreement and use such funds to acquire, protect, enhance and manage HM lands. Agilent agrees to provide security in the amount of \$414,000, including: (1) \$20,000 for initial protection and enhancement of the HM lands, (2) \$351,000 (19.5 acres at an estimated \$18,000 an acre) for the acquisition and/or preservation of the HM lands, (3) \$40,000 for an endowment for the long-term management of the HM lands, and (4) \$3,000 for transaction processing, if required.

E. The parties estimate that Agilent's costs for the acquisition and transfer of suitable HM lands totaling 19.5 acres of burrowing owl habitat will be \$351,000, at an estimated cost of \$18,000 an acre. Notwithstanding the above estimate, in the event that acquisition costs exceed the projected amount, Agilent shall not be released from performance of the requirements unless the Department and Agilent agree to modify this Agreement to provide for alternate effective burrowing owl mitigation measures acceptable to the Department. In the event that acquisition costs are less than estimated, Agilent's obligation shall be the actual acquisition cost and associated expenses described in the Agreement.

F. Once Agilent locates the required acreage of suitable HM lands, and demonstrates to the Department's satisfaction that the land is acceptable for mitigation purposes and that the proposed HM lands will be acquired, within ten (10) working days after written request by Agilent, the Department shall authorize for expenditure or return the acquisition funds to Agilent in the amount of \$351,000 for purchase of HM lands.

OTHER PROVISIONS

8. The Department, its designee or successor shall hold title to and protect all HM lands conveyed in fee title under this Agreement solely for the purposes of conservation, protection, restoration, and enhancement of the Western burrowing owl and/or its habitats. This covenant shall remain in effect with the land and no use of such land shall be permitted by the Department or any subsequent title holder or assignee which is in conflict with the stated conservation purposes of this Agreement. The Department, its designee or successor may allow some limited grazing on the HM lands if said uses or the management of said uses do not conflict in any way with the Department's conservation goals for burrowing owls.
9. The Department, its designee or successor shall record on each deed a statement that the HM lands described in the deed of record have been conveyed to the Department, its designee or successor for purposes of conservation, protection, restoration and enhancement of the burrowing owl and its habitat.
10. In the event Agilent defaults on any of its material obligations under this Agreement, the Department shall have all rights with respect to any cash security and all remedies available at law or in equity, including specific performance injunction, and without limitation all rights of a secured party pursuant to the California Uniform Commercial Code.
11. All notices and other communications required or permitted under this Agreement shall be in writing and addressed to the parties at the following addresses, or at substitute addresses subsequently provided to any of the parties:

AGILENT TECHNOLOGIES, INCORPORATED:

Barrie Simpson
SPG Environmental Regional Manager
Agilent Technologies, Inc.
350 Trimble Road
San Jose, CA 95131
(408) 435-4183

AND

Environmental Counsel
Agilent Technologies, Inc.
395 Page Mill Rd.
Palo Alto, CA 94306
(650) 752-5000

DEPARTMENT:

General Counsel
Legal Affairs Division
Department of Fish and Game
1416 Ninth Street, Twelfth Floor
Sacramento, CA 95814
(916) 654-5295

AND

Mr. Scott Wilson
Region 3
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599
(707) 944-5529

12. Any sale or assignment of this Agreement or any of the rights or obligations thereunder is void absent the written consent of the Parties; provided, however, that no consent shall be required for assignment or pledge made by Agilent (a) to any entity that shall succeed by purchase, merger or consolidation to the properties of Agilent; (b) as security for a debt under the provision of any mortgage, deed of trust, indenture, bank credit agreement, or similar instrument; or (c) to any purchaser of any portion of the San Jose property as further described in Exhibit B attached hereto and incorporated herein.

13. This Agreement comprises the entire agreement and understanding between the Parties concerning the project, and the mitigation of significant environmental impacts regarding western burrowing owls and their habitat. This Agreement supersedes all prior and contemporaneous agreements, representations or understandings, whether oral or written.

14. This Agreement shall be governed by the laws of the State of California. Actual or threatened breach of this Agreement may be prohibited or restrained by a court of competent jurisdiction.

15. This Agreement is solely for the benefit of the People of the State of California, by and through the Department or its designated representative, and Agilent and its successors.

16. From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties or their successors. In any action requiring the agreement or approval of either of the Parties, such agreement or approval shall not be unreasonably denied or withheld, so long as it does not substantially alter the Agreements, duties and remedies of the Parties.

17. It is acknowledged that the purpose of this Agreement is to set forth the obligations and rights of the Parties with respect to the Project and the mitigation of significant environmental impacts on the western burrowing owl and its habitat. The Department will not seek further mitigation or compensation for the western burrowing owl or its habitat from Agilent for impacts within the Project area.

18. This Agreement shall be immediately effective upon execution by the Parties.

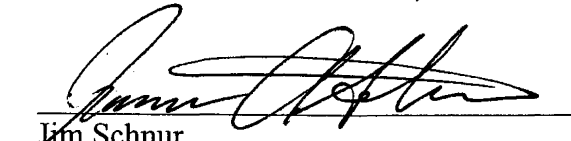
19. This Agreement includes and incorporates the following:

EXHIBIT A – Certificate of Public Purpose

EXHIBIT B – Project Description


The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the last date written below.

AGILENT TECHNOLOGIES, INCORPORATED:


Jim Schnur
Global Real Estate Manager

Date: 1/3/01

CALIFORNIA DEPARTMENT OF FISH AND GAME


Robert W. Floerke
Regional Manager, Region 3

Date: 1/5/01

EXHIBIT A

CERTIFICATE OF PUBLIC PURPOSE

This is to certify that the interest in real property conveyed by the deed or grant of the following property _____

_____, dated _____,
from _____, to the California Department of Fish
and Game (the "Department"), grantee, a governmental agency (under section 27281 of the
Government Code) is hereby accepted by the undersigned officer on behalf of the Department,
pursuant to authority conferred upon him by resolution of the _____
on _____.

The public purpose of this real property conveyance and the recordation hereof is being
accomplished pursuant to the terms and conditions of the Mitigation Agreement ("Agreement")
entered into on _____ by and between _____ and the
Department.

The Agreement, among other terms and conditions not relevant here, provides at paragraph 8:

"The Department, its designee or successor shall hold title to and protect all HM
lands conveyed in fee title under this Agreement solely for the purposes of
conservation, protection, restoration, and enhancement of the western burrowing
owl. This covenant shall run with the land and no use of such land shall be
permitted by the Department or any subsequent title holder or assignee which is in
conflict with the stated conservation purposes of this Agreement. The
Department, its designee or successor may allow some limited grazing on the HM
lands if said uses or the management of said uses do not conflict in any way with
the conservation goals for burrowing owls."

A copy of this Agreement in its entirety may be obtained by interested parties by sending a
request to the Director of the Department at the address below.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA
1416 Ninth Street
Sacramento, California 95814

By: _____
Title: _____
Authorized Representative
Date: _____

EXHIBIT B

LEGAL DESCRIPTION

All that certain Real Property in the City of San Jose, County of Santa Clara, State of California, as described as follows:

Parcel One:

Parcel "D" as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 28, 1979, in Book 415 of Maps at Pages 40 and 41.

Together with that portion of Parcel "A" as Parcel "A" is shown on said Parcel Map filed for record in Book 415 of Maps at Pages 40 and 41, Santa Clara County Records, described as follows:

Beginning at the most Westerly corner of Parcel "A" as shown on said Parcel Map, said corner being a point in the general Northeasterly boundary of said Parcel "D"; thence along said boundary of Parcel "D" the following two (2) courses; South 30° 45' 42" East 34.57 feet; thence along a tangent curve to the left having a radius of 167.00 feet, through a central angle of 56° 05' 54", an arc distance of 163.51 feet to the True Point of Beginning; thence continuing along said general Northeasterly boundary of said Parcel "D" following two (2) courses: continuing along the last said tangent curve to the left having a radius of 167.00 feet, through a central angle of 4° 54' 33", an arc distant of 14.31 feet; thence North 88° 13' 51" East 372.44 feet; thence leaving said boundary along the Northwesterly prolongation of the boundary line labeled with "North 46° 46' 09" West 233.00" on said Parcel Map, North 46° 46' 09" West 192.19 feet; thence South 59° 53' 26" West 284.99 feet to said True Point of Beginning.

Excepting therefrom that portion of Parcel "D" as Parcel "D" is shown on said Parcel Map filed for record in Book 415 of Maps at Pages 40 and 41, Santa Clara County Records, described as follows:

Beginning at the most Northerly corner of said Parcel "D", said corner being on the Southwesterly line of Trimble Road; thence along the Easterly line of said Parcel "D" the following three courses: South 29° 48' 03" 159.30 feet; thence South 4° 14' 18" West 189.49 feet; thence South 45° 45' 42" East 70.32 feet to the True Point of Beginning; thence continuing along said Easterly line, South 45° 45' 42" East 266.06 feet; thence South 30° 45' 42" East recorded 62.48 feet thence leaving said Easterly line South 59° 14' 18" West 86.11 feet; thence along a tangent curve to the right having a radius of 246.00 feet, through a central angel of 38° 25' 29", an arc length of 164.98 feet; thence North 82° 20' 13" West 4.00 feet, thence along a tangent curve to the left having a radius of 28.00 feet through a central angle of 90° 00' 00" for an arc length of 43.98 feet; thence North 7° 39' 47" East 327.99 feet; thence along a tangent curve to the left having a radius of 650.00 feet through a central angel of 1° 15' 37" for an arc length of 14.30 feet to the True Point of Beginning.

Excepting therefrom all oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam in and under said real property and lying below a plane which is 500 feet

below the surface of the ground; provided, however, that any exploration for or removal of any such oil, gas, other hydrocarbon substances, minerals, and naturally created hot water and steam shall be by means of slant drill or other kinds of drilling coming from said real property and shall be performed so as not to endanger said surface or any structure which shall be erected or constructed thereon, as reserved by Pacific Gas and Electric Company, a California Corporation By Deed recorded March 31, 1978 in Book D 564, Page 495, Official Records of Santa Clara County.

Parcel Two:

Commencing at a 3" x 4" post marked B.1 standing on the Westerly line of the San Jose and Alviso County Road, from which an iron rod in the center of said road bears North 43 deg. 24' East distant 40.20 feet; thence running along the Westerly line of the San Jose and Alviso County Road, South 30 deg. 45' East 10.50 chains to a 3" x 4" stake marked 1 and 2; thence South 44 deg. 23' West along the line between Lots 1 and 2 of the Horn Subdivision, 32.93 chains to a 3" x 4" post marked 4 and 2; thence North 43 deg. 24' East and along the line between lands of W. H. Dawson and the Horn Subdivision, 33.85 chains to the place of commencement.

And being Lot 2 of the Horn Subdivision of B. Bardue Tract, Santa Clara County, California

NOTE: There is no Map of Record of the Horn Subdivision hereinabove referred to.

Excepting therefrom, that portion thereof, as conveyed to City of San Jose, A Municipal Corporation by Deed Recorded August 26, 1985 in Book J438, Page 330 of Official Records, described as follows:

Being a portion of Lot 2 of the Horn Subdivision of B. Bardue Tract (unrecorded) and also being a portion of that certain 33.939 acres parcel of land shown on Sheet 5 of 5 of that certain Record of Survey filed in Book 381 of Maps at Pages 19 through 23, Records of Santa Clara County, California and more particularly described as follows:

Beginning at the point of intersection of the Southwesterly line of North First street (40.00 feet half-sheet) with the dividing line between the said 33.939 acres parcel of land and that certain 34.903 acres parcel of land as said parcels and Street are shown on said Record of Survey, thence Northwesterly along the said Southwesterly line of North First Street North 29 deg. 59' 11" West 718.81 feet to the Northeasterly corner of said 33.939 acres parcel of land South 44 deg. 00' 22" West 28.49 feet to a point that is 77.00 feet Southwesterly at right angles to the centerline of North First Street; thence Southerly South 5 deg. 37' 02" East 52.93 feet to a point on a curve; thence Easterly and Southeasterly along said curve from a tangent that bears North 84 deg. 22' 58" East with a radius of 52.50 feet through a central angle of 62 deg. 21' 24" and an arc length of 57.14 feet; thence Southeasterly the following described courses: South 33 deg. 15' 39" East 54.02 feet, South 29 deg. 59' 11" East 48.00 feet, South 40 deg. 36' 22" East 28.49 feet, South 29 deg. 59' 11" East 118.50 feet, South 31 deg. 37' 23" East 96.29 feet, South 29 deg. 59' 11" East 74.99 feet to the said dividing line between the 33.939 acres parcel and 34.903 acre parcel; thence Northeasterly along the said dividing line North 43 deg. 07' 44" East 17.59 feet to the point of beginning.

Also Excepting therefrom

All that certain Parcel of land situate in the City of San Jose, County of Santa Clara, State of California, and being a portion of Lot 2 of the Horn Subdivision of B. Bardue Tract (unrecorded) and also being a portion of that certain 33.939 acres parcel of land shown on Sheet 5 of 5 of that certain Record of Survey Map filed in Book 381 of Maps at Pages 19 through 23, Records of Santa Clara County, California, and more particularly described as follows:

Beginning at the Southwesterly corner of that certain parcel of land described in that Grant Deed filed in Book J438, Page 330, Official Records of Santa Clara County, California, thence Northwesterly along the Southwesterly lines of the said Parcel of land above referenced the following four (4) described coursed:

- 1.) North 29 deg. 59' 11" West 274.99 feet,
- 2.) North 31 deg. 37' 23" West 96.29 feet,
- 3.) North 29 deg. 59' 11" West 118.50 feet,
- 4.) North 40 deg. 36' 22" West 28.49 feet to a point of cusp with a line that is parallel to and distant 65.00 feet Southwesterly and measured at right angle to the centerline of North First Street as said Street is shown on said Record of Survey; thence Southeasterly along the said parallel line South 29 deg. 59' 11" East 519.98 feet to the Southeasterly line of the said 33.939 acre parcel of land; thence Northeasterly along the said Southeasterly line North 45 deg. 07' 44" East 8.28 feet to the Point of Beginning.

Parcel Three:

Commencing at a 3" x 4" post marked 4 and 2 standing on the line between the lands of W. H. Dawson, and the Horn Subdivision; and running thence South 43 deg. 24' West 14.49 chains to a 3" x 4" post marked B.14; standing on the Easterly bank of the Guadalupe River, from which a leaning Live Oak Tree 3 feet in diameter marked B.T.B.14 bears North 14 deg. 20' West 4 links, running thence along Easterly bank of the said Guadalupe River on the following courses and distances: South 14 deg. 20' East 1.03 chains to a point marked B.13, South 5 deg. 54' East 2.97 chains to a post marked B.12; South 13 deg. 14' West 1.84 chains to a 2" x 4" marked Lots 3 and 4; leaving said river and running North 44 deg. 58' East along a line between Lots 3 and 4 of the Horn Subdivision 16.90 chains to a 3" x 4" post marked 3-4 & 2 standing on the Westerly line of Lot 2 of the Horn Subdivision; thence along the Westerly line of said Lot 2, North 34 deg. 54' West 5.24 chains to the place of commencement.

Being Lot 4 of the Horn Subdivision of the B. Bardue Tract, Santa Clara County, California, Course True. Magnetic Variation 16 deg. East.

NOTE: There is no map of record of the Horn Subdivision hereinabove referred to. Excepting therefrom that certain 1.529 acre tract of land described in the Deed from Martimer A. French, et al., to the Santa Clara County Flood Control and Water Conservation District, State of California, Dated October 26, 1960 recorded December 6, 1960 in Book 5003 of Official Records, at Page 141, Santa Clara County Records, described as follows:

Beginning at a point in the Southeasterly line of the 95.97 acre parcel of land conveyed to Clementine R. Goscila recorded in Book 1644 of Official Records, at Page 427 in the Office of

the Recorder of the County of Santa Clara, State of California, (said point being a 3" x 4" post marked 4 and 2 standing on the line between lands of W. H. Dawson and the Horn Subdivisions) said point being distant along said Southeasterly line of said 95.97 acre parcel of land South 44 deg. 02' 24" West 2281.90 feet from the point of intersection of said Southeasterly line with the center line of the San Jose-Alviso Road; thence from said point continuing along said Southeasterly line South 44 deg. 02' 24" West 791.60 feet to the True Point of Beginning of this description; thence from said point of beginning from a tangent bearing South 33 deg. 24' 25" East on a curve to the right with a radius of 650 feet through an angle of 31 deg. 51' 18" for a distance of 361.38 feet to a point in the line between Lots 3 and 4 of said Horn Subdivision; thence Southwesterly along said line being the present Southeasterly line of Alden French, et al., to a point in the Westerly line of said lands of French; thence Northerly along said Westerly line of said lands of French said point bearing South 44 deg. 02' 24" West from the point of beginning; thence North 44 deg. 02' 24" East along said line last mentioned to the True Point of Beginning of this description, being a part of Lot 4 of the Horn Subdivision of the B. Bardue Tract containing 1.529 acres of land more or less, and being all that parcel of the lands of French Northeasterly adjacent to the Guadalupe River lying within the bounds of the proposed 300 foot realignment channel of the Guadalupe River 1959 Project C-1-3.

Parcel Four:

An easement for ingress and egress as conveyed to Hewlett-Packard Company, a California Corporation by that certain grant Deed executed by Watkins-Johnson Company and recorded August 23, 1978 in Book D906, Page 357, Official Records, being more particularly described as follows:

All that certain Real Property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of that certain parcel of land shown as Parcel "B" on that certain Parcel Map recorded in Book 415 of Maps at Pages 40 and 41 Santa Clara County Records.

Beginning at the most Westerly corner of said parcel, said corner lying on the Southeasterly line of Trimble Road, as said Road is shown on said Map; thence along said Southeasterly line, being common with the Northwesterly line of said parcel, North 60 deg. 11' 57" East 65.37 feet; thence leaving said common line, in a Southerly direction along a nontangent curve to the left having a radius of 60.00 feet, concave to the East, whose radius point bears South 65 deg. 02' 54" East through a central angle of 54 deg. 45' 09" an arc length of 57.34 feet to a point in a line that is parallel with and 40.00 feet Northeasterly measured at right angles from the most Northerly course in the general Southwesterly line of said parcel; thence along said parallel line South 29 deg. 48' 03" East 50.00 feet; thence along a tangent curve to the right having a radius of 186.00 feet through a central angle of 35 deg. 40' 26" an arc length of 114.81 feet to the point of reverse curvature; thence along a tangent curve to the left, having a radius of 150.00 feet, through a central angle of 51 deg. 38' 05" an arc length of 135.18 feet; thence South 45 deg. 45' 42" East 169.47 feet; thence along a tangent curve to the left having a radius of 100.00 feet through a central angle of 60 deg. 04' 00", an arc length of 104.84 feet; thence South 30 deg. 45' 42" East 55.38 feet; thence South 59 deg. 14' 18" West 10.98 feet; thence along a tangent curve to the left having a radius of 50.00 feet, through a central angle of 32 deg. 14' 18", an arc length of 28.13 feet to a point of reverse curvature; thence along a tangent curve to the right, having a radius of 50.00 feet, through a central angle of 143 deg. 32' 50" an arc length of 125.27 feet to a point of reverse curvature; thence along a tangent curve to the left, having a radius of 50.00 feet,

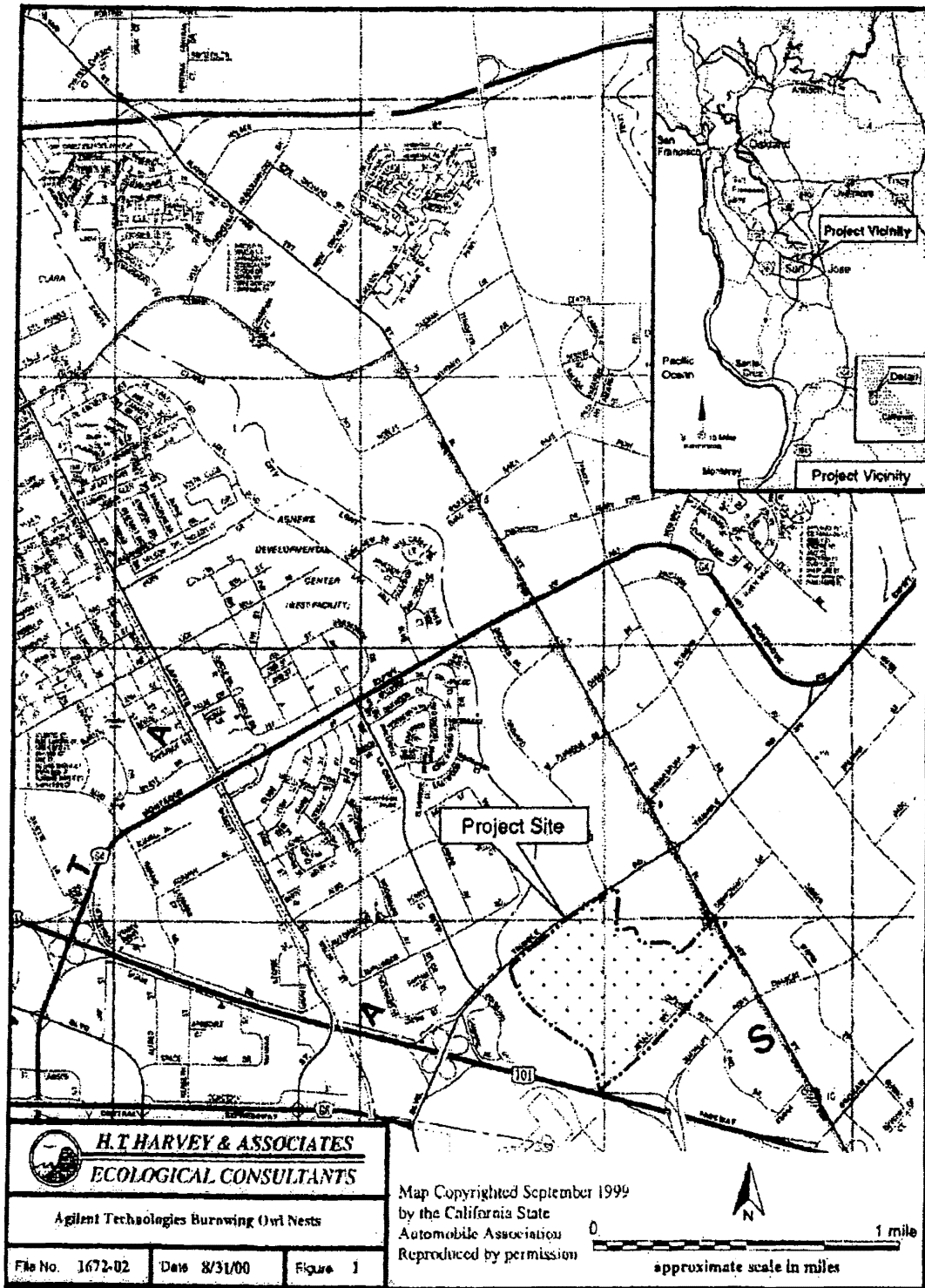
through a central angle of 36 deg. 18' 32" an arc length of 31.69 feet; thence North 45 deg. 45' 42" West 265.51 feet; thence along a tangent curve to the left having a radius of 25.00 feet through a central angle of 10 deg. 58' 11", an arc length of 4.79 feet to a point in the general Northwesterly line of said Parcel B; thence along said generally Southwesterly line the following courses; thence North 4 deg. 14' 18" East 148.43 feet; thence North 29 deg. 48' 03" West 159.30 feet to the Point of Beginning.

Excepted therefrom that portion thereof vacated by that certain Quitclaim Deed recorded June 17, 1998 as Instrument No. 13742915, Official Records.

Parcel Five

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of that certain Parcel of Land shown as containing 7.802 acres, more or less, on Sheet 4 of that certain Record of Survey, recorded in Book 381 of Maps at Pages 19 through 23, Santa Clara County Records and being more particularly described as follows:

Commencing at the most Easterly corner of said parcel, said corner being also a point on the centerline of North First Street, as said street is shown on said map; thence leaving said centerline, South 48 deg. 52' 01" West 78.28 feet to the Point of Beginning lying on a line that is parallel with, and 77.00 feet Southwesterly, measured at right angles, from said centerline; thence leaving said parallel line, continuing South 48 deg. 52' 01" West 279.77 feet; thence along a tangent curve to the left having a radius of 1,000.00 feet, through a central angle of 4 deg. 38' 10" an arc length of 98.37 feet to a point in a line that is parallel with and 40.00 feet Northwesterly, measured at right angles, from the Southeasterly line of said 7.802 acre parcel; thence along said parcel line South 43 deg. 13' 51" West 420.78 feet; thence leaving said parallel line North 46 deg. 46' 09" West 40.00 feet to a point in the general Northwesterly line of said parcel, said point of being also the most Southerly corner of that certain parcel of land shown as Parcel 1, on that certain Parcel Map recorded in Book 390 of Maps, at Pages 25 and 26, Santa Clara County Records; thence along said Parcel 1, North 43 deg. 13' 51" East 110.00 feet to an angle point in said common general line; thence leaving said common general line, continuing North 43 deg. 13' 51" East 310.78 feet; thence along a tangent curve to the right, having a radius of 1,040.00 feet, through a central angle of 5 deg. 38' 10" an arc length of 102.30 feet; thence North 48 deg. 52' 01" East 242.07 feet; thence along a tangent curve to the left, having a radius of 54.00 feet, through a central angle of 68 deg. 97' 59" an arc length of 64.21 feet to a point on said common general line; thence along said common general line, North 43 deg. 13' 51" East 1.13 feet to a point on a line that is parallel with, and 77.00 feet Southwesterly, measured at right angles, from said center line of North First Street; thence leaving said common general line along said parallel line South 30 deg. 45' 42" East 75.23 feet to the Point of Beginning.





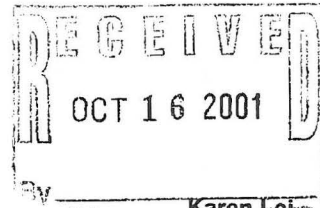
Chase Manhattan Bank and Trust Company, N.A.

101 California Street, Suite 3800

San Francisco, CA 94111

Tel 415-954-2361

Fax 415-954-2371



Karen Lei

Assistant Vice President

*ppp
10-16-01*

VIA FEDERAL EXPRESS

October 15, 2001

Ms. Roxanne R. Rapson

Corporate Counsel

Agilent Technologies, Inc

395 Page Mill Road, M/S A3-10

Palo Alto, CA 94306

COPY

original in

Vaulty CT.

17.02.00.0029

Re: Agilent Technologies, Inc Good Faith Deposit Escrow Account #142945.1

Dear Roxanne:

Enclosed please find a fully executed original Bill of Sale from Wildlands, Inc for the above referenced Escrow. The Purchase Price of 19.50 acres of Burrowing Owl Conservation Credits for \$292,500.00 was wired to Roseville 1st National Bank for Wildlands, Inc on October 15, 2001. The Remaining escrow cash in the amount of \$131,164.67 less wire transfer and overnight mail charges of \$63.00 due to the Escrow Agent was wired to your account #12337-31544 at Bank of America today per the October 8, 2001 Escrow Instructions.

If you have any questions, please feel free to contact me.

Very truly yours,

Karen C. L. Lei

Assistant Vice President

Enclosure



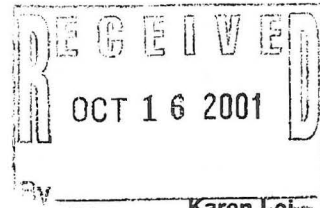
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Assistant Vice President

Enclosure



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.dfg.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



November 15, 2012

Ms. Vera Todorov
Sr. Deputy City Attorney
200 East Santa Clara Street, 16th Floor Tower
San Jose, CA 95113-1905

Dear Ms. Todorov:

Subject: Santa Clara Valley Habitat Plan – Mitigation Agreement Between Agilent Technologies, Inc. and California Department of Fish and Game
(Ref. No. 1802-2000-073-03)

The California Department of Fish and Game (DFG) has reviewed your letter dated November 2, 2012 requesting the status of the above referenced Agreement. DFG confirms that the terms of the Agreement have been fulfilled and per the terms of the Agreement, DFG requires no additional mitigation.

From your letter and conversations between City of San Jose (City) staff and DFG, it is our understanding that any determination by the City regarding the property that was formerly the Agilent project area will not affect the City's ability to successfully implement the conservation strategy for the western burrowing owl described in the Santa Clara Valley Habitat Plan and will not change that strategy.

If you have any questions, please feel free to contact me at (707) 944-5517.

Sincerely,

A handwritten signature in blue ink that reads "Scott Wilson".

Scott Wilson
Acting Regional Manager
Bay Delta Region

ARBORIST REPORT

8/2/2022
5154.20
Revision 1

PROJECT

2500 Orchard Parkway
San Jose, CA

PREPARED FOR

Environmental Systems Design, Inc.

PREPARED BY

HMH
1570 Oakland Road
San Jose, CA 95131
William Sowa
ISA Certified Arborist #WE-12270A



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INTRODUCTION AND OVERVIEW

HMH was contracted to complete a tree survey, assessment and arborist report for trees located within the limit of work illustrated on Exhibit A. The project site is part of an undeveloped lot approximately 22.3 acres. There are currently large tech campuses located adjacent to this area as well as a few undeveloped lots. The southwestern portion of the site is border by the Guadalupe River Trail and subsequent Guadalupe River. There are also high voltage transmission lines running along this same southwestern edge. Orchard Parkway is the main point of access for this lot. Our scope of services includes locating, measuring DBH, assessing, and photographing the condition of all trees within the limit of work. Disposition and health recommendations are based on current site conditions. Site development/design may affect the preservation suitability.

METHODOLOGY

Our tree survey work is a deliberate and systematic methodology for cataloging trees on site:

1. Identify each tree species.
2. Note each tree's location on a site map.
3. Measure each trunk circumference at 4.5' above grade per ISA standards.
4. Evaluate the health and structure of each tree using the following numerical standard:
 - 5 - A healthy, vigorous tree, reasonably free of disease, with good structure and form typical of the species.*
 - 4 - A tree with slight decline in vigor, small amount of twig dieback, minor structural defects that could be corrected.*
 - 3 - A tree with moderate vigor, moderate twig and small branch dieback, thinning of crown, poor leaf color, moderate structural defects that may that might be mitigated with care.*
 - 2 - A tree in decline, epicormic growth, extensive dieback of medium to large branches, significant structural defects that cannot be abated.*
 - 1 - A tree in severe decline, dieback of scaffold branches and or trunk, mostly epicormic growth; extensive structural defects that cannot be abated.*
 - 0 - Tree is dead.*

SUMMARY OF FINDINGS

HMH conducted a tree inventory of 38 trees located within the limit of work outlined in Exhibit A and B. 14 of the trees inventoried are classified as ordinance-sized trees under the City of San Jose Tree Removal permit.

An ordinance-size tree is:

Single Trunk - 38 inches or more in circumference at 4 ½ feet above ground; or

Multi-trunk - The combined measurements of each trunk circumference (at 4 ½ feet above ground) add up to 38 inches or more.

Table 1 - Tree Quantity Summary summarizes tree quantities by both species and size. Each species that was inventoried as part of this scope is included. This is a useful tool for analyzing the mixture of trees as part of the project. The size table is useful when calculating mitigation requirements in the case of tree removal as well as aiding in determining tree maturity.

Table 2 - Tree Evaluation Summary lists each tree number, botanical name, common name, DBH, circumference, ordinance trees, health rating, preservation suitability, general notes and observations and recommendations.

See Exhibit A & B for Existing Tree Locations

See Table 1 for Tree Quantity Summary by species and size.

See Table 2 for Tree Evaluation Summary for sizes, notes and recommendations regarding each tree.

GENERAL OBSERVATIONS AND RECOMMENDATIONS

Species: *Acacia melanoxylon* (Blackwood Acacia)

Quantity: 1

Observations: Tree #21 is the only blackwood acacia observed on site. It is quite clearly a self seeded tree since it is growing in the undeveloped portion of the site amongst a stand of arroyo willows. This is an extremely drought adapted tree native to Australia and classified as an invasive species by the California Invasive Plant Council. They can grow to considerable size with a height and width exceeding 50 feet, while producing copious amounts of seed that self sow regularly. Removal is highly suggested.

Species: *Acer rubrum* 'Armstrong' (Armstrong Maple)

Quantity: 6

Observations: 6 young Armstrong Maples were planted along the existing property line to the North as part of 350 Trimble Rd. site improvements. They are small enough to be move/replanted if necessary. Tree #43 appears to be dead.

Species: *Juglans hindsii* (California Walnut)

Quantity: 14

Observations: This was the most numerous species located on site. California Walnut is a large native tree that is common around riparian areas and drought adapted. Trees on site varied from large established individuals to young seedlings. This is an important species for native habitats.

Species: *Pinus radiata* (Monterey Pine)

Quantity: 1

Observations: One Monterey Pine with minor structural defects was located on the Northwestern edge of the site on the adjacent 350 Trimble property.

Species: *Platanus x acerifolia* (London Plane)

Quantity: 8

Observations: These were among the street trees planted within the landscape strip along Orchard Parkway. London Plane Trees are commonly grown as street trees because of their adaptability and tolerance of regular pruning. These trees appear to be in moderate condition with only slight dieback on the outermost tips of the canopy. None of these trees were ordinance size.

Species: *Populus fremontii* (Fremont Cottonwood)

Quantity: 3

Observations: There is one very large Fremont Cottonwood (tree #23) on site and two smaller seedlings growing along the periphery of its canopy. This is another native riparian species that is drought adapted as well. These trees are fast growing to a very large size as evident in the example of tree #23. Similar to the California Walnut this is a very important habitat species as well.

Species: *Pyrus calleryana* (Callery Pear)

Quantity: 5

Observations: The Callery Pears on site were all planted along Orchard Parkway in the landscape strip amongst the London Plane Trees. These trees are grown for their large display of flowers in the early spring. This is also a deciduous species that loses its leaves in the winter. Somewhat drought adapted, however they do better with regular watering.

Species: *Quercus agrifolia* (Coast Live Oak)

Quantity: 15

Observations: There are two Coast Live Oaks growing along the outer edge of the site adjacent to the Guadalupe River Trail. Both of these trees are growing within the chainlink fence that runs along the perimeter of the site. Tree #1 is a large ordinance size tree. Tree #3 is much smaller and shows evidence that it has been pruned down to the ground at one point in time. Thirteen more Coast Live Oaks are growing along the North edge of the site. All of which are large ordinance sized trees. Coast live oak is one of the most important trees to the native wildlife. Trees of this species are long lived and extremely drought tolerant once established. A mature Coast Live Oak can reach massive sizes and live in excess of 400 years.

Species: *Quercus suber* (Cork Bark Oak)

Quantity: 2

Observations: Two Cork Bark Oaks are located on the Northern edge of the site. They are of similar size to the Coast Live Oaks planted around that area. Both are in fairly good shape and significant size.

Species: *Ulmus parvifolia* (Chinese Elm)

Quantity: 2

Observations: Two Chinese Elms are planted on the Northeastern corner on the 350 Trimble property. They are medium-sized trees in good condition. These are hardy trees and drought adapted.

Species: *Salix lasiolepis* (Arroyo Willow)

Quantity: 8

Observations: There are a few Arroyo Willows growing on site, all of which are dense growths with multiple trunks. This is another native species of tree that spreads readily in riparian areas. Although they prefer moist conditions, trees that are self seeded are very drought tolerant. Trees #16, #17, and #18 are all growing together as a single growth, which is common for the species. This is another important habitat plant for many species of native wildlife.

RECOMMENDATIONS FOR TREE PROTECTION DURING CONSTRUCTION

Site preparation: All existing trees shall be fenced within or at the drip line (foliar spread) of the tree. Depending on the location of the tree the fencing may not be able to be at the dripline. Examples of this would be public right of way, near property lines or around existing structures to remain. Where complete drip line fencing is not possible, the addition of straw waddles and orange snow fencing wrapping the trunk shall be installed per the tree protection detail. The fence should be a minimum of six feet high, made of galvanized 11-gauge wire mesh with galvanized posts or any material superior in quality. A tree protection zone (TPZ) sign shall be affixed to fencing at appropriate intervals as determined by the arborist on site. See tree protection detail for additional

information, including tree protection zone sign. If the fence is within the drip line of the trees, the foliar fringe shall be raised to offset the chance of limb damage from active construction.

Active Construction: All contractors, subcontractors and other personnel shall be warned that encroachment within the fenced area and dripline is prohibited without the consent of the certified arborist on the job. This includes, but is not limited to, storage of lumber and other materials, disposal of paints, solvents or other noxious materials, parked cars, grading equipment or other heavy equipment. If construction activity needs to happen in the TPZ the fence can be moved temporarily for delivery of construction materials. The contractor should make accommodations to off load items such as trusses, timber, plasterboard, wallboard, concrete, gypsum board, flooring, roofing or any other heavy construction material outside the foliar spread of the tree so there is no heavy equipment needed that could cause damage to the canopy of the tree or compact the root zone. The tree protection fencing should be reestablished per the plans and details immediately after any activity through the TPZ. Penalties, based on the cost of remedial repairs and the evaluation guide published by the international society of arboriculture, shall be assessed for damages to the trees.

Grading/excavating: All grading plans that specify grading within the drip line of any tree, or within the distance from the trunk as outlined in the site preparation section above when said distance is outside the drip line, shall first be reviewed by a certified arborist. Provisions for aeration, drainage, pruning, tunneling beneath roots, root pruning or other necessary actions to protect the trees shall be outlined by an arborist. If trenching is necessary within the area as described above, said trenching shall be undertaken by hand labor and dug directly beneath the trunk of the tree. All roots 2 inches or larger shall be tunneled under and other roots shall be cut smoothly to the trunk side of the trench. The trunk side should be draped immediately with two layers of untreated burlap to a depth of 3 feet from the surface. The burlap shall be soaked nightly and left in place until the trench is back filled to the original level. An arborist shall examine the trench prior to back filling to ascertain the number and size of roots cut, so as to suggest the necessary remedial repairs.

Remedial repairs: An arborist shall have the responsibility of observing all ongoing activities that may affect the trees and prescribing necessary remedial work to ensure the health and stability of the trees. This includes, but is not limited to, all arborist activities brought out in the previous sections. In addition, pruning, as outlined in International Society of Arboriculture Best Management Practices: Pruning and ANSI A300 Part 1 Standard Practices: Pruning, shall be prescribed as necessary. Fertilizing, aeration, irrigation, pest control and other activities shall be prescribed according to the tree needs, local site requirements, and state agricultural pest control laws. All specifications shall be in writing. For pest control operations, consult the local county agricultural commissioner's office for individuals licensed as pest control advisors or pest control operators.

Final inspection: Upon completion of the project, the arborist shall review all work undertaken that may impact the existing trees. Special attention shall be given to cuts and fills, compacting, drainage, pruning and future remedial work. An arborist should submit a final report in writing outlining the ongoing remedial care following the final inspection.

MAINTENANCE RECOMMENDATIONS FOR TREES TO REMAIN

Regular maintenance, designed to promote plant health and vigor, ensures longevity of existing trees. Regular inspections and the necessary follow-up care of mulching, fertilizing, and pruning, can detect problems and correct them before they become damaging or fatal.

Tree Inspection: Regular inspections of mature trees at least once a year can prevent or reduce the severity of future disease, insect, and environmental problems. During tree inspection, four characteristics of tree vigor should be examined: new leaves or buds, leaf size, twig growth, and absence of crown dieback (gradual death of the upper part of the tree). A reduction in the extension of shoots (new growing parts), such as buds or new leaves, is a fairly reliable cue that the tree's health has recently changed. Growth of the shoots over the past three years may be compared to determine whether there is a reduction in the tree's typical growth pattern. Further signs of poor tree health are trunk decay, crown dieback, or both. These symptoms often indicate problems that began several years before. Loose bark or deformed growths, such as trunk conks (mushrooms), are common signs of stem decay. Any abnormalities found during these inspections, including insect activity and spotted, deformed, discolored, or dead leaves and twigs, should be noted and observed closely.

Mulching: Mulch, or decomposed organic material, placed over the root zone of a tree reduces environmental stress by providing a root environment that is cooler and contains more moisture than the surrounding soil. Mulch can also prevent mechanical damage by keeping machines such as lawn mowers and string trimmers away from the tree's base. Furthermore, mulch reduces competition from surrounding weeds and turf. To be most effective, mulch should be placed 2 to 4 inches deep and cover the entire root system, which may be as far as 2 or 3 times the diameter of the branch spread of the tree. If the area and activities happening around the tree do not permit the entire area to be mulched, it is recommended that as much of the area under the drip line of the tree is mulched as possible. When placing mulch, care should be taken not to cover the actual trunk of the tree. This mulch-free area, 1 to 2 inches wide at the base, is sufficient to avoid moist bark conditions and prevent trunk decay. An organic mulch layer 2 to 4 inches deep of loosely packed shredded leaves, pine straw, peat moss, or composted wood chips is adequate. Plastic should not be used as it interferes with the exchange of gases between soil and air, which inhibits root growth. Thicker mulch layers, 5 to 6 inches deep or greater, may also inhibit gas exchange.

Fertilization: Trees require certain nutrients (essential elements) to function and grow. Urban landscape trees may be growing in soils that do not contain sufficient available nutrients for satisfactory growth and development. In certain situations, it may be necessary to fertilize to improve plant vigor. Fertilizing a tree can improve growth; however, if fertilizer is not applied wisely, it may not benefit the tree at all and may even adversely affect the tree. Mature trees making satisfactory growth may not require fertilization. When considering supplemental fertilizer, it is important to consider nutrients deficiencies and how and when to amend the deficiencies. Soil conditions, especially pH and organic matter content, vary greatly, making the proper selection and use of fertilizer a somewhat complex process. To that end, it is recommended that the soil be tested for nutrient content. A soil testing laboratory can give advice on application rates, timing, and the best blend of fertilizer for each tree and other landscape plants on site. Mature trees have expansive root systems that extend from 2 to 3 times the size of the leaf canopy. A major portion of actively growing roots is located outside the tree's drip line. Understanding the actual size and extent of a tree's root system before applying fertilizer is paramount to determine quantity, type and rate at which to best apply fertilizer. Always follow manufacturer recommendations for use and application.

Pruning: Pruning is often desirable or necessary to remove dead, diseased, or insect-infested branches and to improve tree structure, enhance vigor, or maintain safety. Because each cut has the potential to change the growth of (or cause damage to) a tree, no branch should be removed without reason. Removing foliage from a tree has two distinct effects on growth: (1) it reduces photosynthesis and, (2) it may reduce overall growth. Pruning should always be performed sparingly. Caution must be taken not to over-prune as a tree may not be able to gather and process enough sunlight to survive. Pruning mature trees may require special equipment, training, and experience. Arborists are equipped to provide a variety of services to assist in performing the job safely and reducing risk of personal injury and property damage (*See also Addendum A - ANSI A300 Part 1 Pruning Standards*).

Removal: There are circumstances when removal is necessary. An arborist can help decide whether or not a tree should be removed. Professionally trained arborists have the skills and equipment to safely and efficiently remove trees. Removal is recommended when a tree: (1) is dead, dying, or considered irreparably hazardous; (2) is causing an obstruction or is crowding and causing harm to other trees and the situation is impossible to correct through pruning; (3) is to be replaced by a more suitable specimen, and; (4) should be removed to allow for construction. Pruning or removing trees, especially large trees, can be dangerous work. It should be performed only by those trained and equipped to work safely in trees.

TERMS AND CONDITIONS

The following terms and conditions apply to all oral and written reports and correspondence pertaining to consultations, inspections and activities of HMM.

1. The scope of any report or other correspondence is limited to the trees and conditions specifically mentioned in those reports and correspondence. HMM assumes no liability for the failure of trees or parts of trees, either inspected or otherwise. HMM assumes no responsibility to report on the condition of any tree or landscape feature not specifically requested by the named client.
2. No tree described in this report was climbed, unless otherwise stated. HMM does not take responsibility for any defects, which could have only been discovered by climbing. A full root collar inspection, consisting of excavating the soil around the tree to uncover the root collar and major buttress roots was not performed unless otherwise stated. HMM does not take responsibility for any root defects, which could only have been discovered by such an inspection.
3. HMM shall not be required to provide further documentation, give testimony, be deposed, or attend court by reason of this appraisal or report unless subsequent contractual arrangements are made, including payment of additional fees for such services as described by HMM or in the schedule of fees or contract.
4. HMM guarantees no warranty, either expressed or implied, as to the suitability of the information contained in the reports for any reason. It is the responsibility of the client to determine applicability to his/her case.
5. Any report and the values, observations and recommendations expressed therein represent the professional opinion of HMM, and the fee for services is in no manner contingent upon the reporting of a specified value nor upon any particular finding to be reported.
6. Any photographs, diagrams, graphs, sketches or other graphic material included in any report, being intended solely as visual aids, are not necessarily to scale and should not be construed as engineering reports or surveys, unless otherwise noted in the report. Any reproductions of graphic material or the work produced by other persons, is intended solely for clarification and ease of reference. Inclusion of said information does not constitute a representation by HMM as to the sufficiency or accuracy of that information.
7. Trees can be managed, but they cannot be controlled. To live near trees is to accept some degree of risk. The only way to eliminate all risk associated with trees is to eliminate all trees.



Existing Tree Map Exhibit A

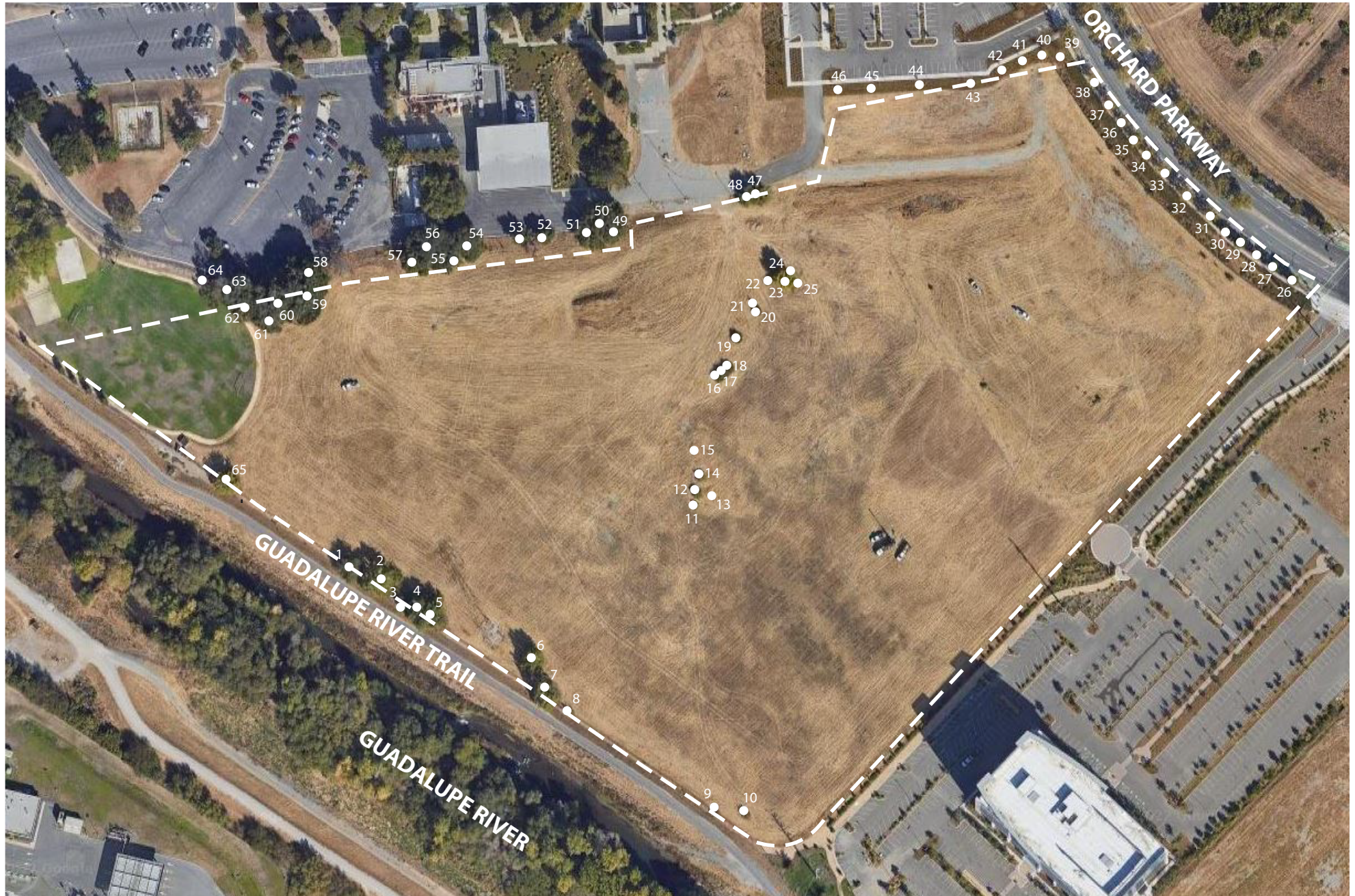


TABLE 1 - TREE QUANTITY SUMMARY

Tree Quantity by Species		
Species	Quantity	% of Site
<i>Acacia melanoxylon</i>	1	2%
<i>Acer rubrum</i> 'Armstrong'	6	9%
<i>Juglans hindsii</i>	14	22%
<i>Pinus radiata</i>	1	2%
<i>Platanus acerifolia</i>	8	12%
<i>Populus fremontii</i>	3	5%
<i>Pyrus calleryana</i>	5	8%
<i>Quercus agrifolia</i>	15	23%
<i>Quercus suber</i>	2	3%
<i>Ulmus parvifolia</i>	2	3%
<i>Salix lasiolepis</i>	8	12%
Total Trees	65	100%

TABLE 2 - TREE EVALUATION SUMMARY

Prepared By: William Sowa ISA Certified Arborist WE-12270A

DBH MEASUREMENT HEIGHT: 54"

Date of Evaluation: 5/17/2022

Suitability for Preservation is based on the following		
Good - Trees with good health and structural stability that have the potential for longevity at the site.		
Moderate - Trees in somewhat declining health and/or exhibits structural defects that cannot be abated with treatment. Trees will require more intense management and will have a shorter lifespan than those in the 'Good' category.		
Poor - Trees in poor health or with significant structural defects that cannot be mitigated. Tree is expected to decline, regardless of treatment.		
Health Rating		
5	A healthy, vigorous tree, reasonably free of disease, with good structure and form typical of the species.	
4	A tree with slight decline in vigor, small amount of twig dieback, minor structural defects that could be corrected.	
3	A tree with moderate vigor, moderate twig and small branch dieback, thinning of crown, poor leaf color, moderate structural defects that may that might be mitigated with care.	
2	A tree in decline, epicormic growth, extensive dieback of medium to large branches, significant structural defects that cannot be abated.	
1	A tree in severe decline, dieback of scaffold branches and or trunk, mostly epicormic growth; extensive structural defects that cannot be abated.	
0	Tree is dead.	
Abbreviations and Definitions		
CD	Codominant branches	Forked branches nearly the same size in diameter, arising from a common junction an lacking a normal branch union.
CDB	Dieback in Crown	Condition where branches in the tree crown die from the tips toward the center.
CR	CR	Tree is bounded closely by one or more of the following: structure, tree, Etc.
D	Decline	Tree shows obvious signs of decline, which may be indicative of the presence of multiple biotic and abiotic disorders.
DBH	Diameter at Breast Height	Measurement of tree diameter in inches. Measurement height varies by City and is noted above.
EG	Epicormic Growth	Watersprouting on trunk and main leaders. Typically indicative of tree stress.
EH	Exposed Heartwood	Exposure of the tree's heartwood is typically seen as an open wound that leaves a tree more susceptible to pathogens, disease or infection.
H	Hazardous	A tree that in it's current condition, presents a hazard.
HD	Headed	Poor pruning practice of cutting back branches. Often practiced under utility lines to limit tree height.
IB	Included Bark	Structural defect where bark is included between the branch attachment so the wood can't join. Such defect can have a higher probability of failure.
LC	Low crotch	Multiple central leaders originating below the DBH measurement site.
LN	Leaning Tree	Tree leaning, see notes for severity.
ML	Multiple Leaders	More than one upright primary stem
PT	Phototropism	Tree exhibits phototropic growth habits. Reduced trunk taper, misshapen trunk and canopy growth are examples of this growth habit.
S	Suckers	Shoot arising from the roots.
SD	Structural Defects	Naturally or secondary conditions including cavities, poor branch attachments, cracks, or decayed wood in any part of the tree that may contribute to structural failure.
SE	Severe	Indicates the severity of the following term.
SL	Slight	Indicates the mildness of the following term.
SR	Surface Roots	Roots visible at finished grade.
ST	Stress	Environmental factor inhibiting regular tree growth. Includes drought, salty soils, nitrogen and other nutrient deficiencies in the soil.
WU	Weak Union	Weak union or fork in tree branching structure.
	Ordinance Tree	Ordinance-Size Trees.An ordinance-size tree is: Single Trunk - 38 inches or more in circum-ference at 4 ½ feet above ground; or Multi-trunk - The combined measurements of each trunk circumference (at 4 ½ feet above ground) add up to 38 inches or more.

TREE #	BOTANICAL NAME	COMMON NAME	DBH (INCHES)	CIRCUMFERENCE (INCHES)	ORDINANCE TREE	HEALTH	PRESERVATION SUITABILITY	NOTES
1	<i>Quercus agrifolia</i>	Coast Live Oak	24,10,11	141	YES	3	Moderate	crowded with chainlink fence
2	<i>Juglans hindsii</i>	California Black Walnut	36.0	113	YES	4	Good	
3	<i>Quercus agrifolia</i>	Coast Live Oak	11.0	35	NO	2	Poor	crowded with chainlink fence, SD
4	<i>Juglans hindsii</i>	California Black Walnut	24,18,20	195	YES	4	Good	
5	<i>Juglans hindsii</i>	California Black Walnut	18,18,20,16	226	YES	4	Good	
6	<i>Juglans hindsii</i>	California Black Walnut	12,12,16	126	YES	3	Good	
7	<i>Juglans hindsii</i>	California Black Walnut	24.0	75	YES	4	Good	
8	<i>Juglans hindsii</i>	California Black Walnut	6.0	19	NO	2	Moderate	crowded with chainlink fence
9	<i>Juglans hindsii</i>	California Black Walnut	3,3,2,2,1	35	NO	2	Moderate	crowded with chainlink fence
10	<i>Juglans hindsii</i>	California Black Walnut	3,2,2,2,1,1	35	NO	2	Moderate	
11	<i>Juglans hindsii</i>	California Black Walnut	2,2,2,1,1	25	NO	2	Poor	
12	<i>Juglans hindsii</i>	California Black Walnut	3,3,3,3,3,2,2,2,1,1,1,1	79	YES	2	Moderate	
13	<i>Juglans hindsii</i>	California Black Walnut	3,1,1,1,1,1	22	NO	2	Poor	
14	<i>Juglans hindsii</i>	California Black Walnut	2,2,2,2,1,1,1,1	35	NO	2	Moderate	
15	<i>Juglans hindsii</i>	California Black Walnut	2,2,2,1	22	NO	2	Poor	
16	<i>Salix lasiolepis</i>	Arroyo Willow	3,3,3,3,3,3,3,3,3,3,3	94	YES	3	Moderate	
17	<i>Salix lasiolepis</i>	Arroyo Willow	3,3,3,3,3,3,3,3,3,3,3	94	YES	3	Moderate	
18	<i>Salix lasiolepis</i>	Arroyo Willow	3,3,3,3,3,3,3,3,3,3,3	94	YES	3	Moderate	
19	<i>Salix lasiolepis</i>	Arroyo Willow	3,3,3,3,3,3,3,3,3	66	YES	3	Moderate	
20	<i>Salix lasiolepis</i>	Arroyo Willow	3,3,3,3,3,3,3,3,3	66	YES	3	Moderate	
21	<i>Acacia melanoxylon</i>	Blackwood Acacia	4,2,1	22	NO	2	Poor	invasive

TREE #	BOTANICAL NAME	COMMON NAME	DBH (INCHES)	CIRCUMFERENCE (INCHES)	ORDINANCE TREE	HEALTH	PRESERVATION SUITABILITY	NOTES
22	<i>Salix lasiolepis</i>	Arroyo Willow	3,3,3,3,3,3,3,3,3	75	YES	2	Moderate	
23	<i>Populus fremontii</i>	Fremont Cottonwood	10,8,8,8,6,6,5,5,4,4	201	YES	4	Good	
24	<i>Populus fremontii</i>	Fremont Cottonwood	1,2	9	NO	2	Poor	
25	<i>Populus fremontii</i>	Fremont Cottonwood	3.0	9	NO	2	Poor	
26	<i>Pyrus calleryana</i>	Callery Pear	10.0	31	NO	3	Moderate	
27	<i>Pyrus calleryana</i>	Callery Pear	10.0	31	NO	3	Moderate	
28	<i>Pyrus calleryana</i>	Callery Pear	9.0	28	NO	3	Moderate	
29	<i>Pyrus calleryana</i>	Callery Pear	10.0	31	NO	3	Moderate	
30	<i>Pyrus calleryana</i>	Callery Pear	9.0	28	NO	3	Moderate	
31	<i>Platanus acerifolia</i>	London Planetree	8.0	25	NO	3	Moderate	
32	<i>Platanus acerifolia</i>	London Planetree	9.0	28	NO	3	Moderate	
33	<i>Platanus acerifolia</i>	London Planetree	8.0	25	NO	3	Moderate	
34	<i>Platanus acerifolia</i>	London Planetree	8.0	25	NO	3	Moderate	
35	<i>Platanus acerifolia</i>	London Planetree	8.0	25	NO	3	Moderate	
36	<i>Platanus acerifolia</i>	London Planetree	8.0	25	NO	2	Moderate	
37	<i>Platanus acerifolia</i>	London Planetree	8.0	25	NO	3	Moderate	
38	<i>Platanus acerifolia</i>	London Planetree	7.0	22	NO	3	Moderate	
39	<i>Ulmus parvifolia</i>	Chinese Elm	4.0	13	NO	3	Moderate	
40	<i>Ulmus parvifolia</i>	Chinese Elm	4.0	13	NO	3	Moderate	
41	<i>Acer rubrum</i> 'Armstrong'	Armstrong' Maple	2.0	6	NO	2	Moderate	recently planted
42	<i>Acer rubrum</i> 'Armstrong'	Armstrong' Maple	2.0	6	NO	2	Moderate	recently planted

TREE #	BOTANICAL NAME	COMMON NAME	DBH (INCHES)	CIRCUMFERENCE (INCHES)	ORDINANCE TREE	HEALTH	PRESERVATION SUITABILITY	NOTES
43	<i>Acer rubrum</i> 'Armstrong'	Armstrong' Maple	1.0	3	NO	0	Poor	dead
44	<i>Acer rubrum</i> 'Armstrong'	Armstrong' Maple	2.0	6	NO	2	Moderate	recently planted
45	<i>Acer rubrum</i> 'Armstrong'	Armstrong' Maple	2.0	6	NO	2	Moderate	recently planted
46	<i>Acer rubrum</i> 'Armstrong'	Armstrong' Maple	2.0	6	NO	2	Moderate	recently planted
47	<i>Salix lasiolepis</i>	Arroyo Willow	4,4,4,6,6,5	91	YES	3	Moderate	
48	<i>Salix lasiolepis</i>	Arroyo Willow	4,4,6,6,7,7,8,8	157	YES	3	Moderate	
49	<i>Quercus agrifolia</i>	Coast Live Oak	24.0	75	YES	4	Good	
50	<i>Quercus agrifolia</i>	Coast Live Oak	28.0	88	YES	4	Good	
51	<i>Quercus agrifolia</i>	Coast Live Oak	24.0	75	YES	4	Good	
52	<i>Quercus suber</i>	Cork Bark Oak	19.0	60	YES	4	Good	
53	<i>Quercus suber</i>	Cork Bark Oak	15.0	47	YES	4	Good	
54	<i>Quercus agrifolia</i>	Coast Live Oak	29.0	91	YES	4	Good	
55	<i>Quercus agrifolia</i>	Coast Live Oak	29.0	91	YES	4	Good	
56	<i>Quercus agrifolia</i>	Coast Live Oak	40.0	126	YES	5	Good	
57	<i>Quercus agrifolia</i>	Coast Live Oak	25.0	79	YES	4	Good	
58	<i>Quercus agrifolia</i>	Coast Live Oak	33.0	104	YES	4	Good	
59	<i>Quercus agrifolia</i>	Coast Live Oak	51.0	160	YES	5	Good	
60	<i>Quercus agrifolia</i>	Coast Live Oak	31.0	97	YES	4	Good	
61	<i>Quercus agrifolia</i>	Coast Live Oak	33.0	104	YES	4	Good	
62	<i>Quercus agrifolia</i>	Coast Live Oak	29.0	91	YES	4	Good	
63	<i>Quercus agrifolia</i>	Coast Live Oak	31.0	97	YES	4	Good	

TREE #	BOTANICAL NAME	COMMON NAME	DBH (INCHES)	CIRCUMFERENCE (INCHES)	ORDINANCE TREE	HEALTH	PRESERVATION SUITABILITY	NOTES
64	<i>Pinus radiata</i>	Monterey Pine	24.0	75	YES	3	Moderate	SD
65	<i>Juglans hindsii</i>	California Black Walnut	12,12,13,11	151	YES	5	Good	





























