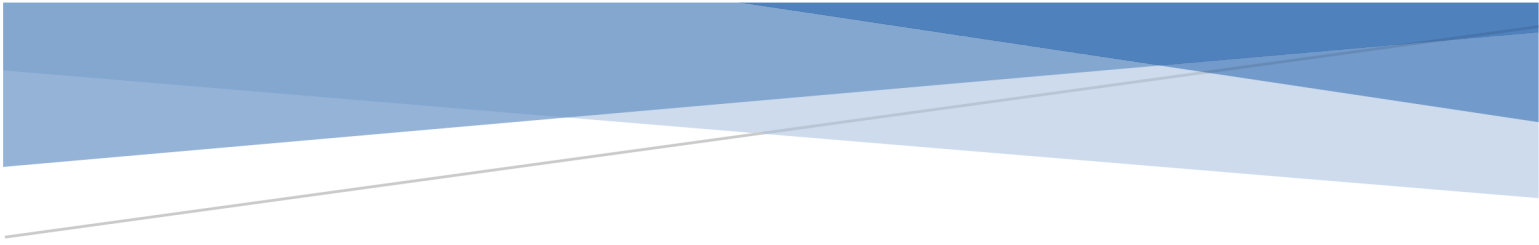


DOCKETED

Docket Number:	22-SPPE-02
Project Title:	San Jose Data Center 04
TN #:	263233
Document Title:	Microsoft Responses to CEC Data Request Set 6 - SJ04
Description:	N/A
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Organization:	DayZenLLC
Submitter Role:	Applicant Representative
Submission Date:	5/21/2025 1:10:40 PM
Docketed Date:	5/21/2025



RESPONSE TO CEC STAFF DATA REQUEST SET 6

San Jose Data Center 04 (22-SPPE-02)

SUBMITTED TO: CALIFORNIA ENERGY COMMISSION

SUBMITTED BY: **Microsoft**

May 2025



INTRODUCTION

Attached are Microsoft's responses to California Energy Commission (CEC) Staff Data Request Set No. 6 (BIO 1-5) for the SJ04 Data Center Application for Small Power Plant Exemption (SPPE) (22-SPPE-02). Staff issued Data Request Set No. 6 on May 2, 2025.

The Data Responses are grouped by individual discipline or topic area. Within each discipline area, the responses are presented in the same order as Staff presented them and are keyed to the Data Request Numbers¹. Additional tables, figures, or documents submitted in response to a data request (e.g., supporting data, stand-alone documents such as plans, folding graphics, etc.) are found in Attachments at the end of the document and labeled with the Data Request Number for ease of reference.

For context, the text of the Background and Data Request precede each Data Response.

GENERAL OBJECTIONS

Microsoft objects to all data requests that require analysis beyond which is necessary to comply with the California Environmental Quality Act (CEQA) or which require Microsoft to provide data that is in the control of third parties and not reasonably available to Microsoft. Notwithstanding this objection, Microsoft has worked diligently to provide these responses swiftly to allow the CEC Staff to prepare the Draft Environmental Impact Report (DEIR).

¹ There was a mistake in the numbering of the data requests including two requests numbered "1". To provide clarity, we have adjusted the numbering in our responses to correct the mistake. Data Request 1 has been modified to BIO DR 1; Data Requests 1-4 have been modified to BIO-2 through BIO-5.

BIOLOGICAL RESOURCES

BACKGROUND

Staff is reviewing applicant's materials and evaluating the final disposition of burrowing owl mitigation requirements as outlined in Appendix C (TN 245946 and TN 245947) between Agilent Technologies, Inc. and the then California Department of Fish and Game (CDFG). Staff is working with the California Department of Fish and Wildlife (CDFW) to determine the applicability of the mitigation agreement to future efforts at the site as it relates to the current legal status of the burrowing owl and potential presence on site.

DATA REQUEST

BIO-1 If available, please provide the record of purchase of mitigation credits from the mitigation bank, or "credit sale purchase" for burrowing owl credits.

RESPONSE TO DATA REQUEST BIO-1

A copy of the record of purchase of mitigation credits is included in Attachment BIO DR-1.

BACKGROUND

*The original application for the proposed project addressed potential impacts on burrowing owl (*Athene cunicularia hypugaea*), as a species of special concern, as designated by the CDFW. As of October 25, 2024, burrowing owl is a candidate species under the California Endangered Species Act (CESA). Under California law, "take" of candidate species is prohibited unless authorized by an incidental take permit. The applicant's proposed mitigation does not include any discussion of applying for take authorization for this species.*

Although surveys performed in 2022 reported negative results, these results are now considered outdated since there has been a substantial lapse in time since the surveys were conducted. In addition, the surveys were limited to a single-day reconnaissance effort and did not follow survey recommendations provided in the CDFW Staff Report on Burrowing Owl Mitigation (CDFG 2012). According to that guidance, protocol-level surveys must include multiple visits during the breeding season and cover appropriate times of day and weather conditions to adequately assess occupancy. This information is essential to developing appropriate avoidance, minimization, and compensatory mitigation measures.

During a meeting on April 3, 2025, CDFW staff relayed that a burrowing owl had recently been detected on the adjacent property to the northeast. In addition, there are multiple occurrences in CDFW's California Natural Diversity Database

indicating the species has occupied the site in the past. As a result, the potential for burrowing owl presence on the project site remains a concern.

The activities described by the proposed project could result in incidental take of the burrowing owl. These activities include facility construction, vehicle and heavy equipment operations, and activities generating noise, vibration, and dust. Incidental take may occur due to collisions with vehicles or heavy equipment, burial or destruction of burrows and refugia, or crushing of individuals or eggs.

Staff requires additional information on the location and status of burrowing owl within the site to assess potential for impacts under CEQA. Staff needs clarification on whether project activities may directly or indirectly impact owl habitat. If full avoidance of the species cannot be achieved, coordination with CDFW to obtain a CESA incidental take permit may be necessary.

DATA REQUESTS

BIO-2 Please perform surveys of the proposed data center campus (excluding the reconductoring portion of the project) consistent with the recommendations in the CDFW Staff Report on Burrowing Owl Mitigation. Please coordinate survey efforts with the appropriate local CDFW staff.

RESPONSE TO DATA REQUEST BIO-2

H. T. Harvey & Associates has conducted pre-activity surveys for burrowing owls at the project site in support of mowing activities in November 2023, April 2024, August 2024, and April 2025. The surveys were conducted according to the methods outlined in the Santa Clara Valley Habitat Plan, which is consistent with the guidance for take avoidance surveys provided in the California Department of Fish and Wildlife's 2012 Staff Report on Burrowing Owl Mitigation. Two pre-activity surveys were conducted prior to each mowing event.

No burrowing owls or signs of owl occupation at burrows were detected during the surveys. During our most recent survey in April 2025, no burrows suitable for roosting or nesting by burrowing owls were observed on the project site.

The survey report for the April 2025 surveys is included in Attachment BIO DR-2 and should be sufficient for Staff's use in completing its Draft Environmental Impact Report.

BIO-3 Please submit a complete survey report, including detailed results with the locations and status of burrowing owl populations within the site. Please provide mapping of active and historical burrows, documentation of observed individuals,

and a description of proposed mitigation measures. Please submit corresponding GIS shapefiles.

RESPONSE TO DATA REQUEST BIO-3

The survey report for the April 2025 surveys is included in Attachment BIO DR-2 and should be sufficient for Staff's use in completing its Draft Environmental Impact Report.

As described in Response to Data Request BIO-2, none of the surveys conducted on the site have ever found burrowing owls, and this species has not been documented historically on the site. Therefore, we did not include GIS shapefiles of active and historic burrowing owl locations.

A description of proposed mitigation measures is provided in the September 2022 biological resources report for the project (also described under Data Request BIO-4 below).

BIO-4 Provide additional information regarding the potential direct impacts to burrowing owl from construction of the proposed facilities.

RESPONSE TO DATA REQUEST BIO-4

Potential direct impacts of the project on burrowing owls are described in detail in our September 2022 biological resources report for the project. The project will implement measures to protect burrowing owls, including conducting pre-activity surveys and establishing appropriate buffers around any burrowing owls detected. Because the burrowing owl is now a candidate for listing under the California Endangered Species Act (CESA), the eviction of owls from burrows would require an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife. However, given that burrowing owls are not known to occur on the site and that the site currently lacks nesting or roosting habitat, we think that an ITP is unlikely to be necessary.

BIO-5 Please clarify whether any proposed project activities may result in indirect impacts to burrowing owl habitat within or adjacent to the site, including satellite burrows.

RESPONSE TO DATA REQUEST BIO-5

Potential indirect impacts on burrowing owls are described in detail in our September 2022 biological resources report for the project. The project will implement measures to protect burrowing owls, including conducting pre-activity surveys and establishing appropriate buffers around any burrowing owls detected.

ATTACHMENT BIO DR-1

Record of Purchase of Mitigation Credits



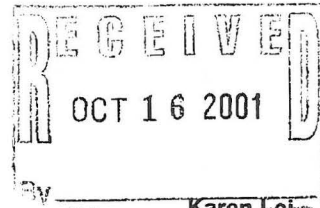
Chase Manhattan Bank and Trust Company, N.A.

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



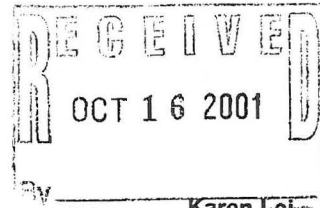
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If you have any questions, please feel free to contact me.

Very truly yours,

Karen C. L. Lei

Assistant Vice President

Enclosure

ATTACHMENT BIO DR-2

BUOW Survey Report April 2025



H. T. HARVEY & ASSOCIATES

Ecological Consultants

50 years of field notes, exploration, and excellence

April 16, 2025

Tami Arroyo
Microsoft Asset Manager
Data Center Land Development

Subject: Microsoft San José Data Center 04 and 06 April 2025 Vegetation Management – Nesting Bird and Burrowing Owl Survey Report (HTH #4658-02)

Dear Tami Arroyo:

Per your request, H. T. Harvey & Associates has conducted pre-mowing surveys for burrowing owls (*Athene cunicularia*) and other nesting birds at the Microsoft San José Data Center 04 and 06 property located at 350 and 370 West Trimble Road in San José, California. The property lies within the coverage area for the Santa Clara Valley Habitat Plan (VHP), which requires pre-activity surveys for burrowing owls and other nesting birds prior to mowing activities. The purpose of our survey was to determine whether burrowing owls and other nesting birds are currently present within or adjacent to the mowing area for purposes of pre-activity clearance in support of mowing activities that occurred on April 15, 2025.

Initial Survey

H. T. Harvey & Associates ecologist Zachary Hampson, B.A., conducted an initial pre-activity survey for burrowing owls and active nests of other protected birds (i.e., birds protected by the Migratory Bird Treaty Act and California Fish and Game Code) within the mowing area on April 14, 2025. Zachary is an ornithologist with a B.A. in Environmental Studies from the University of California, Santa Cruz. As an intern at the University, Zachary conducted nesting bird surveys throughout Santa Cruz County for the Santa Cruz Bird Club Breeding Bird Atlas project, as well as point counts at the Younger Lagoon Reserve. In addition, he has conducted thousands of hours of nesting bird and burrowing owl surveys for H. T. Harvey & Associates projects over the past several years. Zachary has observed many burrowing owls in the field including nesting pairs, chicks, and individual roosting, wintering, and foraging owls, and he has detected active owl burrows with owl sign (e.g., pellets, whitewash, and feathers). He has also spent many hours in the field monitoring the behavior of burrowing owls. Thus, he is well qualified to conduct this survey.

Per the requirements of the VHP, to maximize the probability of detecting owls, the survey for burrowing owls was conducted from one hour before sunrise to two hours after sunrise on the morning of April 14. Zachary walked the mowing area and, as access allowed, all suitable habitat within 250 feet looking for burrowing owls,

burrows, and evidence of recent owl occupation at burrows (e.g., whitewash, pellets, feathers, and/or prey remains). Where access was not possible, he scanned areas within 250 feet of the work areas with binoculars searching for owls and suitable owl habitat.

Concurrently with the survey for burrowing owls on April 14, Zachary walked the entirety of the mowing area, searching for active nests of protected birds by looking for nests, birds carrying materials or food, distraction displays, and other physical or behavioral evidence of nesting. In addition, to the extent that access allowed, he surveyed all areas within 300 feet of the mowing area for active nests of raptors (e.g., hawks, owls, and falcons) and within 100 feet of this area for active nests of other birds. These distances are equivalent to the sizes of non-disturbance buffers around active nests of these species that we typically recommend.

No burrowing owls were detected on or within 250 feet of the mowing area during the survey. Additionally, no suitable burrows of California ground squirrels (*Otospermophilus beecheyi*) were detected within the survey area to provide potential nesting or roosting sites for burrowing owls. No active nests of other protected bird species were detected during the survey.

Final Survey

Mowing of the site occurred on April 15, 2025. H. T. Harvey & Associates ornithologist Dani Christensen, B.S., conducted a final pre-activity survey for burrowing owls and other nesting birds immediately prior to the start of mowing activities to ensure that no burrowing owls or active nests were present. Dani is an ornithologist with a B.S. in Wildlife Conservation & Management from California Polytechnic Humboldt. She has conducted thousands of hours of nesting bird surveys for H. T. Harvey & Associates and other projects throughout Santa Clara County and the San Francisco Bay area over the past several years, as well as surveys both internationally and in the Sierra Nevada, California. In addition, she has performed numerous burrowing owl surveys in support of population monitoring in occupied habitat in Santa Clara County for several years, and observed breeding and wintering burrowing owls, as well as occupied burrows. Thus, she is well-qualified to conduct this survey.

No burrowing owls, active owl burrows, or signs of owl presence were observed during the survey. Dani detected an active nest of red-winged blackbirds (*Agelaius phoeniceus*) approximately 3 feet high in mustard (*Brassica* sp.) in the mowing area. This nest contains three eggs, and is labeled “Red-Winged Blackbird” on Figure 1. Based on the typical nesting period for this species, this nest may remain active until mid-May. However, red-winged blackbirds nest in colonies, and Dani observed many additional red-winged blackbirds constructing nests nearby within the mowing area. If red-winged blackbirds establish a nesting colony at this location, these nests may remain active until June, or potentially July.

No additional active nests were detected during the survey.

Recommendations

Dani remained on-site on April 15 to ensure that the mower avoided the active red-winged blackbird nest. Based on our experience, and per my discussion with you on April 15, we recommend leaving the majority of the site unmown to ensure that sufficient foraging resources are present to support the nesting red-winged blackbird colony that is in the process of establishing on the site. To ensure compliance with County Fire Safety Standards, the mower mowed the site perimeter as well as cross fuel breaks as needed to separate the site into sections no larger than 5 acres, while avoiding the active nest location.

The site may need to be mown 1–2 additional times this spring and summer. We recommend conducting pre-activity surveys for burrowing owls and active nests of other birds prior to each mowing event to ensure compliance with the VHP. If the colony of red-winged blackbirds is still present when the site needs to be mown again, we recommend that the mower follow the same route to comply with County Fire Safety Standards while leaving sufficient vegetation to support the nesting birds. However, if no active nests are present, the entire site may be mown.

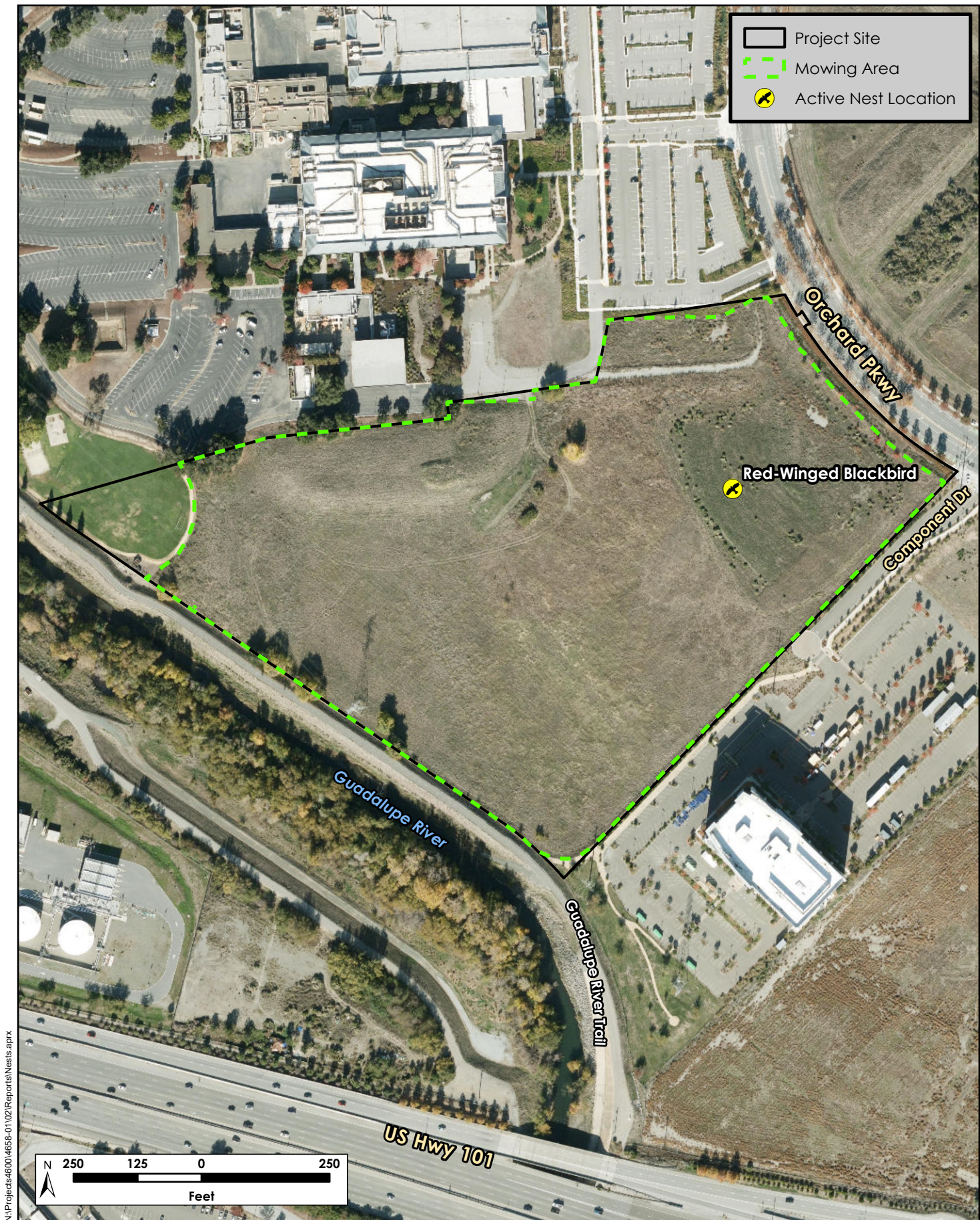
Please do not hesitate to contact me at rcarle@harveyecology.com or (408) 677-8737 with any questions you may have. Thank you for contacting H. T. Harvey & Associates regarding this opportunity.

Sincerely,

A handwritten signature in blue ink that reads "Robin Carle". The signature is fluid and cursive, with the first name "Robin" and last name "Carle" clearly distinguishable.

Robin Carle, M.S.
Principal Wildlife Ecologist/Project Manager

Attachment: Figure 1. Active Nest Location



N:\Projects\4600\4658-01\02\Report\Nests.aprx



H. T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 1. Active Nest Location
Microsoft SJC04 and 06 April 2025 Vegetation Management –
Nesting Bird and Burrowing Owl Survey Report
April 2025