

APPENDIX A:
BIOLOGICAL RESOURCES





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**Alviso Park Master Plan Update
Biological Resources Report**

Project #3745-01

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Section 1. Introduction

This report describes the biological resources present in the area of the proposed Alviso Park Master Plan Update, referred to herein as the “proposed project” or “proposed Plan”, as well as the potential impacts of project buildout on biological resources and measures necessary to reduce these impacts to less-than-significant levels under the California Environmental Quality Act (CEQA).

1.1 Project Description

The proposed Plan is intended to improve and enhance the existing Alviso Park to support a growing number of community users. The City of San José has outlined the following goals for this project and the project site:

- Express community identity
- Strengthen the user experience
- Improve circulation and visibility
- Identify community needs, priorities and phasing
- Respect resources

The project site is located in the Alviso neighborhood of northern San José in the *Milpitas, California* U.S. Geological Survey (USGS) 7.5-minute quadrangle (Figures 1 and 2). It is located on approximately 24.61 acres (ac) of City-owned land comprising five parcels, including the existing Alviso Park (Assessor’s Parcel Numbers 015-43-002, 015-43-023, 015-43-022, 015-43-020, and 015-44-013) (Figure 3).

The proposed Plan is a “covered project” under the approved Santa Clara Valley Habitat Plan (VHP; ICF International 2012). As a result, Plan implementation would require the City of San José to pay VHP fees for impacts on certain habitats in accordance with the types and acreage of habitat impacted and to implement conservation measures specified by VHP conditions. Therefore, for the purpose of the impact assessment presented herein, the Plan is assumed to incorporate all applicable VHP conditions, and these conditions are summarized in Section 6.2.

1.1.1 Proposed Components


The proposed Plan includes the following components:


- **New Facilities** - An enclosed sun deck adjacent to the swimming pool, shade structures at the picnic areas, outdoor fitness equipment and walking paths, a dog park, a Bay Trail segment, a community plaza with shade structure, and youth practice baseball and soccer fields



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LEGEND

 Project Site

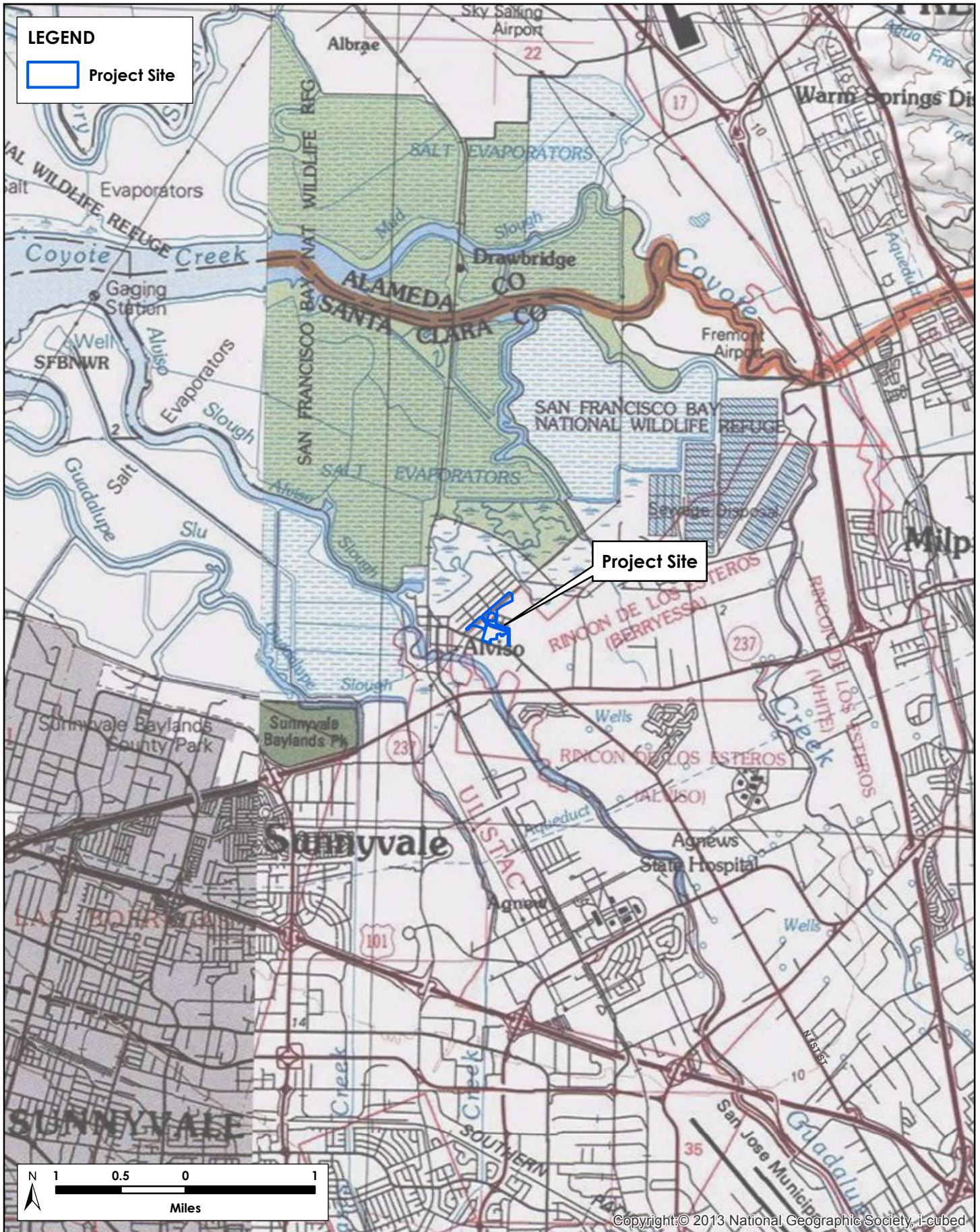
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Figure 1. Vicinity Map

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Figure 2. USGS Topographic Map

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- **New Amenities-** Pedestrian paths, park entryway gateway, wayfinding, landscaping, and furniture intended to present a cohesive design
- **Existing Facilities** – Improvements and renovations to existing facilities, including the swimming pool and associated restroom, picnic areas and playgrounds, and softball/baseball field

As shown on Figure 3, the Plan includes four areas within the project site, identified as the North Fields, Main Park, Southwest Edge, and Northwest Edge. The following sections describe the improvements envisioned for each of these areas under the proposed Plan.

North Fields. Under the proposed Plan, this area of the park would be characterized by open spaces and a naturalistic setting, including walking paths with resting areas placed at intervals, which provide a connection to the Don Edwards San Francisco Bay National Wildlife Refuge (NWR) located approximately 0.5 mile (mi) to the north of the park. Planned improvements for this section of the park include the following:

- New fenced dog park with separate areas for both small and large dogs
- New benches and trees located outside of the PG&E easement
- New walking paths to connect with the lower and main portions of the park
- New low-level pedestrian and path lighting
- New wayfinding marker

Northwest Edge. Planned improvements for this section of the park include a pedestrian promenade, consisting of an 8-foot (ft) sidewalk, trees, and an entrance arch at Wilson Way and Grand Boulevard. As described in the Bay Trail Master Plan (Amphion Environmental Inc. 2002), adopted by the City of San José in 2002, the Bay Trail would travel along the eastern edge of this area, beginning in the northwestern portion of the project site at the intersection of Disk Drive and Grand Boulevard, crossing the proposed pedestrian promenade, then exiting the park in the southwest portion of the project site at the intersection of North First Street and Grand Boulevard.

Southwest Edge. Planned improvements for this section of the park include the following:

- New communal venues for gathering and recreation, such as a plaza, specialty plantings, a trellis/shade structure, and a park marker that would be oriented towards Trinity Park Drive
- Improved large group picnic areas adjacent to the library, consisting of paving and planting improvements, picnic tables, grills, and a trellis/shade structure. This picnic area would replace the existing picnic area near the library.
- New small group picnic area adjacent to Trinity Park Drive, consisting of paving and planting improvements, picnic tables and grills
- New multi-use field consisting of a 225-ft youth softball/baseball field overlaid with a 55-yard by 100-yard youth soccer field
- New restroom located at the rear of and level to the library

- Improvements to the existing playground near the library to expand the play area by approximately 2,000 ft²
- New internal park paths measuring 6 ft in width, including low-level lighting

Main Park. This portion of the park would be characterized by green fields and multi-use lawn areas that would serve to complement the existing park facilities. Existing facilities in this area include a restroom, swimming pool, and picnic areas with barbeque pits. Planned improvements for this section of the park include the following:

- Improvements to the existing multi-use softball/baseball field with soccer field overlay to provide usability for participants and generate a key destination zone in the park's core
- New mid-block crossing across Wilson Way near the pool
- New plaza and gateway near Santos Street and Wilson Way to replace the community garden
- New 25-yard pool and pool deck, restroom and pump filters building, and associated seating, storage, and landscaping (these improvements would replace the existing pool and restroom)
- New large group picnic area near the community pool, consisting of paving and landscaping, trees, play area, picnic tables and grills, and plaza with trellis (this picnic area would replace the existing picnic area in the lawn near the pool)
- New fitness path loop, consisting of exercise nodes at intervals along proposed pathways with equipment and benches
- New 6-ft sidewalks on both sides of Wilson Way
- New 4-ft sidewalk on the eastern side of Santos Street, including low-level lighting

Lighting and Sound. The Plan would replace the existing, non-functional stadium lighting and sound system located at the baseball/softball field to allow for increased use of the field. Additionally, lighting is proposed along pedestrian pathways, and supplemental lighting is proposed within the improved sections of the plaza, swimming pool, and adjacent to each building on-site.

Conservation Measures. The proposed field lighting and sound system would be designed to minimize the potential impact on adjacent residential areas and natural habitat; further, all new lighting proposed within the park would conform to existing City standards for neighborhood parks and other applicable regulations, such as light spillage, energy efficiency, and the City of San José Dark Sky Ordinance. In addition, during construction all heavy equipment would be washed, or the tires and undercarriages cleaned with compressed air, before entering or leaving the project site to prevent the spread of invasive weeds.

1.1.2 Project Phasing

Improvements to Alviso Park are envisioned to occur in phases as funding becomes available, with a goal of providing a usable park that meets the needs of the community. Phase 1 would consist of modest changes to improve the functionality of the existing park over the short term, and would require the use of City staff time and equipment. Phase 2 would consist of changes to increase use of and contribute to building an identity for

the park. These changes would be supported by outside sources, such as transportation funds to address Bay Trail gap closures or habitat restoration efforts. Phases 3 and 4 would consist of improvements that would require significant sources of outside funding, such as landscape improvements, community gathering plazas, and other recreational amenities.

Section 2. Methodology

2.1 Background Review

Prior to conducting field work, H. T. Harvey & Associates biologists reviewed the draft Plan provided by Placeworks; a USGS topographic map (Figure 2); aerial photos (Google Inc. 2016); the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDDB 2016); the VHP (ICF International 2012); and other relevant scientific literature, technical databases, and resource agency reports in order to assess the current distribution of special-status plants and animals in the project vicinity. For the purposes of this report, the general vicinity of the project site is defined as the area within a 5-mi radius. 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 *Milpitas, California* USGS quadrangle 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 2016). In addition, we queried the CNDDDB (2016) for natural communities of special concern that occur within the project region.

2.2 Surveys

A reconnaissance-level field survey of the project site area was conducted by H. T. Harvey & Associates wildlife ecologist Stephen L. Peterson, M.S., and plant ecologist Maya Goklany, M.S., on August 26, 2015. The purpose of this survey was to provide a project-specific impact assessment for the development of the site 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 habitats (such as Waters of the U.S./State), although a formal wetland delineation was not conducted. During the reconnaissance survey, S. Peterson also conducted a focused survey for habitat for the burrowing owl (*Athene cunicularia*), a California Species of Special Concern; evidence of previous raptor nesting activity (i.e., large stick nests); and bat roosting habitat. Also during the August 2015 reconnaissance survey, M. Goklany performed a focused survey for Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*) and other potentially occurring summer-blooming rare plants. Finally, H. T. Harvey & Associates plant ecologist Greg Sproull, M.S., conducted a second focused survey for Congdon's tarplant on November 10, 2016. We also drew on years of experience working in the Alviso area (where our office was based for nearly 30 years) in performing our assessment.

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

Areas meeting the regulatory definition of “waters of the U.S.” are subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE) under provisions of Section 404 of the 1972 Clean Water Act (CWA). Waters of the U.S. are defined in 33 Code of Federal Regulations (CFR), Part 328, and may include all waters used currently and historically for interstate commerce (including all waters subject to the ebb and flow of the tide), all interstate waters (including interstate wetlands), all other waters (intrastate lakes, rivers, streams, mudflats, sandflats, playa lakes, natural ponds, etc.), territorial seas, and wetlands adjacent to waters of the U.S. Wetlands on non-agricultural lands are identified using the *Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987) using an approach that relies on identification of three parameters: hydrophytic vegetation, hydric soils, and wetland hydrology indicators. Areas typically not considered to be jurisdictional waters include nontidal drainage and irrigation ditches excavated in uplands, artificially irrigated areas, artificial lakes or ponds used for irrigation or stock watering, small artificial water bodies such as swimming pools, and water-filled depressions (33 CFR, Part 328).

Construction activities in jurisdictional waters are regulated by the USACE. The placement of fill into such waters must comply with Section 404 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 northeastern portion of the project site supports approximately 1.04 ac of potential jurisdictional waters of the U.S. (seasonal wetland habitat). Additional studies would need to be conducted to make a more definitive statement regarding potential jurisdiction of the seasonal wetlands on the site. Specifically, a formal wetland delineation is needed to determine if hydric soils and wetland hydrology indicators are present along with the hydrophytic (i.e., water loving) vegetation that was observed in the seasonal wetland. If ultimately determined to be regulated by the USACE, impacts on this area would require a Section 404 permit from the USACE, in addition to a Section 401 Water Quality Certification from the RWQCB.

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. Code 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 project site is located approximately 0.15 mi north of the Guadalupe River mouth, and 0.1 mi south of an unnamed slough. Because the site does not support open water, it does not overlap with current Section 10 waters. However, we verified that nearly the entire project site except for the southern boundary of the Main Park parcel (Figure 3) occurs within historical Section 10 waters by reviewing maps of historical sloughs, which are depicted on historical maps with a double-blue line¹. The site does not appear to have ever been filled above the mean high water elevation. Impacts on historical Section 10 jurisdictional areas may require a Letter of Permission from the USACE.

3.1.3 Federal Endangered Species Act

The federal Endangered Species Act (FESA) protects 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

¹ The dataset used to determine the extent of historical sloughs integrates several sources of data describing the historical features of tidal marshes in the region, and was developed by the San Francisco Estuary Institute (SFEI 2015). The primary source is the maps of the United States Coast Survey (USCS; later US Coast and Geodetic Survey), a federal agency renowned for the accuracy and detail of its 19th-century maps of America's shoreline. In most parts of the country, these maps provide the best early pictures of coastal and estuarine habitats prior to substantial Euro-American modification.

protected from take under the FESA only if they occur on federal lands or if the project requires a federal action, such as a Clean Water Act Section 404 fill permit from the USACE.

The U.S. Fish and Wildlife Service (USFWS) has jurisdiction over federally listed threatened and endangered wildlife species under the FESA, while the National Marine Fisheries Service (NMFS) has jurisdiction over federally listed, threatened and endangered, marine species and anadromous fish.

Project Applicability. No suitable habitat for any federally listed plant or animal species occurs on the project site or has been mapped on the site (e.g., by the VHP). Therefore, no federally listed species are reasonably expected to occur on the project site.

3.1.4 Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA), 16 U.S.C. §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 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 Department of the Interior in its April 16, 2003 Migratory Bird Permit Memorandum. Nest starts (nests that are under construction and do not yet contain eggs) are not protected from destruction

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

3.1.5 Federal Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (16 USC Sec. 668 et seq.) makes it unlawful to import, export, take, sell, purchase, or barter any bald eagle (*Haliaeetus leucocephalus*) or golden eagle (*Aquila chrysaetos*), or their parts, products, nests, or eggs. Take includes pursuing, shooting, poisoning, wounding, killing, capturing, trapping, collecting, molesting, or disturbance. Exceptions may be granted by the USFWS for scientific or exhibition use, or for traditional and cultural use by Native Americans. However, no permits may be issued for import, export, or commercial activities involving eagles.

Project Applicability. Suitable breeding habitat for golden eagles is not present on, or immediately adjacent to, the project site. This species is expected to forage in the open habitats of the project site only infrequently, if at all, based on the limited number of recorded occurrences in the vicinity by birders. No suitable nesting or foraging habitat for the bald eagle is present on the project site.

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 to regulate activities that could result in a discharge of dredged or fill material comes from the CWA and 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. The SWRCB has recently developed a preliminary draft Water Quality Control Policy that addresses numerous policy elements including development of a wetland definition and description of methodology to be used in defining wetlands as part of waters of the state (SWRCB 2013). Pursuant to Section 401 of the CWA, projects that are regulated by the USACE must obtain a Water Quality Certification permit from the RWQCB. This certification ensures that the 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. Waters of the state on the project site include all waters of the U.S. as described above (approximately 1.04 ac of seasonal wetland habitat). Impacts on waters of the state would require a Section 401 Water Quality Certification from the RWQCB.

3.2.2 California Endangered Species Act

The California Endangered Species Act (CESA; Fish and Game Code of California, 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. The CDFW regulates activities that may result in “take” of individuals listed under the Act (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 state-listed plant species or suitable habitat for such species occurs on the project site. Further, no state-listed animal species occur on the project site. The tricolored blackbird (*Agelaius tricolor*), a State candidate for listing and VHP-covered species, may occasionally forage on the site, but it is not expected to breed there owing to the absence of suitable nesting habitat and lack of any prior breeding records in the site vicinity.

3.2.3 California Environmental Quality Act

CEQA and the CEQA Guidelines provide guidance in evaluating impacts of projects on biological resources and determining which impacts will be significant. CEQA 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.” Under CEQA Guidelines Section 15065, a project's effects on biotic resources are deemed significant where the project would:

- “substantially reduce the habitat of a fish or wildlife species”
- “cause a fish or wildlife population to drop below self-sustaining levels”
- “threaten to eliminate a plant or animal community”
- “reduce the number or restrict the range of a rare or endangered plant or animal”

In addition to the Section 15065 criteria that trigger mandatory findings of significance, Appendix G of the CEQA Guidelines provides a checklist of other potential impacts to consider when analyzing the significance of project effects. The impacts listed in Appendix G may or may not be significant, depending on the level of the impact. For biological resources, these impacts include whether the project would:

- “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 Wildlife and or U.S. Fish and Wildlife Service”
- “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”
- “have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act”
- “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”
- “conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance”
- “conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan”

Section 15380(b) of the 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 or 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 CEQA § 15380(b).

The CNPS, a non-governmental conservation organization, has developed rankings for plant species of concern in California in the CNPS Inventory of Rare and Endangered Plants. Lichens, vascular, and non-vascular plants included in these rankings are defined as follows:

- Rank 1A Plants considered extinct
- Rank 1B Plants rare, threatened, or endangered in California and elsewhere
- Rank 2A Plants considered extinct in California but more common elsewhere
- Rank 2B Plants rare, threatened, or endangered in California but more common elsewhere
- Rank 3 Plants about which more information is needed - review list
- Rank 4 Plants of limited distribution-watch list

These CNPS rankings 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 with a rank of 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 ranked 3 or 4 are also considered during CEQA review, although because these species are typically not as rare as those of Rank 1B or Rank 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 2016). Further, the CDFW ranks sensitive vegetation alliances based on their global (G) and state (S) rankings analogous to those provided in the CNDDDB and using NatureServe’s (2016) standard heritage program methodology. 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 currently accepted list of vegetation alliances and associations (CDFG 2010).

Project Applicability. All potential impacts on biological resources will be considered during CEQA review of the Plan. Potential impacts resulting from implementation of the Plan are discussed below.

3.2.4 California Fish and Game Code

The California Fish and Game Code includes regulations governing the use of, or impacts on, many of the state's fish, wildlife, and sensitive habitats. The CDFW exerts jurisdiction over the bed and banks of rivers, lakes, and streams according to provisions of Sections 1601–1603 of the 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. Streams and riparian habitat are defined in Title 14, California Code of Regulations, Section 1.72, and Fish and Game Code Section 2786; respectively. Using these definitions, the lateral extent of a stream and associated riparian habitat would fall under the jurisdiction of CDFW. These areas 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.

Pursuant to Fish and Game Code Section 1603, the 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.” 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 Streambed Alteration Agreement must be prepared. This permit 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 permit.

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 (i.e., 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. The project site does not support open water, or channels with a clear bed and banks. Therefore, no areas are subject to CDFW jurisdiction and the proposed Plan activities do not require a Streambed Alteration Agreement. Most native bird, mammal, and other wildlife species that occur on the project site and in the immediate vicinity are protected by the California Fish and Game Code.

3.2.5 The McAteer-Petris Act

The McAteer-Petris Act, enacted on September 17, 1965, serves as a legal provision under California state law to preserve San Francisco Bay from indiscriminate filling. The act initially established the San Francisco Bay Conservation and Development Commission (BCDC) as a temporary state agency charged with preparing a plan for the long-term use of the San Francisco Bay. In August 1969, the McAteer-Petris Act was amended to make BCDC a permanent regulatory agency to incorporate the policies of the Bay Plan (BCDC 2012). BCDC jurisdiction includes a 100-ft wide band along the shoreline of the San Francisco Bay. The “shoreline” is defined as all areas that are subject to tidal action from the south end of the San Francisco Bay to the Golden Gate (Point Bonita–Point Lobos), and to the Sacramento River line (a line between Stake Point and Simmons Point, extended northeasterly to the mouth of Marshall Cut). The BCDC will claim all sloughs (specifically, marshlands lying between mean high tide and up to 5 ft above mean sea level where marsh vegetation is present); tidelands (lands between mean high tide and mean low tide); and submerged lands (land lying below mean low tide) in this region. The McAteer-Petris Act also requires that “maximum feasible public access, consistent with a project be included as part of each project to be approved by the BCDC.” If a project proposes work within BCDC jurisdiction, a permit will need to be obtained from the agency.

Project Applicability. The project site falls outside of the 100-ft BCDC shoreline band and does not support marshlands, tidelands, or submerged lands. Thus, implementation of the Plan would not require a permit from the BCDC.

3.3 Local Regulations

3.3.1 Santa Clara Valley Habitat Plan

The VHP was initiated by six “local partners” (Santa Clara Valley Transportation Authority, County of Santa Clara, Santa Clara Valley Water District, and the Cities of San José, Morgan Hill, and Gilroy), in cooperation with the CDFW and the USFWS. It covers approximately 520,000 ac, primarily within southern Santa Clara County, and nine special-status plant and nine special-status animal species (called “covered species” in the

VHP). The VHP is “intended to provide an effective framework to protect, enhance, and restore natural resources in specific areas of Santa Clara County, while improving and streamlining the environmental permitting process for impacts on threatened and endangered species” (ICF International 2012).

Approval of impacts on covered species from project activities covered by the VHP (i.e., projects that meet a number of criteria concerning location, proponent, and type) are considerably expedited. Fees paid in accordance with the extent and nature of projects’ impacts on wetland, aquatic, and riparian habitats are used to further conservation efforts via the acquisition, creation, or enhancement, as well as the preservation and management, of habitat for these species. In addition, covered projects are subject to a number of measures concerning avoidance and minimization of impacts on covered species and habitats through project design and construction measures (such as preconstruction species surveys and seasonal restrictions on construction activities) to directly protect species. Several “no take” species also exist that, because of their rarity or regulatory status (e.g., state fully protected species), cannot be “taken” by a project that is covered by the plan.

Project Applicability. The City is a permittee under the VHP, and the proposed Plan is a covered project under the VHP. As such, the City would be covered under the auspices of the VHP, and would adhere to the conservation measures set forth therein (see Section 6.2). Further, the City would pay VHP fees for habitat impacts, in accordance with the types and acreage of habitat impacted, resulting from Plan implementation.

None of the special-status plant species covered under the VHP occurs on the project site. However, the VHP includes conservation strategies and mitigation measures for two wildlife species that may be found in or near the project site, the burrowing owl and tricolored blackbird.

3.3.2 State and Local Requirements to Control Construction-Phase and Post-Construction Water Quality Impacts

3.3.2.1 Construction Phase

Construction projects in California causing land disturbances that are equal to 1.0 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). Prior to the start of construction/demolition, a Notice of Intent must be filed with the State Water Board 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.

Similarly, within the City of San José city limits, regardless of size, all construction/demolition projects must comply with the City of San José’s Grading Ordinance, which requires the use of erosion and sediment controls to protect water quality while the site is under construction. Prior to the issuance of a permit for grading activity that occurs during the rainy season (October 15 to April 15), an Erosion Control Plan must be submitted to the Department of Public Works detailing BMPs that will prevent the discharge of stormwater pollutants.

Standard permit conditions under both of these permits 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.

Project Applicability: The project will comply with the requirements of the NPDES permit and the City Grading Ordinance, thus, construction phase activities would not result in detrimental water quality effects upon biological/regulated resources.

3.3.2.2 Post-Construction Phase

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 NPDES Permit (MRP)* (Water Board Order No. R2-2009-0074). Within the City of San José, projects must also comply with the *City Council Policy 6-29, Post Construction Urban Runoff Management* and *City Council Policy 8-14, Post Construction Hydromodification Management Policy and Map*. These policies require that all projects implement BMPs and incorporate Low Impact Development practices into the design that prevents stormwater runoff pollution, promotes infiltration, and holds/slows 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 MRP permit and the City policies, thus, post-construction activities would not result in detrimental water quality effects upon biological/regulated resources.

3.3.3 City of San José Tree Ordinance

According to the City of San José's Municipal Code, Chapter 13.28.220, no person is allowed to unlawfully prune or remove street trees or heritage trees without obtaining a permit. Any tree planted on a street is protected by this ordinance. In addition, any tree which, because of factors including but not limited to its history, girth, height, species, or unique quality, has been found by the City Council to have special significance to the community may be designated as a heritage tree (also see Chapter 13.28.220 of the Municipal Code). Property owners can contact the City Arborist's Office to nominate a tree for heritage status, and the arborist has the authority to accept or deny requests to add trees to the Heritage Tree List. The list is available on the City of San José's official website (<http://www.sanjoseca.gov/index.aspx?NID=1913>) and includes the unique identification number, species, girth, and location for each tree.

Permits to prune or remove street trees are issued by the Department of Transportation, whereas permits to impact heritage trees can be obtained from the Department of Planning, Building, and Code Enforcement.

Both types of permits will define protection measures that will be required during development activities to limit adverse environmental effects. For instance, heritage tree work must be performed by a certified arborist and must remain in compliance with the trimming, cutting, or pruning standards adopted by the American National Standards Institute.

Project Applicability: A substantial number of trees exist on the project site (greater than 20 individual, mature trees); however, the project is still in the design phase, and further planning is necessary to determine if project implementation will impact trees. A tree survey would need to be conducted to make a more definitive statement regarding potential City jurisdiction over trees on the project site. At a minimum, the survey would need to include a map showing the location of tree trunks and canopies, and list the species and size of each tree. If it is ultimately determined that trees in the project site are regulated by the City, pruning or removal of ordinance-sized, heritage, and/or street trees would require the appropriate permit from either the Department of Transportation and/or Department of Planning, Building, and Code Enforcement.

3.3.4 City of San José Riparian Policy

The City has a riparian buffer policy that is administered through use of a *Riparian Corridor Policy Study* (Policy Study) document that describes suggested buffer widths (City of San José 1999). The Policy Study defines a riparian corridor as any defined stream channel, including the area up to the bank full-flow line, as well as all riparian (streamside) vegetation in contiguous adjacent uplands. Characteristic woody vegetation could include (but is not limited to) willow (*Salix* spp.), alder (*Alnus* spp.), box elder (*Acer negundo*), Fremont cottonwood (*Populus fremontii*), bigleaf maple (*Acer macrophyllum*), California sycamore, and native oaks. Stream channels include all perennial and intermittent streams shown as a solid or blue line on USGS topographic maps, and ephemeral streams or “arroyos” with well-defined channels and some evidence of scour or deposition. The Policy Study states that riparian setbacks should be measured 100 ft from the outside edges of riparian habitat or the top of bank, whichever is greater. However, the Policy Study also states that setback distances for individual sites may vary if consultation with the City and a qualified biologist, or other appropriate means, indicates that a smaller or larger setback is more appropriate for consistency with riparian preservation objectives (City of San José 1999).

The *Santa Clara Valley Water Resources Protection Collaborative Guidelines and Standards for Land-Use Near Streams* (*Guidelines and Standards*) document was also reviewed (Santa Clara Valley Water Resources Protection Collaborative [SCVWRP Collaborative] 2007). This document defines the top of bank line as the stream boundary where a majority of normal discharges and channel forming events take place; containing the active channel, active floodplain, and their associated banks. The top of bank along streams with levees should be delineated on the inner edge of the levee (see Chapter 11, SCVWRP Collaborative 2007).

Project Applicability. The project site does not support open water, or channels with a clear bed and banks. The project site occurs over 800 ft outside of the top of bank of the Guadalupe River and over 400 ft outside of the top of bank of an unnamed slough to the north of the site. Therefore, the City’s Riparian Policy is not applicable to the Plan.

3.3.5 Envision San José 2040 General Plan

The Envision San José 2040 General Plan (Envision) (City 2011a) was adopted in compliance with the state law requirement that each city and county prepare and adopt a comprehensive and long-range general plan for its physical development (California Government Code Section 65300). The goals and policies set forth by Envision that pertain to biological resources are summarized below.

Goal ER-1 Grassland, Oak Woodlands, Chaparral, and Coast Scrub - Preserve, protect and restore the ecological integrity and scenic characteristics of grasslands, oak woodlands, chaparral, and coastal scrub in hillside areas.

Policies:

- ER-1.1 The nature and amount of public access to wooded areas, scrublands, and grasslands, when allowed, shall be consistent with the environmental characteristics of these areas.
- ER-1.2 Prohibit the use of motorized off-road vehicles for recreation purposes in oak woodland, grassland, and hillside areas within the City to protect these limited resources.
- ER-1.3 Cooperate with other agencies in the preservation and management of native hillside vegetation.
- ER-1.4 Minimize the removal of ecologically valuable vegetation such as serpentine and non-serpentine grassland, oak woodland, chaparral, and coastal scrub during development and grading for projects within the City.
- ER-1.5 Preserve and protect oak woodlands, and individual oak trees. Any loss of oak woodland and/or native oak trees must be fully mitigated.
- ER-1.6 Preserve, protect, and manage serpentine grasslands and serpentine chaparral, particularly those supporting sensitive serpentine bunchgrass communities providing habitat for sensitive plant and animal species. Development will not be permitted on serpentine grasslands or chaparral supporting state or federal candidate or listed threatened or endangered plant or animal species. Appropriately managed grazing is encouraged on serpentine grasslands.
- ER-1.7 Prohibit planting of invasive non-native plant species in oak woodlands, grasslands, chaparral and coastal scrub habitats, and in hillside areas.

Goal ER-2 Riparian Corridors - Preserve, protect, and restore the City's riparian resources in an environmentally responsible manner to protect them for habitat value and recreational purposes.

Policies:

- ER-2.1 Ensure that new public and private development adjacent to riparian corridors in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP).
- ER-2.2 Ensure that a 100-ft setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.

- ER-2.3 Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise, and toxic substances into the riparian zone.
- ER-2.4 When disturbances to riparian corridors cannot be avoided, implement appropriate measures to restore, and/or mitigate damage and allow for fish passage during construction.
- ER-2.5 Restore riparian habitat through native plant restoration and removal of non-native/invasive plants along riparian corridors and adjacent areas.

Goal ER-3 Bay and Baylands - Preserve and restore natural characteristics of the Bay and adjacent lands, and recognize the role of the Bay's vegetation and waters in maintaining a healthy regional ecosystem.

Policies:

- ER-3.1 Protect, preserve and restore the baylands ecosystem in a manner consistent with the fragile environmental characteristics of this area and the interest of the citizens of San José in a healthful environment.
- ER-3.2 Cooperate with the County, USACE, Environmental Protection Agency, CDFW, BCDC, and other appropriate jurisdictions to prevent the degradation of baylands by discouraging new filling or dredging of Bay waters and baylands.
- ER-3.3 In cooperation and, where appropriate, in consultation with other interested agencies and with projects such as the South Bay Salt Ponds Restoration Project, encourage the restoration of diked historical wetlands, including salt ponds, to their natural state by opening them to tidal action.
- ER-3.4 Avoid new development which creates substantial adverse impacts on the Don Edwards San Francisco Bay NWR or results in a net loss of baylands habitat value.
- ER-3.5 Prohibit planting of invasive non-native plant species in or near baylands habitats.

Goal ER-4 Special-Status Plants and Animals - Preserve, manage, and restore habitat suitable for special-status species, including threatened and endangered species.

Policies:

- ER-4.1 Preserve and restore, to the greatest extent feasible, habitat areas that support special-status species. Avoid development in such habitats unless no feasible alternatives exist and mitigation is provided of equivalent value.
- ER-4.2 Limit recreational uses in wildlife refuges, nature preserves and wilderness areas in parks to those activities which have minimal impact on sensitive habitats.
- ER-4.3 Prohibit planting of invasive non-native plant species in natural habitats that support special-status species.
- ER-4.4 Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.

Goal ER-5 Migratory Birds - Protect migratory birds from injury or mortality.

Policies:

- ER-5.1 Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
- ER-5.2 Require that development projects incorporate measures to avoid impacts to nesting migratory birds.

Goal ER-6 Urban Natural Interface - Minimize adverse effects of urbanization on natural lands adjacent to the City's developed areas.

Policies:

- ER-6.1 Encourage fencing between residential areas and natural lands to minimize the encroachment of people, pets, and non-native vegetation into natural lands.
- ER-6.2 Design development at the urban/natural community interface of the Greenline/Urban Growth Boundary (UGB) to minimize the length of the shared boundary between urban development and natural areas by clustering and locating new development close to existing development. Key areas where natural communities are found adjacent to the UGB include the Baylands in Alviso, the Santa Teresa Hills, Alum Rock Park, and Evergreen.
- ER-6.3 Employ low-glare lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.
- ER-6.4 Site public facilities such as ballparks and fields that require high-intensity night lighting at least 0.5 mi from sensitive habitats to minimize light pollution, unless it can be demonstrated that lighting systems will not substantially increase lighting within natural areas (e.g., due to screening topography or vegetation).
- ER-6.5 Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
- ER-6.6 Encourage the use of native plants in the landscaping of developed areas adjacent to natural lands.
- ER-6.7 Include barriers to animal movement within new development and, when possible, within existing development, to prevent movement of animals (e.g., pets and wildlife) between developed areas and natural habitat areas where such barriers will help to protect sensitive species.
- ER-6.8 Design and construct development to avoid changes in drainage patterns across adjacent natural areas and for adjacent native trees, such as oaks.

Goal ER-7 Wildlife Movement - Minimize adverse effects of future development on wildlife movement and remove or reduce existing impediments to wildlife movement

Policies:

- ER-7.1 In the area north of Highway 237 design and construct buildings and structures using bird-friendly design and practices to reduce the potential for bird strikes for species associated with the baylands or the riparian habitats of lower Coyote Creek.
- ER-7.2 In areas important to terrestrial wildlife movement, design new or improved existing roads so that they allow wildlife to continue to move across them (e.g., either over the road surface or through undercrossings or overcrossings designed for the animals moving through the areas). Enhance undercrossings used for wildlife movement (e.g., by enlargement) when roads are improved.
- ER-7.3 Where new road crossings of streams are constructed, or existing culverts are replaced or improved, design them to allow movement of aquatic species present in any watercourse crossed by the road. Use clear-span bridges in place of culverts where feasible.

Goal ER-8 Stormwater - Minimize the adverse effects on ground and surface water quality and protect property and natural resources from stormwater runoff generated in the City of San José.

Policies:

- ER-8.1 Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
- ER-8.2 Coordinate with regional and local agencies and private landowners to plan, finance, construct, and maintain regional stormwater management facilities.
- ER-8.3 Ensure that private development in San José includes adequate measures to treat stormwater runoff.
- ER-8.4 Assess the potential for surface water and groundwater contamination and require appropriate preventative measures when new development is proposed in areas where storm runoff will be directed into creeks upstream from groundwater recharge facilities.
- ER-8.5 Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.
- ER-8.6 Eliminate barriers to and enact policies in support of the reuse of stormwater runoff for beneficial uses in existing infrastructure and future development in San José.
- ER-8.7 Encourage stormwater reuse for beneficial uses in existing infrastructure and future development through the installation of rain barrels, cisterns, or other water storage and reuse facilities.
- ER-8.8 Consider the characteristics and condition of the local watershed and identify opportunities for water quality improvement when developing new or updating existing development plans or policies including, but not limited to, specific or area land use plans.

Goal ER-9 Water Resources - Protect water resources because they are vital to the ecological and economic health of the region and its residents.

Policies:

- ER-9.1 In consultation with the Santa Clara Valley Water District (SCVWD), other public agencies and the SCVWDs Water Resources Protection Guidelines and Standards (2006 or as amended), restrict or

carefully regulate public and private development in streamside areas so as to protect and preserve the health, function and stability of streams and stream corridors.

- ER-9.2 In consultation with the SCVWD, restrict or carefully regulate public and private development in upland areas to prevent uncontrolled runoff that could impact the health and stability of streams.
- ER-9.3 Utilize water resources in a manner that does not deplete the supply of surface or groundwater or cause overdrafting of the underground water basin.
- ER-9.4 Work with the SCVWD to preserve water quality by establishing appropriate public access and recreational uses on land adjacent to rivers, creeks, wetlands, and other significant water courses.
- ER-9.5 Protect groundwater recharge areas, particularly creeks and riparian corridors.
- ER-9.6 Require the proper construction and monitoring of facilities that store hazardous materials in order to prevent contamination of the surface water, groundwater and underlying aquifers. In furtherance of this policy, design standards for such facilities should consider high groundwater tables and/or the potential for freshwater or tidal flooding.

Project Applicability. The Environmental Impact Report (EIR) for Envision (City 2011b) evaluated the impacts of the general plan on biological resources, including potential adverse effects of development but also taking into consideration the aforementioned goals and policies of the general plan related to the protection and enhancement of biological resources. Envision is the General Plan currently in effect in the City; therefore, the project will need to remain consistent with all the goals, policies, and action set forth by the general plan and will need to comply with the applicable measures listed in the EIR.

3.3.6 Alviso Master Plan

The Alviso Master Plan (City 1998a) provides a directive for change in the Alviso community, which has a unique mix of open spaces; agricultural activities; and residential, industrial, and commercial uses. The Alviso Master Plan area includes all properties within the City limits north of California State Route 237, between Coyote Creek and the Guadalupe River. It includes environmental protection policies that prohibit certain activities to minimize pollutant discharges into the groundwater table and drainages; such as locating all new parking, circulation, outdoor storage, and utility areas on paved surfaces, and implementing post-construction urban runoff management measures. The Alviso Master Plan specifically identifies five key areas that are expected to have the highest habitat value in the Alviso community in an effort to preserve these areas and alert future property owners and developers of the associated environmental constraints.

Project Applicability. The EIR for the Alviso Master Plan evaluated the impacts of the plan on biological resources (City 1998b), including potential adverse effects of development but also taking into consideration the aforementioned goals and policies of the master plan related to the protection and enhancement of biological resources. The project site is located in the “Alviso village” portion of the master plan area, and the project would need to remain consistent with all the goals, policies, and action set forth by the master plan. Specifically, the plan identifies the vacant lot and PG&E easement located along Grand Boulevard on the project site as one of five key areas in the Alviso community with high habitat value.

Section 4. Existing Land Uses, Natural Communities, and Habitats

4.1 General Project Area Description

The 24.61-ac project site is located in the Alviso community on the fringe of the southern portion of the San Francisco Bay in Santa Clara County, California (Figure 1). It is approximately 0.15 mi north of the Guadalupe River mouth and 0.1 mi south of an unnamed slough, both of which are connected with San Francisco Bay. The Don Edwards San Francisco Bay NWR is located 0.2 mi to the northwest of the site, and supports extensive tidal wetlands, salt ponds, mudflats, and tidal sloughs. Although the project site occurs within historical sloughs of the bay (SFEI 2015), it does not currently support tidal marsh or open water habitat.

The project site is partially developed, and includes landscaped areas and infrastructure associated with the George Mayne Elementary School, Alviso Branch Library, and Alviso Park. The remaining portions of the site are vacant and generally support California annual grassland with a more or less ruderal (i.e., disturbed) character. A PG&E easement is located on the vacant lot along Grand Boulevard, an area which has been identified in the Alviso Master Plan as one of five key areas in the Alviso community with high habitat value (City 1998a).

The project site experiences a maritime influence due to its proximity to the San Francisco Bay; it has small daily and seasonal temperature ranges, and high relative humidity. Climate normals from 1981 to 2010 indicate that temperature ranges from 50 to 70 °F, and annual precipitation is approximately 14.9 inches, the majority of which falls during the wet season between the months of October and April (PRISM Climate Group 2016). The topography of the project site is flat, with elevations 1 ft below sea level extending up to 5 ft (Google Inc. 2016).

The site is underlain by three soil types, all of which are typical of basin floors: (1) Embarcadero silty clay loam, drained, 0 to 2 percent slopes; (2) Urbanland-Clear Lake complex, 0 to 2 percent slopes; and (3) Clear Lake silty clay, 0 to 2 percent slopes, drained (Figure 4). Soils in the Embarcadero and Clear Lake series are clayey, slightly to moderately saline, and develop in wetland or riverine conditions, or in level, low lying valley floors. Clear Lake soils in Santa Clara County may have up to 5 percent inclusions of Hangarone soils, which are considered hydric (NRCS 2016). The Urbanland series includes imported fill, and is found in developed areas over much of the San Francisco Bay region. At the project site, Urbanland fill is only mapped in the extreme southern portion of the project site, near the housing development south of the southwest edge parcel (Figure 4). Thus, native Bay soils are mapped over the majority of the project site, which provides some evidence that most of the site was not historically filled to raise elevation.

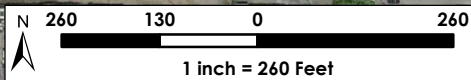


LEGEND

Project Site

Soil Categories

- 150 - Urbanland-Embarcadero complex, 0 to 2 percent slopes, drained
- 151 - Embarcadero silty clay loam, drained, 0 to 2 percent slopes
- 160 - Urbanland-Clear Lake complex, 0 to 2 percent slopes
- 161 - Clear Lake silty clay, 0 to 2 percent slopes, drained



N:\Projects\3700\3745-01\Reports\Biological Resources\Fig 4 NRCS Soils Map.mxd

Figure 4. NRCS Soils Map
Alviso Park Master Plan Update (3745-01)
Biological Resources Report
June 2017

4.2 Existing Land Uses, Vegetation Communities, and Habitats

The reconnaissance-level field survey identified four general biotic habitat types on the project site: (1) golf courses/urban parks, (2) California annual grassland, (3) ornamental woodland, and (4) seasonal wetland. These habitat/land cover types were named in accordance with accepted VHP land cover classes, and they are described in detail below. The project site was previously mapped as part of the VHP program (ICF International 2012). For this report, the land cover classes present on the project site, while based on the VHP mapping, have been refined and updated to reflect current conditions and a finer mapping scale. Table 1 provides a summary of the land cover acreages on the site, and their distribution is depicted in Figure 5; representative photos of each land cover type are also provided below.

Table 1. Habitat Acreages on the Project Site

Habitat	Area (acres)
California annual grassland	14.50
Golf courses/urban parks	8.79
Seasonal wetland	1.04
Ornamental woodland	0.28
Total	24.61

4.2.1 California Annual Grassland

Vegetation. Approximately 14.50 ac of ruderal California annual grassland occur on the project site (Photo 1), located in an abandoned school garden, and in vacant lots along the eastern and western perimeters of the site. The grassland had been mowed during the weeks prior to the August 2015 reconnaissance survey; but was at a height of approximately 1 ft during the November 2016 focused survey.

This plant community has a ruderal character indicative of disturbance and is dominated by non-native grasses such as Italian ryegrass (*Festuca perenne*), smilo grass (*Stipa mileacea*), mouse barley (*Hordeum murinum*), wild oats (*Avena* sp.), and rattail sixweeks grass (*Festuca myuoros*). Co-dominant forbs include bull thistle (*Cirsium vulgare*), horseweed



Photo 1. California annual grassland



N:\Projects\3700\3745-01\Reports\Biological Resources\Fig 5 Biotic Habitats Map.mxd

LEGEND

Project Site

Biotic Habitats

- Golf Course/Urban Park (8.79 ac)
- Ornamental Woodland (0.28 ac)
- California Annual Grassland (14.50 ac)
- Seasonal Wetland (1.04 ac)

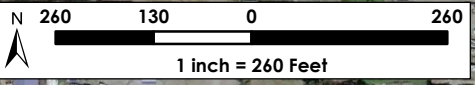


Figure 5. Biotic Habitats Map
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(*Erigeron canadensis*), bristly ox-tongue (*Helminthotheca echioides*), fennel (*Foeniculum vulgare*), and yellow star thistle (*Centaurea solstitialis*). Much of this site was originally in the historical Bay margin (SFEI 2015). As such, ruderal grasslands on the project site were likely historically wetland habitat prior to diking and draining of the area. Moderately sized patches of alkaline mallow (*Malvella leprosa*), a halophytic or “salt-loving” species (Lichvar and Dixon 2007), were noted across the ruderal grasslands, and provide further evidence of historical tidal inundation with the presence of alkaline and/or saline soils. Yellow star thistle, fennel, and bull thistle appear on the California Invasive Plant Council (Cal-IPC) Inventory (2016). Yellow star thistle and fennel are “highly” invasive, and can cause severe ecological impacts on plant and animal communities, vegetation structure, and other physical processes, whereas bull thistle is listed as “moderately” invasive.

Wildlife. The California annual grassland on the project site provides breeding habitat for relatively few bird species due to the lack of structural complexity of the vegetation. Although ground-nesting species such as the western meadowlark (*Sturnella neglecta*) breed here, most of the bird species using the project site during the breeding season nest in the landscaped habitat or more heavily vegetated areas outside the project site, using the California annual grassland habitat on the site only for foraging. Such species include the American kestrel (*Falco sparverius*), white-tailed kite (*Elanus caeruleus*), red-tailed hawk (*Buteo jamaicensis*), mourning dove (*Zenaidura macroura*), American crow (*Corvus brachyrhynchos*), red-winged blackbird (*Agelaius phoeniceus*), and Brewer's blackbird (*Euphagus cyanocephalus*). Similarly, a few species nesting on nearby buildings, such as the barn swallow (*Hirundo rustica*), house finch (*Haemorhous mexicanus*), black phoebe (*Sayornis nigricans*), and non-native European starling (*Sturnus vulgaris*), also forage on or over the ruderal grassland habitat on the project site. Several other species of birds use the grassland habitat during the nonbreeding season. These species, which include the white-crowned sparrow (*Zonotrichia leucophrys*) and golden-crowned sparrow (*Zonotrichia atricapilla*), forage on the ground or in herbaceous vegetation, primarily for seeds, and were observed during the reconnaissance survey. In addition, an adult and a juvenile red-tailed hawk were seen perched above a large stick nest at the top of a PG&E transmission tower located north of the fire station. The transmission towers on the project site provide nesting structure not only for hawks but also for crows and common ravens (*Corvus corax*).

Few species of reptiles and amphibians occur in the California annual grassland on the project site due to its ruderal character, disturbed nature, and low habitat heterogeneity. Nevertheless, the western fence lizard (*Sceloporus occidentalis*), gopher snake (*Pituophis melanoleucus*), and common garter snake (*Thamnophis sirtalis*) occur in this type of habitat, and amphibians such as the Sierran chorus frog (*Pseudacris sierra*), which breed in wet areas found adjacent to the project site, may forage in this habitat. Small mammals expected to be present include the western harvest mouse (*Reithrodontomys megalotis*), California vole (*Microtus californicus*), and non-native Norway rat (*Rattus norvegicus*). Small burrowing mammals, such as the Botta's pocket gopher (*Thomomys bottae*) and California ground squirrel (*Spermophilus beecheyi*), are also present and their burrows are common throughout the ruderal grassland. Larger mammals, such as the striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and non-native Virginia opossum (*Didelphis virginiana*) and red fox (*Vulpes vulpes*) are also likely to occur here.

4.2.2 Golf Courses/Urban Parks

Vegetation. The project site includes approximately 8.79 ac of the golf courses/urban parks land cover type (Photos 2 and 3). Some areas within this land cover type are devoid of vegetation and include hardscape, asphalt and concrete surfaces in parking lots and along pathways and road edges, a swimming pool facility, and buildings associated with the Alviso Branch Library, George Mayne Elementary School, and Alviso Park. The majority of the landscaped area in the project site is an irrigated lawn that serves as a baseball field at the park, and is co-dominated by non-native grasses such as annual bluegrass (*Poa annua*) and Bermuda grass (*Cynodon dactylon*). Forbs such as rose clover (*Trifolium hirtum*), common dandelion (*Taraxacum officinalis*), puncture vine (*Tribulus terrestris*), and common plantain (*Plantago major*) were common throughout the lawn. Other landscaped areas that are routinely maintained occur around the library and school infrastructure, and support non-native shrubs and trees. Common shrubs include various species of cultivated rose (*Rosa* spp.), star jasmine (*Jasminum multiflorum*), cotoneaster (*Cotoneaster* sp.), firethorn (*Pyracantha* sp.), and honeysuckle (*Lonicera* sp.). The majority of trees were planted and not naturally occurring; species include but are not limited to eucalyptus (*Eucalyptus* sp.), cherry (*Prunus* sp.), elm (*Ulmus* sp.), tree of heaven (*Ailanthus altissima*), Peruvian pepper tree (*Schinus molle*),



Photo 2. Alviso Park

cottonwood (*Populus* sp.), coast redwood (*Sequoia sempervirens*), London plane (*Platanus hybrida*), Italian cypress (*Cupressus sempervirens*), and Monterey pine (*Pinus radiata*). Generally, landscaped areas lacked an herbaceous layer although Aaron's beard (*Hypericum calycinum*) and birds of paradise (*Strelitzia* sp.) were observed. Several species common to the golf courses/urban parks land cover on the site appear on the Cal-IPC Inventory (2016).



Photo 3. Alviso Branch Library

Bermuda grass, tree of heaven, and cotoneaster are considered “moderately” invasive, and can cause substantial and apparent ecological impacts on plant and animal communities, vegetation structure, and other physical processes (Cal-IPC 2016).

Wildlife. The wildlife most often associated with golf courses/urban parks areas are those that are tolerant of periodic human disturbances, including introduced species such as the European starling, rock pigeon (*Columba livia*), and Norway rat. Numerous common, native species are also able to utilize these habitats, especially the landscaped areas, including the western fence lizard, striped skunk and a variety of birds, such as the American crow, Anna’s hummingbird (*Calypte anna*), Bewick’s wren (*Thryomanes bewickii*), bushtit (*Psaltriparus minimus*), California towhee (*Melospiza crissalis*), northern mockingbird (*Mimus polyglottos*), oak titmouse (*Baeolophus inornatus*) and red-winged blackbird, all of which were observed on the project site. Large trees provide potential nesting habitat for urban-adapted raptors such as the red-tailed hawk and Cooper’s hawk (*Accipiter cooperi*). However, no old nests of raptors were observed in trees on the site during the survey. In addition, the eaves and corners of the buildings on the project site may be attractive to other nesting and/or roosting bird species in the area, such as the barn swallow, black phoebe, and house finch. A number of Canada geese (*Branta canadensis*) were observed foraging on the baseball field, which also showed signs of activity (i.e., burrows) by the Botta’s pocket gopher, a rodent commonly found in urban landscaped areas. California ground squirrels were also observed foraging in the landscaped areas, and a number of their burrows were found on the western edge of the baseball field and within landscaped areas surrounding the Alviso Branch Library and youth center buildings. Although bats may occasionally forage over this habitat, a close examination of the buildings and large trees on the site revealed no large cavities that might provide suitable habitat for large numbers of roosting bats or a maternity colony of bats (during the breeding season).

4.2.3 Seasonal Wetland

Vegetation. A seasonal wetland, approximately 1.04 ac in size, was documented at the northernmost end of the project site during the reconnaissance survey (Photo 4). A formal wetland delineation was not conducted; however, this feature would likely be considered Waters of the U.S. and State, and would thus fall under the jurisdiction of the USACE and RWQCB. This habitat was dominated by “facultative” plant species which are moderately hydrophytic and are equally likely to occur in wetlands and uplands, including bird’s foot trefoil (*Lotus corniculatus*), seaside barley (*Hordeum marinum*), saltgrass (*Distichlis spicata*), and alkali heath (*Frankenia salina*). The



Photo 4. Seasonal wetland

presence of saltgrass and alkali heath, both halophytic species, is indicative of alkaline and/or saline soils resulting from historical tidal inundation. Currently, the feature is situated within a concave depression at a slightly lower elevation than the California annual grassland and developed areas surrounding it. Moreover, historical aerial images from 2000 to 2015 show the area as being saturated during the wet season and sometimes continuing to stay wet with green vegetation into the dry, summer months (Google Inc. 2016).

Wildlife. Seasonal wetlands can provide habitat for a unique array of special-status and common wildlife species that rely specifically on the particular features they provide. However, because the seasonal wetland on the project site does not pond water and is regularly disturbed by activities such as tractor mowing that compress soils and inhibit use by wetland-associated invertebrate and amphibian species that might take refuge in the moist soils, the habitat provided by this feature is functionally similar to the adjacent grasslands from the perspective of wildlife use.

4.2.4 Ornamental Woodland

Vegetation. Ornamental woodland at the site occurs along the western edge of the parcels (Photo 5), in the form of planted street trees in a 0.28-ac area. The majority of these trees are non-native Peruvian peppertree, and these areas tend to lack herbaceous vegetation adjacent to the sidewalk due to disturbance.

Wildlife. The ornamental woodland on the project site provides relatively low value as habitat for wildlife due to the lack of understory vegetation and the relatively small nature of the non-native trees present. Nevertheless, a variety of common bird species, such as Anna's hummingbirds, mourning doves, and others, may nest in these trees, and peppertree fruits are also eaten by a number of bird species.



Photo 5. Ornamental woodland

Section 5. Special-Status Species and Sensitive Habitats

CEQA requires assessment of the effects of a project on species that are “threatened, rare, or endangered”; such species are typically described as “special-status species”. In order to assess the impacts of the proposed 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 under “Regulatory Setting” above.

5.1 Special-Status Plants

The CNPS (2016) and CNDDDB (2016) identify 71 special-status plant species as potentially occurring in the nine 7.5-minute quadrangles containing and/or surrounding the project site for CRPR 1 and 2 plants, and in Santa Clara County for CRPR 3 and 4 plants, as described in Section 2.1 above. CNDDDB plant records in the general project vicinity are shown in Figure 6. Sixty-seven special-status plant species identified during the background review were determined to be absent from the project site due to one or more of the following reasons: (1) a lack of specific habitat (e.g., coastal salt marsh) and/or edaphic requirements (e.g., serpentine or alkaline soils) for the species in question, (2) the elevation range of the species is outside of the range on the project site, and (3) the species is known to be extirpated from the site vicinity. Appendix A lists these plants along with the basis for the determination that they are absent.

Suitable habitat, edaphic requirements, and elevation range were present on the project site for the following four special-status species, which are assessed in more detail below: (1) brittlescale (*Atriplex depressa*, CRPR 1B.2), (2) Congdon’s tarplant (*Centromadia parryi* ssp. *congdonii*) (CRPR 1B.1), (3) Hoover’s button celery (*Eryngium aristulatum* var. *hooveri*, CRPR 1B.1), and (4) San Joaquin spearscale (*Extriplex joaquiniana*, CRPR 1B.1). On the project site, suitable habitat for brittlescale, Hoover’s button celery, and San Joaquin spearscale is only present within the seasonal wetland. This area had short-statured but identifiable vegetation during a focused survey conducted in August of 2015. The survey was conducted during the blooming periods for brittlescale and San Joaquin spearscale, and just after the blooming period for Hoover’s button celery, so all of these target plants should have been detectable. However, none of these species were observed, and thus the brittlescale, Hoover’s button celery, and San Joaquin spearscale are considered absent from the site.

Congdon’s tarplant is known to occur in seasonal wetlands and disturbed, ruderal grasslands and suitable habitat is present on the project site in the seasonal wetland and California annual grassland habitats. In addition, in August 2015, the swales and seasonal wetlands on the adjacent property east of Tony P. Santos Street were observed to support a population of Congdon’s tarplant that has been documented by the CNDDDB (2016), although this population appears to have been at least partially lost to recent development of the adjacent parcel. Congdon’s tarplant was not located on the project site itself during the focused survey conducted in August 2015, although it was observed in flower beyond the project site’s fence line. However, the intensive mowing of the project site’s grasslands that year precluded a definitive determination of the presence or absence of this species from the project site. Therefore, a second focused survey was conducted on November 10, 2016.

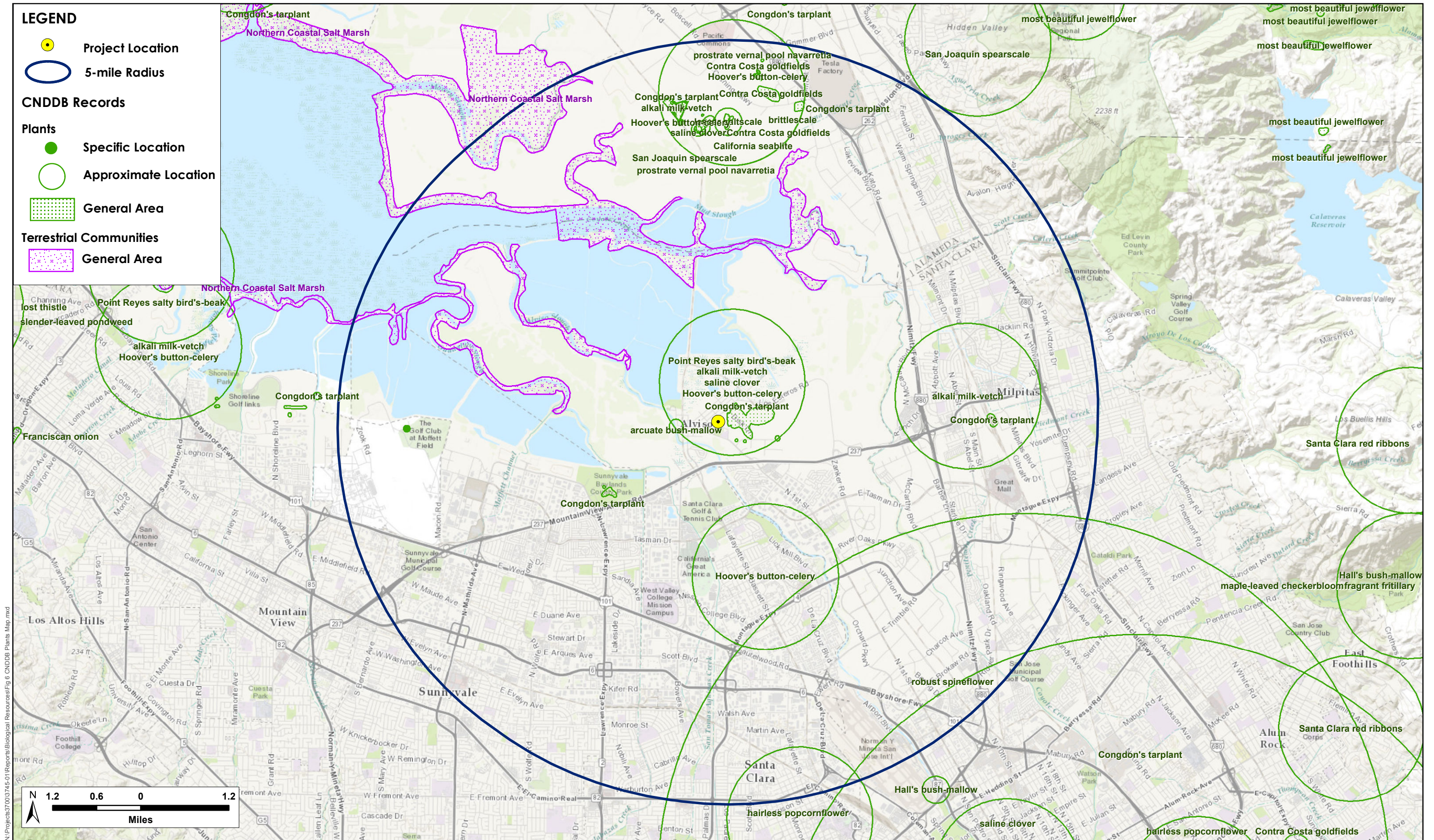


Figure 6. CNDDDB Map of Special-Status Plants
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At this time, the project site had not been recently mowed. Further, Congdon's tarplant was still detectable and in late flower at a reference site (i.e., Sunnyvale Baylands Park) on this date. Thus, based on the project site conditions and the reference population observation at Sunnyvale Baylands Park, Congdon's tarplant, if present, should have been detectable on the project site during the November 2016 survey. Congdon's tarplant was not detected on the site during the November 2016 focused survey. Therefore, it is assumed to be absent from the project site.

5.2 Special-Status Animals

The legal status and likelihood of occurrence on the project site of special-status animal species known to occur, or potentially occurring in the project region are presented in Table 2, and CNDDB animal records in the general project vicinity are shown in Figure 7. Most of the special-status species listed in Table 2 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. Animal species not expected to occur on the project site for these reasons include the southern green sturgeon (*Acipenser medirostris*), longfin smelt (*Spirinchus thaleichthys*), Central California coast steelhead (*Oncorhynchus mykiss*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), western pond turtle (*Actinemys marmorata*), bald eagle, Swainson's hawk (*Buteo swainsoni*), least Bell's vireo (*Vireo bellii pusillus*), California Ridgway's rail (*Rallus obsoletus obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), western snowy plover (*Charadrius alexandrinus nivosus*), California least tern (*Sterna antillarum browni*), San Francisco common yellowthroat (*Geothlypis trichas sinuosa*), Alameda song sparrow (*Melospiza melodia pusillula*), salt marsh harvest mouse (*Reithrodontomys raviventris*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), and San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*). Although some of these species occur in wetland or aquatic habitats nearby, they are absent from the project site and immediately adjacent areas, and the project site is well removed from suitable habitat for these species.

Other special-status species have some potential to occur on the project site only as visitors, migrants, or transients, but are not expected to reside or breed on the site, occur in large numbers, or otherwise make substantial use of the site. These include the American peregrine falcon (*Falco peregrinus anatum*), golden eagle, northern harrier (*Circus cyaneus*), loggerhead shrike (*Lanius ludovicianus*), tricolored blackbird, white-tailed kite, and pallid bat (*Antrozous pallidus*).

Only one special-status animal species, the burrowing owl, could potentially breed on the project site. Expanded descriptions are provided in Appendix B for those species potentially occurring on the project site, as well as species for which resource agencies have expressed particular concern and for which expanded discussion is required.

Table 2. Special-status Wildlife 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			
Green sturgeon (<i>Acipenser medirostris</i>)	FT, CSSC	Spawns in large river systems such as the Sacramento River; forages in nearshore oceanic waters, bays, and estuaries.	Absent. No aquatic habitat is present on the project site. Determined to be absent.
Longfin smelt (<i>Spirinchus thaleichthys</i>)	ST	Spawns in fresh water in the upper end of the San Francisco Bay; occurs year-round in the South Bay.	Absent. No aquatic habitat is present on the project site. 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.	Absent. No aquatic habitat is present on the project site. Determined to be absent.
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 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; SCVWD 2011). No recent records of California tiger salamanders are located anywhere in the project vicinity (CNDDDB 2016), and the project site is not mapped as habitat for the California tiger salamander by the VHP (ICF International 2012). Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
California red-legged frog (<i>Rana draytonii</i>)	FT, CSSC, VHP	Streams, freshwater pools, and ponds with emergent or overhanging vegetation.	Absent. This species has been extirpated from the majority of the project region, including the entire urbanized Valley floor, due to development, the alteration of hydrology of its aquatic habitats, and the introduction of non-native predators such as non-native fishes and bullfrogs (<i>Lithobates catesbeianus</i>) (H. T. Harvey & Associates 1997; SCVWD 2011). Although a portion of the project site was modeled by the VHP as potential dispersal habitat (ICF International 2012), we do not expect this species to be present on the project site for the previously mentioned reasons, and there are no records of California red-legged frogs from anywhere in the project vicinity (CNDDDB 2016). 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. This species has been recorded nesting in the project region only at inland reservoirs and is very rare along the Bay edge. No suitable nesting or foraging habitat is present on the project site. Determined to be absent.
Swainson's hawk (<i>Buteo swainsoni</i>)	ST	Nests in trees surrounded by extensive marshland or agricultural foraging habitat.	Absent. Swainson's hawk apparently nested historically in small numbers in Santa Clara County, and there is an 1894 nest record from the Berryessa area (eastern San José) (Bousman 2007a). Currently, the species is known to nest in Santa Clara County only in one location in Coyote Valley; otherwise, it occurs in the project region only as a very infrequent transient during migration, and neither suitable nesting nor foraging habitat is present on the project site. Determined to be absent.
Least Bell's vireo (<i>Vireo bellii pusillus</i>)	FE, SE, VHP	Nests in heterogeneous riparian habitat, often dominated by cottonwoods (<i>Populus</i> spp.) and willows (<i>Salix</i> spp.).	Absent. The project site is outside this species' range and does not provide suitable habitat for the species. 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 2007). The VHP does not map suitable habitat for this species as occurring on the project site (ICF International 2012). Determined to be absent.
California Ridgway's rail (<i>Rallus obsoletus obsoletus</i>)	FE, SE, SP	Salt marsh habitat dominated by pickleweed (<i>Salicornia</i> spp.) and cordgrass (<i>Spartina</i> spp.).	Absent. No suitable marsh habitat for the California Ridgway's rail is present on the project site. Determined to be absent.
California black rail (<i>Laterallus jamaicensis coturniculus</i>)	ST, SP	Breeds in fresh, brackish, and tidal salt marsh.	Absent. No suitable marsh habitat for the California black rail is present on the project site. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Western snowy plover (<i>Charadrius alexandrinus nivosus</i>)	FT, CSSC	Sandy beaches on marine and estuarine shores and salt pans in San Francisco Bay saline managed ponds.	Absent. No suitable nesting or foraging habitat for the western snowy plover is present on the project site. Determined to be absent.
California least tern (<i>Sterna antillarum browni</i>)	FE, SE, SP	Nests along the coast on bare or sparsely vegetated, flat substrates. In San Francisco Bay, nests in salt pannes and on an old airport runway. Forages for fish in open waters.	Absent. No suitable nesting or foraging habitat for the California least tern is present on the project site. Determined to be absent.
Tricolored blackbird (<i>Agelaius tricolor</i>)	SC, CSSC, VHP	Nests near fresh water in dense emergent vegetation.	Absent as Breeder. Tricolored blackbirds typically nest in extensive stands of tall emergent herbaceous vegetation in non-tidal freshwater marshes and ponds, which are not present on the project site. This species is not known to nest in tidal habitats in the South Bay, and has not been recorded nesting in the project vicinity. The VHP does not map suitable habitat for this species as occurring on, or within 250 ft of, the project site (ICF International 2012). However, the species is known to forage in the project vicinity during the nonbreeding season, and may occur on the project site as an uncommon nonbreeding visitor.
Salt marsh harvest mouse (<i>Reithrodontomys raviventris</i>)	FE, SE, SP	Salt marsh habitat dominated by common pickleweed.	Absent. Suitable pickleweed/alkali bulrush-dominated salt marsh habitat for the salt marsh harvest mouse is not present on the project site. 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.	Absent. No aquatic habitat is present on the project site. Determined to be absent.
Foothill yellow-legged frog (<i>Rana boylei</i>)	CSSC, VHP	Partially shaded shallow streams and riffles with a rocky substrate. Occurs in a variety of habitats in coast ranges.	Absent. Although this species occurs in less urbanized areas of Santa Clara County, it has disappeared from farmed and urbanized areas as well as many of the perennial streams below major reservoirs (H. T. Harvey & Associates 1999b). The VHP does not map primary or secondary habitat for the foothill yellow-legged frog in the project site (ICF International 2012) and suitable habitat for this species is absent from the site. Determined to be absent.

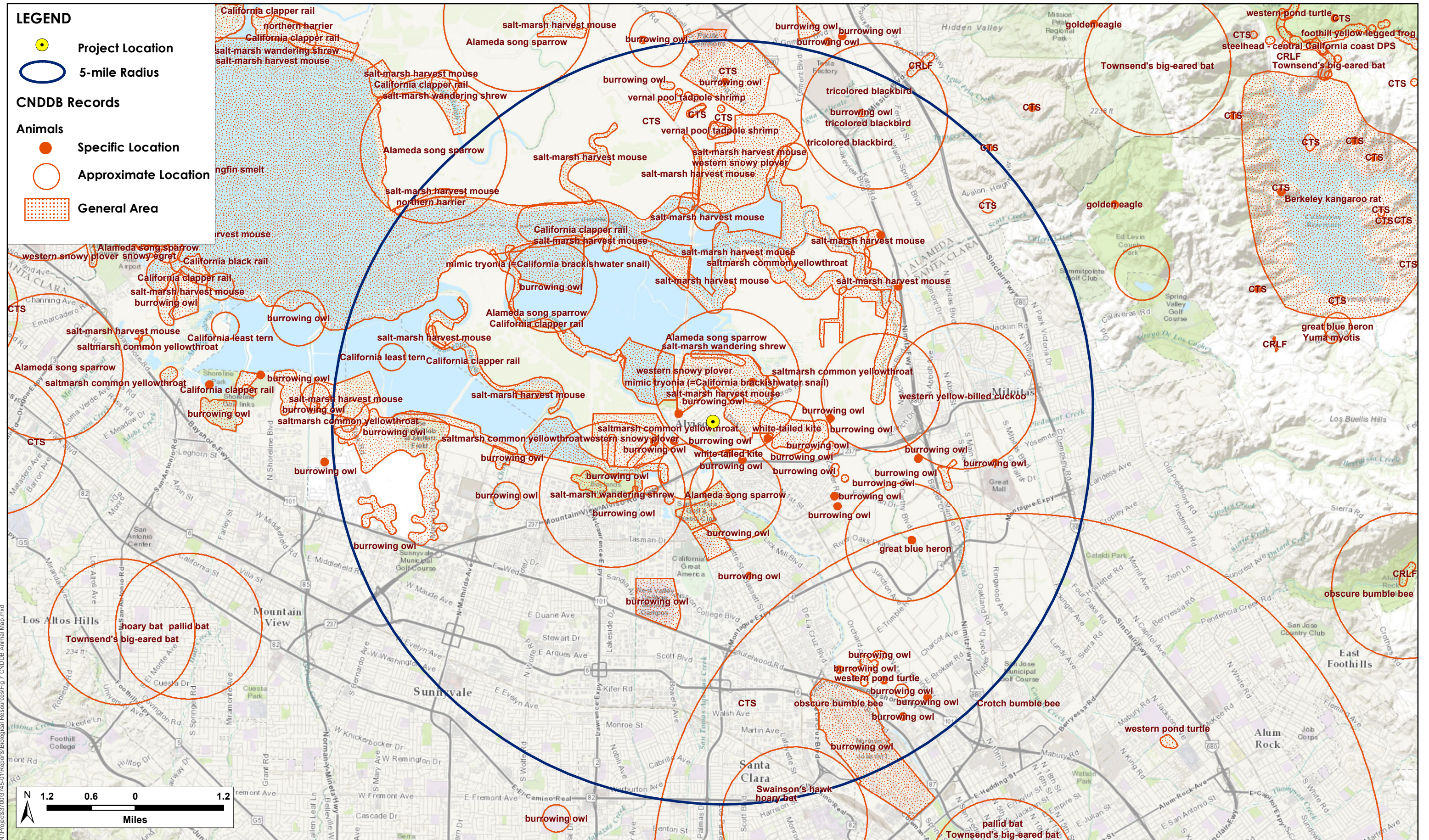
Name	*Status	Habitat	Potential for Occurrence on the Project Site
Western pond turtle (<i>Actinemys marmorata</i>)	CSSC, VHP	Permanent or nearly permanent water in a variety of habitats.	Absent. Although breeding populations of the western pond turtle have been extirpated from most agricultural and urbanized areas in the project region, individuals of this long-lived species still occur in urban streams and ponds in the Santa Clara Valley. However, no suitable aquatic habitat is present on the project site. Individuals have occasionally been recorded along the lower reaches of the Guadalupe River in the project vicinity, but the species is not expected to breed on the project site due to a lack of suitable habitat and distance between the site and the river. Determined to be absent.
Northern harrier (<i>Circus cyaneus</i>)	CSSC (nesting)	Nests in marshes and moist fields, forages over open areas.	Absent as Breeder. Northern harriers are not expected to nest on the project site due to a lack of suitable habitat. However, harriers may nest in nearby marsh habitats and forage on the site in small numbers.
Burrowing owl (<i>Athene cunicularia</i>)	CSSC, VHP	Open grasslands and ruderal habitats with suitable burrows, usually those made by California ground squirrels.	May be Present. The VHP maps the project site as potentially suitable breeding habitat for the burrowing owl (ICF International 2012), and numerous observations of burrowing owls have been documented near the project site (CNDDDB 2016), including on the adjacent Midpoint at 237 Office and Industrial Project site located north of Wilson Way and east of the project boundary (CNDDDB 2016). In 2016, multiple pairs of breeding burrowing owls were recorded on the bufferlands of the San José-Santa Clara Regional Wastewater Facility, which are managed as burrowing owl habitat and located less than 0.2 mi to the northeast of the project site (CNDDDB 2016, Santa Clara Valley Audubon Society 2016). In addition, numerous burrows of the California ground squirrel were observed in the golf courses/urban parks and grassland habitats on the project site during the focused survey. Although no burrowing owls or evidence (e.g., whitewash, cast pellets, or feathers) of burrowing owl presence was observed during the focused survey, the grassland habitat provides ostensibly suitable nesting, foraging, and roosting habitat for the burrowing owl.
Loggerhead shrike (<i>Lanius ludovicianus</i>)	CSSC (nesting)	Nests in tall shrubs and dense trees; forages in grasslands, marshes, and ruderal habitats.	Absent as Breeder. Suitable breeding habitat for the loggerhead shrike is not present on, or immediately adjacent to, the project site, but the species may nest in nearby habitats and forage in the grasslands on the project site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
San Francisco common yellowthroat (<i>Geothlypis trichas sinuosa</i>)	CSSC	Nests in herbaceous vegetation, usually in wetlands or moist floodplains.	Absent. The San Francisco common yellowthroat is known to breed and forage within tidal marsh habitats located in the nearby Alviso Marina County Park and the Don Edwards San Francisco Bay NWR. However, no suitable breeding or foraging habitat is present on the project site. Determined to be absent.
Alameda song sparrow (<i>Melospiza melodia pusillula</i>)	CSSC	Nests in salt marsh, primarily in marsh gumplant and cordgrass along channels.	Absent. Song sparrows are known to breed and forage within tidal marsh habitats located in the nearby Alviso Marina County Park and the Don Edwards San Francisco Bay NWR. However, no suitable breeding or foraging habitat is present on the project site. Determined to be absent.
Salt marsh wandering shrew (<i>Sorex vagrans halicoetes</i>)	CSSC	Medium-high marsh 6-8 feet above sea level with abundant driftwood and common pickleweed.	Absent. Suitable pickleweed-dominated salt marsh habitat for the salt marsh wandering shrew is not present on the project site. Determined to be absent.
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. No suitable roosting habitat is present on the project site and no known maternity colonies are present on or adjacent to the project site. There is a low probability that the species occurs in the project vicinity at all due to urbanization; however, small numbers of individuals from more remote colonies could potentially forage on the project site over open habitats on rare occasions.
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. Currently, 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). Further, no suitable habitat is present on or immediately adjacent to the project site. Determined to be absent.
State Fully Protected Species			

Name	*Status	Habitat	Potential for Occurrence on the Project Site
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 electrical transmission towers within managed ponds near the Mountain View/Alviso area, but are not known or expected to nest on the transmission towers on the project site. Nevertheless, the peregrine falcon may occur on the project site as an occasional forager, primarily during migration and winter.
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. Suitable breeding habitat for golden eagles is not present on, or immediately adjacent to, the project site. This species is expected to forage in the open habitats of the project site only infrequently and in small numbers.
White-tailed kite (<i>Elanus leucurus</i>)	SP	Nests in tall shrubs and trees, forages in grasslands, marshes, and ruderal habitats.	Absent as Breeder. Historical records of white-tailed kites nesting southeast of Alviso have been documented (CNDDDB 2016). However, breeding white-tailed kites are intolerant of human disturbance and are not expected to breed in the project vicinity. Nonetheless, open ruderal grasslands provide suitable foraging habitat for white-tailed kites, which may occur on the project site as an uncommon nonbreeding visitor.

*Status Codes:

- FE = Federally listed Endangered
- FT = Federally listed Threatened
- SE = State listed Endangered
- ST = State listed Threatened
- SC = State Candidate
- CSSC = California Species of Special Concern
- SP = State Fully Protected Species
- VHP = Species covered under the Santa Clara Valley Habitat Plan



N:\Projects\37003745-01\Reports\Biological Resources\Fig 7 CNDDDB Animal Map.mxd

5.3 Sensitive and Regulated Plant Communities and Habitats

The CDFW ranks certain rare or threatened plant communities, such as wetlands, meadows, and riparian forest and scrub, as ‘threatened’ or ‘very threatened’. These communities are tracked in the CNDDDB. Impacts on CDFW sensitive plant communities, or any such community identified in local or regional plans, policies, and regulations, must be considered and evaluated under the CEQA (California Code of Regulations: Title 14, Div. 6, Chap. 3, Appendix G). Furthermore, wetland and riparian habitats are also afforded protection 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.

Natural Communities of Special Concern. Figure 6 shows sensitive natural communities tracked by Rarefind (CNDDDB 2016) that occur in the project vicinity. The only sensitive natural community in or near the project vicinity is Northern Coastal Salt Marsh, which is not present on the project site. The seasonal wetland on-site supports some species associated with the upper elevation edges of Northern Coastal Salt Marsh, such as salt grass and alkali heath, but does not have other indicative species such as pickleweed (*Salicornia* spp.). Additionally, no tidal influence occurs at the site. Therefore, no sensitive natural communities tracked by the CNDDDB occur on the project site.

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), and maintains a list of vegetation alliances and associations within the state of California (CDFG 2010). This list includes global (G) and state (S) rarity ranks for associations and alliances. If an alliance is marked G1-G3, all of the vegetation associations within it will also be of high priority. Alliances and associations currently ranked as S1-S3 are considered highly imperiled. The alkali heath marsh alliance, *Frankenian salina*/*Distichlis spicata* association occurs within the seasonal wetland on the project site, and is considered sensitive according to this ranking. No other sensitive alliances occur on the project site, as the vegetative communities are composed of primarily non-native plant species.

Waters of the U.S./State. The seasonal wetlands on the project site may be considered waters of the U.S./State, and as wetlands, are considered a sensitive habitat type.

CDFW Stream/Riparian Habitat. No drainages, streams, or sloughs occur on the project site, so no stream or riparian habitat considered sensitive or regulated as riparian habitat under State Fish and Game Code is present.

VHP Sensitive Habitats. No non-wetland habitats considered sensitive by the VHP, including serpentine bunchgrass grasslands; chaparral, valley or blue oak woodlands; or riparian forest or woodlands occur on the project site. However, the VHP does consider seasonal wetlands to be a sensitive habitat type.

Section 6. Biotic Impacts and Mitigation Measures

6.1 Overview

The 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.” Under State CEQA Guidelines section 15065, a project's effects on biotic resources are deemed significant where the project would:

- A. “substantially reduce the habitat of a fish or wildlife species”
- B. “cause a fish or wildlife population to drop below self-sustaining levels”
- C. “threaten to eliminate a plant or animal community”
- D. “reduce the number or restrict the range of a rare or endangered plant or animal”

In addition to the section 15065 criteria that trigger mandatory findings of significance, 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 may or may not be significant, depending on the level of the impact. For biological resources, these impacts include whether the project would:

- E. “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”
- F. “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”
- G. “have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act”
- H. “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”
- I. “conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance”
- J. “conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan”

6.2 Santa Clara Valley Habitat Plan

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 ac, 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
- 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. Additional fees in-lieu of providing compensatory mitigation are imposed for projects that impact serpentine habitat, wetlands, and burrowing owl habitat, 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 site is located within the VHP Urban Service Area for the City of Alviso and is mapped as Fee Zone A (Ranchlands and Natural Lands). There is no serpentine habitat on the project site, and therefore, fees for impacts on this habitat type would not be required. However, the project site is located within a burrowing owl fee zone, and fees for impacts on burrowing owl habitat would be required. In addition, fees for impacts on wetlands may apply if the proposed project results in direct impacts on wetlands or if the VHP’s required wetland buffers cannot be implemented. Because the proposed project entails new development, nitrogen deposition fees may also apply; the City would determine applicable fees in coordination with the Santa Clara Valley Habitat Agency (SCVHA). Applicable VHP conditions that will be implemented by the proposed project are summarized below.

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

Wildlife Species Protected Under State or Federal Laws. Several wildlife species that occur in the proposed project vicinity are protected under state and federal laws. Some of these species are listed as fully protected under the California Fish and Game Code (e.g., American peregrine falcon and 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 pre-construction, 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 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 12 – Wetland and Pond Avoidance and Minimization

Condition 12 applies to covered projects that would directly or indirectly affect wetlands or ponds. The purpose of Condition 12 is to minimize impacts on wetlands and ponds and avoid impacts on high quality wetlands and ponds by prescribing vegetated stormwater filtration features, proper disposal of cleaning materials, and other requirements (see pages 6-55 to 6-68 of the VHP). Project proponents are required to pay a wetland fee for impacts on wetlands and ponds to cover the cost of restoration or creation of aquatic land cover types required by the VHP. Covered activities can avoid paying the wetland fee if they avoid impacts on wetlands.

Condition 15 – Western Burrowing Owl

Condition 15 requires the implementation of measures to avoid and minimize direct impacts on burrowing owls, including preconstruction surveys, establishment of 250-ft non-disturbance buffers around active nests during the breeding season (February 1 through August 31), establishment of 250-ft non-disturbance buffers around occupied burrows during the nonbreeding season, and construction monitoring. Preconstruction surveys for burrowing owls are required by the VHP in areas mapped as breeding habitat, which include the project site. As mentioned above, additional fees in-lieu of providing compensatory mitigation are imposed for VHP covered projects that impact burrowing owls. Because the project site includes habitat for burrowing owls as mapped by the VHP, a specialty fee for impacts on habitat for this species would apply.

6.3 Less Than Significant Impacts

6.3.1 Impacts on Non-Sensitive Habitats and Associated Common Plant and Animal Communities

Project activities would result in permanent loss of California annual grassland and ornamental woodland land cover types found on the project site, which would result in a reduction in the abundance of, and suitable

habitat for, some of the common plant and animal species that use the site. However, the habitat provided by these land cover types is abundant and widespread regionally, and within the project site does not represent particularly sensitive or valuable habitat (from the perspective of providing important plant or wildlife habitat). The level of ongoing disturbance and weed infestations within this land cover type on the project site precludes it from being an exemplary occurrence of this habitat type. Therefore, impacts on these habitats are considered less than significant. Further, because the number of individuals of any common plant or animal species within these habitats, 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.

Although no mitigation is necessary to reduce project impacts on these non-sensitive habitats and associated plant and animal species to less-than-significant levels under CEQA, these species will benefit from the conservation program of the VHP (e.g., preservation, enhancement, and management of numerous habitat types throughout the VHP Reserve System) to which the City would contribute via payment of VHP impact fees.

6.3.2 Impacts from Invasive Weeds

The California annual grassland on the project site supports several infestations of weed species considered by Cal-IPC (2016) to have moderate to severe ecological impacts. The potential spread of such weeds to sensitive habitat types would degrade these habitats, possibly reducing their ability to provide habitat values to common and sensitive species that utilize them, and could be a substantial adverse impact under CEQA (Appendix G, Item F). However, by developing and maintaining (e.g., through landscaping) the areas that currently support weed infestations, the project would likely lead to a reduction of these weed species at the project site. Additionally, the project would wash all heavy equipment used in ground disturbing activities at the site at a legally operating equipment yard or car wash prior to being used at another site, to prevent the inadvertent spread of weeds or introduction of new infestations of yellow star thistle, fennel, or bull thistle to other sites where such infestations may impact adjacent sensitive habitats. Based on these avoidance measures and compliance with local permits and policies, the project is not expected to contribute to the spread or introduction of weed infestations onto sensitive habitats within or outside the project site, and this impact is considered less than significant under CEQA.

6.3.3 Impacts on Non-Breeding Special-Status Birds

Several special-status bird species occur in the project area as non-breeding migrants, transients, or foragers, but they are not known or expected to breed or occur in large numbers on the project site; these are the American peregrine falcon, golden eagle, northern harrier, loggerhead shrike, tricolored blackbird, and white-tailed kite.

The American peregrine falcon, golden eagle, white-tailed kite (all fully protected species), and loggerhead shrike and northern harrier (both California state species of special concern) are not expected to breed on the project site due to a lack of suitable nesting habitat. Although individuals of these species may occasionally occur on the site while foraging, they are not expected to occur on the site regularly or in large numbers.

The VHP does not map suitable habitat for the tricolored blackbird on, or within 250 ft of, the project site (ICF International 2012). However, the species is known to forage in the project vicinity during the nonbreeding season, and may occur on the project site as an uncommon nonbreeding visitor.

The proposed project would have some potential to impact foraging habitat and/or temporarily disturb individuals of these species. Work activities associated with the project 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 would be easily able to fly away from any areas of project disturbance before injury could occur. Therefore, this impact would be less than significant.

Although no mitigation is necessary to reduce project impacts on these species to less-than-significant levels under CEQA, these species will benefit from the conservation program of the VHP (e.g., preservation, enhancement, and management of numerous habitat types throughout the VHP Reserve System) to which the City would contribute via payment of VHP impact fees.

6.3.4 Impacts from Field Lighting

Artificial lighting has the potential to indirectly affect mammals, birds, and other animals by making them more visible to nocturnal predators such as owls and mammalian predators, thus increasing predation. The presence of artificial light may also influence habitat use by rodents and by breeding birds by causing avoidance of well-lit areas, resulting in a net loss of habitat availability and quality. Lighting may also adversely affect the circadian rhythms of certain animals.

Lighting from the proposed project would be the result of new low-level pedestrian and path lighting; replacement of the existing, non-functional stadium lighting located at the baseball/softball field; and addition of supplemental lighting within the improved sections of the plaza, swimming pool, and adjacent to each building on-site. Areas to the north, west, and south of the project site are primarily occupied by commercial and urban residential land uses, which do not support sensitive species that might be significantly impacted by illumination from the proposed project. However, the unnamed slough to the north of the project site and the bufferlands of the Santa Clara/San José Regional Wastewater Facility to the northeast provide suitable habitat for a variety of wildlife, including sensitive species such as the burrowing owl and Alameda song sparrow. These species and others using these habitats may be subject to increased predation, decreased habitat availability (for species that show aversions to increased lighting), and alterations of physiological processes if the proposed project produces appreciably greater illumination than the existing conditions. However, all lighting would conform to existing City standards for neighborhood parks and other applicable regulations, addressing issues

such as light spillage, energy efficiency, and the City of San José Dark Sky Ordinance. Thus, proposed lighting would have minimal spillover to any surrounding sensitive wildlife habitat, and the lighting would not adversely affect nighttime views in the area. Therefore, impacts from increased lighting would be *less than significant*.

6.3.5 Impacts from Noise

Similar to the impact of increased lighting described above, operation of the proposed project has the potential to generate noise that may adversely affect wildlife inhabiting the slough and bufferlands to the north. These species may be subject to decreased habitat availability (for species that show aversions to increased noise and thus do not use adjacent habitats) and alterations of behavior if the proposed project produces substantially greater noise than the existing conditions.

The project is subject to the noise standards established in the City's General Plan. The City considers significant noise impacts to occur if a project would:

- Cause the day/night average sound level (DNL) at noise sensitive receptors to increase by five A-weighted decibels (dBA) DNL or more where the noise levels would remain “Normally Acceptable;” or
- Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the “Normally Acceptable” level.

However, given the existing uses at the park, the proposed project would not introduce any new types or concentrations of noise to the area that would be markedly different from the current conditions. In addition, although the baseball facilities may accommodate practices and games (for local teams), it is not expected to host tournaments or other regional-based events, and sound system usage would be sporadic, occasional, and of limited duration; primarily during early evening hours or during daylight weekends hours. Further, additions to the park due to the proposed project (e.g., a fenced dog park, walking paths, picnic areas, and athletic fields) would not result in significant noise impacts as defined in the General Plan. Because the proposed project would not generate significant increases in noise, increase noise as a result of the project would not be considered substantial enough to adversely affect biological resources. Therefore, impacts from noise on biological resources are considered less than significant.

6.3.6 Impacts on Wildlife Movement

Environmental corridors are segments of suitable habitat that provide connectivity between larger areas of suitable habitat, allowing species to disperse through otherwise unsuitable areas. On a broader level, corridors may also function as avenues along which wide-ranging animals can travel, plants can propagate, genetic interchange can occur, populations can move in response to environmental changes and natural disasters, and threatened species can be replenished from other areas. The project site is not located within a particularly important corridor for wildlife movement, it does not meet the definition of a Riparian Project per City Council Policy 6-34 (i.e., is not located within 300 ft of a riparian corridor’s top of bank or vegetative edge), and the

VHP does not map any important landscape linkages in the project vicinity (ICF International 2012). The project vicinity contains extensive open and low-density residential habitat suitable for use by terrestrial species moving among areas of core habitat rather than providing more limited suitable habitat surrounded by non-habitat. As a result, wildlife can move on a broad front along numerous pathways in the project vicinity. In addition, no high-quality cover for use by dispersing wildlife is present.

Project activities may result in a temporary, and very small-scale and localized, impediment to wildlife movement. If animals try to avoid equipment any activity within work areas during construction, they may attempt to cross the roads in the project area, increasing their risk of road mortality. However, the project has the potential to affect wildlife movement only during construction, and it does not include any structures or features that would result in long-term impediments to movement. Overall, the project site would retain its value for wildlife movement after project completion, as no new barriers to wildlife movement would be constructed.

Further, the proposed project complies with the Bird-Safe Design Guidance contained in City Council Policy 6-34 as follows:

- Neither mirrors nor large areas of reflective glass are proposed.
- No transparent glass skyways, walkways, entryways, or building corners are proposed.
- Use of up-lighting and spotlights is not proposed.
- The project avoids funneling open space to a building façade.
- Non-emergency lighting will be turned off at night or shielded to minimize light that is visible to birds during nighttime migration.

Therefore, the proposed project would not substantially impact wildlife movement through the area and this impact would be less than significant under CEQA.

6.4 Impacts Found to be Less Than Significant with Mitigation

6.4.1 Impacts on the Burrowing Owl

California annual grasslands on the project site contain ground squirrel burrows that provide potential nesting, wintering, and foraging habitat for burrowing owls. If active burrowing owl nests are present on the project site at the time of construction, construction-related disturbance could result in injury or mortality of an owl. In addition, construction-related disturbance could lead to the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment. Even if burrowing owls are not breeding on the site, construction could result in injury or mortality of an owl in the event that an occupied burrow is filled or compacted during construction. The project would also result in the modification of up to 14.50 ac of potential nesting, wintering, and foraging habitat, including habitat mapped as burrowing owl nesting habitat by the VHP (ICF International 2012).

Given the regional rarity of burrowing owls, and recent population declines in the Bay Area, any loss of burrowing owls, any activities resulting in the destruction of occupied burrowing owl burrows, or the loss of occupied burrowing owl habitat would substantially impact the species, a significant impact under CEQA. However, implementation of Mitigation Measure BIO-1 would reduce impacts on individual burrowing owls and their habitat to a less-than-significant level.

Mitigation Measure BIO-1. VHP Condition 15 requires the implementation of measures to avoid and minimize direct impacts on burrowing owls, including preconstruction surveys, establishment of 250-ft non-disturbance buffers around active nests during the breeding season (February 1 through August 31), establishment of 250-ft non-disturbance buffers around occupied burrows during the nonbreeding season, and construction monitoring. In addition, because the project site is mapped as burrowing owl habitat by the VHP, the project proponent would be required to pay a burrowing owl specialty fee. The fee would help fund the VHP conservation program. The VHP has established requirements for both preservation and management of 5,300 ac of occupied or potential burrowing owl nesting habitat to guide the use of impact fees paid to the SCVHA. The VHP includes an aggressive suite of measures aimed at reversing the declining trend of the burrowing owl population in Santa Clara County. This will occur on a large-scale, regional basis, which will have far greater ecological value than “traditional” mitigation that relies on isolated, piecemeal, mitigation sites. This holistic strategy is strongly endorsed by the CDFW and the USFWS, which are the state and federal trustee agencies, respectively, that have stewardship over these resources. Both of these agencies are partners in, and strong proponents of, the VHP as they see its value as a tool for the mitigation of impacts and the long-term protection and recovery of the important resources.

6.4.2 Impacts on Seasonal Wetlands and Water Quality

Project activities may directly affect the seasonal wetland at the north end of the project site. If the seasonal wetland on the project site is determined to be Waters of the U.S./State, permanent impacts, including placement of fill, would be significant in accordance with CEQA Significance Criterion G. The project could also result in impacts on water quality due to alteration of hydrology or an increase in inputs of disrupting sediment or chemical fertilizers or pesticides used in turf care in adjacent park lawns or landscaping. Additionally, implementation of the project could cause an increase in sediment into nearby sloughs through the City storm drain system during construction, or chemical input during operation of the park. Though much of the currently undeveloped sections of the park would not be converted to extensive areas of hardscape, installation of features such as paved trails and structures may increase runoff amounts and velocities for stormwater leaving the site or draining to the preserved portion of the seasonal wetland.

The project would comply with all VHP conditions, including Conditions 3 and 12, as well as City of San José Council Policies 6-29 and 8-14, and the Regional NPDES permit. The project would also install permanent stormwater treatment features such as bioswales, detention basins, or other features intended to reduce the velocities and provide on-site treatment of any water that may leave the site as runoff or enter the preserved portions of the seasonal wetland.

In the absence of VHP compliance measures, permanent impacts on waters of the United States due to implementation of park improvements would be a significant impact. Implementation of Mitigation Measures BIO-2 and BIO-3 would reduce this impact to a less-than-significant level.

Mitigation Measure BIO-2: The project proponent will implement Conditions 3 and 12 of the VHP to reduce construction impacts on wetlands. These VHP conditions require avoidance of wetlands during construction. Condition 3 consists of avoidance and minimization measures outlined in Table 6-2 of the VHP. Applicable avoidance and minimization measures will be implemented during construction. VHP Condition 12 requires the implementation of design phase and construction phase measures to avoid and minimize impacts on wetlands and ponds to the extent feasible, including erosion control measures, fencing of avoided wetlands during construction, establishment of buffers between wetlands and refueling areas, and measures to minimize the spread of invasive species.

Mitigation Measure BIO-3: Prior to any construction activities that could result in fill of the seasonal wetland on the project site, the project proponent will complete a formal wetland delineation that will be submitted to the USACE for verification, and the project will obtain a Section 404 fill discharge permit from the USACE for any impacts to Waters of the U.S., and a Section 401 Water Quality Certification and/or Waste Discharge Requirement from the RWQCB for any impacts to Waters of the State. In addition, the project applicant will pay wetland impact fees to the SCVHA, which would be used to help compensate for impacts on aquatic habitats.

6.4.3 Impacts on Trees

As the project is currently designed, trees in the ornamental woodlands on the project site may be removed or pruned. While there are no heritage trees on the project site, there are street trees that occur on the Grand Avenue right-of-way. Because these trees are protected by the City of San José's tree ordinance, their removal would meet the threshold of having a substantial adverse effect, and would be considered potentially significant under CEQA Significance Criterion I. Implementation of Mitigation Measure BIO-4 will reduce this impact to a less-than-significant level.

Mitigation Measure BIO-4. During detailed design of the project, adverse impacts on trees protected by the City of San José's tree ordinance will be avoided and minimized to the extent feasible. Where impacts on trees cannot be avoided, the project proponent will comply with the standards of the City of San José's Department of Transportation Street Tree Permit and the City's policies to protect the urban forest. This includes the planting of replacement trees where feasible and the payment of fees to *Our City Forest* where planting is not feasible. In addition, the project proponent will comply with the procedures related to the care and maintenance of street trees outlined in the City of San José's *Tree Policy Manual and Recommended Best Practices* (City of San Jose 2013).

6.4.4 Conflict with Provisions of an Adopted Habitat Conservation Plan

As described above, the project is considered a covered project under the VHP and is therefore required to comply with all applicable VHP conditions (i.e., Conditions 1, 3, 12, and 15). Construction disturbance during the avian breeding season (February 1 through August 31, 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.

The following mitigation measure would be implemented to reduce impacts due to conflict with Condition 1 of the VHP to a less-than-significant level.

Mitigation Measure BIO-5: To the extent feasible, construction activities will be scheduled to avoid the typical avian breeding season (February 1st through August 31st, for most species in Santa Clara County). If it is not possible to schedule construction activities between September 1st and January 31st, preconstruction surveys for nesting birds will be conducted by a qualified biologist (certified for raptors and birds) or ornithologist to ensure that no nests will be disturbed during project implementation. During the early part of the breeding season (February 1st through April 30th), pre-construction surveys will be conducted no more than 14 days prior to the initiation of any ground-disturbing activities in any given area. During the late part of the breeding season (May 1st through August 31st), pre-construction surveys will be conducted no more than 30 days prior to the initiation of any ground disturbing activities in any given area. If construction is phased, surveys will be conducted prior to the commencement of each construction phase. The surveys will be limited to the portions of the project work area where construction activities will occur as well as a 300-ft buffer for raptors and a 100-ft buffer for non-raptors. During each survey, the qualified biologist will inspect all trees and other potential nesting habitats (e.g., shrubs, ruderal grasslands, wetlands, and buildings) in and immediately adjacent to the impact areas for nests.

If an active nest is found, the qualified biologist, in consultation with the CDFW, will designate the extent of a disturbance-free buffer zone to be established around the nest (typically 300 ft for raptors and 100 ft for non-raptors) to ensure that no active nests of species protected by the MBTA of California Fish and Game Code will be disturbed during project implementation. No new project-related activities (i.e., activities that were not ongoing when the nest was established) will be performed within the buffer until the young have fledged or the nest has been determined to be inactive by a qualified biologist.

The qualified biologist will submit a report to the City's Environmental Supervising Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building, and Code Enforcement prior to the continuance of any ground disturbance activities.

6.5 Cumulative Impacts

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 by this 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 project area and larger 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, including the burrowing owl, through that program, which will require payment of fees for habitat restoration. Moreover, the VHP will help to ensure the conservation of the burrowing owl and its habitat throughout the Project region. 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.

Projects covered under the VHP are expected to result in a cumulatively significant impact on serpentine grasslands and serpentine associated plants and wildlife due to increased nitrogen deposition resulting from an increase in passenger and commercial vehicle trips and other new industrial and nonindustrial sources. However, Alviso Park is a neighborhood park. According to outreach conducted during the Master Plan Update process, the current park is utilized by local residents who live within approximately four blocks. As such, the majority of users access the park by foot or bicycle. It is anticipated that most park users would continue to be from the vicinity of the site and would arrive on foot or bicycle. Neighborhood parks do not generate a substantial amount of vehicular trips as they normally serve users in close proximity. Soccer and baseball/softball fields could draw users from areas outside a walking distance that could generate additional vehicular trips. Because the park would add only one field, the number of additional (i.e., new) users arriving by automobile would likely be nominal. Therefore, the proposed project is expected to contribute little to cumulative effects on serpentine communities and species due to nitrogen emission and deposition.

Nevertheless, during the permitting process, the City of San Jose and SCVHA would determine whether the nitrogen deposition fee applies to the project. If it is determined that the nitrogen deposition fee is applicable to the project, payment of the fee would offset the project's very limited contribution to cumulative impacts due to nitrogen deposition.

Thus, provided that this project successfully incorporates the mitigation measures described in this biological resources report, the project would not have a considerable contribution to cumulative effects on biological resources.

Section 7. References

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Appendix A. Special-Status Plants Considered for Occurrence on the Project Site but Rejected

Scientific Name	Common Name	Suitable Habitat Absent	Lack of Edaphic Requirements	Outside Elevation Range for Species	Presumed Extirpated from Project Vicinity
<i>Acanthomintha lanceolata</i>	Santa Clara thorn-mint	x	x	x	
<i>Androsace elongata</i> ssp. <i>acuta</i>	California androsace	x		x	
<i>Arctostaphylos andersonii</i>	Anderson's manzanita	x		x	
<i>Astragalus tener</i> var. <i>tener</i>	alkali milk-vetch				X
<i>Atriplex minuscula</i>	lesser saltscare			x	
<i>Azolla microphylla</i>	Mexican mosquito fern			x	
<i>Balsamorhiza macrolepis</i>	big-scale balsamroot			x	
<i>Calandrinia breweri</i>	Brewer's calandrinia	x			
<i>California macrophylla</i>	round-leaved filaree			x	
<i>Calochortus umbellatus</i>	Oakland star-tulip		x	x	
<i>Calystegia collina</i> ssp. <i>venusta</i>	South Coast Range morning-glory		x	x	
<i>Campanula exigua</i>	chaparral harebell	x	x	x	
<i>Chloropyron maritimum</i> ssp. <i>palustre</i>	Point Reyes bird's-beak	x			
<i>Chorizanthe robusta</i> var. <i>robusta</i>	robust spineflower	x			
<i>Cirsium fontinale</i> var. <i>campylon</i>	Mt. Hamilton fountain thistle			x	
<i>Clarkia breweri</i>	Brewer's clarkia	x	x	x	
<i>Clarkia concinna</i> ssp. <i>automixa</i>	Santa Clara red ribbons	x		x	
<i>Clarkia lewisii</i>	Lewis' clarkia			x	
<i>Collinsia multicolor</i>	San Francisco collinsia			x	
<i>Cypripedium fasciculatum</i>	clustered lady's-slipper			x	
<i>Delphinium californicum</i> ssp. <i>interius</i>	Hospital Canyon larkspur			x	

Scientific Name	Common Name	Suitable Habitat Absent	Lack of Edaphic Requirements	Outside Elevation Range for Species	Presumed Extirpated from Project Vicinity
<i>Dirca occidentalis</i>	western leatherwood	x		x	
<i>Dudleya abramsii</i> ssp. <i>setchellii</i>	Santa Clara Valley dudleya		x	x	
<i>Eriastrum tracyi</i>	Tracy's eriastrum	x		x	
<i>Eriogonum argillosum</i>	clay buckwheat	x	x	x	
<i>Eriogonum umbellatum</i> var. <i>bahiiiforme</i>	bay buckwheat	x	x	x	
<i>Eriophyllum jepsonii</i>	Jepson's woolly sunflower			x	
<i>Eryngium aristulatum</i> var. <i>hooveri</i>	Hoover's button-celery	x			
<i>Erysimum franciscanum</i>	San Francisco wallflower		x	x	
<i>Fritillaria agrestis</i>	stinkbells	x	x		
<i>Fritillaria liliacea</i>	fragrant fritillary		x		
<i>Galium andrewsii</i> ssp. <i>gatense</i>	phlox-leaf serpentine bedstraw	x	x	x	
<i>Helianthella castanea</i>	Diablo helianthella			x	
<i>Helianthus exilis</i>	serpentine sunflower	x	x	x	
<i>Hoita strobilina</i>	Loma Prieta hoita	x	x	x	
<i>Iris longipetala</i>	coast iris	x		x	
<i>Isocoma menziesii</i> var. <i>diabolica</i>	Satan's goldenbush	x		x	
<i>Lasthenia conjugens</i>	Contra Costa goldfields	x			
<i>Leptosiphon acicularis</i>	bristly leptosiphon			x	
<i>Leptosiphon ambiguus</i>	serpentine leptosiphon		x	x	
<i>Leptosiphon grandiflorus</i>	large-flowered leptosiphon		x	x	
<i>Lessingia hololeuca</i>	woolly-headed lessingia			x	
<i>Lessingia micradenia</i> var. <i>glabrata</i>	smooth lessingia	x		x	
<i>Lessingia tenuis</i>	spring lessingia	x		x	
<i>Malacothamnus aboriginum</i>	Indian Valley bush-mallow	x		x	
<i>Malacothamnus arcuatus</i>	arcuate bush-mallow	x		x	

Scientific Name	Common Name	Suitable Habitat Absent	Lack of Edaphic Requirements	Outside Elevation Range for Species	Presumed Extirpated from Project Vicinity
<i>Malacothamnus hallii</i>	Hall's bush-mallow		x		
<i>Malacothrix phaeocarpa</i>	dusky-fruited malacothrix			x	
<i>Micropus amphibolus</i>	Mt. Diablo cottonweed			x	
<i>Microseris sylvatica</i>	sylvan microseris		x	x	
<i>Monardella antonina</i> ssp. <i>antonina</i>	San Antonio Hills monardella			x	
<i>Monolopia gracilens</i>	woodland woollythreads			x	
<i>Navarretia cotulifolia</i>	cotula navarretia			x	
<i>Navarretia prostrata</i>	prostrate vernal pool navarretia	X			X
<i>Perideridia gairdneri</i> ssp. <i>gairdneri</i>	Gairdner's yampah			x	
<i>Piperia leptopetala</i>	narrow-petaled rein orchid	x		x	
<i>Piperia michaelii</i>	Michael's rein orchid	x		x	
<i>Plagiobothrys chorisianus</i> var. <i>hickmanii</i>	Hickman's popcorn-flower			x	
<i>Plagiobothrys glaber</i>	hairless popcorn-flower			x	
<i>Psilocarphus brevissimus</i> var. <i>multiflorus</i>	Delta woolly-marbles			x	
<i>Senecio aphanactis</i>	chaparral ragwort	x		x	
<i>Sidalcea malachroides</i>	maple-leaved checkerbloom	x			
<i>Streptanthus albidus</i> ssp. <i>albidus</i>	Metcalf Canyon jewel-flower		x	x	
<i>Streptanthus albidus</i> ssp. <i>peramoenus</i>	most beautiful jewel-flower			x	
<i>Stuckenia filiformis</i> ssp. <i>alpina</i>	slender-leaved pondweed			x	
<i>Suaeda californica</i>	California seablite	x			
<i>Trifolium hydrophilum</i>	saline clover	x			
<i>Tropidocarpum capparideum</i>	caper-fruited tropidocarpum				x

Appendix B. Detailed Descriptions of Special-Status Animal Species Potentially Occurring in Project Area

American Peregrine Falcon (*Falco peregrinus anatum*). **Federal Listing Status: None; State Listing Status: Fully Protected.** The American peregrine falcon occurs throughout much of the world, and is known as one of the fastest flying birds of prey. Peregrine falcons prey almost entirely on birds, which they kill while in flight. These falcons nest on ledges and caves on steep cliffs, as well as on human-made structures such as buildings, bridges, and electrical transmission towers. In California, they are known to nest along the entire coastline, the northern Coast, and the Cascade Ranges and Sierra Nevada.

A severe decline in populations of the widespread North American subspecies *anatum* began in the late 1940s. This decline was attributed to the accumulation of DDE, a metabolite of the organochlorine pesticide DDT, in aquatic food chains. When concentrated in the bodies of predatory birds such as the peregrine falcon, this contaminant led to reproductive effects, such as the thinning of eggshells. The American peregrine falcon was listed as endangered by the USFWS in 1970 (USFWS 1970) and by the State of California in 1971. Recovery efforts included the banning of DDT in North America, and captive breeding programs to help bolster populations. The USFWS removed the American peregrine falcon from the endangered species list in 1999 (USFWS 1999), and from the state endangered species list in 2009.

The only locations within the project region where peregrines have been detected nesting are in old common raven and hawk nests on electrical transmission towers within managed ponds in the Mountain View/Alviso area. The species is not known or expected to nest in the immediate project area. However, peregrines nesting elsewhere in the South Bay, as well as migrants and wintering birds, forage occasionally on the project site.

Northern Harrier (*Circus cyaneus*). **Federal Listing Status: None; State Listing Status: Species of Special Concern (Nesting).** The northern harrier nests in marshes and grasslands with tall vegetation and sufficient moisture to inhibit accessibility of nest sites to predators. This species forages primarily on small mammals and birds in a variety of open grassland, ruderal, and agricultural habitats. Northern harriers forage in a variety of open habitats, especially during the nonbreeding season. The species is fairly widespread as a forager in grasslands, extensive wetlands, and agricultural areas in the project region during migration and winter. Northern harriers are not expected to nest on the project site due to a lack of suitable habitat. However, harriers may nest in nearby marsh habitats and forage on the site.

Burrowing Owl (*Athene cunicularia*). **Federal Listing Status: None; State Listing Status: Species of Special Concern.** Burrowing owls occur year-round in the Santa Clara Valley, using open, agricultural or grassland areas with active small mammal burrows, which they use for nesting and roosting. Typical burrowing owl habitat is treeless (because tall trees provide perches for raptors that can easily prey on burrowing owls), with minimal shrub cover and woody plant encroachment, and low density and foliage height diversity, which allows the owls to observe approaches to their nest or roost burrows. In the San Francisco Bay Area, burrowing

owls are chiefly associated with burrows of California ground squirrels, which, in addition to providing nesting, roosting, and escape burrows, improve habitat for burrowing owls in other ways. For example, burrowing owls are known to favor areas with short, sparse vegetation (Coulombe 1971, Haug and Oliphant 1990, Plumpton and Lutz 1993a), which provides visual protection from avian predators and foraging habitat, and ground squirrel colonies maintain short vegetation height. In the absence of ground squirrel populations, habitats soon become unsuitable for occupancy by owls.

Burrowing owls are diet generalists. Insects, small mammals, birds, and occasionally amphibians and reptiles may be eaten (Errington and Bennett 1935, Thomsen 1971, Green et al. 1993, Plumpton and Lutz 1993b). Prey size and availability may be more important than prey species. Numerically, insect prey are most often represented, while small mammal prey (e.g., mice and voles) comprise the majority of biomass intake.

The burrowing owl nesting season as recognized by the CDFW runs from February 1 through August 31. In Santa Clara County, burrowing owl families with non-flying young have been found as early as March 30, suggesting egg-laying dates in mid to late February, and fledged young still dependent on adults have been found into late August (Trulio 2007). After nesting is completed, adult owls may remain in their nesting burrows or in nearby burrows, or they may migrate and over-winter elsewhere (Gorman et al. 2003). Young birds disperse across the landscape from 0.1 mi to 35 mi from their natal burrows (Rosier et al. 2006). Philopatry (the tendency for individuals to breed at or near their place of birth), site tenacity (the tendency for individuals to breed at or near their prior nest location), and nest burrow reuse have been well documented for burrowing owls (Martin 1973, Rich 1984, Plumpton and Lutz 1993a), and burrowing owls may return to a nesting site and attempt to nest even after the site has been developed. Further, past reproductive success may influence future site reoccupancy. Female burrowing owls with large broods tend to return to previously occupied nest sites, while females that fail to breed, or which produce small broods, may change nest territories in subsequent years (Lutz and Plumpton 1999).

Historically, numerous pairs of burrowing owls are known to have nested in the project vicinity, including on the adjacent Midpoint at 237 Office and Industrial Project site located north of Wilson Way and east of the project boundary (CNDDDB 2016). In addition, in 2016 12 pairs of burrowing owls nested on the bufferlands of the Santa Clara/San José Regional Wastewater Facility located less than 0.2 mi to the northeast of the project site (CNDDDB 2016, Santa Clara Valley Audubon Society 2016), which has been set aside as habitat for the burrowing owl (City of San José and City of Santa Clara 2013).

The VHP maps the project site as potentially suitable breeding habitat for the burrowing owl (ICF International 2012) and numerous burrows of the California ground squirrel were observed in the golf courses/urban parks and ruderal grassland habitats on the project site during the 2015 site visit. Although no burrowing owls or evidence (e.g., whitewash, cast pellets, or feathers) of burrowing owl presence was observed during the focused survey, the grassland habitat provides ostensibly suitable nesting, foraging, and roosting habitat for the burrowing owl. Based on the availability of suitable burrowing owl habitat on the project site and the known

presence of nesting burrowing owls to the east of the site, the burrowing owl may occur within the project site at any time during the year.

Golden Eagle (*Aquila chrysaetos*). Federal Listing Status: None; State Listing Status: Fully Protected.

In California, the golden eagle is an uncommon permanent resident and migrant throughout the state. The species' breeding range within California excludes only the Central Valley, the immediate coast in the far north, and the southeastern corner of the state (Zeiner et al. 1990a). Recent declines of golden eagle populations have occurred in several western states in North America, including California, primarily because of loss of habitat and mortalities resulting from human activities (Kochert et al. 2002, Good et al. 2007). Further declines in eagle populations are expected to occur as long as habitat loss and anthropogenic landscape alteration continue (Good et al. 2007).

The golden eagle nests in a range of open habitats, including desert scrub, foothill cismontane woodlands, and annual or perennial grasslands (Zeiner et al. 1990a, Kochert et al. 2002). Golden eagle nesting habitat is characterized by large, remote patches of grassland or open woodland; a hilly topography that generates lift; an abundance of small mammal prey; and tall structures that serve as nest platforms and hunting perches (Kochert et al. 2002). Once a breeding pair establishes a territory, they may build a number of nests in tall structures such as tall trees or snags, cliffs, or utility towers (Zeiner et al. 1990a, Kochert et al. 2002), only one of which is used in any given year (Kochert et al. 2002). The eagle breeding season begins in late January and continues through August (CDFG 2008). Following the nesting period, adult eagles usually remain in or near their breeding territory (Zeiner et al. 1990). Young birds in California tend to be sedentary, remaining in or near their parental home ranges (Kochert et al. 2002).

In the South Bay, golden eagles nest widely in the Diablo Range and less commonly in the Santa Cruz Mountains (Bousman 2007b), outside the project area. No suitable nesting habitat for golden eagles occurs within or adjacent to the project site. Suitable foraging habitat for golden eagles occurs on the project site, and nonbreeding eagles may forage there on occasion. However, this species occurs infrequently and in low numbers around the immediate edge of the baylands in the South Bay, and based on the infrequency with which it has been reported in this heavily birded area by birders, it is expected to forage in open habitats within and adjacent to the project site infrequently.

Loggerhead Shrike (*Lanius ludovicianus*). Federal Listing Status: None; State Listing Status: Species of Special Concern (Nesting).

The loggerhead shrike is a predatory songbird associated with open habitats interspersed with shrubs, trees, poles, fences, or other perches from which it can hunt (Yosef 1996). Nests are built in densely foliated shrubs or trees, often containing thorns, which offer protection from predators and upon which prey items are impaled. The breeding season for loggerhead shrikes may begin as early as mid-February and last through July (Yosef 1996). Nationwide, loggerhead shrike populations have declined significantly over the last 20 years. Loggerhead shrikes are still fairly common in parts of the San Francisco Bay area, but urbanization has reduced available habitat, and local populations are likely declining (Cade and Woods 1997, Humple 2008).

Loggerhead shrikes nest in a number of locations in the project region where open grassland, ruderal, or agricultural habitat with scattered brush, chaparral, or trees that provide perches and nesting sites occurs (Bousman 2007c). This species occurs slightly more widely (i.e., in smaller patches of open areas providing foraging habitat) during the nonbreeding season. Suitable nesting habitat is absent from the project site, however the species may nest in nearby habitats and forage in the grasslands on the project site.

Tricolored Blackbird (*Agelaius tricolor*). Federal Listing Status: None; State Listing Status: Candidate and Species of Special Concern (Nesting Colony). Tricolored blackbirds are found primarily in the Central Valley and in central and southern coastal areas of California. This species is considered a California species of special concern (at its nesting colonies) due to concerns over the loss of wetland habitats in the state. The tricolored blackbird is highly colonial in its nesting habits, and forms dense nesting colonies that, in some parts of the Central Valley, may consist of up to tens of thousands of pairs. This species typically nests in tall, dense, stands of cattails or tules, but also nests in blackberry (*Rubus sp.*), wild rose (*Rosa sp.*) bushes, and tall herbs. Nesting colonies are usually located near fresh water. Tricolored blackbirds form large, often multi-species flocks during the nonbreeding period and range more widely than during the nesting season.

Suitable nesting habitat is not present on the project site. This species is not known to nest in tidal habitats in the South Bay, and has not been recorded nesting in the project vicinity. The VHP does not map suitable habitat for this species as occurring on, or within 250 ft of, the project site (ICF International 2012). However, the species is known to forage in the project vicinity during the nonbreeding season, and may occur on the project site as an uncommon nonbreeding visitor.

White-tailed Kite (*Elanus leucurus*). Federal Listing Status: None; State Listing Status: Fully Protected. In California, white-tailed kites can be found in the Central Valley and along the coast, in grasslands, agricultural fields, cismontane woodlands, and other open habitats (Zeiner et al. 1990a, Dunk 1995, Erichsen et al. 1996). White-tailed kites are year-round residents of the state, establishing nesting territories that encompass open areas with healthy prey populations, and snags, shrubs, trees, or other nesting substrates (Dunk 1995). Nonbreeding birds typically remain in the same area over the winter, although some movements do occur (Polite 1990). The presence of white-tailed kites is closely tied to the presence of prey species, particularly voles, and prey base may be the most important factor in determining habitat quality for white-tailed kites (Dunk and Cooper 1994, Skonieczny and Dunk 1997). Although the species recovered after population declines during the early 20th century, its populations may be exhibiting new declines as a result of recent increases in habitat loss and disturbance (Dunk 1995, Erichsen et al. 1996).

Historical records of white-tailed kites nesting southeast of Alviso have been documented (CNDDB 2016). However, breeding white-tailed kites are highly intolerable of human disturbance and are not be expected to breed in the project vicinity. Nonetheless, open ruderal grasslands provide suitable foraging habitat for white-tailed kites, which may occur on the project site as an uncommon nonbreeding visitor.

Pallid Bat (*Antrozous pallidus*). **Federal Listing Status: None; State Listing Status: Species of Special Concern.** The pallid bat is a light brown or sandy-colored, long-eared, moderate-sized bat that occurs throughout California with the exception of the northwest corner of the state and the high Sierra Nevada (Zeiner et al. 1990b). Pallid bats are most commonly found in oak savannah and in open dry habitats with rocky areas, trees, buildings, or bridge structures that are used for roosting (Zeiner et al. 1990b, Ferguson and Azerrad 2004). Coastal colonies commonly roost in deep crevices in rocky outcroppings, in buildings, under bridges, and in the crevices, hollows, and exfoliating bark of trees. Night roosts often occur in open buildings, porches, garages, highway bridges, and mines. Colonies can range in size from a few individuals to over a hundred (Barbour and Davis 1969), and usually consist of at least 20 individuals (Wilson and Ruff 1999). Pallid bats typically winter in canyon bottoms and riparian areas. After mating during the late fall and winter, females leave to form maternity colonies, often on ridge tops or other warmer locales (Johnston et al. 2006). Pallid bat roosts are very susceptible to human disturbance, and urban development has been cited as the most significant factor contributing to their regional decline (Miner and Stokes 2005).

Pallid bats were likely present throughout the South Bay historically, but they are slowly being extirpated from the area due to anthropogenic disturbance and habitat loss. No trees with suitably large cavities to provide roosting habitat for pallid bats are present on the project site. Further, pallid bats have been extirpated from highly urbanized areas close to the Bay in the region, and thus this species is not expected to roost in the project vicinity. However, individuals from more remote roosts could potentially forage on the project site over open habitats on rare occasions.