21 April 2015

Ms. Shaivali Desai
Salvatore Caruso Design Corporation
980 El Camino Real, Suite 200
Santa Clara, CA 95050

Subject: Biotic Assessment (2015 Update), Dove Hill Road Assisted Living Project, San Jose, California (HTH #2983-03)

Dear Ms. Desai:

Per your request, H. T. Harvey & Associates has revised our 20 February 2009 biotic assessment for the proposed development of an assisted living facility at 4200 Dove Hill Road, in San Jose, California. Specifically, we have updated our report to include an updated site plan and to incorporate conditions of the Santa Clara County Valley Habitat Plan (VHP), which was adopted in 2012 (i.e., since our previous report was prepared). It is our understanding that this project would be considered a "covered project" under the VHP. This report documents our findings.

Methods

Prior to conducting site surveys, information concerning the known distribution of threatened, endangered, or other special-status species and sensitive habitats that may occur in the area was reviewed. Such information included the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Data Base (CNDDB), previous reports prepared for other projects in the vicinity (e.g., H. T. Harvey's previous reports for the Cerro Plata/Ranch on Silver Creek project), the VHP, and other sources.

Reconnaissance-level field surveys were conducted on 12 September 2008 by H. T. Harvey & Associates wildlife biologist Yair Chaver, M.S. and on 15 September 2008 by plant ecologist Brian Cleary, M.S. The entire site was surveyed on foot during these surveys. A brief site visit was also performed by senior wildlife ecologist Steve Rottenborn, Ph.D. on 21 September 2008. The purpose of these surveys was to document the biological resources on and directly adjacent to the project site, and identify potential biological constraints to the proposed development. Specifically, surveys were conducted to 1) describe biotic habitats, 2) determine whether the site includes habitat capable of supporting special-status plant and animal species, and 3) document the potential presence/absence of regulated habitats including Waters of the U.S. A follow-up survey was conducted on 9 February 2009 by Rottenborn and by plant ecologists Amanda Breen, Ph.D. and Kate Huxster, B.S. to refine our impact assessment based on an updated site plan provided by Salvatore

Caruso Design Corporation and to double-check the site for evidence of use by San Francisco dusky-footed woodrats (*Neotoma annectens fuscipes*) and white-tailed kites (*Elanus leucurus*), at the request of the CDFW.

Additionally, a reconnaissance-level site survey and a focused survey for adult Bay checkerspot butterflies (*Euphydryas editha bayensis*) was conducted by H. T. Harvey & Associates senior wildlife ecologist Patrick Stone, B.S. on 31 March 2015 to refine our assessment based on the 2015 site plans and to document the presence or absence of the Bay checkerspot butterfly.

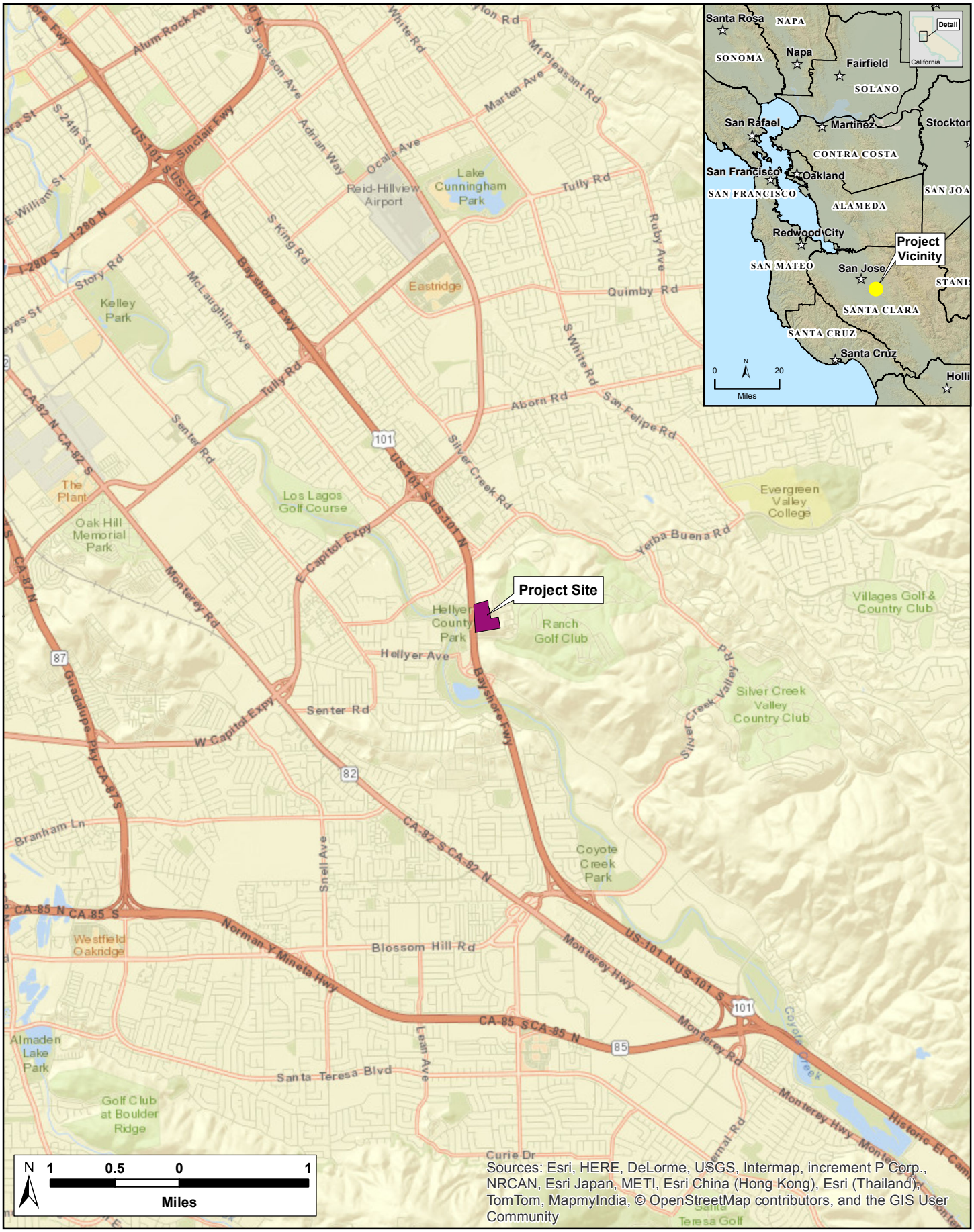
Environmental Setting

The approximately 21.1-acre project parcel is located at 4200 Dove Hill Road in San Jose California (Figure 1). The project site's western boundary is situated directly adjacent to the east side of U.S. Highway 101. The south and east boundaries of the site are bordered by the Silver Creek Valley country club and residential housing development. Surrounding land uses include developed area and hardscape, ruderal grassland habitat, and pasture. Within the project site, the proposed development footprint occupies a relatively limited area in the lower-elevation, western part of the site, while the remainder of the site (18.1 acres) will remain private open space (Figure 2).

Existing Habitats/Vegetation

The majority of the 3.0-acre proposed development footprint includes existing developed area comprised of several older residential homes and yards, garages, outbuildings, driveways, bare ground, and livestock enclosures (Figure 2). A small horticultural nursery is located in the northwest portion of the proposed development footprint. Soil types include the Montara-Rock outcrop complex with 30 to 50 percent slopes and the Urbanland-Cropley complex with 0 to 2 percent slopes (Natural Resources Conservation Service 2010). Montara serpentine soils occupy the majority of area within the project site and occur along portions of the proposed development footprint boundary. Vegetation within the proposed development footprint includes landscaped and volunteer trees and shrubs (mostly non-native) adjacent to the homes and outbuildings, including Casuarina sp., grey pine (*Pinus sabiniana*), western sycamore (*Platanus racemosa*), California black walnut (*Juglans californica*), peppertree (*Schinus molle*), and several other ornamentals. Most vegetation within the project footprint is dominated by weedy non-native annual grasses and forbs such as Mediterranean barley (*Hordeum marinum ssp. gussoneanum*), rattail fescue (*Vulpia myuros var. myuros*), ripgut brome (*Bromus diandrus*), wild oat (*Avena fatua*), wide-leaf filaree (*Erodium botrys*), wild lettuce (*Lactuca serriola*), common knotweed (*Polygonum arenastrum*), and yellow star thistle (*Centaurea solstitialis*) occur within these areas.

Although the project footprint is dominated by developed areas or weedy non-native vegetation, a few very limited patches of native-dominated serpentine habitat occur at the edge of the project footprint . Native plant species noted in these areas during our 9 February 2009 site visit included California poppy (*Eschscholzia californica*), miner's lettuce (*Claytonia perfoliata*), bird's-foot fern (*Pellaea mucronata*), and buckwheat (*Eriogonum nudum*).



N:\Projects\2983-01\Reports\Dove Hill April 2015\Fig 1 Vicinity Map.mxd smoturi

H.T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 1. Vicinity Map

4200 Dove Hill Road (2983-03)
April 2015

H.T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 2. Proposed Development Footprint

4200 Dove Hill Road (2983-03)
April 2015

The majority of the approximately 18.1-acre private open space area supports heavily grazed (i.e., disturbed) California annual grassland habitat and serpentine grassland on relatively steep, Montara serpentine rocky clay loam soils; the VHP maps the land cover type on the entire site as serpentine bunchgrass grassland. A small amount of equally disturbed annual grassland on Climara clay soil is found in the northern one-third of the private open space area. The predominant plant species identified in this grassland habit are the same as those listed above. Additional non-native plants include black mustard (*Brassica nigra*), soft chess (*Bromus hordeaceus*), bull thistle (*Cirsium vulgare*), dwarf pepper grass (*Lepidium latipes*) and sand-spurry (*Spergularia* sp.). Native plant species observed include tarweed (*Centromadia parryi* ssp. *parryi*), California poppy, buckwheat, and dwarf plantain (*Plantago erecta*). A small native hillside spring supporting moisture-loving plants such as seep monkeyflower (*Mimulus guttatus*) and willow dock (*Rumex salicifolius*) was observed along the northwest boundary of the private open space area. The spring is used as a water source for pastured livestock (i.e., horses) and the plant nursery on site but contains no ponded or pooled surface water other than a ceramic trough. A single Fremont cottonwood (*Populus fremontii*) is present in the open space east/southeast of the ranch buildings.

Numerous low-statured outcrops of serpentine rocks are found scattered within the private open space area on Montara serpentine soil. The largest numbers of outcrops occur in the south/southeast corner and the east-central portion of the project site. Diablan sage scrub habitat supporting California sage (*Artemisia californica*), coyote brush (*Baccharis pillularis*), and poison oak (*Toxicodendron diversilobum*) is present within some of the serpentine rock outcrops in the very steep southern section of the open space area. Several small populations of the federally listed plant species Santa Clara Valley dudleya (*Dudleya setchellii*) were observed growing on outcrops of serpentine rocks in each of these three locations. This plant species is endemic (i.e., restricted) to serpentine rocks and adjacent serpentine soils. A total of approximately 100-150 Santa Clara Valley dudleya plants were observed within the portion of the site proposed to remain as open space (all more than 200 ft from the proposed development footprint); a thorough inspection of the limited serpentine inclusions within the project footprint revealed no dudleya there. Large patches of dwarf plantain were also identified growing in the serpentine areas outside of the proposed development, particularly around the edges of the serpentine rock outcroppings.

Existing Wildlife Use

Due to the ongoing disturbance associated with the residences and ranching activities on the site, relatively few wildlife species use the area within the proposed development footprint. For the most part, wildlife species associated with these developed areas consist of common, widespread species tolerant of human disturbance. Western fence lizards (*Sceloporus occidentalis*) and gopher snakes (*Pituophis melanoleucus*) forage in disturbed areas around the buildings. Native birds such as barn swallows (*Hirundo rustica*) and black phoebes (*Sayornis nigricans*) may nest in some of the outbuildings on the site, along with non-native birds such as the house sparrow (*Passer domesticus*) and rock pigeon (*Columbia livia*). Ornamental vegetation in the developed portions of the site provides potential nesting habitat for few birds, though California towhees (*Melozone crissalis*) and Anna's hummingbirds (*Calypte anna*) may nest there. Golden-crowned sparrows (*Zonotrichia*

atricapilla), white-crowned sparrows (*Zonotrichia leucophrys*), house finches (*Haemorhous mexicanus*), and lesser goldfinches (*Spinus psaltria*) are among the birds that forage in the developed portions of the site. Mammals occurring in these developed areas consist primarily of non-natives such as the house mouse (*Mus musculus*), opossum (*Didelphis virginiana*), and black rat (*Rattus rattus*), as well as urban-adapted natives such as the raccoon (*Procyon lotor*) and striped skunk (*Mephitis mephitis*). Several species of bats, possibly including the pallid bat (*Antrozous pallidus*), big brown bat (*Eptesicus fuscus*), California myotis (*Myotis califonicus*), and Mexican free-tailed bat (*Tadarida braziliensis*), could potentially roost in buildings on the site.

The site's non-native annual grassland in the proposed open space provides relatively little cover and habitat structure for wildlife. Western fence lizards, gopher snakes, and several species of sparrows and finches feed in these habitats. Tadpoles of common Sierran chorus frog (*Pseudacris sierra*) were observed in the livestock trough. Native small mammals occurring here include California ground squirrels (*Spermophilus beecheyi*), California voles (*Microtus californicus*), and Botta's pocket gophers (*Thomomys bottae*), which serve as prey for predators such as the American kestrel (*Falco sparverius*), red-tailed hawk (*Buteo jamaicensis*), and great horned owl (*Bubo virginianus*). In response to questions by the CDFW regarding potential use of the site by white-tailed kites, a survey of all trees on and immediately adjacent to the site for raptor nests (including remnants of old nests) was conducted on 9 February 2009 and 31 March 2015. Although American kestrel and red-tailed hawk were observed foraging over the hillside proposed as open space, no raptor nests were observed in any trees on or immediately adjacent to the site, and no white-tailed kites were seen during that site visit. The seep/spring within the grassland on the site does not provide natural surface pools that might serve as breeding habitat or aquatic refugia for amphibians. Although the livestock trough and other artificial sources of standing water associated with the nursery may occasionally support breeding habitat for chorus frog, use of the site by amphibians is expected to be infrequent.

Portions of the non-native annual grassland/serpentine substrate provide large patches of dwarf plantain, which is the primary larval foodplant for the federally threatened Bay checkerspot butterfly. However, extensive surveys for this species on the Ranch on Silver Creek during the 1990s never detected this butterfly near the western portion of the ridge, where the site is located. Instead, Bay checkerspot populations occurred in the central and eastern portions of the Ranch on Silver Creek site, far to the east of the Dove Hill Road project site (H. T. Harvey & Associates 1998). The project site is too small and does not contain sufficient topographic heterogeneity to support a previously unknown population of this species. In accordance with VHP conditions for sites that support the larval host plant of this species, focused surveys for Bay checkerspot butterfly were conducted on 31 March 2015, a time of year in which adults are known to be flying at occupied sites. These surveys did not detect the species, although other common butterfly species were observed in the open space portions of the site. Thus, the Bay checkerspot butterfly is presumed absent from the site.

Due to the generally small, patchy nature of the Diablan sage scrub on-site, many of the animals occurring within this habitat type are species also associated with the adjacent biotic communities. Species likely to occur in the scrub with greater frequency than in the adjacent habitats include the California towhee, rufous-

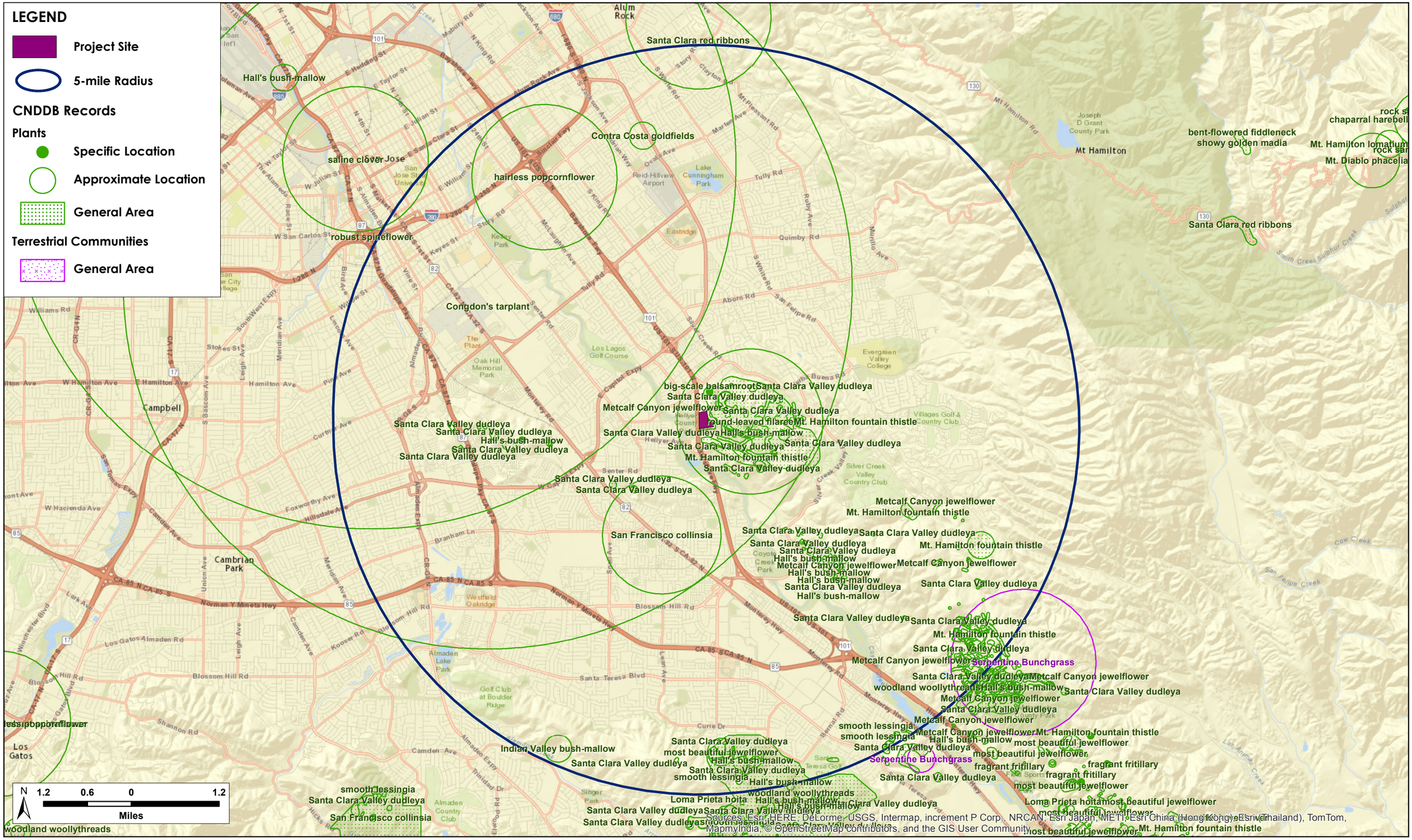
crowned sparrow (*Aimophila ruficeps*), California quail (*Callipepla californica*), brush rabbit (*Sylvilagus bachmani*), and gray fox (*Urocyon cinereoargenteus*). A focused survey for nests of the San Francisco dusky-footed woodrat conducted on 9 February 2009 in response to a request for information by the CDFW detected no nests or other evidence of this species.

Special-Status Species

Maps depicting records of special-status plant and animal species in the site vicinity, as mapped by the CNDDB (2015), appear in Figures 3 and 4, respectively. Most of the special-status plants known to occur in the project vicinity are associated with serpentine grasslands and outcrops. Very little serpentine habitat (approximately 100-200 ft2 or less) occurs within the project's development footprint, and because this serpentine habitat is located right at the edge of the developed and weedy portions of the site, it provides relatively low-quality habitat for serpentine-associated special-status plants. Nevertheless, potential project impacts to special-status plants are discussed below.

Special-status wildlife species known to occur in the project vicinity consist primarily of species associated with serpentine habitats (e.g., Bay checkerspot butterfly), grasslands (e.g., burrowing owl [*Athene cunicularia*]), and aquatic habitats (e.g., California tiger salamander [*Ambystoma californiense*] and California red-legged frog [*Rana draytonii*]). As discussed above, the Bay checkerspot butterfly is not expected to occur on the project site due to the lack of historical occurrences, the fact that the site represents a small patch of serpentine habitat surrounded on three sides by development, the lack of adequate topographic heterogeneity to support a population of this butterfly, and the absence of adult Bay checkerspots during an appropriately timed survey on 31 March 2015. No evidence of the San Francisco dusky-footed woodrat was observed on the site.

There is a low probability of occurrence of the burrowing owl, a California species of special concern, on the site due to the paucity of California ground squirrel burrows, and if this owl occurs on the site, it would not do so within the developed portion of the site where direct impacts will occur. Nevertheless, it is possible that burrowing owls could use the grassland within the area proposed as private open space for foraging, roosting, and possibly nesting. It is possible that a single pair of white-tailed kites, a state fully protected species, and loggerhead shrikes (*Lanius ludovicianus*), a California species of special concern, could nest in trees or tall shrubs on the site and forage in the site's grasslands. However, neither species was observed on the site during our site visits, and no evidence of kite nests from previous years was observed. Therefore, there is a low probability that these species nest on the site. Other grassland-associated special-status species, such as the grasshopper sparrow (*Ammodramus savannarum*) and Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), would not nest in such a small area of heavily grazed grassland surrounded by development, and would occur on the site only as occasional nonbreeding visitors, if at all. The site is also likely too small and too isolated from larger expanses of grassland to serve as suitable foraging habitat for the golden eagle (*Aquila chrysaetos*), a state fully protected species, or to support denning habitat for the American badger (*Taxidea taxus*), a California species of special concern.

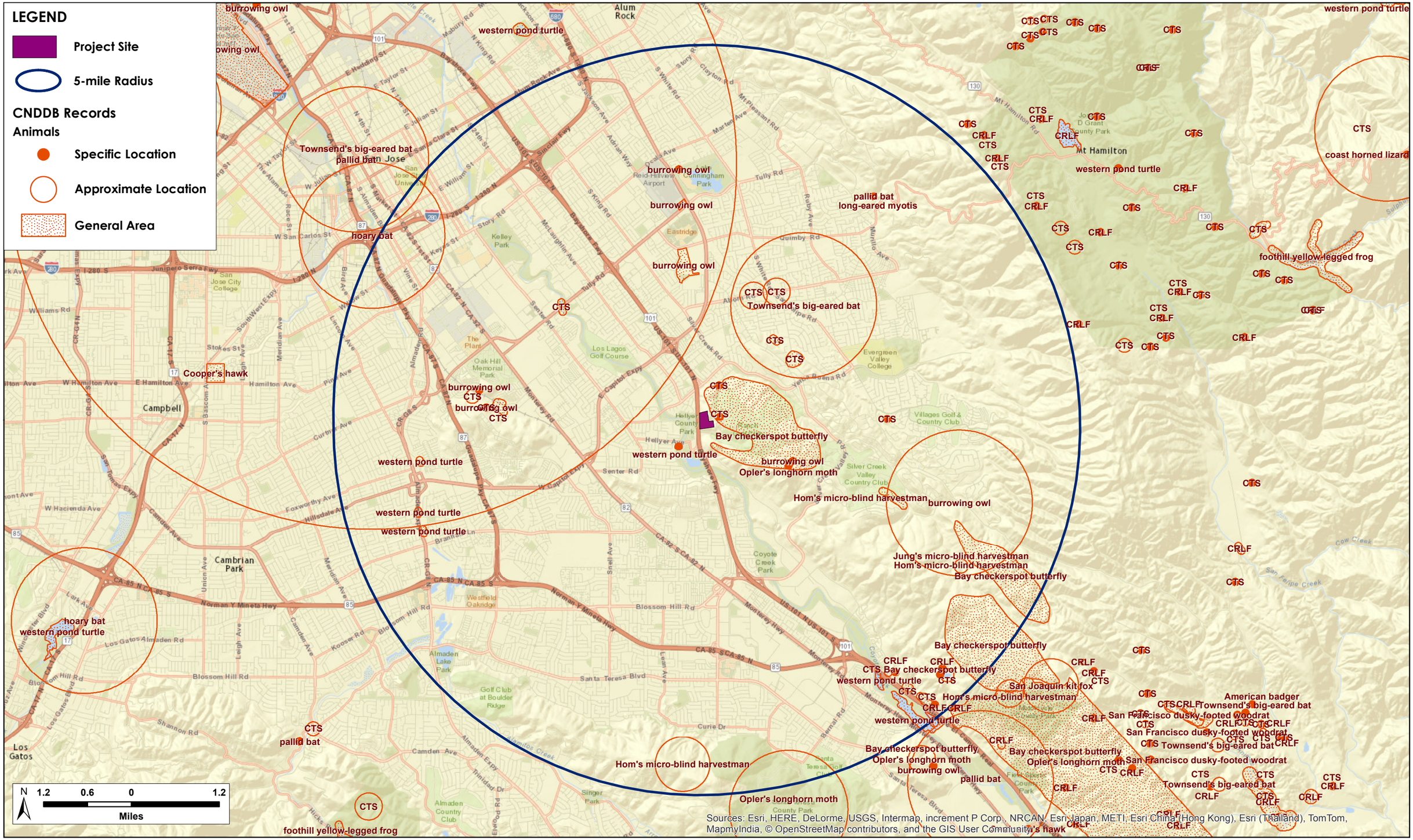


N:\Projects\2983-01\Reports\Dove Hill April 2015\Fig 3 CNDDB Map of Special status Plants.mxd

H.T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 3. CNDDB Map of Special-status Plants

4200 Dove Hill Road (2983-03)
April 2015



N:\Projects\2983-01\Reports\Dove Hill April 2015\Fig 4 CNDDB Map of Special status Animals.mxd

H.T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 4. CNDDB Map of Special-status Animals

4200 Dove Hill Road (2983-03)
April 2015

The VHP maps the site as providing potential non-breeding habitat for the California tiger salamander and potential dispersal habitat for the California red-legged frog. However, no waterbodies providing suitable breeding habitat for the California tiger salamander or California red-legged frog are present on or immediately adjacent to the site. Although the California tiger salamander previously bred in a pond north of the site, southeast of the Yerba Buena Road/U.S. 101 interchange, that pond was filled in the 1990s. A pond southeast of the intersection of Hassler Parkway and Dove Hill Road south of the project site was recently constructed as a stormwater management feature for the Ranch on Silver Creek project. The perennial conditions in this pond and in a pond just upstream likely support bullfrogs (*Rana catesbeiana*), and possibly fish, which would inhibit the establishment of a population of California tiger salamanders or California red-legged frogs. Furthermore, the developed area in which project construction will occur does not provide suitable habitat for these special-status amphibians. Therefore, the California tiger salamander and California red-legged frog are not expected to occur within the project's impact areas, and likely do not occur on-site at all.

Discussion of the Santa Clara Valley Habitat Plan

This project is covered under the VHP (ICF 2012). The VHP and associated documents have been approved and adopted by the six local partners (Cities of San Jose, Gilroy, and Morgan Hill, County of Santa Clara, Santa Clara Valley Transportation Authority, and Santa Clara Valley Water District). 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 2012). As it relates to biological resources and conservation, this plan is designed to "protect, enhance, and restore ecosystem integrity and functionality for threatened and endangered species; enhance the diversity of plant and animal communities; and conserve habitat and contribute to the recovery of species listed or likely to be listed under the federal ESA or the California ESA."

A number of plant and animal species are covered by the VHP. 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) will be considerably expedited, relative to previous, traditional approvals. Fees paid in accordance with the extent and nature of projects' impacts 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 pre-construction species surveys and seasonal restrictions on construction activities) to directly protect species.

The VHP included private development such as the Dove Hill Road Assisted Living project within the Planning Limits of Urban Growth in its list of covered activities and in its analysis of the effects of covered activities, and the project satisfies the criteria for private development subject to the VHP. Therefore, the VHP would provide the Federal Endangered Species Act, California Endangered Species Act, and Natural

Community Conservation Planning Act compliance pathway for the project for species under the jurisdiction of the USFWS and CDFW. All impacts on VHP-covered species which may be impacted by the proposed activities are discussed in the VHP and its EIR.

The project proponent will apply for VHP coverage for project activities and will pay impact fees for project activities. The project site is located within VHP fee zones for Land Cover A (Ranchlands and Natural Lands) and Serpentine Bunchgrass Grassland and in VHP survey areas for rare plants and wildlife (Bay Checkerspot Butterfly). The Santa Clara Valley Habitat Agency will use any fees paid to acquire, preserve, manage, and restore populations of covered species and sensitive habitats. These conservation measures are performed in accordance with the VHP, which in some cases prescribes that the Habitat Agency closely match the number of individuals and quality of habitat that is acquired, preserved, and managed with the resources that are impacted. As a result, the conservation program of the VHP compensates for the potential project impacts to covered species and habitats, using the impact fees paid by the project proponent.

The project proponent will also adhere to all applicable VHP conditions during project implementation, such as avoiding direct impacts on legally protected plant and wildlife species. Therefore, this project will incorporate the avoidance and minimization measures specified by all applicable VHP conditions. The applicable VHP conditions and Avoidance and Minimization Measures for urban development are listed in Section 6 and Tables 6-2 and 6-8 of the VHP.

Whether fees for effects on serpentine habitat will need to be paid, or whether protection and management of the on-site open space will be adequate to avoid the need for fees, will be up to the Santa Clara Valley Habitat Agency. The project may be eligible to provide onsite mitigation through participation in the VHP Reserve System and recording of a conservation easement that includes Santa Clara Valley dudleya plants.

Evaluation of Potential Impacts to Biological Resources

Construction and operation of the assisted living facility will result in direct impacts to biological resources within the footprint of the proposed development. The ruderal and developed habitats that currently exist in the project footprint will be destroyed during construction and will be replaced with developed and landscaped areas associated with the assisted living facility. Impacts to biological resources associated with the site will occur primarily to common, widespread habitats and plant and animal species since the vast majority of the project footprint is currently developed and highly disturbed. Some of the plants and animals displaced during construction will recolonize the landscaped areas around the new assisted living facility, further limiting biological impacts. In addition, the project has been designed to avoid the limited amount of more native-dominated serpentine grassland located at the periphery of the development footprint; potential impacts to special-status plants are discussed under "Special-status Plants" below.

For the purposes of our impact assessment, we have assumed that all grading and construction will occur within the development footprint depicted on Figure 2, and that no trails or other facilities will be located

within the open space area. The steep, rocky nature of the private open space area does not lend itself to frequent use by residents of the assisted living facility. As a result, it is our opinion that the project will not result in significant impacts to serpentine habitats and species within the private open space area. Nevertheless, potential impacts to the open space area are discussed under "Special-status Plants" below. We have also assumed that this project would be considered a "covered project" under the VHP, as described in greater detail below.

Special-status Plants

The serpentine grasslands on the site, which are located outside the proposed development footprint, have the potential to support several special-status plant species. The only special-status plant that was observed on the site during our surveys was Santa Clara Valley dudleya. Up to 150 dudleya plants occur in the private open space land on outcrops of serpentine rock. Each of the dudleya populations on site is located well outside of (more than 200 ft from) the proposed development footprint along the upper slopes of the open space area. Thus, none of these plants will be directly affected by the proposed project.

Our surveys of the project site found no individuals of the Mt. Hamilton thistle (*Cirsium fontinale var. campylon*), which should have been detectable if present. However, because our surveys were conducted outside of the period when other serpentine-associated plants, such as the Metcalf Canyon jewel-flower (*Streptanthus albidus ssp. albidus*), most beautiful jewel-flower (*Streptantus albidus ssp. peramoenus*), fragrant fritillary (*Fritillaria liliacea*), and smooth lessingia (*Lessengia micradenia var. glabrata*), are detectable, it is unknown whether these species occur on the site. Metcalf Canyon jewel-flower is a federally endangered, annual serpentine endemic plant species that prefers somewhat undisturbed California grassland habitat. Based on a review of CNDDB records, numerous populations of this plant occur within grassland habitat on the Ranch on Silver Creek residential development located east of the project site. The most beautiful jewel-flower, fragrant fritillary, and smooth lessingia are designated as California Native Plant Society List 1B plant species (i.e., plants rare, threatened and endangered in California and elsewhere). These three species are found in serpentine grassland habitat identical to that which supports the Metcalf Canyon jewel-flower.

The project has been designed to exclude all serpentine grassland (as identified during our survey, as opposed to that mapped more coarsely by the VHP) from the development footprint. The serpentine habitat located right outside the development footprint provides relatively low-quality habitat for serpentine-associated special-status plants due to disturbance and weeds from the existing developed areas. Thus, there is a low potential for any special-status plant species to occur very close to the development footprint. However, proposed project construction and landscaping associated with proposed gardens at the edges of the development footprint may have the potential to introduce invasive or weedy species to the surrounding open space areas.

The steep, rocky terrain that comprises most of the proposed private open space is not expected to be heavily impacted by residents of the assisted living facility, and thus indirect effects of human activities on special-

status plants in the open space are expected to be limited, if they occur at all. Because serpentine-associated special-status plants benefit from grazing, which reduces competition from non-native plants, removal of horses from the site may result in habitat degradation for special-status plants to some extent. However, in our experience, Santa Clara Valley dudleya (the only special-status plant species currently known to occur in the open space) can persist on rock outcrops even on slopes that are relatively heavily infested with non-native grasses, since the grasses do not typically invade the rock outcrops. Also, removal of grazing could be done at any time (with or without the project), and thus is not necessarily an impact of the proposed project. As a result, this project is not expected to have a significant impact on special-status plants that might occur in the open space area.

Nevertheless, it is our understanding that the project applicant has agreed to commit to the preservation of the open space, and to the development and implementation of a simple monitoring and management plan for the open space area. Fencing will separate the assisted living facility from the open space to prevent unauthorized human access to the open space area, and facility management staff will monitor for unauthorized use of the open space. The monitoring and management plan will include (a) periodic monitoring of the site (e.g., every few years) by a biologist to determine whether unauthorized entry and disturbance, overgrowth by non-native plants, or other stressors are degrading the suitability of the open space for serpentine plants, (b) management activities to address unauthorized human use (e.g., fence repair) or infestations of non-native plants (e.g., periodic grazing), and (c) best management practices for preventing the introduction of non-native species during construction or maintenance of landscaping. Preservation and management of the open space and prevention of additional non-native species introductions will more than compensate for any limited impacts of the project on any special-status plants that may occur within the development footprint. As a result, no further surveys for special-status plants, either within the development footprint or in the open space, should be necessary for the purposes of CEQA review or mitigation. The Santa Clara Valley Habitat Agency may require special-status plant surveys to satisfy the conditions of the VHP, but these are not necessary for us to conclude that impacts to special-status plants will be less than significant under CEQA.

Special-status Animals

White-tailed Kite and Loggerhead Shrike. Both the white-tailed kite and loggerhead shrike are predatory birds that nest in trees or tall shrubs and forage in open areas, such as grassland. Both species are known to be present in the Silver Creek hills, and suitable habitat for both species is present on the project site in the form of scattered trees and shrubs that could provide nesting sites and grassland providing foraging habitat. However, due to the territorial nature of these species, the relatively small size of the site, and the presence of development on three sides of the site, no more than one pair of each of these species could breed on the site. In our opinion, the loss of one pair of each species would not be considered a significant impact under CEQA given the extremely low proportion of the regional population that would be represented by a single pair. In addition, suitable nesting habitat will still be present after project construction, and the suitability of the grassland on the project site as foraging habitat for these species is not expected to change as a result of

the project. Therefore, in our opinion, impacts to these species will be less than significant, and no mitigation is necessary (but see Regulatory Overview for Nesting Birds below).

Burrowing Owl. The burrowing owl is a small, terrestrial owl of open country. These owls prefer annual and perennial grasslands, typically with sparse or nonexistent tree or shrub canopies. In California, Burrowing Owls are found in close association with California ground squirrels. No evidence of burrowing owls was observed on the site during reconnaissance-level surveys conducted for the project, and relatively few ground squirrel burrows were observed on the site. Given existing disturbance and the paucity of ground squirrel burrows within the development footprint, we do not expect burrowing owls or their burrows to be directly impacted during construction, or for the project to result in the loss of burrowing owl habitat, and impacts to this species are thus less than significant. Furthermore, the VHP does not include the project site within the area in which burrowing owl surveys or mitigation are required.

Roosting Bats. Several bat species, including non-special-status species such as the big brown bat, California myotis, and Mexican free-tailed bat, and possibly including the pallid bat, a California species of special concern, could potentially roost in buildings on the project site. If a building supporting a day roost were demolished, injury or mortality of bats within the roost would result. Demolition of a maternity roost (i.e., a roost containing females with young) could result in the loss of reproductive females and young. Loss of regionally important numbers of individuals, particularly of special-status species such as the pallid bat, would constitute a significant impact under CEQA.

We did not conduct any focused surveys for roosting bats, and thus we do not know whether there is any potential for large numbers of bats to roost on the site. Nevertheless, measures will be implemented to avoid and minimize impacts to roosting bats, and if a regionally important bat roost is to be impacted, measures to replace the lost roosting habitat would be warranted. Measures necessary to ensure that impacts to bat roosts are less than significant under CEQA are as follows:

Mitigation 1a. Surveys for and Compensation for Loss of a Bat Maternity Roost. A survey of existing buildings will be conducted by a qualified bat biologist to determine whether the site supports a maternity roost of any bat species. Ideally, the survey would be conducted during the breeding season (1 March-31 August). If the survey is conducted during the non-breeding season (i.e., 1 September – 28 February), and if no evidence of bat roosts is found, it can be concluded that no maternity roost is present. However, if the survey is conducted during the non-breeding season and evidence of a bat day roost is observed, then a follow-up survey during the breeding season (1 March-31 August) will be necessary to determine whether a maternity roost is present. If suitable roost sites are found but a visual survey is not adequate to determine presence or absence of bats (which would be particularly likely in the case of potential roost trees), acoustical equipment will be used to determine occupancy.

If a maternity roost will be impacted, and the roost supports either a special-status species or a regionally important proportion of the population of a non-special-status species (e.g., 2% or more, in the opinion of a

qualified bat biologist), an alternative bat roost structure will be provided. The design and placement of this structure will be determined by the bat biologist based on the species of bat to be displaced, the location of the original roost, and the habitat conditions in the vicinity. This bat structure will be erected at least one month prior to removal of the original roost structure. This structure will be checked during the breeding season for up the three years following completion of the project, or until it is found to be occupied by bats, to provide information for future projects regarding the effectiveness of such structures in minimizing impacts to bats

Mitigation 1b. Pre-demolition Surveys. A pre-demolition survey for roosting bats, following the methods described above, will be conducted within 15 days prior to the commencement of demolition activities in a given area to determine whether bats have occupied a roost in or near the project's impact areas, or whether they have abandoned a roost identified during the surveys described in Mitigation 2a above.

Mitigation 1c. Construction-free Buffer Zone if a Maternity Roost Is Present. If a maternity roost of any bat species is present, the bat biologist will determine the extent of a construction-free buffer around the active roost that will be maintained from 1 March until the young are flying, typically after 31 August.

Mitigation 1d. Eviction of Bats prior to Demolition. If a day roost is found in a building that is to be removed, individual bats will be safely evicted under the direction of a qualified bat biologist. Eviction of bats will occur at night, so that bats will have less potential for predation compared to daytime roost abandonment. Eviction will occur between 1 September and 31 March, outside the maternity season, but will not occur during long periods of inclement or cold weather (as determined by the bat biologist) when prey are not available or bats are in torpor. If a day roost is found within a building, eviction will occur by opening the roosting area to allow air flow through the cavity. Demolition should then follow no sooner than the following day (i.e., there should be no less than one night between initial disturbance for air flow and the demolition). This action should allow bats to leave during dark hours, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight. If feasible, one-way doors will also be used to evict bats from tree roosts. If use of a one-way door is not feasible, or the exact location of the roost entrance in a tree is not known, the trees with roosts that need to be removed should first be disturbed by removal of some of the trees' limbs not containing the bats. Such disturbance will occur at dusk to allow bats to escape during the dark hours. These trees would then be removed the following day. All of these activities will be performed under the supervision of the bat biologist.

Regulated and Sensitive Habitats

During our reconnaissance-level field survey, we looked for areas on or adjacent to the project site that may fall under the jurisdiction of the USACE regulatory definition of "Waters of the United States" (jurisdictional waters). The USACE's regulatory definition of jurisdictional waters includes all waters used, or potentially used, for interstate commerce, including all waters subject to the ebb and flow of the tide, all interstate waters, all other waters (intrastate lakes, rivers, streams, mudflats, sandflats, playa lakes, natural ponds, etc.), all

impoundments of waters otherwise defined as "Waters of the U. S." tributaries of waters other¬wise defined as "Waters of the U. S." the territorial seas, and wetlands adjacent to "Waters of the U.S." (33 CFR, Part 328, Section 328.3). Areas not considered to be jurisdictional waters include non-tidal drainage and irrigation ditches excavated on dry land, 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).

Results of the survey concluded that the 3.4-acre portion of the site within the proposed development footprint does not support potential regulated habitats that fall under the jurisdiction of the USACE. The seep/spring located within the proposed open space would not likely be considered Waters of the U.S. since it has no connection to other waterbodies, but regardless of its jurisdictional status, it will not be impacted by this project.

We also looked for streams and riparian habitats regulated by the CDFW under Section 1600 of the California Fish and Game Code. No such features are present on the project site.

High-quality serpentine grassland may be considered a sensitive habitat due to its potential to support special-status plant and animal species. The serpentine grassland in the proposed private open space has in many areas been degraded by over-grazing and in other areas by the abundance of non-native vegetation. Nevertheless, it does provide habitat for sensitive serpentine-associated species. This project will preserve this habitat in the private open space area, and impacts to serpentine habitats by the project will be less than significant under CEQA.

Regulatory Overview for Nesting Birds

Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA; 16 U.S.C., §703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. The trustee agency that addresses issues related to the MBTA is the USFWS. Migratory birds protected under this law include almost all native birds that could occur in the project site (Federal Register 70(2):372-377). This act encompasses whole birds, parts of birds, and bird nests and eggs. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment, a violation of the MBTA. The MBTA protects active nests from destruction and all nests of species protected by the MBTA, whether active or not, cannot be possessed. An active nest under the MBTA as described by the Department of the Interior in their Migratory Bird Permit Memorandum dated 15 April 2003 is one having eggs or young. Nest starts, prior to egg laying, are not protected from destruction.

California State Fish and Game Code

Migratory birds are also protected in and by the state of California. The State Fish and Game Code §3513 specifically emulates the MBTA and other sections and subsections of §3500-3516 provide additional protections for birds. Specifically, § 3503 protects birds' nests and eggs from all forms of needless take. All native birds are protected, although game birds may be taken with a hunting license. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "take" by the CDFW. In addition, §3511 lists species that are "fully protected" and cannot be taken or possssed at any time.

In addition, raptors (eagles, hawks, and owls) and their nests are specifically protected in California under Fish and Game 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." For all of these regulations, resource agencies typically consider "nests" to be active nests (nests with eggs or chicks). Destruction of inactive nests is generally not considered "take."

Project Applicability

Relatively few birds are expected to breed on the Dove Hill Road project site, and some of these species (e.g., house sparrow) are non-native, and are not protected under these laws. However, several species of birds that could nest on the site are protected under the MBTA and by State Fish and Game Code. Project activities have the potential to take nests, eggs, young or individuals of these protected species. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to the abandonment of nests. Although this impact is not significant under CEQA, in our opinion, due to the local and regional abundance of the species in question and the low magnitude of the potential impact, Condition 1 of the VHP requires that measures be implemented to avoid take of legally protected species. Therefore, the following measures should be implemented to reduce the risk of a violation of the MBTA and the California Fish and Game Code and ensure compliance with the VHP.

Compliance Measures

Measure 1. Avoid Construction during the Nesting Season. Demolition, grading, and other project activities should be scheduled to avoid the nesting season to the extent possible. The period of 1 February through 31 August encompasses the nesting season for most birds in the project area.

Measure 2. Pre-disturbance Surveys. If construction is to occur during the breeding season, preconstruction surveys should be conducted by a qualified ornithologist no more than 7 days prior to the initiation of construction in any given area. Pre-disturbance surveys should be used to ensure that no nests of species protected by the MBTA or State Code will be disturbed during project implementation.

Measure 3. Inhibiting Nesting. If vegetation or buildings are to be removed by the project and all necessary approvals have been obtained, potential nesting substrate (e.g., bushes, trees, grass, buildings, burrows) that will be removed by the project should be removed during the period September through January (outside the nesting season), to help preclude nesting.

Measure 4. Buffer Zones. If an active nest is found, a qualified ornithologist, in consultation with the CDFW, will determine the extent of a construction-free buffer zone to be established around the nest.

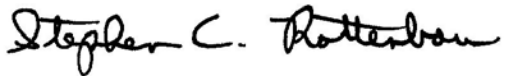
Summary

A total of approximately 100-150 federally listed Santa Clara Valley dudleya plants were observed within the private open space area on site, well outside of the proposed development footprint. None of these plants will be directly or indirectly affected by the proposed project, therefore no significant impacts will occur to this species and no mitigation measures for this species are warranted. The private open space area on site has the potential to support Metcalf Canyon jewel-flower, most beautiful jewel-flower, smooth lessingia, and fragrant fritillary; however, the project has been designed to avoid direct impacts to these plant species. The applicant will preserve, monitor, and manage the on-site open space area, thus more than compensating for any limited impacts to special-status plant species that may occur. No regulated habitats that fall within the jurisdiction of the USACE or CDFW occur within the project site.

The project may result in impacts to several sensitive and special-status animal species, potentially including the white-tailed kite, loggerhead shrike, and roosting bats. Measures to avoid and minimize these impacts, and impacts to protected migratory birds, are described.

Please feel free to contact me at srottenborn@harveyecology.com or (408) 458-3205 if you have any questions regarding our report. Thank you very much for contacting H. T. Harvey & Associates regarding this project.

Sincerely,



Stephen C. Rottenborn, Ph.D.
Principal – Wildlife Ecologist

Literature Cited

California Natural Diversity Data Base (CNDDB). 2015. Rarefind. California Department of Fish and Game.

H. T. Harvey & Associates. 1998. Habitat Conservation Plan for The Ranch on Silver Creek. Prepared for Salvatore Caruso Design Corporation, Santa Clara, CA.

ICF International. 2012. Final Santa Clara Valley Habitat Plan. Prepared for The Cities of Gilroy, Morgan Hill, and San Jose, the County of Santa Clara, the Santa Clara Valley Transportation Authority, and the Santa Clara Valley Water District.

Natural Resources Conservation Service. 2010. Soil Survey Geographic (SSURGO) database for Santa Clara Area, California, Western Part. U. S. Department of Agriculture.