APPENDIX A

Biological Constraints Analysis

LIVE OAK ASSOCIATES, INC.
an Ecological Consulting Firm

November 15, 2019

Justin Hu
SummerHill Homes
777 S. California Avenue
Palo Alto, CA 94304

Subject: Biological constraints analysis for the 790 Portswood Drive site in the City of San Jose, Santa Clara County, California (PN 2416-01)

Dear Mr. Hu:

At your request, Live Oak Associates, Inc. (LOA), completed an analysis of potential biological constraints for the approximately 8-acre linear site located at 790 Portswood Drive in the City of San Jose, Santa Clara County, California. The site currently consists of a PG&E utility corridor. It is our understanding that the site is being considered for redevelopment with residences.

LOA ecologists Robert Shields and Davinna Ohlson conducted a site survey on October 22, 2019. The primary objectives of this survey and report are to 1) identify habitats onsite, 2) discuss the suitability of the site to support habitat for special-status plant or animal species, 3) identify and discuss biological resource issues specific to the site that could constrain future development, and 4) identify potential avoidance and mitigation options that could significantly reduce the magnitude of any likely impacts to biological resources associated with future site development.

Sources of information used in the preparation of this analysis include, but are not limited to, the *California Natural Diversity Data Base* (CDFW 2019), special status species lists prepared by the California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS), and manuals and references related to plants and animals found in and around Santa Clara County.

EXISTING CONDITIONS

Regional Setting

The site is located at 790 Portswood Drive in the City of San Jose, Santa Clara County, California (Figure 1). The project site is located in the Santa Teresa Hills 7.5" U.S. Geological Survey (USGS) quadrangle in sections 26 and 35 of township 8 south, range 1 east of the Mt. Diablo meridian.

The site is narrow and linear, spanning several roads, including Portswood Drive, Ranch Drive, Hampswood Way, and Almaden Expressway. Topographically, the site is relatively flat.

Soils

Three soil types occur on-site: Urban land-Flaskan complex, 0 to 2 percent slopes; Urban land-Elpaloalto complex, 0 to 2 percent slopes; and Urban Land-Togasara-Montavista complex, 2 to 9 percent slopes (NRCS 2019; Figure 2). The Flaskan, Elpaloalto, and Montavista series both consist of very deep, well drained soils that formed in alluvium from mixed rock sources. It is non-hydric. The Togasara series consists of very deep, well drained soils that formed in old alluvium from mixed rock sources. (i.e., the soils of the site are neither serpentine nor alkaline).

Of the soil types occurring on the site, only Elpaloalto complex, 0 to 2 percent slopes is considered hydric. None of the soil types are known to support edaphic special status plant species (i.e., the soils of the site are neither serpentine nor alkaline).

Habitats

One habitat and one land use were identified on the site. For the purposes of this report, the habitat was identified as "ruderal grassland," and the land use was identified as "developed." These are described below.

Developed. The approximate center of the site consists of an asphalt parking lot and a few associated electrical towers. There are no trees on the parking lot, but a number of trees occur immediately offsite along all boundaries, including coast live oak (*Quercus agrifolia*), valley oak (*Quercus lobata*), privet (*Ligustrum* sp.), olive (*Olea europaea*), coast redwood (*Sequoia sempervirens*), red iron bark (*Eucalyptus sideroxylon*), and bottlebrush (*Callistemon* sp.). The panhandle south of the asphalt parking lot also had an asphalt base but supported a few trees, including coast live oak, coast redwood, privet, olive, and red iron bark.

Ruderal grassland. Areas north of Portswood Drive consist of ruderal habitat and ruderal grassland. These areas consist of ruderal undeveloped space, a compacted dirt road, and several tall electrical towers. Trees observed in this habitat include coast live oak, valley oak, privet, olive, almond (*Prunus dulcis*), elderberry (*Sambucus nigra* ssp. *caerulea*), bottlebrush, and Chinese pistache (*Pistacia chinensis*). Grasses, forbs, and shrubs observed in this habitat include wild oats (*Avena* sp.), summer mustard (*Hirschfeldia incana*), common sowthistle (*Sonchus oleraceus*), coyote brush (*Baccharis pilularis*), and panicled willowherb (*Epilobium brachycarpum*).

Animals observed on the site include the coast range fence lizard (*Sceloporus occidentalis bocourtii*), turkey vulture (*Cathartes aura*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), acorn woodpecker (*Melanerpes formicivorus*), northern flicker (*Colaptes auratus*), Nuttall's woodpecker (*Picoides nuttallii*), California scrub-jay (*Aphelocoma californica*), American crow (*Corvus brachyrhynchos*), bushtit (*Psaltriparus minimus*), chestnut-backed chickadee (*Poecile rufescens*), oak titmouse (*Baeolophus inornatus*), American robin (*Turdus migratorius*), northern mockingbird (*Mimus polyglottos*), dark-eyed junco (*Junco hyemalis*), and lesser goldfinch (*Spinus psaltria*). Other bird species are likely to occur and nest onsite, and typical urban mammals such as raccoon (*Procyon lotor*), opossum (*Didelphis virginiana*), and feral and domestic cats (*Felis catus*) and dogs (*Canis lupus familiaris*) are also expected to occur onsite.

Special Status Species

A search of published accounts for all relevant special status plant and animal species was conducted for the Santa Teresa Hills USGS 7.5" quadrangle in which the project site occurs and for the eight surrounding quadrangles (San Jose West, San Jose East, Lick Observatory, Morgan Hill, Mount Madonna, Loma Prieta, Laurel and Los Gatos) using the California Natural Diversity Data Base (CNDDB) Rarefind (CDFW 2019). A number of special status plants and animals occur in the vicinity of the study area (Figures 3 and 4). These species, and their potential to occur in the study area, are summarized in Appendix A. Species that may pose constraints to the proposed project are included in the discussion below.

Jurisdictional Waters

Jurisdictional waters include rivers, creeks, and drainages that have a defined bed and bank and that, at the very least, carry ephemeral flows. Jurisdictional waters also include lakes, ponds, reservoirs, and wetlands. Such waters may be subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), and the California Regional Water Quality Control Board (RWQCB).

No areas meeting the regulatory definition of jurisdictional waters, including wetlands, were identified on the site.

BIOLOGICAL CONSTRAINTS

Special Status Plants

The site consists of ruderal and developed areas; as such, the site does not support habitat suitable for special status plant species (see Table 1, Appendix A). Therefore, impacts to habitat for special status plants would not constrain site development.

Special Status Wildlife

Most special status animal species known to occur in the region would not constrain future site construction because habitats on the site are not suitable for them or the site is located outside of the species' known range. For a more detailed treatment of individual special status wildlife species that occur regionally, refer to Appendix A.

Special status or migratory birds may nest in trees and shrubs on the site (see section below). Development of the site would result in a slight decrease in foraging or breeding habitat for these species regionally. Therefore, impacts to habitat would not be regionally significant and would not constrain construction activities.

Nesting Raptors and Migratory Birds

Trees and shrubs occurring on and adjacent to the site could be used by tree-nesting raptors and other migratory birds for breeding (Appendix A, Table 2). All nesting raptors and migratory birds, regardless of their status, are protected by state and federal laws. Therefore, project-related activities that adversely affect the nesting success of raptors and migratory birds (i.e., lead to the abandonment of active nests) or result in mortality of individual birds constitute a violation of state and federal laws. Project-related activities that occur during the breeding season could be constrained in the vicinity of any active nests. If tree removal or ground disturbance activities are scheduled to commence during the breeding season (February 1 through August 31), pre-

construction nesting bird surveys should be conducted by a qualified biologist in order to identify possible nesting activity. A construction-free buffer of suitable dimensions must be established around any active raptor and migratory bird nests (up to 250 feet, depending on the location and species) for the duration of the project or until it has been determined that the chicks have fledged and are independent of their parents.

Bats

Bats are likely to forage at night on and around the project site. Special-status bats are not expected to roost on the site. However, the site has larger trees with cavities that could potentially be used as bat roosts by common, locally occurring bat species.

A pre-construction survey for roosting bats is recommended. If a non-breeding and non-wintering bat colony is found, the individuals should be humanely evicted via the partial dismantlement (two-step removal) of the trees prior to removal under the direction of a qualified biologist to ensure that no harm or take would occur to any bats as a result of removal activities. If a maternity colony or overwintering colony is detected in the trees of the site, then a construction-free buffer should be established around the tree(s) and remain in place until it has been determined that the nursery is no longer active.

Trees

It is likely that one or more trees will require removal in order to accommodate future buildout of the project site. Tree removal and preservation should occur pursuant to the City of San Jose's tree ordinance, summarized in Appendix B. If a tree removal permit is required, replacement of removed trees will be required as part of permit conditions.

Santa Clara Valley Habitat Plan

The project occurs within Santa Clara Valley Habitat Plan's plan area. Therefore, the project is subject to the conditions and fees of the SCVHP.

Funding sources for the SCVHP include development fees based on land cover types (natural, agricultural or small vacant sites surrounded by urban development). Additional fees are charged based on the occurrence of certain sensitive habitat types such as serpentine and wetlands. For this project, the Land Cover is identified by the Plan as "Urban-Suburban" and is therefore exempt from development fees, with the exception of the nitrogen deposition fee and burrowing owl fee, if it is not located in or adjacent to a parcel that contains a stream, riparian woodland or forest, wetland, pond, or serpentine habitat. As the project is not on or adjacent to a parcel which contains a stream, riparian woodland or forest, wetland, pond, or serpentine, only the nitrogen fee is expected to be assessed for this project.

CONCLUSION

In summary, future development of the site could be constrained by the presence of nesting raptors, migratory birds, and roosting bats. Focused preconstruction surveys and assessments should be completed to determine the extent to which these species could constrain the project design or timing of construction. Reasonable measures could be taken that would avoid impacts to these species or habitats, if they are determined to be present on the site, or lessen them to a less-than-significant level.

A permit from the City may also be required for the removal of existing trees. Santa Clara Valley Habitat Plan fees are also likely to be assessed for this project.

If you have any questions regarding our conclusions, please contact me at rshields@loainc.com or (408) 281-5887 at your earliest convenience.

Sincerely,

Robert Shields
Staff Ecologist

References

California Department of Fish and Wildlife (CDFW). 2018a. State and federally listed endangered, threatened, and rare plants of California. Natural Resources Agency, Sacramento, CA.

_____. 2018b. State and federally listed endangered and threatened animals of California. Natural Resources Agency, Sacramento, CA.

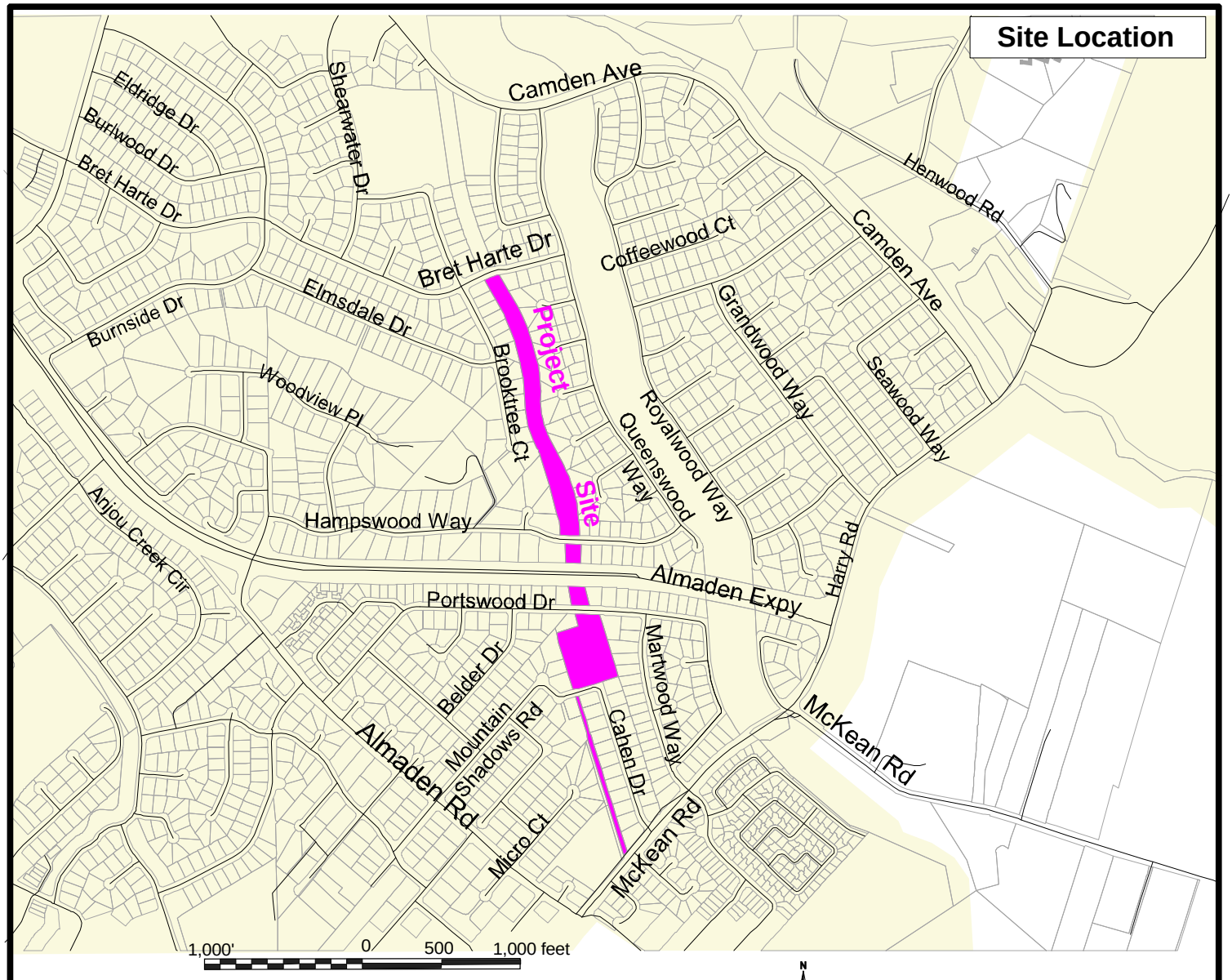
_____. 2019. California natural diversity database. The Resources Agency, Sacramento, CA.

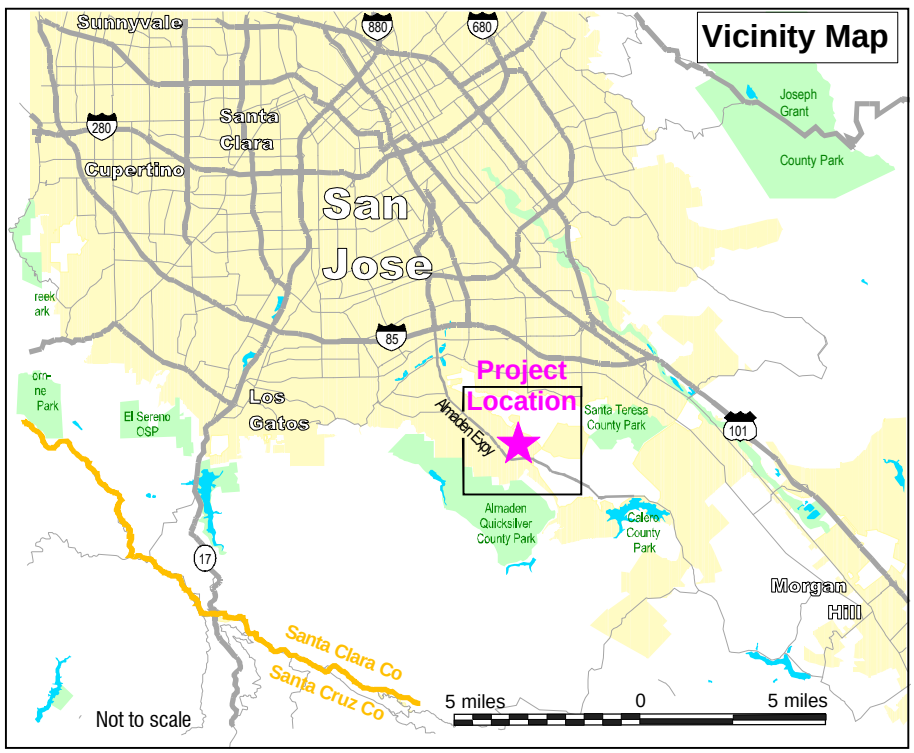
California Native Plant Society (CNPS). 2019. Inventory of Rare and Endangered Vascular Plants. Available online at: http://cnps.site.aplus.net/cgi-bin/inv/inventory.cgi. Accessed February 2019.

ICF International. 2012. Santa Clara Valley Habitat Plan. California.

Natural Resource Conservation Service. 2019. Web Soil Survey, USDA. http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx.

U. S. Fish and Wildlife Service. 2018. Endangered and threatened wildlife and plants.





Live Oak Associates, Inc.

Portswood Drive
Site / Vicinity Map

Date	Project #	Figure #
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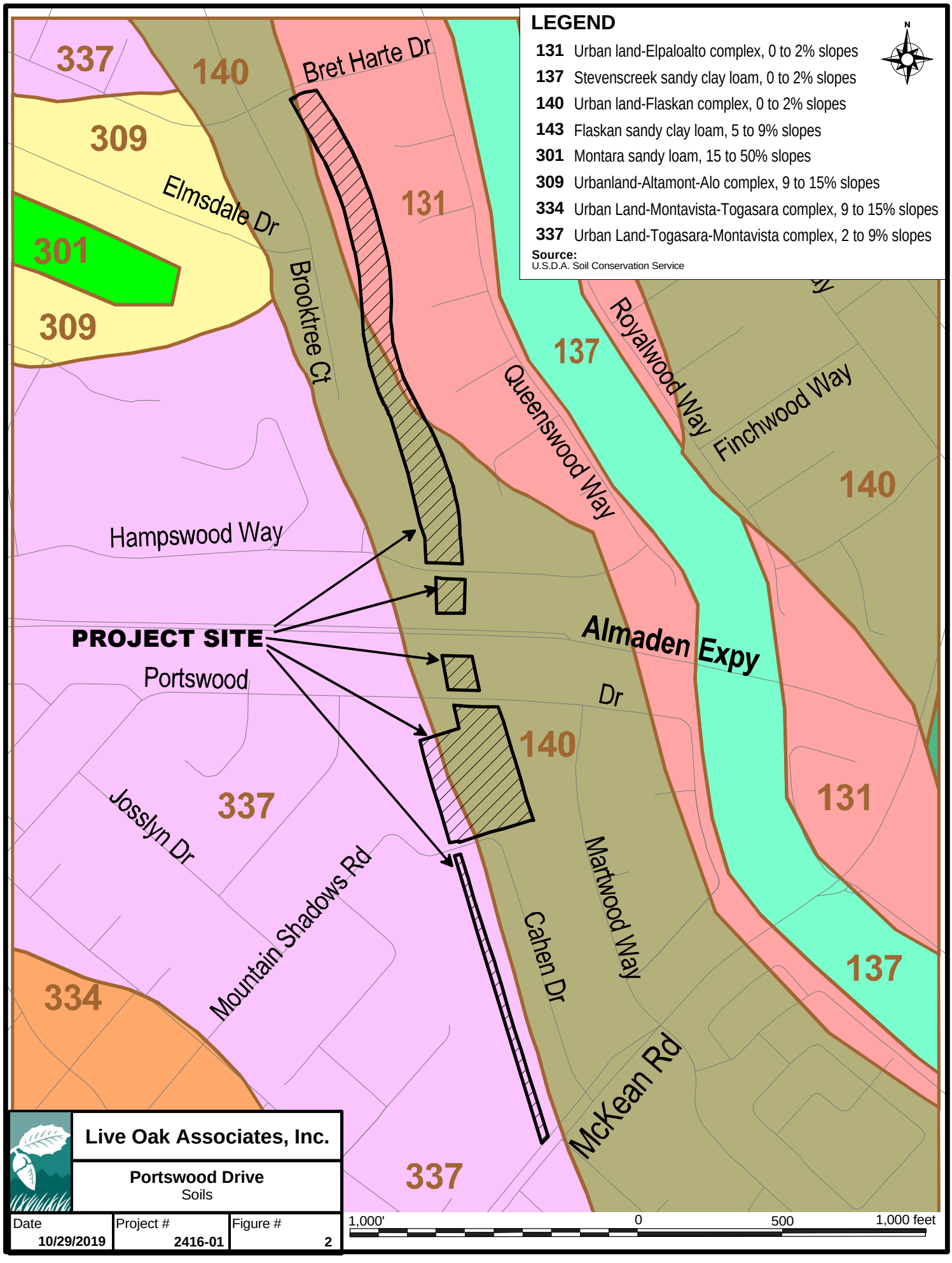
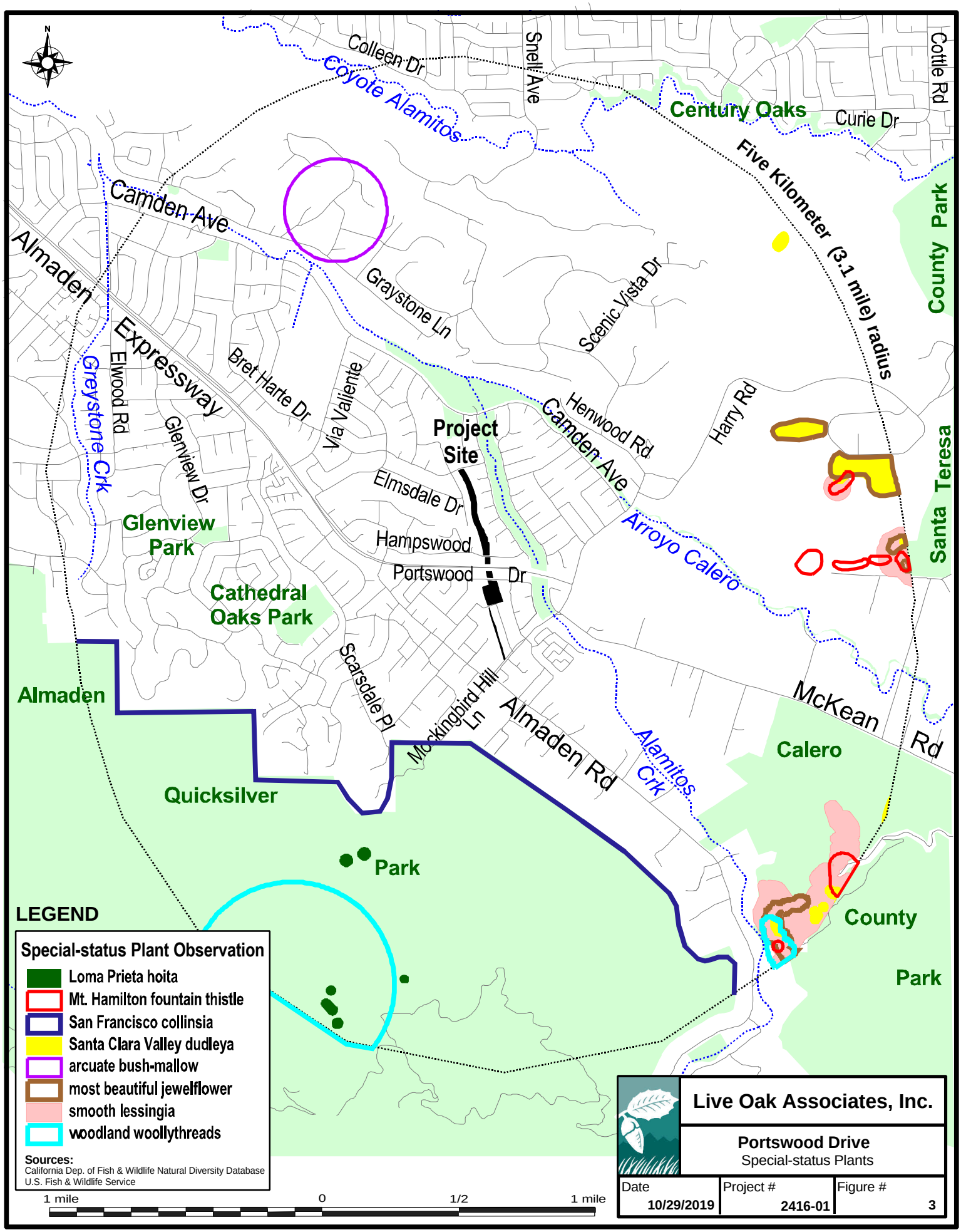


Live Oak Associates, Inc.

Portswood Drive
Soils

Date	Project #	Figure #
10/29/2019	2416-01	2


Colleen Dr
Snell Ave
Cottle Rd
Coyote Alamitos
Century Oaks
Curie Dr
Five Kilometer (3.1 mile) radius
County Park
Camden Ave
Almaden
Expressway
Graystone Ln
Scenic Vista Dr
Elwood Rd
Greystone Crk
Bret Harte Dr
Via Valliente
Glenview Dr
Project Site
Henwood Rd
Harry Rd
Camden Ave
Santa Teresa
Elmsdale Dr
Hampswood
Portswood Dr
Arroyo Calero
Glenview Park
Cathedral Oaks Park
Scarsdale Pl
Mockingbird Hill Ln
Almaden Rd
McKean Rd
Almaden
Alamitos Crk
Calero
Quicksilver
Park
County Park
LEGEND
Special-status Plant Observation
Loma Prieta hoita
Mt. Hamilton fountain thistle
San Francisco collinsia
Santa Clara Valley dudleya
arcuate bush-mallow
most beautiful jewelflower
smooth lessingia
woodland woollythreads
Sources:
California Dep. of Fish & Wildlife Natural Diversity Database
U.S. Fish & Wildlife Service
1 mile
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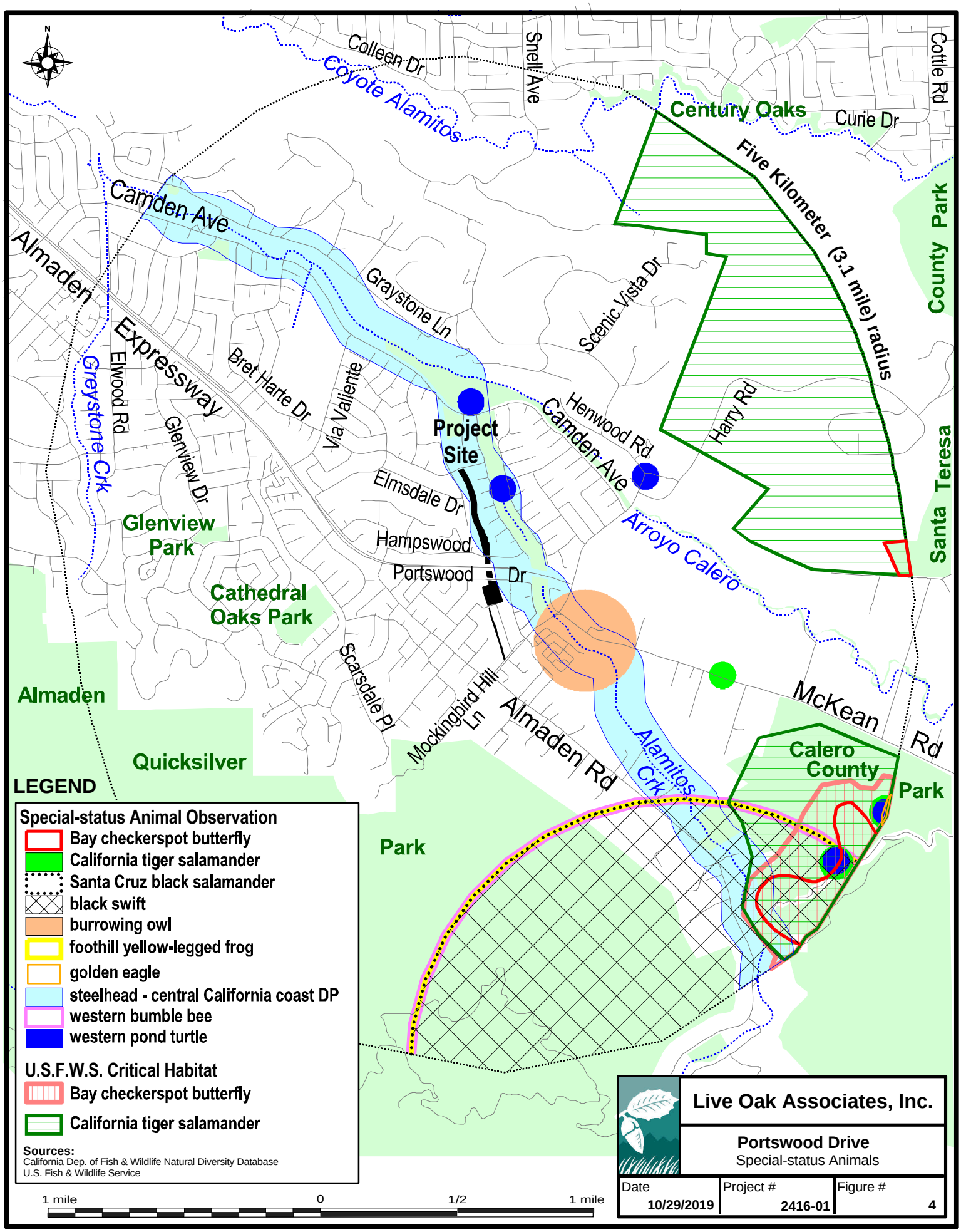
Live Oak Associates, Inc.
Portswood Drive
Special-status Plants
Date
10/29/2019
Project #
2416-01
Figure #
3


Colleen Dr
Snell Ave
Cottle Rd
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Five Kilometer (3.1 mile) radius
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Elwood Rd
Greystone Crk
Bret Harte Dr
Via Valliente
Glenview Dr
Project Site
Henwood Rd
Harry Rd
Elmsdale Dr
Hampswood
Portswood Dr
Arroyo Calero
Glenview Park
Cathedral Oaks Park
Scarsdale Pl
Mockingbird Hill Ln
Almaden Rd
McKean Rd
Alamitos Crk
Calero County Park
Almaden
Quicksilver
Park
LEGEND
Special-status Animal Observation
Bay checkerspot butterfly
California tiger salamander
Santa Cruz black salamander
black swift
burrowing owl
foothill yellow-legged frog
golden eagle
steelhead - central California coast DP
western bumble bee
western pond turtle
U.S.F.W.S. Critical Habitat
Bay checkerspot butterfly
California tiger salamander
Sources:
California Dep. of Fish & Wildlife Natural Diversity Database
U.S. Fish & Wildlife Service
1 mile
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1 mile
Live Oak Associates, Inc.
Portswood Drive
Special-status Animals
Date 10/29/2019
Project # 2416-01
Figure # 4

APPENDIX A:
SPECIAL STATUS SPECIES

A search of published accounts for all relevant special status plant and animal species was conducted for the Santa Teresa USGS 7.5" quadrangles in which the project site occurs and for the eight surrounding quadrangles (San Jose West, San Jose East, Lick Observatory, Morgan Hill, Mount Madonna, Loma Prieta, Laurel and Los Gatos) using the California Natural Diversity Data Base (CNDDB) Rarefind (CDFW 2019). These species and their potential to occur in the study area are summarized in Table 1 below.

Because serpentine and alkaline soils are absent from the site, those species that are uniquely adapted to serpentine or alkaline conditions are considered absent from the site. These species include the Santa Clara thorn-mint (*Acantha mintea)*), Oakland star-tulip (*Calochortus umbellatus*), South Coast Range morning glory (*Calystegia collina*), Tiburon paintbrush (*Castilleja affinis* var. *neglecta*), pink creamsacs (*Castilleja rubicundula* var. *rubicundula*), coyote ceanothus (*Ceanothus ferrisiae*), dwarf soaproot (*Chlorogalum pomeridianum* var. *minus*), Mt. Hamilton thistle (*Cirsium fontinale* var. *campylon*), Brewer's clarkia (*Clarkia breweri*), clustered lady's-slipper (*Cypripedium fasciculatum*), Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), phlox-leaf serpentine bedstraw (*Galium andrewsii*), Loma Prieta hoita (*Hoita strobilina*), woolly-headed lessingia (*Lessingia hololeuca*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), woodland woolythreads (*Monolopia gracilens*), Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*), and saline clover (*Trifolium hydrophilum*).

Other plant species occur in habitats not present in the study area (e.g., brackish and freshwater marshes, coastal scrub, etc.) or are outside the elevation range of the site and, therefore, are also considered absent from the site. These include Anderson's manzanita (*Arctostaphylos andersonii*), Bonny Doon manzanita (*Arctostaphylos silvicola*), Brewer's calandrinia (*Calandrinia breweri*), Santa Cruz Mountains pussypaws (*Calyptridium parryi* var. *hesseae*), chaparral harebell (*Campanula exigua*), deceiving sedge (*Carex saliniformis*), Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Santa Clara red ribbons (*Clarkia concinna* ssp. a*utomixa*), Lewis' clarkia (*Clarkia lewisii*), San Francisco collinsia (*Collinsia multicolor*), mountain lady's-slipper (*Cypripedium montanum*), California bottle-brush grass (*Elymus californicus*), Ben Lomond buckwheat (*Eriogonum nudum* var. *decurrens*), Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*), Santa Cruz wallflower (*Erysimum teretifolium*), minute pocket moss (*Fissidens pauperculus*), Kellogg's horkelia (*Horkelia cuneata* var. *sericea*), coast iris (*Iris longipetala*), Mt. Hamilton coreopsis (*Leptosyne hamiltonii*), Mt. Hamilton lomatium (*Lomatium observatorium*), arcuate bush-mallow (*Malacothamnus arcuatus*), Hall's bush-mallow (*Malacothamnus hallii*), northern curly-leaved monardella (*Monardella sinuata* ssp. *nigrescens*), Santa Cruz Mountains beardtongue (*Penstemon rattanii* var. *kleei*), Mt. Diablo phacelia (*Phacelia phacelioides*), Choris'popcornflower (*Plagiobothrys chorisianus* var. *chorisianus*), Hickman's popcornflower (*Plagiobothrys chorisianus* var. *hickmanii*), hairless popcornflower (*Plagiobothrys glaber*), chaparral ragwort (*Senecio aphanactis*), maple-leaved checkerbloom (*Sidalcea malachroides*), and Santa Cruz clover (*Trifolium buckwestiorum*).

Animals with a range that occurs outside of the site or in habitats not present on the site (e.g., redwoods, riparian, marshes, coastal scrub, etc.) are considered absent from the site. These include Coho salmon (*Oncorhynchus kisutch*) and steelhead (*Oncorhynchus mykiss irideus*).

Plant and animal species that may more reasonably occur onsite are included in Tables 1 and 2 below.

Table 1. Special status species that could occur in the project vicinity.

PLANTS (adapted from CDFW 2018a, c and CNPS 2019)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Acts

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Monterey spineflower *Chorizanthe pungens* var. *pungens*	FT, CRPR 1B	Habitat: Maritime chaparral, cismontane woodland, coastal dunes, coastal scrub, and valley and foothill grassland. Occurs in sandy soils. Elevation: 3-450 meters. Blooms: April–June. Life form: Annual herb.	**Absent.** Grassland habitat on the site is ruderal and highly disturbed as a result of the surrounding development. The nearest documented occurrences of this species are more than ten miles south of the site.
Scotts Valley spineflower *Chorizanthe robusta* var. *hartwegii*	FE, CRPR 1B	Habitat: Meadows and seeps and valley and foothill grasslands. Occurs on mudstone and sandstone outcrops. Elevation: 105-245 meters. Blooms: April–July. Life form: Annual herb.	**Absent.** Grassland habitat on the site is ruderal and highly disturbed as a result of the surrounding development, and outcrops are absent from the site. Occurrences of this species are localized to the Scotts Valley area more than ten miles southwest of the site.
Santa Cruz tarplant *Holocarpha macradenia*	FT, CE	Habitat: Coastal prairie, coastal scrub, and valley and foothill grasslands. Often occurs in clay, sandy soils. Elevation: 10-220 meters. Blooms: June–October. Life form: Annual herb.	**Absent.** Grassland habitat on the site is ruderal and highly disturbed as a result of the surrounding development. Occurrences of this species are localized to the Santa Cruz area more than twelve miles southwest of the site.
Contra Costa goldfields *Lasthenia conjugens*	FE, CRPR 1B	Habitat: Cismontane woodlands, alkaline playas, valley and foothill grasslands, and vernal pools. Occurs in mesic soils. Elevation: 0-470 meters. Blooms: March–June. Life form: Annual herb.	**Absent.** Alkaline soils and mesic habitats are absent from the site. The nearest documented occurrences of this species are more than seven miles north of the site.
White-rayed pentachaeta *Pentachaeta bellidiflora*	FE, CE, CRPR 1B	Habitat: Cismontane woodland and valley and foothill grasslands, often on serpentinite. Elevation: 35-620 meters. Blooms: March–May. Life form: Annual herb.	**Absent.** Serpentine soils are absent from the site, and grassland habitat on the site is ruderal and highly disturbed as a result of the surrounding development. The nearest documented occurrence of this species is from 1933 more than twelve miles south of the site.

Table 1. Special status species that could occur in the project vicinity.

PLANTS (adapted from CDFW 2018a, c and CNPS 2019)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Acts

Common and scientific names	Status	General habitat description	*Occurrence in the study area
San Francisco popcornflower *Plagiobothrys diffusus*	CE, CRPR 1B	Habitat: Coastal prairie and valley and foothill grasslands. Historically found on grassy slopes with marine influence. Elevation: 60-360 meters. Blooms: March–June. Life form: Annual herb.	**Absent.** Grassland habitat on the site is ruderal and highly disturbed as a result of the surrounding development. The nearest documented occurrences of this species are more than twelve miles south of the site.
Scotts Valley polygonum *Polygonum hickmanii*	FE, CE, CRPR 1B	Habitat: Valley and foothill grassland on mudstone and sandstone. Elevation: 210-250 meters. Blooms: May–August. Life form: Annual herb.	**Absent.** Mudstone and sandstone are absent from the site. Grassland habitat on the site is ruderal and highly disturbed as a result of the surrounding development. The nearest documented occurrences of this species are more than twelve miles south of the site.
Rock sanicle *Sanicula saxatilis*	CR, CRPR 1B	Habitat: Bedrock outcrops and talus slopes in chaparral, oak woodlands, and valley and foothill grasslands. Elevation: 620-1175 meters. Blooms: April–May. Life form: Annual herb.	**Absent.** The site occurs at an elevation well below the known range for this species, and the site lacks suitable habitat (i.e., rock outcrops and talus slopes) for this species. The nearest documented occurrences of this species are more than four miles southwest of the site.
Pacific Grove clover *Trifolium polyodon*	CR, CRPR 1B	Habitat: Closed-cone coniferous forest, meadows and seeps, coastal prairie, valley and foothill grassland. Found along small springs and seeps in grassy openings Elevation: 5-425 meters. Blooms: April–June. Life form: Annual herb.	**Absent.** Mesic areas are absent from the site. Grassland habitat on the site is ruderal and highly disturbed as a result of the surrounding development. The nearest documented occurrence of this species is more than ten miles south of the site.

Table 1. Special status species that could occur in the project vicinity.

PLANTS (adapted from CDFW 2018a and CNPS 2019)
Other special status plants listed by the CDFW and CNPS

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Bent-flowered fiddleneck *Amsinckia lunaris*	CRPR 1B	Habitat: Coastal bluff scrub, cismontane woodland, and valley and foothill grasslands. Elevation: 3-795 meters. Blooms: March–June. Life form: Annual herb.	**Unlikely.** Grassland habitat on the site is ruderal and highly disturbed due to development of surrounding areas. The nearest documented occurrence of this species is more than three miles west of the site.

Table 1. Special status species that could occur in the project vicinity.

PLANTS (adapted from CDFW 2018a and CNPS 2019)
Other special status plants listed by the CDFW and CNPS

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Big-scale balsamroot *Balsamorhiza macrolepis*	CRPR 1B	Habitat: Chaparral, cismontane woodland, and valley and foothill grassland. Can occur in serpentine soils. Elevation: 45-1555 meters. Blooms: March–June. Life form: Perennial herb.	**Absent.** Serpentine soils are absent from the site. Grassland habitat on the site is ruderal and highly disturbed from surrounding development. The nearest documented occurrence of this species is more than five miles north of the site.
Bristly sedge *Carex comosa*	CRPR 2B	Habitat: Mesic areas of coastal prairie, lake margins, and valley and foothill grassland. Elevation: 0-625 meters. Blooms: May–September. Life form: Perennial rhizomatous herb.	**Absent.** Wetlands and mesic areas are absent from the site.
Congdon's tarplant *Centromadia parryi* ssp.*congdonii*	CRPR 1B	Habitat: Valley and foothill grassland on alkaline soils. Elevation: 0-230 meters. Blooms: May–October. Life form: Annual herb.	**Absent.** Alkaline soils are absent from the site. Furthermore, this species was not observed on the site during the October survey.
Fragrant fritillary *Fritillaria liliacea*	CRPR 1B	Habitat: Cismontane woodland, coastal prairie, coastal scrub, and valley and foothill grasslands. Often occurs on serpentinite. Elevation: 3-410 meters. Blooms: February–April. Life form: Perennial bulbiferous herb.	**Absent.** Grassland habitats of the site are ruderal in nature and provide very poor habitat for this species. The site does not support serpentine soils.
Lobb's aquatic buttercup *Ranunculus lobbii*	CRPR 4	Habitat: Cismontane woodland, North Coast coniferous forest, valley and foothill grassland, and vernal pools. Occurs in mesic areas. Elevation: 15-470 meters. Blooms: February –May. Life form: Annual herb.	**Absent.** Mesic habitats are absent from the site.

Table 2: Special status species that could occur in the project vicinity.

ANIMALS (adapted from CDFW 2018b and USFWS 2018)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Acts

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Crotch bumble bee *Bombus crotchii*	CCE	In California, inhabits open grassland and scrub habitats of the southern 2/3 of California. Historically in, but largely extirpated from the Central Valley. Flight period for queens is late February to late October peaking in April and July; flight period for males and workers is March through September peaking in early July. Constructs nests underground in animal burrows. Overwintering sites are likely in soft soils or in debris or leaf litter.	**Absent.** Suitable habitat is absent from the site and its immediate vicinity.
Western bumble bee *Bombus occidentalis*	CCE	In California, mainly occurring within the coastal and Sierra Nevada ranges within meadows and grasslands and some natural areas within urban environments. Indication of recent population potentially being restricted to high elevation and coastal areas. Historically occurred from the Channel Islands to the northern California border. Flight period is February to late November, peaking in late June and late September. Tends to construct nest underground in animal burrows on west and south-west facing slopes. Overwintering sites are likely in friable soils or in debris or leaf litter.	**Absent.** Suitable habitat is absent from the site and its immediate vicinity.
Bay Checkerspot Butterfly *Euphydryas editha bayensis*	FT	Occurs in serpentine grasslands with the larval host plant *Plantago erecta*, and/or a secondary host plant of *Castilleja densiflora* or *Castilleja exserta*.	**Absent.** Suitable habitat is absent from the site and its immediate vicinity.

Table 2: Special status species that could occur in the project vicinity.

ANIMALS (adapted from CDFW 2018b and USFWS 2018)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Acts

Common and scientific names	Status	General habitat description	*Occurrence in the study area
California tiger salamander *Ambystoma californiense*	FT, CT	Breeds in vernal pools and stock ponds of central California. Adults aestivate in grassland habitats adjacent to the breeding sites.	**Absent.** Suitable breeding habitat for this species in the form of stagnant pools with continuous inundation for a minimum of three months is absent from the site and the immediate vicinity (at least 1.2 miles or more); thereby precluding the salamander from occurring onsite.
Foothill yellow-legged frog *Rana boylii*	CCT, CSC	Frequents partly shaded, shallow, swiftly-flowing streams and riffles with rocky substrate in a variety of habitats.	**Absent.** Suitable habitat is absent from the site and its vicinity.
California red-legged frog *Rana draytonii*	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and coast range, preferring pools with overhanging vegetation.	**Absent.** Suitable habitat is absent from the site and its vicinity.
Tricolored blackbird *Agelaius tricolor*	CT, CSC	Breeds near fresh water, primarily emergent wetlands, with tall thickets. Forages in nearby grassland and cropland habitats.	**Absent.** Breeding and foraging habitat is absent from the site.

Table 2: Special status species that could occur in the project vicinity.

ANIMALS (adapted from CDFW 2018b and USFWS 2018)
California Species of Special Concern and Protected Species

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Santa Cruz black salamander *Aneides niger*	CSC	Occurs in deciduous woodland, coniferous forests, and coastal grasslands around the Santa Cruz Mountains and foothills. This species is also known to occur on the developed flats in pockets within older developments. They can be found under rocks near streams, in talus, under damp logs, rotting wood, and other objects.	**Absent.** Suitable habitat is absent from the site and its immediate vicinity.
California giant salamander *Dicamptodon ensatus*	CSC	Occurs in or adjacent to cold clear permanent to semi-permanent streams and seeps.	**Absent.** The site does not provide suitable breeding or foraging habitat for this species.

Table 2: Special status species that could occur in the project vicinity.

ANIMALS (adapted from CDFW 2018b and USFWS 2018)
California Species of Special Concern and Protected Species

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Western pond turtle *Emys marmorata*	CSC	An aquatic turtle of ponds, marshes, slow-moving rivers, streams and irrigation ditches with aquatic vegetation. Needs basking sites and sandy banks or grassy open fields for egg laying.	**Absent.** Suitable habitat is absent from the site and its immediate vicinity.
Northern California legless lizard *Anniella pulchra*	CSC	Occurs mostly underground in warm moist areas with loose soil and substrate. Occurs in habitats including sparsely vegetated areas of beach dunes, chaparral, pine-oak woodlands, desert scrub, sandy washes, and stream terraces with sycamores, cottonwoods, or oaks.	**Absent.** Suitable habitat is absent from the site and its immediate vicinity.
Coast horned lizard *Phrynosoma blainvillii*	CSC	Occur in grasslands, scrublands, oak woodlands, etc. of central California. Common in sandy washes with scattered shrubs.	**Absent.** Habitats required by coast horned lizards are absent.
American peregrine falcon *Falco peregrines anatum*	CP	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	**Absent.** Suitable habitat is absent from the site and its immediate vicinity.
White-tailed kite *Elanus leucurus*	CP	Open grasslands and agricultural areas throughout central California.	**Unlikely.** Suitable habitat is generally absent from the site and its immediate vicinity. The site provides only extremely marginal foraging habitat.
Northern harrier *Circus cyaneus*	CSC	Frequents meadows, grasslands, open rangelands, freshwater emergent wetlands; uncommon in wooded habitats.	**Unlikely.** Suitable habitat is generally absent from the site and its immediate vicinity. The site provides only extremely marginal foraging habitat.
Golden Eagle *Aquila chrysaetos*	CP	Typically frequents rolling foothills, mountain areas, sage-juniper flats, and desert.	**Unlikely.** The trees of the site are not typical of those chosen by eagles for breeding. The site provides only extremely marginal foraging habitat.
Burrowing owl *Athene cunicularia*	CSC	Open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. Often associated with California ground squirrels.	**Absent.** Suitable nesting habitat is absent, and there are no records for the burrowing owl near the site. No evidence of burrows owls were detected during these surveys.
Grasshopper sparrow *Ammodramus savannarum*	CSC	Occurs in California during spring and summer in open grasslands with scattered shrubs.	**Absent.** Suitable habitat is generally absent from the site and its immediate vicinity.

Table 2: Special status species that could occur in the project vicinity.

ANIMALS (adapted from CDFW 2018b and USFWS 2018)
California Species of Special Concern and Protected Species

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Black swift (nesting) *Cypseloides niger*	CSC	Migrants move through many habitats of Sierra and its foothills. This species breeds in riparian thickets of alder, willow and cottonwoods.	**Absent.** The site does not provide suitable breeding or foraging habitat for this species.
Yellow-breasted chat *Icteria virens*	CSC	Frequently breeds in dense shrubs and blackberry thickets and uses areas of dense vegetation during migration.	**Absent.** The site does not provide suitable breeding or foraging habitat for this species.
Loggerhead Shrike (nesting) *Lanius ludovicianus*	CSC	Frequents open habitats with sparse shrubs and trees, other suitable perches, bare ground, and low herbaceous cover. Nests in tall shrubs and dense trees. Forages in grasslands, marshes, and ruderal habitats. Can often be found in cropland.	**Unlikely.** The site is largely open and lacks dense bushes used by loggerhead shrikes for breeding, however, they may forage over the site from time to time.
Purple martin (nesting) *Progne subis*	CSC	Cavity nester, nests widely in man-made birdhouses.	**Absent.** The site does not provide suitable breeding or foraging habitat for this species.
Townsend's big-eared bat *Corynorhinus townsendii*	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats of the state.	**Possible.** The site provides suitable foraging habitat for this species. However, roosting habitat is absent from the site.
San Francisco dusky-footed woodrat *Neotoma fuscipes annectens*	CSC	Hardwood forests, oak riparian and shrub habitats.	**Absent.** No suitable habitat for woodrats was observed, and woodrat nests were not observed during the October 2019 survey.

***Explanation of Occurrence Designations and Status Codes**

Present: Species observed on the site at time of field surveys or during recent past.
Likely: Species not observed on the site, but it may reasonably be expected to occur there on a regular basis.
Possible: Species not observed on the site, but it could occur there from time to time.
Unlikely: Species not observed on the site and would not be expected to occur there except, perhaps, as a transient.
Absent: Species not observed on the site and precluded from occurring there because habitat requirements not met.

STATUS CODES

FE	Federally Endangered
FT	Federally Threatened
FPE	Federally Endangered (Proposed)
FC	Federal Candidate

CE	California Endangered
CT	California Threatened
CR	California Rare
CP	California Protected
CSC	California Species of Special Concern

CRPR	California Rare Plant Rank
1A	Plants Presumed Extinct in California
1B	Plants Rare, Threatened, or Endangered in California and elsewhere
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere
3	Plants about which we need more information – a review list
4	Plants of limited distribution – a watch list

APPENDIX B:
SIGNIFICANCE CRITERIA AND RELEVANT GOALS, POLICIES, AND LAWS

Significance Criteria

Approval of general plans, area plans, and specific projects is subject to the provisions of the California Environmental Quality Act (CEQA). The purpose of CEQA is to assess the significance of a proposed project's impacts on the environment before they are carried out. Whenever possible, public agencies are required to avoid or minimize environmental impacts by implementing practical alternatives or mitigation measures.

According to *2019 CEQA Status and Guidelines* (2019), a significant effect on the environment means a "substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest."

Specific project impacts to biological resources may be considered "significant" if they 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 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 Wildlife or U.S. Fish and Wildlife Service;

- Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;

- 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; or

- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Furthermore, CEQA Guidelines Section 15065(a) states that a project may trigger the requirement to make a "mandatory findings of significance" if the project has the potential to "substantially degrade the quality of the environment, 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 an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory."

Relevant Goals, Policies, and Laws

Threatened and Endangered Species

State and federal "endangered species" legislation has provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Species listed as threatened or endangered under provisions of the state and federal endangered species acts, candidate species for such listing, state species of special concern, and some plants listed as endangered by the California Native Plant Society are collectively referred to as "species of special status." Permits may be required from both the CDFW and USFWS if activities associated with a proposed project will result in the "take" of a listed species. "Take" is defined by the state of California as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill" (California Fish and Wildlife Code, Section 86). "Take" is more broadly defined by the federal Endangered Species Act to include "harm" (16 USC, Section 1532(19), 50 CFR, Section 17.3). Furthermore, the CDFW and the USFWS are responding agencies under the California Environmental Quality Act (CEQA). Both agencies review CEQA documents in order to determine the adequacy of their treatment of endangered species issues and to make project-specific recommendations for their conservation.

Migratory Birds

Most bird species are protected by state and federal laws. The State of California signed Assembly Bill 454 into law in 2019, which clarifies native bird protection and increases protections where California law previously deferred to Federal law. The Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., sec. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

Birds of Prey

Birds of prey are also protected in California under provisions of the State Fish and Wildlife Code, Section 3503.5, 1992), which 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". Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the CDFW.

Bats

Section 2000 and 4150 of the California Fish and Wildlife Code states that it is unlawful to take or possess a number of species, including bats, without a license or permit as required by Section 3007. Additionally, Title 14 of the California Code of Regulations states it is unlawful to harass, herd, or drive a number of species, including bats. To harass is defined as "an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering." For these reasons, bat colonies in particular are considered to be sensitive and therefore, disturbances that cause harm to bat colonies are unlawful.

Wetlands and Other Jurisdictional Waters

The U.S. Army Corps of Engineers (USACE) regulates the filling or grading of waters of the U.S. under the authority of Section 404 of the Clean Water Act (CWA). Natural drainage

channels and adjacent wetlands may be considered waters of the United States (hereafter referred to as "jurisdictional waters") subject to the jurisdiction of the USACE. The extent of jurisdiction has been defined in the Code of Federal Regulations and clarified in federal courts.

In 2015, the EPA and USACE jointly issued the Clean Water Rule (CWR), providing a synthesized definition of waters of the U.S. based on statute, science, and federal court decisions to date. Subsequent litigation delayed implementation of the CWR. However, in August 2018, the CWR was enjoined in 22 states including California.

On September 12, 2019 the EPA and USACE repealed the 2015 CWR. However, new definitions of what constitutes a water of the U.S. have not been presented by the EPA or USACE. Furthermore, the repeal does not become effective until 60 days after the September publication of the appeal in the Federal Register. Therefore, at the time of this analysis the CWR is still in effect. However, this will soon change.

The Clean Water Rule defines Waters of the U.S. to include the following:

1. All waters used in interstate or foreign commerce (also known as traditional navigable waters), including all waters subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands:
3. The territories seas;
4. All impoundments of Waters of the U.S.;
5. All tributaries of waters defined in Nos. 1 through 4 abover, where "tributary" refers to a water (natural or constructed) that contributes flow to another water and is characterized by the physical indicators of a bed and bank and an ordinary high water (OHW) mark;
6. Adjacent waters, defined as either (a) located in whole or in part within 100 feet of the OHW mark of waters defined in Nos. 1 through 5 above, or (b) located in whole or in part within the 100-year floodplain and within 1,500 feet of the OHW mark of waters defined in Nos. 1 through 5 above;
7. Western vernal pools, prairie potholes, Carolina bays and Delmarva bays, pocosins, and Texas coastal prairie wetlands, if determined on a case-specific basis to have a significant nexus to waters defined in Nos. 1 through 3 above;
8. Waters that do not meet the definition of adjacency, but are determined on a case-specific basis to have a significant nexus to waters defined in Nos. 1 through 3 above, and are either (a) located in whole or in part within the 100-year floodplain of waters defined in Nos. 1 through 3 above, or (b) located within 4,000 feet of the OHW mark of waters defined in Nos. 1 through 5 above.

The 2015 rule also redefines exclusions from jurisdiction, which include:

1. Waste treatment systems;
2. Prior converted cropland;
3. Artificially irrigated areas that would revert to dry land should application of irrigation water to the area cease;

4. Groundwater;
5. Stormwater control features constructed to convey treat or store stormwater created in dry land; and
6. Three types of ditches: (a) ditches with ephemeral flow that are not a relocated or excavated tributary, (b) ditches with intermittent flow that are not a relocated or excavated tributary or that do not drain wetlands, and (c) ditches that do not flow, either directly or through another water, to a traditional navigable water.

A ditch may be a water of the U.S. only it if meets the definition of "tributary" and is not otherwise excluded under the provision.

All activities that involve the discharge of dredge or fill material into Waters of the U.S. are subject to the permit requirements of the USACE. Such permits are typically issued on the condition that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values. No permit can be issued until the RWQCB issues a CWA Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards.

Under the Porter-Cologne Water Quality Control Act of 1969, the State Water Resources Control Board has regulatory authority to protect the water quality of all surface water and groundwater in the State of California ("Waters of the State"). Nine RWQCBs oversee water quality at the local and regional level. The RWQCB for a given region regulates discharges of fill or pollutants into Waters of the State through the issuance of various permits and orders. Discharges into Waters of the State that are also Waters of the U.S. require a Section 401 Water Quality Certification from the RWQCB as a prerequisite to obtaining certain federal permits, such as a Section 404 Clean Water Act permit. Discharges into all Waters of the State, even those that are not also Waters of the U.S., require Waste Discharge Requirements (WDRs), or waivers of WDRs, from the RWQCB.

The RWQCB also administers the Construction Storm Water Program and the federal National Pollution Discharge Elimination System (NPDES) program. Projects that disturb one or more acres of soil must obtain a Construction General Permit under the Construction Storm Water Program. A prerequisite for this permit is the development of a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer. Projects that discharge wastewater, storm water, or other pollutants into a Water of the U.S. may require a NPDES permit.

CDFW has jurisdiction over the bed and bank of natural drainages and lakes according to provisions of Section 1601 and 1602 of the California Fish and Game Code. Activities that may substantially modify such waters through the diversion or obstruction of their natural flow, change or use of any material from their bed or bank, or the deposition of debris require a Notification of Lake or Streambed Alteration. If CDFW determines that the activity may adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement will be prepared. Such an agreement typically stipulates that certain measures will be implemented to protect the habitat values of the lake or drainage in question.

Local Ordinances

The City of San Jose has a Tree Ordinance (Chapter 13.32 of the Municipal Code), which regulates the removal of trees. The City's Tree Ordinance seeks to:

> Promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems.

An "ordinance-size tree" is defined as any native or non-native tree with a circumference of 38 inches (diameter of 12 inches) at 54 inches (4.5 feet) above the natural grade of slope. For multi-trunk trees, the circumference is measured as the sum of the circumferences of all trunks at 54 inches above the natural grade of slope. The ordinance covers both native and non-native species. A tree removal permit is required from the City prior to the removal of any trees covered under the ordinance. Prior to the issuance of a removal permit, the City requires that a formal tree survey be conducted which indicates the number, species, trunk circumference and location of all trees which will be removed or impacted by the project. The arborist evaluation was completed in conjunction with preparation of this biological evaluation report and the results are presented herein.

Santa Clara Valley Habitat Plan

Six local partners (i.e., County of Santa Clara, Santa Clara Valley Transportation Authority; Santa Clara Valley Water District; and the Cities of San Jose, Gilroy, and Morgan Hill) and two wildlife agencies (i.e., the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service) prepared and adopted the SCVHP, which primarily covers southern Santa Clara County, including the City of San Jose with the exception of the bayland areas (ICF 2012).

The SCVHP is a multi-species Habitat Conservation Plan (HCP) and a Natural Community Conservation Plan (NCCP). An HCP meets federal ESA requirements and enables local agencies to allow projects and activities to occur in endangered species' habitats. In exchange, those projects and activities must incorporate HCP-prescribed measures to avoid, minimize, or compensate for adverse effects on natural communities and endangered species. The SCVHP extends its federally granted endangered species permit—known as take authorization—to all projects and activities it covers. Loosely defined, take means to injure or kill a listed species or alter the habitat on which it depends. Although the ESA prohibits take of listed species, under some circumstances, take can be authorized by permit to agencies, developers, and other entities engaged in otherwise lawful activities (Section 4.1.1). The HCP process recognizes the impact of land use activities and establishes a program to provide for a net benefit to specific species (i.e., covered species).

An NCCP is the State counterpart to the HCP. It provides a means of complying with the Natural Community Conservation Plan Act (NCCP Act) and securing take authorization at the State level. The NCCP Act is broader than federal ESA and the California Endangered Species Act. The primary objective of the NCCP program is to conserve natural communities at the ecosystem scale while accommodating compatible land uses. The SCVHP, as an approved

NCCP, provides for the conservation of species and protection and management of natural communities in perpetuity within the area covered by permits.

The SCVHP addresses listed species, species that are likely to become listed during the plan's 50-year permit term, and biologically sensitive habitats. The eighteen covered species include nine plants and nine animals. The animal species covered include, but are not limited to, the California tiger salamander, California red-legged frog, western pond turtle, and western burrowing owl. In general, the SCVHP is a fee-based program aimed at providing for the regional conservation of these species.

Fees. Funding sources for the SCVHP include development fees based on land cover types, fees charged based on the occurrence of certain species and sensitive habitat types such as serpentine habitats, and fees based on the number of vehicle trips the project is anticipated to add to the baseline conditions on an annual basis and/or the number of residential units included in the project. Chapter 9 of the SCVHP describes fees that may be required by each project.

SCVHP fees are generally calculated based on the size and planned usage of the property related to the proposed project. For projects occurring on parcels that are 10 or more acres in size, the fees are calculated based on the development area for the project plus a 50-foot buffer around permanent impacts and a 10-foot buffer around temporary impacts (e.g., underground utility construction that results in restoration of the surface to pre-project conditions). For permanent and temporary impacts, the acreage would be multiplied by the project's Land Cover Fee Zone classification as defined in the SCVHP. Development of smaller parcels are generally charged fees for the entire parcel. Properties that contain sensitive species habitats and/or sensitive habitat communities that are covered by the SCVHP and that would be impacted by a project are also subject to species and/or sensitive habitat fee surcharges based on the acreages of impact.

In addition to area-based fees, the SCVHP includes a nitrogen deposition fee for diffuse impacts to habitats from increased nitrogen levels resulting from particular projects. This fee is related to the number of vehicle trips or single-family units generated by a project.

Conditions on Covered Activities. Projects occurring within the SCVHP plan area are subject to the requirements and provisions of the SCVHP. The SCVHP specifies twenty conditions for covered activities. These conditions can be found in Chapter 6 of the SCVHP and are summarized below:

- **Condition 1 (page 6-7). Avoid Direct Impacts on Legally Protected Plant and Wildlife Species-** Condition 1 instructs developers to avoid direct impacts on legally protected plant and wildlife species, including federally endangered Contra Costa goldfields and fully protected wildlife species including the golden eagle, bald eagle, American peregrine falcon, southern bald eagle, white-tailed kite, California condor, and ring-tailed cat. Condition 1 also protects bird species and their nests that are protected under the Migratory Bird Treaty Act (MBTA). Additionally, golden eagles and bald eagles are protected under the Bald and Golden Eagle Protection Act.
- **Condition 2 (page 6-9). Incorporate Urban-Reserve System Interface Design Requirements-** Condition 2 provides design requirements for the urban-reserve system interface. Some of the design requirements included in Condition 2 are installing non-permeable fences between urban and reserve areas, fencing public roads that run adjacent

to reserve areas, minimizing the length of shared boundaries between urban and reserve areas, outdoor lighting limitations, and landscaping requirements.

- **Condition 3 (page 6-12). Maintain Hydrologic Conditions and Protect Water Quality-** Condition 3 sets forth a consistent approach for applying water quality conditions of each Regional Board across the SCVHP area. This includes programmatic avoidance and minimization measures, performance standards, and control measures to minimize increases of peak discharge of stormwater and to reduce runoff of pollutants to protect water quality, including during project construction. Required measures related to Conditions 3, 4, and 5 can be located in Table 6-2 of the SCVHP. These measures relate to stormwater runoff, in-stream channel and floodplain impacts, vegetation control and/or maintenance, materials a project should and should not use, landscaping and revegetation, free-span bridges at stream crossings, culverts, trails, levees, erosion control, and construction requirements and timing.
- **Condition 4 (page 6-14). Avoidance and Minimization for In-Stream Projects-** Condition 4 minimizes impacts on riparian and aquatic habitat through appropriate design requirements and construction practices and provides avoidance and minimization measures for in-stream projects that may impact stream morphology, aquatic and riparian habitat, flow conditions, covered species, natural communities, and wildlife movement.
- **Condition 5 (page 6-18). Avoidance and Minimization Measures for In-Stream Operations and Maintenance-** Condition 5 provides avoidance and minimization measures for in-stream operations and maintenance activities, which includes, but are not limited to trail, bridge, road, and culvert maintenance, bank stabilization, removal of debris, and vegetation management.
- **Condition 6 (Page 6-21). Design and Construction Requirements for Covered Transportation Projects-** Condition 6 provides requirements for rural development design, construction, and post-construction. Types of projects affected by Condition 6 include highway projects, mass transit projects, roadway projects and interchange upgrades, road safety and operational improvements, and dirt road construction.
- **Condition 7 (page 6-28). Rural Development Design and Construction Requirements-** Condition 7 provides requirements for development design and construction of new development outside of the urban service area including requirements relating to site hydrology, vineyards, private rural roads, vegetation management, soils, and lighting.
- **Condition 8 (page 6-35). Implement Avoidance and Minimization Measures for Rural Road Maintenance-** Condition 8 provides requirements for rural roads, road median, and barrier maintenance including requirements regarding riparian setbacks, erosion measures, herbicide and pesticide use, seasonal restrictions, mower cleaning, revegetation, ground-disturbing road maintenance, and flow lines.
- **Condition 9 (page 6-37). Prepare and Implement a Recreation Plan-** Condition 9 requires providing public access to all reserve lands owned by a public entity. Each reserve land must provide a recreation plan.
- **Condition 10 (page 6-42). Fuel Buffer-** Condition 10 provides requirements for fuel buffers between 30 and 100 feet of structures. Requirements include measures relating to fuel buffers near structures and on reserve lands; the most notable measure is the

requirement for nesting bird surveys prior to any fuel buffer maintenance during the nesting season.

- **Condition 11 (page 6-44). Stream and Riparian Setbacks-** Condition 11 provides requirements for stream and riparian setbacks. Development areas must observe development-free stream setbacks measured from the top of the stream bank of between 35 to 200 feet depending on the category rating of the stream and the slope class of the development and setback areas. Setbacks for Category 1 streams with 0-30% slopes should be at least 100 feet, and with >30% slopes should be at least 150 feet. Category 2 streams should have a setback of 35 feet. Chapter 6, Condition 11 of the SCVHP also defines the criteria used by the SCVHP to verify or identify a stream which includes evaluation of the features hydrologic connectivity, channel form, and topographic position.
- **Condition 12 (page 6-56). Wetland and Pond Avoidance and Minimization-** Condition 12 provides measures to protect wetlands and ponds, including planning actions, design, and construction actions. A surcharge fee applies for impacts to wetland habitats.
- **Condition 13 (page 6-58). Serpentine and Associated Covered Species Avoidance and Minimization-** Condition 13 requires surveys for special status plants and the Bay checkerspot butterfly as well as its larval host plant in appropriate areas that support serpentine bunchgrass grassland, serpentine rock outcrops, serpentine seeps, and serpentine chaparral. A surcharge fee applies for impacts to serpentine habitat.
- **Condition 14 (page 6-60). Valley Oak and Blue Oak Woodland Avoidance and Minimization-** Condition 14 provides requirements for project planning and project construction, including avoidance of large oaks, guidance on irrigation near oak trees, and a buffer around the root protection zone, roads and pathways within 25 feet of the dripline of an oak tree, trenching, and pruning activities. Fees apply for impacts to valley oak and blue oak woodlands.
- **Condition 15 (page 6-62). Western Burrowing Owl-** Condition 15 requires preconstruction surveys for burrowing owls in appropriate habitat prior to construction activities, provides avoidance measures for owls and nests in the breeding season and owls in the non-breeding season, and requirements for construction monitoring. A surcharge fee applies for development within mapped burrowing owl breeding habitat.
- **Condition 16 (page 6-68) Least Bell's Vireo-** Condition 16 requires preconstruction surveys in appropriate habitat for the least Bell's vireo prior to construction activities, and provides avoidance and construction monitoring measures.
- **Condition 17 (page 6-69) Tricolored Blackbird-** Condition 17 requires preconstruction surveys in appropriate habitat for the tricolored blackbird prior to construction activities, and provides avoidance and construction monitoring measures.
- **Condition 18 (page 6-71) San Joaquin Kit Fox-** Condition 18 requires preconstruction surveys in appropriate habitat for the San Joaquin kit fox prior to construction activities, and provides avoidance and construction monitoring measures.
- **Condition 19 (page 6-74). Plant Salvage when Impacts are Unavoidable-** Condition 19 provides salvage guidance and requirements for covered plants.

- **Condition 20 (page 6-76). Avoid and Minimize Impacts to Covered Plant Occurrences-** Condition 20 provides requirements for preconstruction surveys for appropriate covered plants (per habitat).