Appendix C-1

LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

WOZ WAY SITE
BIOLOGICAL TECHNICAL REPORT
SAN JOSE, CALIFORNIA

Prepared by

LIVE OAK ASSOCIATES, INC.

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November 11, 2020 PN 2395-02

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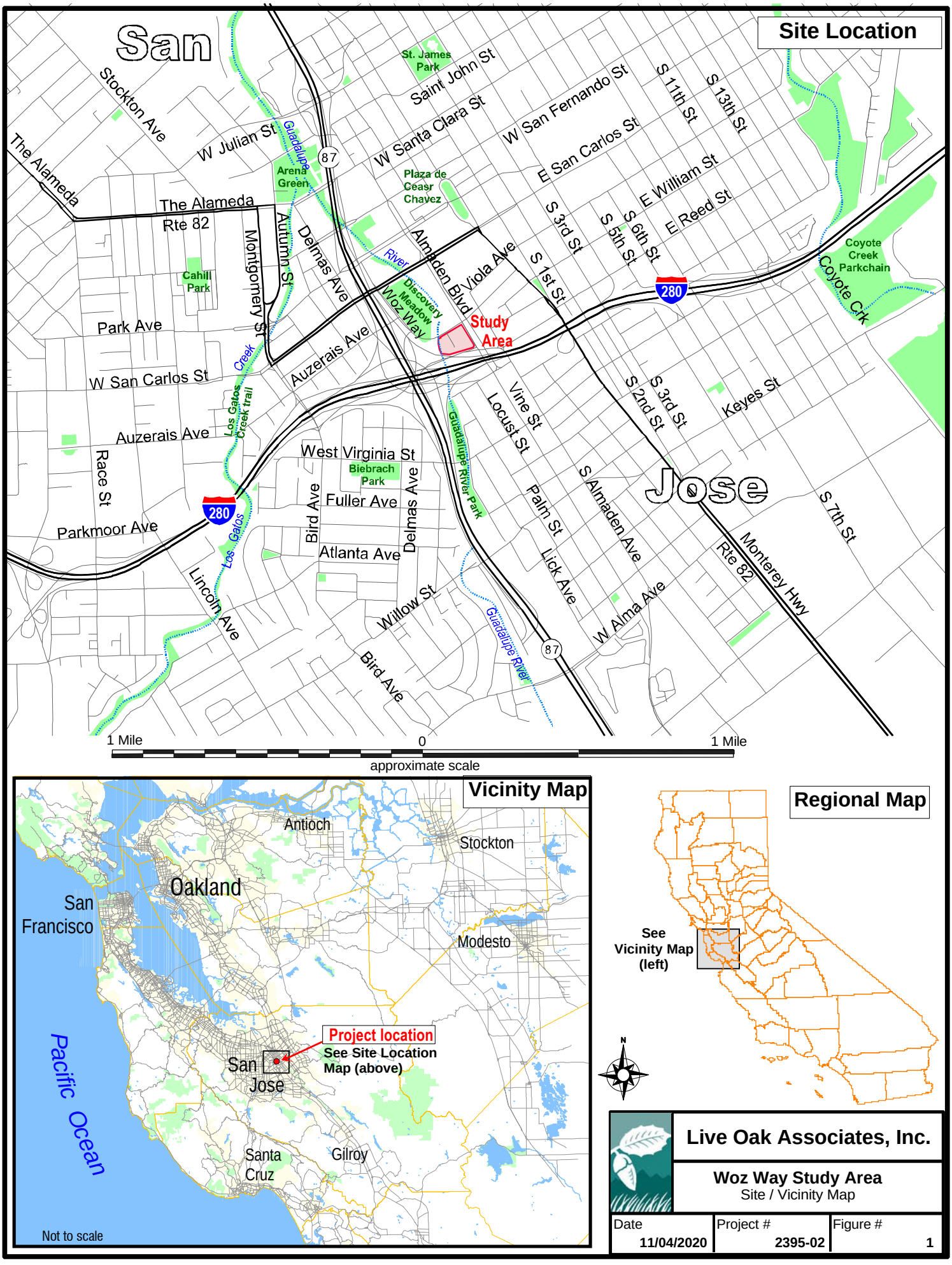
1 INTRODUCTION

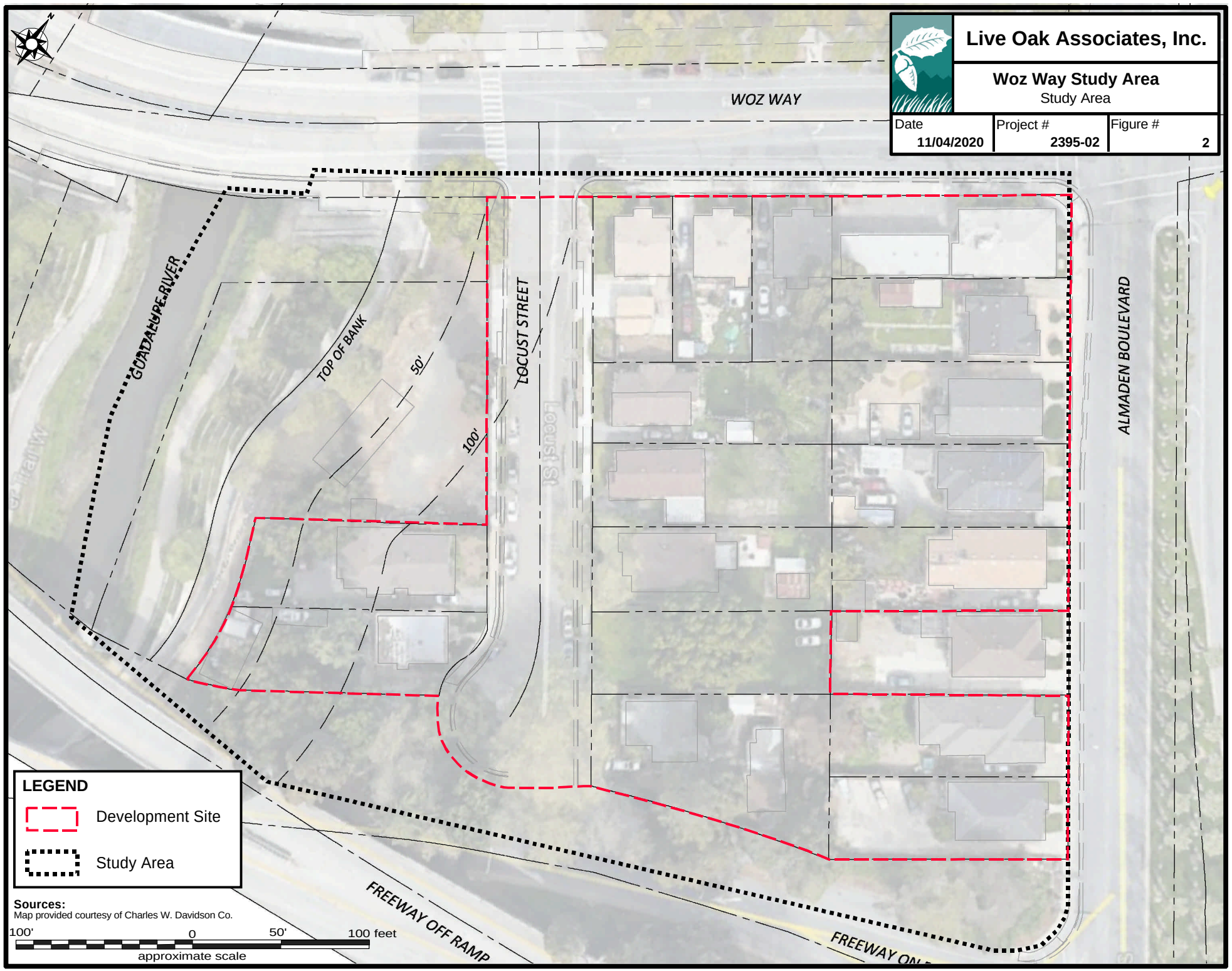
Live Oak Associates, Inc (LOA) evaluated the Woz Way Office Development project located within the downtown area of the City of San José, California (Figure 1), to ascertain whether future build-out of the proposed project would have a significant impact (as defined by CEQA) on the biological resources of the site and the region. This report describes the biotic resources of the approximately 2.93-acre Woz Way Site ("development site") and site vicinity ("study area") (Figure 2). The development site is comprised of 17 residential parcels (one of which is a vacant lot) and the roadway of Locust Street. The study area includes the development site and a 300-foot reach of the Guadalupe River's riparian corridor including a paved public access trail on the river bank, a Valley Water river access maintenance road, a graded Valley Water parcel, a City of San Jose parcel, and an access ramp and planted shoulder to Interstate 280. This report evaluates potential impacts to resources of the development site and site vicinity from potential land use changes within the study site and it summarizes the project's potential conformance to the City of San Jose's Council Policy Number 6-34 (2016), Envision San Jose 2040 General Plan (City of San Jose 2011) and Santa Clara Valley Habitat Conservation Plan ("SCVHP"; ICF International 2012).

The development site is comprised of the roadway of Locus Street, southeast of Woz Way, and the following APNs: 264-31-037, 264-31-038, 264-31-039, 264-31-040, 264-31-041, 264-31-043, 264-31-044, 264-31-061, 264-31-062 (vacant lot), 264-31-063, 264-31-064, 264-31-065, 264-31-066, 264-31-067, 264-31-092, 264-31-107, and 264-31-108. The development site is generally bounded by Woz Way to the northwest, Almaden Boulevard to the northeast, an onramp to northbound Interstate 280 to the southeast, and the Guadalupe River and Valley Water property to the west. The Woz Way site can be found in the San Jose West U.S.G.S. 7.5' quadrangle in Section 17 of Township 7 South and Range 1 East (Figure 1).

The development site is currently comprised of 17 single-family residences with landscaped yards and outbuildings and the roadway of Locust Street. The site occurs adjacent to an engineered section of the Guadalupe River.

In general, the development of parcels can damage or modify biotic habitats used by sensitive plant and wildlife species. In such cases, site development may be regulated by state or federal agencies,


Site Location
San
Jose
Study Area
St. James Park
Saint John St
Stockton Ave
W Julian St
The Alameda
The Alameda
Rte 82
Guadalupe River
Arena Green
87
W Santa Clara St
W San Fernando St
S 11th St
S 13th St
Plaza de Ceasr Chavez
E San Carlos St
E William St
E Reed St
S 3rd St
S 5th St
S 6th St
Coyote Creek Parkchain
Coyote Crk
Autumn St
Montgomery St
Delmas Ave
River
Almaden Blvd
Viola Ave
S 1st St
Discovery Meadow
Woz Way
280
Cahill Park
Park Ave
Auzerais Ave
W San Carlos St
Creek
Los Gatos Creek trail
Auzerais Ave
Race St
West Virginia St
Biebrach Park
Fuller Ave
Bird Ave
Delmas Ave
Parkmoor Ave
280
Los Gatos
Atlanta Ave
Lincoln Ave
Willow St
Bird Ave
Guadalupe River Park
Vine St
Locust St
S 2nd St
S 3rd St
Keyes St
Palm St
S Almaden Ave
Lick Ave
W Alma Ave
Rte 82
Monterey Hwy
S 7th St
Guadalupe River
87
1 Mile
0
1 Mile
approximate scale
Vicinity Map
Antioch
Stockton
Oakland
San Francisco
Modesto
Project location
See Site Location Map (above)
San Jose
Santa Cruz
Gilroy
Pacific Ocean
Not to scale
Regional Map
See Vicinity Map (left)
N
Live Oak Associates, Inc.
Woz Way Study Area
Site / Vicinity Map
Date
11/04/2020
Project #
2395-02
Figure #
1


Live Oak Associates, Inc.
Woz Way Study Area
Study Area
Date 11/04/2020
Project # 2395-02
Figure # 2
WOZ WAY
GUADALUPE RIVER
TOP OF BANK
50'
100'
LOCUST STREET
Locust St
ALMADEN BOULEVARD
FREEWAY OFF RAMP
FREEWAY ON
LEGEND
Development Site
Study Area
Sources:
Map provided courtesy of Charles W. Davidson Co.
100' 0 50' 100 feet
approximate scale

subject to provisions of the California Environmental Quality Act (CEQA), and/or covered by policies and ordinances of the City of San Jose. Therefore, this report addresses issues related to: 1) sensitive biotic resources occurring in the study area; 2) the federal, state, and local laws regulating such resources, 3) whether or not the project results in any significant impact to these resources; and 4) mitigations to reduce these impacts to less-than-significant (as defined by CEQA).

The analysis of impacts, as discussed in Section 3.0 of this report, was based on the known and potential biotic resources of the development site and study area discussed in Section 2.0. Sources of information used in the preparation of this analysis included: 1) the *California Natural Diversity Data Base* (CDFW 2019); 2) the *California Rare Plant Rank* (CNPS 2019); 3) manuals and references related to plants and animals of the Santa Clara Valley Region; 4) the Envision San Jose 2040 General Plan; 5) the City of San Jose policies and ordinances; 6) the Santa Clara Valley Habitat Conservation Plan (ICF International 2012); and 7) relevant technical and scientific papers.

General site information pertaining to the biological setting was collected during three site visits by LOA. The edge of riparian habitat was delineated by LOA ecologist Nathan Hale on August 7, 2019. During this visit, Mr. Hale also assessed the conditions of the riparian habitat and the immediately adjacent reach of the Guadalupe River. LOA arborist, Wendy Fisher, conducted a tree survey with assistance from Mr. Hale on September 11, 2019 within the development site and several additional parcels ("tree survey study area"). During the arborist survey, Mr. Hale conducted a reconnaissance-level survey of biological conditions within the development site to inform this study. Finally, Mr. Hale conducted one additional general habitat survey of the development site and study area, including the adjacent reach of the Guadalupe River, as well as provided an update to tree data for a few trees on October 10, 2019. All constituent habitats and species observed within the study area were recorded during these site visits.

1.1 PROJECT DESCRIPTION

The Woz Way project applicant is seeking a General Plan Amendment (GPA), which would change the land use designation from Public/Quasi Public to Downtown. The Project also entails a site development permit, which would facilitate construction of the Project, as described below.

The 3.08-acre total area affected by the proposed land use designation change comprises the boundaries of the proposed General Plan Amendment (GPA). The GPA is proposed for the entire

development site, including all 17 parcels noted above, as well as 541 Vine Street (APN 264-31-041), which is not part of the proposed development project.

Within the larger 3.08-acre area that the applicant is seeking the CPA, a Site Development would occur within a 2.93-acre area (Figure 2 & Figure 3). The Site Development Permit is proposed for the 17 of 18 parcels within the Project site, totaling 2.93 acres. 541 Vine Street (APN 246-31-042) is currently developed with a single-family home.

The proposed Project would entail development of two 20-story office towers, with a floor-to-area ratio of 10.4 and a maximum height of 297 feet. The two towers would be connected on Levels 18 and 19, and they include a total of 1,211,777 square feet of office space and 9,748 square feet of retail space. The Project also proposes a total of 34,812 square feet of common open space in the form of a patio terrace atop a 4-story parking structure that would connect to the south tower, and a 20th floor patio terrace in the north tower. The site development would have four levels of underground parking and four levels of at-grade and above ground parking.

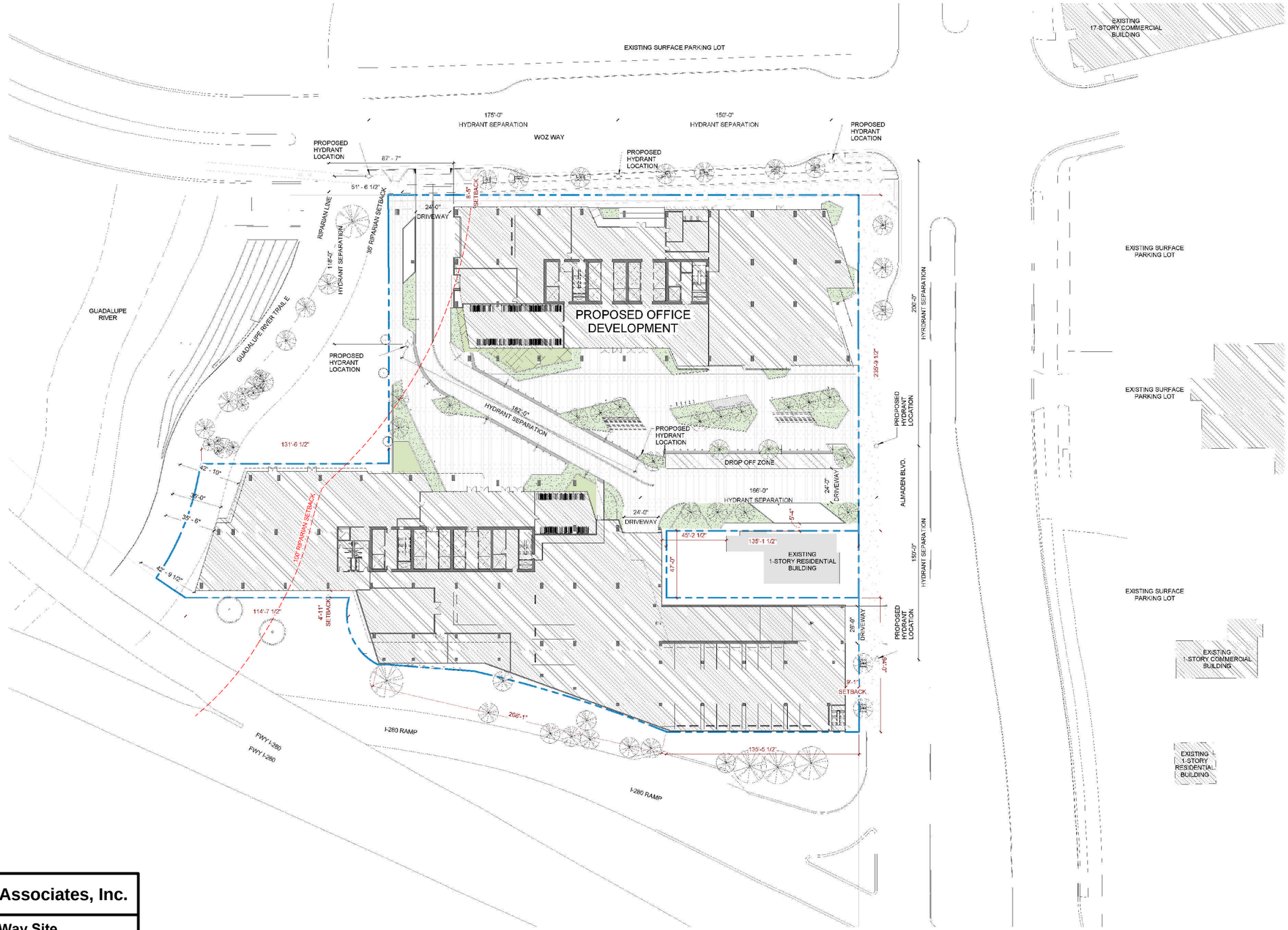
The site development includes an internal driveway, located between the north and south towers. The primary pedestrian entrances to the north tower lobby is planned from Woz Way and the internal driveway. The primary pedestrian entrance to the south tower lobby is planned from the internal driveway, which has vehicular entrances and exits on both Woz Way and Almaden Boulevard.

Underground parking (Levels B1 to B4) and above ground parking (Levels 1 through 4) would be accessible from the internal driveway and Almaden Boulevard.

The primary project components are described below.

1.1.1 OFFICE

The project proposes two 20-story office towers, a maximum height of 297 feet, with the towers physically connected on the upper levels. The total gross square footage would be approximately 1,800,024 square feet. The proposed Project also includes four levels of underground parking and



Live Oak Associates, Inc.

Woz Way Site
Site Plan

Date	Project #	Figure #
11/04/2020	2395-02	3

C2K
ARCHITECTURE
1645 NW HOYT
PORTLAND OREGON 97209
503 444 2200

CITY STAMP

WOZ WAY

OWNER:
KT URBAN

ADDRESS:
280 Woz Way
San Jose, CA

PROJECT NO.: 18120
DRAWN: NM/PM
DATE: 09 APR 2020
SDP SET GP19-008/H20-004

REVISION:	DESCRIPTION:
03 AUG 2020	RESPONSE TO COMMENTS #1

REPRODUCTION OF THIS DRAWING IS EXPRESSLY FORBIDDEN WITHOUT THE SPECIFIC WRITTEN PERMISSION OF C2K ARCHITECTURE INC. THIS DRAWING IS ONLY CONDITIONALLY ISSUED AND NEITHER RECEIPT OR POSSESSION THEREOF CONFERS OR TRANSFERS ANY RIGHT TO, OR LICENSE TO, USE THE SUBJECT MATTER OF THIS DRAWING OR ANY TECHNICAL INFORMATION SHOWN THEREON, NOR ANY RIGHT TO REPRODUCE THIS DRAWING OR PART THEREOF, WITHOUT THE WRITTEN AUTHORIZATION OF C2K ARCHITECTURE INC.

PROGRESS SET

SHEET TITLE:
SITE PLAN

SCALE: 1/32" = 1'-0"
SHEET NO.:
A101

SDP SET GP19-008/H20-004

C:\Users\nmiller\Documents\Revit_Local\18120_WOZ WAY CENTRAL_nmiller@c2k.rvt

four levels of on- and above-ground parking at the south tower. The design proposal includes the following:

- Approximately 1,211,777 square feet of office space, and
- Approximately 9,748 square feet of retail space.
- The remainder of the gross square footage would comprise parking, and common open spaces.

1.1.2 RETAIL

The Project proposes approximately 9,748 square feet of retail space on the ground level, at the northeast corner of the project site, at the corner of Woz Way and Almaden Boulevard with entrances from Woz Way, Almaden Boulevard, and the internal driveway.

1.1.3 COMMON SPACE AND AMENITIES

The office common space and other included amenities would have a combined total of 34,812 square feet. The Project also proposes amenity deck space located on levels 3, 5, and 20.

1.1.4 SITE ACCESS AND PARKING

The proposed Project includes a total of 1,249 parking spaces. The four underground parking levels include 1,045 parking spaces and the four at- and above-ground parking levels include 204 parking spaces.

The Project includes an internal driveway, located between the proposed north and south towers, with ingress and egress on both Woz Way and Almaden Boulevard. The primary entrance to the north tower lobby is provided from Woz Way and via the internal driveway. The primary entrance to the south tower lobby is provided from the internal driveway. Vehicle ingress and egress to all parking areas (Levels B1 to B4, and Levels 1 to 4) is provided via the internal driveway, on the north side of the south tower, and via a driveway on Almaden Boulevard.

The Project also includes two loading areas for trucks and waste management. One loading area, located at the northwest of the north tower, is accessible from Woz Way and the internal driveway; and the other loading area, located in the south tower ground floor parking garage (Level 1), is accessible from the internal driveway.

Off-site improvements associated with the site development include local roadway improvements on Woz Way and improvements along the Project frontage on South Almaden Boulevard to accommodate the site development ingress and egress movements, vacating the existing Locust Street, and connections to existing utility infrastructure.

1.1.5 BUILDING SETBACK

The proposed Project is setback 35-feet from the riparian corridor boundary. The Guadalupe River Park includes a hardscaped path and cement siding, along the boundary of the Project site. The boundary of the riparian corridor was delineated as the top of a flood wall at the top of the hardscaped bank of the Guadalupe River. The buildings proposed by the Project would not encroach within the 35-foot setback boundary.

Stream setbacks measured from the top of the stream bank are required to be 35 to 100 feet, depending on the category of the stream. Setbacks for Category 1 streams are at least 100 feet. The Guadalupe River is a Category 1 stream. As discussed above, the project proposes a 35-foot setback from the Guadalupe River. The SCVHP provides a framework for allowable exceptions to these setbacks. The Project proposes an exception request from the Habitat Agency for approval of a reduced setback. This approval would be required for the project to be allowed to develop within 100-feet of the riparian edge.

1.1.6 UTILITIES

The proposed Project site is located within the Urban Service Area of the City of San José and is currently served by City services. Off-site facilities would not be required to be upgraded or expanded to serve the project. The proposed Project can be adequately served by existing utilities.

1.1.7 WASTEWATER TREATMENT

Wastewater treatment and disposal is provided by the San José/Santa Clara Regional Wastewater Facility (RWF), formerly known as the San José /Santa Clara Water Pollution Control Plant (WPCP); sanitary sewer lines maintained by the City of San José. There are two existing sanitary sewer manholes located on Woz Way and three existing sanitary sewer manholes located on Almaden Boulevard. The Project would create two new connection, via a 56-linear foot PVC pipe, from the Project site to the existing sanitary sewer system on Almaden Boulevard. The proposed Project would not result in any additional sanitary sewer manholes.

1.1.8 WATER SERVICE

Water service in the City is provided by San José Water Company (SJWC). According to the SJWC, site development would result in a total net potable water demand of approximately 131 acre-feet per year and represents an approximately 0.10% increase in total system usage when compared to the SJWC's pre-drought potable water production. Therefore, the SJWC has the capacity to serve the proposed Project through buildout based on current water supply capacity.

1.1.9 STORM DRAINAGE

The City of San José is responsible for the maintenance of the storm drainage collection system serving the Project site. Surface runoff at the Project site is currently captured catch basins and underground pipelines, located on Woz Way and Almaden Boulevard. There are currently three existing storm drain manholes located on Woz Way and two existing storm drain manholes located on Almaden Boulevard. The proposed internal driveway would result in the construction of four catch basins connected by underground pipelines. The proposed Project would also construct one additional storm drain manhole along with two additional underground storm drain pipelines on Almaden boulevard and two additional storm drain pipelines on Woz Way. The City of San José would continue to be responsible for maintaining stormwater facilities.

1.1.10 SOLID WASTE

Solid waste services are provided to the Project site by Garden City Sanitation (Garbage), California Waste Solutions (Recycling) and Green Waste Recovery (Yard Trimmings). Garden City Sanitation serves residential uses, and would therefore not serve the Project. The Project would be serviced by the commercial solid waste service provider, Republic Services, for all solid waste.

Solid waste and recycling are hauled off to landfills located within the City, including:

- Newby Island Landfill:The City must use Newby Island Landfill for residential, commercial, and City facility waste streams. Newby Island also is a construction and demolition (C&D) Certified Facility under the Construction & Demolition Diversion (CDD) Program.
- Guadalupe Landfill: Guadalupe Landfill currently has a temporary C&D Certification for under the CDD Program until Dec 31st, 2020.
- Kirby Canyon Landfill: Kirby Canyon Landfill is not certified under the City's CDD Program.

1.1.11 NATURAL GAS & ELECTRICITY

Pacific Gas and Electric (PG&E) provides electric services to the Project site. The Project site would continue to be served by PG&E.

1.1.12 TELECOMMUNICATIONS

AT&T, Comcast, Viasat, Frontier, and Spectrum currently, and would continue to provide telecommunication, cable television, and Internet services to the Project site.

1.1.13 LANDSCAPING

The proposed Project would remove 52 trees, 31 of which would be ordinance sized trees. Site development would also include plant areas which would consist of a mix of evergreen and deciduous shrubs, ornamental grasses, and turf. All plant species would be native to the Bay Area. In addition, the proposed Project would incorporate the use of flow through planters.

1.1.14 GREEN BUILDING MEASURES

The proposed Project would conform to the City's green building policy and measures and with San José City Council Policy 6-32. City building codes require consistency with the California Green Building Code (CALGreen), which includes design provisions intended to minimize wasteful energy consumption.

The Project would comply with the City of San Jose Riparian Corridor Protection and Bird-Safe Design Policy. Project design would ensure that at least 90% of the exposed building façade materials, from the ground level to 40 feet, and 60% of the exposed building façade materials above 40 feet is not composed of transparent or reflective glass. To the extent feasible, the Project would use glass surfaces that are designed to be visible by birds and specifically designed to avoid bird collision.

The glass façade surfaces will be composed of a glass product designed to be visible to birds. Specifically, the project proposes to include bird friendly glass with two different densities of acid-etched visual patterns. The density of etched dots in the glass visibility pattern will be densest at 2-inch by 2-inch spaced 5 millimeter (mm) dots on the ground floor up to 40-feet high, which is the portion of the façade where birds would be more likely to collide with buildings. A 4-inch by 4-inch spaced 6 mm etched dot pattern is proposed above the 40-foot elevations. Further, plantings

in the interior of the buildings will not be installed close to transparent glass, which would help to minimize birds being attracted toward the buildings.

The building will also comply with the City of San Jose's Dark Sky Policy, which will ensure that night lighting is directed downward and away from the riparian corridor. The Project would direct exterior night lighting downward and away from the riparian corridor of the Guadalupe River.

The project will follow City of San Jose's green building design measures including achievement of a minimum of a LEED Silver certification. This LEED certification level indicates that the building will have some evening lighting conservation measures such as occupancy sensors on lighting and/or lighting programming to ensure interior lighting is limited after dark.

1.1.15 CONSTRUCTION

It is anticipated that the Project would be constructed over an approximate 31-month period, starting in Fall 2021.

Site development involves construction activities associated with demolition of the existing single-family homes and Locust Street, site preparation, grading, paving, building construction, and architectural coating applications, construction of the site development would not include pile driving. The site would be excavated to a depth of approximately 40 feet below grade for the four levels of parking. It is estimated that construction of the Project would require an export of approximately 191,000 cubic yards of soil.

Typical construction equipment associated with site development include, but are not limited to, graders, scrapers, and tractors during site preparation; graders, dozers, and tractors during grading; cranes, forklifts, generators, tractors, and welders during building construction; pavers, rollers, mixers, tractors, and paving equipment during paving; and air compressors during architectural coating. Typical equipment used during site development grading and excavation include heavy-duty trucks, backhoes, bulldozers, excavators, front-end loaders, and scrapers. The Project would generate the highest number of daily trips during the building construction phase, approximately 641 worker trips and 300 vendor trips, which would last approximately 410 days.

The Project would be required to prepare a Storm Water Pollution Prevention Plan (SWPPP) under the National Pollution Discharge Elimination System (NPDES) General Construction Permit and the City's Municipal Code. The SWPPP would include best management practices (BMPs) to be implemented to prevent soil erosion and discharge of other construction-related pollutants that could contaminate nearby bodies of water.

Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

1.1.16 DEMOLITION

The proposed Project involves demolition of 16 single-family residential structures and removal of 52 on-site trees, including 31 ordinance sized trees. Six of these 52 on-site trees to be removed are located along the riparian corridor boundary.

The 16 single-family residential structures to be demolished are all one-story, low-density, single-family dwellings . These homes have all been purchased by the applicant and would not be occupied by residents requiring relocation assistance because residents will have vacated the premises prior to construction. Demolition would result in approximately 2,761 tons of waste.

Site grading would require approximately 191,000 cubic yards of soil export. There are five facilities within a 20-mile radius that provide waste management services. It is assumed that the export could be off-hauled to any of the waste disposal sites within a 20-mile radius of the Project site.

2 EXISTING CONDITIONS

The approximately 2.93-acre development site is located in downtown San José, California, and is bounded by the Guadalupe River and Valley Water access road and work yard to the west, Woz Way to the northwest, Almaden Blvd to the northeast, and Interstate 280 to the southwest. The study site evaluated by this report currently consists of eighteen (18) residential properties, each including a single house and yard area, the roadway of Locust Street, a Valley Water work yard and unpaved maintenance access road, a small City of San José parcel that contains public walkways and City trees, and an approximately 300-foot engineered section of the east bank of the Guadalupe River. The study area is located at the highly developed freeway interchange of Interstate 280 and Highway 87 adjacent to the Guadalupe River. The study area has relatively level topography that slopes down slightly at the bank of the Guadalupe River. The site ranges in elevation of approximately70 to 85 feet (21 to 26 m) National Geodetic Vertical Datum (NGVD). Current development of the study area that is immediately adjacent to the riparian corridor includes one house approximately 60 feet from the riparian edge, two back yards up to 20 feet from the riparian edge, the Valley Water gravel storage yard including a chain-link fence and miscellaneous debris and materials approximately 20 feet from the riparian edge, a compacted gravel Valley Water maintenance road between the Valley Water storage yard and the riparian edge, hardscape of pedestrian sidewalks up to the top-of-bank near Woz Way, and the roadway and sidewalk of Locust Street within approximately 60 feet of the riparian edge. The riparian habitat of the channel within the study area is comprised of a paved trail, terraced cement planter boxes, stairs, and a flood wall.

Soils of the development site are comprised entirely of Urbanland-Campbell complex, 0 to 2% slopes, protected. This soil is derived from disturbed and human-transported parent material that primarily includes alluvium derived from metamorphic and sedimentary rock and/or alluvium derived from metavolcanics. This soil type is considered moderately well-drained and is not considered to be hydric.

Annual precipitation in the general vicinity of the study area is about 14 to 20 inches, almost 85% of which falls between the months of October and March. Virtually all precipitation falls in the form of rain.

2.1 BIOTIC HABITATS

Two main land types occur within the study area. The primary land use type is developed land, primarily including residential development, roadways, sidewalks, driveways, out-buildings and mature landscaping. The second land use type, occurring to the west of the development site, is the riparian corridor habitat of the Guadalupe River. This corridor has been highly engineered and includes paved walkways, terraced cement planting areas, and a paved Guadalupe River Trail. These land types are discussed below.

2.1.1 Developed

The entirety of the development site and majority of the study area are comprised of developed land uses. The 18 residential units of the study area are predominantly occupied as single-family homes. They include maintained landscaping with lawns and a mix of shrub and tree species of mixed canopy heights. Cement or other hardscape-covered walkways, driveways, parking areas, barren soil areas, and patios comprise a portion of the residential properties. The asphalt paved roadway of Locust street occurs within the development site. The Valley Water parcel of the study area includes a graded and gravel-covered yard that appears to support temporary storage of Valley Water maintenance equipment. The City of San José parcel includes cement walkway area and street trees. In general, this land use type provides low habitat value for regionally occurring species.

Landscaped trees of the study area include non-native species such as the red buckeye (*Aesculus pavia*), pecan (*Carya illinoinesis*), Italian cypress (*Cupressus sempervirens*), juniper (*Juniperus* sp.), mulberry (*Morus alba*), London plane (*Platanus* x *acerifolia*), callery pear (*Pyrus calleryana*), and coast redwood (*Sequoia sempervirens*). A few native coast live oak (*Quercus agrifolia*) trees and one native California bay laurel (*Umbellularia californica*) are also present within the study area. One invasive tree, the tree-of-heaven (*Ailanthus latissimus*), is also present within the study area in a few parcels, including several individuals within the Valley Water yard. Among the shrubs that were observed were *Agapanthus* sp., butterfly bush (*Buddleia davidii*), boxwood (*Buxus* sp.), blue plumbago (*Plumbago auriculata*), horticultural roses (*Rosa* spp.), hot lips sage (*Salvia microphylla*), and Arum lily (*Zantedeschia aethiopica*). Weedy species noted in this land use area included typical ruderal species such as spotted spurge (*Euphorbia maculata*), foxtail barley

(*Hordeum murinum*), serrated lettuce (*Lactuca serriola*), and Johnson grass (*Sorghum halepense*). Other vegetation within the developed portion of the site consisted of lawn areas.

The presence of animals within the study area was notably sparse, but not unexpectedly so, given the highly urbanized nature of the site. Animal species observed during the 2019 site visits by LOA included the Anna's hummingbird (*Calipte anna*), rock pigeon (*Columba livia*), common crow (*Corvus brachyrhynchos*), black phoebe (*Sayornis nigricans*), feral cat (*Felis catus*) and domestic (i.e., pet) dog (*Canis lupus familiaris*). Species that are likely to occur within the study area from time to time include the western fence lizard (*Sceloporus occidentalis*), deer mouse (*Peromyscus maniculatus*), Norway rat (*Rattus norvegicus*), black rat (*Rattus rattus*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), domestic cat, and coyote (*Canis latrans*). Due to the proximity to the Guadalupe River, the study area may also provide some limited value as forage, cover, nesting, or migratory habitat for a number of avian species.

2.1.2 Riparian Habitat of the Guadalupe River

The development site occurs immediately adjacent to the Guadalupe River which flows, perennially, south to north adjacent to the study area. A small amount of water was flowing slowly through the river channel during the biological assessment. LOA evaluated an approximately 300-foot section of the river that occurs closest to the development site.

The adjacent reach of riparian habitat of the Guadalupe River is highly disturbed by human inputs. The edge of the low-flow channel is armored with gabions. Weedy introduced plant species occur along the lower banks including non-native species such as Italian thistle (*Carduus pycnocephalus*), fennel (*Foeniculum vulgare*), bristly oxtongue (*Helminthotheca echioides*), serrated lettuce, spotted ladysthumb (*Persicaria maculosa*), and Harding grass (*Phalaris aquatic*). Vegetation within the channel included watercress (*Nasturtium officinale*), cattails (*Typha* spp.), and a couple small willow (*Salix* sp.) saplings. The paved pedestrian trail of the Guadalupe River Trail runs adjacent to the channel passing under Woz Way to the north and under Interstate 280 to the south. The bank of the river includes terraced plantings within concrete and paver stone planter areas. Trees and shrubs that were planted within the planter areas include generally young/small native species such as the California bay laurel, Valley oak (*Quercus lobata*), coast live oak, and California grape (*Vitis californica*). Some of the weedy species that were observed within the planters include the wild

oat (*Avena* sp.), serrated lettuce, and wild radish (*Raphanus sativus*). The edge of the Guadalupe River riparian area is demarcated with a flood wall, and there is significant flood control related cement infrastructure within the channel upstream and at the reach within the study area. This reach of riparian and riverine habitat occurs immediately adjacent to the highway interchange of Interstate 280 and Highway 87, which is one of the busiest interchanges in all of metropolitan San Jose, and it dominates approximately 60 acres of land immediately to the southwest. The interchange includes eight separate bridge crossings over the river just upstream from the subject reach crossings (permanently shading approximately 0.1 miles of the river). Downstream from the reach is a culvert bridge supporting an approximately 110-foot wide Woz Way and adjacent walking bridge overpass. Homeless encampments were observed in high density along the bank of the river and adjacent to and under the road infrastructure, and a significant amount of trash was observed within the banks and channel area of the river. Very little exposed soil is present within the reach or under any of the road infrastructure. No mature riparian vegetation is present, and planted riparian species are very sparse relative to typical riparian vegetation.

While there are pockets of mature riparian vegetation upstream and downstream of the site, the Guadalupe River is a system that has been heavily impacted by its urban setting in the vicinity of the development site. Regardless, many common species are known to use this river as part of their home range and/or as a movement corridor; however, it likely that this usage is highly limited by the human inputs described above.

The Guadalupe River is known to provide habitat for several species of fish including the Sacramento sucker juveniles (*Catostomus occidentalis occidentalis*), prickly sculpin (*Cottus asper*), rifle sculpin (*Cottus gulosus*), Pacific lamprey (*Entosphenus tridentatus*), California roach (*Hesperoleucus symmetricus*), and Central California Coast steelhead (*Oncorhynchus mykiss*). Non-native fish, including the white bullhead catfish (*Ameiurus catus*), green sunfish (*Lepomus cyanellus*), and largemouth bass (*Micropterus salmoides*), also occur in the Guadalupe River. Riparian systems can serve as dispersal or movement corridors and islands of habitat for many species of wildlife that are adapted to urban creeks. Animals observed along the Guadalupe riparian corridor include a red-tailed hawk (*Buteo jamaicensis*), evidence of cliff swallow (*Petrochelidon pyrrhonota*) nesting under Woz Way, Anna's hummingbird, black phoebe, and a feral cat. Numerous additional species of birds are likely to occur within the riparian corridor, and several

reptilian, amphibian, and mammalian species would also use the riparian habitats of the creek. Species expected to occur in the riparian habitat include the pacific treefrog (*Hyla regalia*), western fence lizard (*Sceloporus occidentalis*), non-native red-eared slider (*Trachemys scripta elegans*), western pond turtle (*Actinemys marmorata*), deer mouse, non-native rats, brush rabbit (*Sylvilagus bachmani*), non-native eastern gray squirrel (*Sciurus carolinensis*), Botta's pocket gopher (*Thomomys bottae*), California ground squirrel (*Otospermophilus beechyi*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), and coyote (*Canis latrans*).

In general, the adjacent reach of the Guadalupe River does not offer high quality foraging, breeding, or cover habitat for local species. Species are not expected to occur in high numbers within the reach adjacent to the development site, but the species discussed above would be expected to utilize the reach as an important migratory corridor.

2.2 MOVEMENT CORRIDORS

Ecologists and conservation biologists have long advocated for the protection and restoration of landscape linkages among suitable habitat patches. Movement corridors or landscape linkages are usually linear habitats that connect two or more habitat patches (Harris and Gallagher 1989), providing assumed benefits to the species by reducing inbreeding depression, and increasing the potential for recolonization of habitat patches. Some researchers have even demonstrated that poor quality corridors can still provide some benefit to the species that use them (Beier 1996).

Habitat corridors are vital to terrestrial animals for connectivity between core habitat areas (i.e., larger intact habitat areas where species make their living). Connections between two or more core habitat areas help ensure that genetic diversity is maintained, thereby diminishing the probability of inbreeding depression and geographic extinctions. This is especially true in fragmented landscapes and the surrounding urbanized areas as found in the rural/urban matrix along the edges of the City of San Jose.

The quality of habitat within the corridors is important. "Better" habitat consists of an area with a minimum of human interference (e.g., roads, homes, etc.) and is more desirable to more species than areas with sparse vegetation and high-density roads. Movement corridors in California are typically associated with valleys, rivers and creeks supporting riparian vegetation, and ridgelines. With increasing encroachment of humans on wildlife habitats, it has become important to establish

and maintain linkages, or movement corridors, for animals to be able to access locations containing different biotic resources that are essential to maintaining their life cycles.

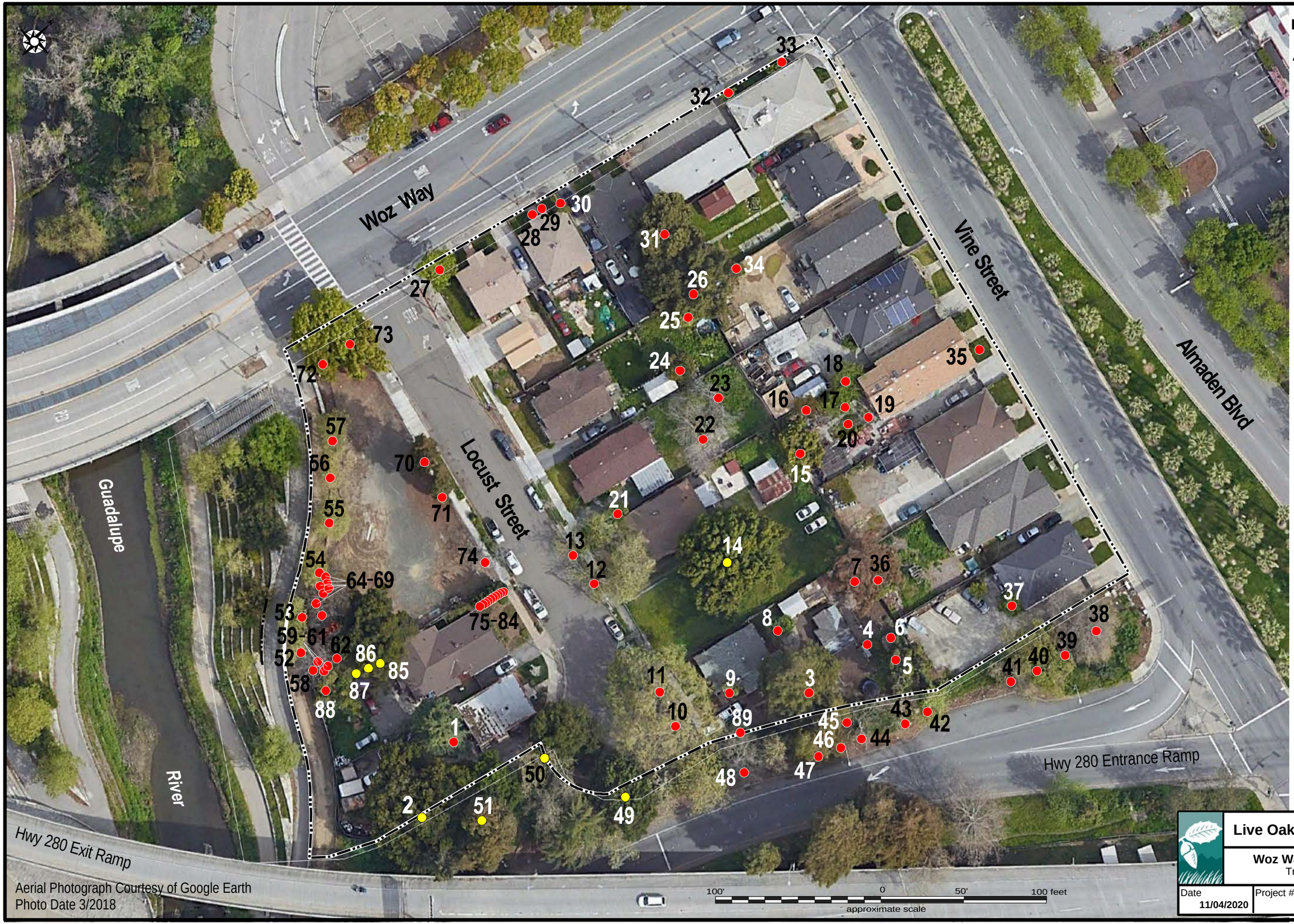
Healthy riparian areas (supporting structural diversity, i.e., understory species to saplings to mature riparian trees) have a high biological value as they not only support a rich and diverse wildlife community but have also been shown to facilitate regional wildlife movement. Riparian areas can vary from tributaries winding through scrubland to densely vegetated riparian forests to urbanized channels constrained to engineered pathways.

A riparian zone can be defined as an area that has a source of fresh water (e.g., rill, stream, river), a defined bank, and upland areas consisting of moist soils (e.g., wetter than would be expected simply due to seasonal precipitation). These areas support a characteristic suite of vegetative species, many of which are woody, that are adapted to moister soils. Such vegetation in hills surrounding San Jose include California buckeye (*Aesculus californica*), California hazelnut (*Corylus cornuta* var. *californica*), willows (*Salix* spp.), elderberry (*Sambucus* sp.), Oregon ash (*Fraxinus latifolia*), walnut (*Juglans* sp.), California laurel, toyon (*Heteromeles arbutifolia*), and some species of oaks (*Quercus* spp.).

The development site itself is not a movement corridor, and it does not provide the functions and values discussed above. However, the development site is adjacent to the highly degraded riparian corridor of the Guadalupe River. The adjacent reach of the river itself offers low habitat value to regional wildlife in the form of forage, cover, and breeding/roosting habitat, but the Guadalupe River is an important thread of aquatic habitat and regional habitat linkage for many species. Many fish species may use the Guadalupe River including the steelhead and the chinook salmon (*Oncorhynchus tshawytscha*). Many bird species use the Guadalupe River for movement and foraging habitat. In general, the Guadalupe River is expected to act as a movement corridor for many common local species, as discussed above in Section 2.1.2.

2.3 TREES OF THE WOZ WAY STUDY AREA

A field inspection of tree resources was completed on September 11, 2019, by Ms. Wendy Fisher, an arborist certified by the International Society of Arboriculture (Certified Arborist #WE-3872A) with the field assistance of LOA ecologist Nathan Hale. The tree survey study area (Figure 4)



Aerial Photograph Courtesy of Google Earth
Photo Date 3/2018

LEGEND

- Approximate Tree Survey Study Area
- 38 — Non-native Tree Location & Number
- 49 — Native Tree Location & Number

Live Oak Associates, Inc.

Woz Way Study Area
Tree Survey

Date	Project #	Figure #
11/04/2020	2395-02	4

differs slightly from both the development site and the overall project study area; (ref. Figure 2), as the tree survey study area was based on a different potential development footprint than the final project.

The survey located, identified, and assessed the health and condition of 89 trees greater than 4 inches in diameter located on approximately 3 acres. Fifty-five (55) of these trees fell within the requirements specified by the City of San Jose tree ordinance. All ordinance-sized and non-ordinance-sized trees greater than 4 inches in diameter were tagged using metal tree tags. Tree data collected in the field can be found in Table 1 below. Each tree falling within the ordinance was mapped in reference to a current Google Earth image of the tree survey study area (Figure 4). The numbered locations on the map correspond with the numbers in the right-hand column of Table 1 and 2. Photographs of ordinance-sized trees identified on the site during the arborist survey can be found in Appendix A.

Of the 22 different species of trees over 4 inches in diameter identified during the survey, only five species are indigenous to California and only two species are considered locally native. They are shown in bold in Table 1 and 2. Trees that are native to the site include eight individual trees from two different species: coast live oaks (*Quercus agrifolia*; 7 trees) and California bay laurel (*Umbellularia californica*; 1 tree. The coast redwood (*Sequoia sempervirens*: 6 trees) and evergreen huckleberry (*Vaccinium ovatum*; 1 tree) are both native California trees; however, they are not considered native to the tree survey study area and neither would naturally colonize the tree survey study area as part of their habitat range. Therefore, the latter two species are not shown as native plants in Table 1 or 2 as they are not native to the site. The largest diameter tree in the study area was Tree #3, a coast redwood, closely followed by a native California bay laurel tree (Tree #14).

Approximately 91% of the trees (both ordinance-sized and non-ordinance-sized) are non-native species to the site that were planted for ornamental or fruit productivity reasons. One tree species that occurs within the study area is an invasive noxious weed: tree-of-heaven (14 trees).

A summary of tree data is provided in Table 2. This summary provides a total number of ordinance-sized trees—those trees that are 38 inches in circumference (12” or greater in diameter) measured at 4.5 feet above grade—broken down by species.

TABLE 1. TREES OF THE WOZ WAY STUDY AREA, SAN JOSÉ, CALIFORNIA (NATIVE TREES IN BOLD).

Tree ID	Common Name	Species	Diameter (in.)	Circumference (in.)	Estimated Height (ft.)	Estimated Canopy	Condition Rating: Health and Structure (%)	Ordinance Tree*
1	Atlas cedar	*Cedrus atlantica*	35	110.0	80	35	90	Yes
2	**Coast live oak**	***Quercus agrifolia***	**46**	**144.5**	**60**	**65**	**90**	**Yes**
3	Coast redwood	*Sequoia sempervirens*	53.2	167.1	100	40	90	Yes
4	Common fig	*Ficus carica*	7.1	22.3	18	20	90	No
5	Incense cedar	*Calocedrus decurrens*	26.1	82.0	45	35	40—wound	Yes
6	Evergreen huckleberry	*Vacciunum ovatum*	5.7	17.9	12	12	80—leans	No
7	Coast redwood	*Sequoia sempervirens*	46.2	145.1	85	45	90—pruned	Yes
8	Orange	*Citrus × sinensis*	8	25.1	16	15	90	No
9	Yucca	*Yucca* sp.	10, 3.6	42.7	20	10	60--pruned	No
10	London plane	*Plantanus × acerifolia*	30.4	95.5	55	60	50--trunk wound	Yes
11	London plane	*Plantanus × acerifolia*	22	69.1	40	40	90	Yes
12	White mulberry	*Morus alba*	24.5	77.0	25	30	90	Yes
13	White mulberry	*Morus alba*	21.4	67.2	25	25	90	Yes
14	**California bay laurel**	***Umbellularia californica***	**52**	**163.4**	**60**	**80**	**90**	**Yes**
15	Avocado	*Persia americana*	28.1	88.3	60	25	90	Yes
16	Unknown	--	6.2, 8.7	46.8	18	12	40	Yes
17	Plum	*Prunus cerasifera*	12.5	39.3	35	15	90	Yes
18	Willow	*Salix* sp.	10.6	33.3	45	45	80	No
19	Pecan	*Carya illinoinensis*	13.7	43.0	30	15	90	Yes
20	Pecan	*Carya illinoinensis*	8.9, 7.9	52.8	25	20	90	Yes
21	Yucca	*Yucca* sp.	14.9	46.8	18	14	90	Yes
22	Tree-of-heaven	*Ailanthus altissimus*	27.7	87.0	60	50	90	Yes
23	Tree-of-heaven	*Ailanthus altissimus*	24.9	78.2	55	40	90	Yes
24	Privet	*Ligustrum* sp.	8.5, 7.6, 6.4	70.7	22	25	90	Yes
25	Mexican fan palm	*Washingtonia robusta*	19	59.7	40	12	90	Yes
26	Pepper tree	*Schinus mole*	43.7	137.3	60	40	95	Yes
27	Japanese maple	*Acer palmatum*	18.3	57.5	20	18	90	Yes
28	Juniper	*Juniperus* sp.	6.1	19.2	8	6	90	No
29	Juniper	*Juniperus* sp.	5.5	17.3	8	6	90	No
30	Juniper	*Juniperus* sp.	5, 2, 6, 2	47.1	16	6	90	No
31	Acacia	*Acacia* sp.	26	81.7	18	10	90	Yes

TABLE 1. TREES OF THE WOZ WAY STUDY AREA, SAN JOSÉ, CALIFORNIA (NATIVE TREES IN BOLD).

Tree ID	Common Name	Species	Diameter (in.)	Circumference (in.)	Estimated Height (ft.)	Estimated Canopy	Condition Rating: Health and Structure (%)	Ordinance Tree*
32	Red buckeye	*Aesculus pavia*	7.5	23.6	16	8	40--topped	No
33	Red buckeye	*Aesculus pavia*	12.3	38.6	16	8	40--diseased	Yes
34	Avocado	*Persia americana*	9.3	29.2	30	16	40--diseased	No
35	Callery pear	*Pyrus calleryana*	4.5	14.1	20	6	60--dead top	No
36	Grapefruit	*Citrus paradisi*	15.4, 4, 9	77.9	18	18	90	Yes
37	Orange	*Citrus × sinensis*	10.8, 4.9	49.3	30	8	95--good	Yes
38	London plane	*Plantanus × acerifolia*	30.4	95.5	60	35	90	Yes
39	London plane	*Plantanus × acerifolia*	10.4	32.7	30	20	90	No
40	London plane	*Plantanus × acerifolia*	24.4	76.7	55	50	60--spindly	Yes
41	London plane	*Plantanus × acerifolia*	21.9	68.8	60	35	90	Yes
42	London plane	*Plantanus × acerifolia*	14.3	44.9	40	18	80	Yes
43	London plane	*Plantanus × acerifolia*	13.1	41.2	50	28	90	Yes
44	London plane	*Plantanus × acerifolia*	16.3	51.2	25	35	90	Yes
45	Coast redwood	*Sequoia sempervirens*	17.2	54.0	120	25	90	Yes
46	Coast redwood	*Sequoia sempervirens*	27.5	86.4	130	25	90	Yes
47	Coast redwood	*Sequoia sempervirens*	14.4, 17.5	100.2	120	25	90	Yes
48	London plane	*Plantanus × acerifolia*	16.6	52.2	50	50	90	Yes
49	**Coast live oak**	***Quercus agrifolia***	**33**	**103.7**	**75**	**70**	**90**	**Yes**
50	**Coast live oak**	***Quercus agrifolia***	**27**	**84.8**	**60**	**30**	**60-leaning**	**Yes**
51	**Coast live oak**	***Quercus agrifolia***	**22.9**	**71.9**	**75**	**35**	**80**	**Yes**
52	London plane	*Plantanus × acerifolia*	12.9	40.5	50	20	90	Yes
53	London plane	*Plantanus × acerifolia*	13	40.8	45	30	90	No
54	London plane	*Plantanus × acerifolia*	18.8	59.1	80	25	90	Yes
55	London plane	*Plantanus × acerifolia*	19.8	62.2	80	30	90	Yes
56	London plane	*Plantanus × acerifolia*	17.3	54.3	70	25	90	Yes
57	London plane	*Plantanus × acerifolia*	12.5, 10.3	71.6	60	25	90	Yes
58	Tree-of-heaven	*Ailanthus altissimus*	7, 9.7	52.5	75	35	90	Yes
59	Tree-of-heaven	*Ailanthus altissimus*	10.6	33.3	75	35	90	No
60	Tree-of-heaven	*Ailanthus altissimus*	4.8	15.1	70	30	90	No
61	Tree-of-heaven	*Ailanthus altissimus*	5	15.7	70	30	90	No
62	Tree-of-heaven	*Ailanthus altissimus*	9.8	30.8	70	30	90	No
63	Tree-of-heaven	*Ailanthus altissimus*	6.3	19.8	55	20	90	No

TABLE 1. TREES OF THE WOZ WAY STUDY AREA, SAN JOSÉ, CALIFORNIA (NATIVE TREES IN BOLD).

Tree ID	Common Name	Species	Diameter (in.)	Circumference (in.)	Estimated Height (ft.)	Estimated Canopy	Condition Rating: Health and Structure (%)	Ordinance Tree*
64	Tree-of-heaven	*Ailanthus altissimus*	10.4	32.7	50	20	90	No
65	Tree-of-heaven	*Ailanthus altissimus*	8	25.1	50	20	90	No
66	Tree-of-heaven	*Ailanthus altissimus*	4.2	13.2	50	20	90	No
67	Tree-of-heaven	*Ailanthus altissimus*	11	34.6	50	20	90	No
68	Tree-of-heaven	*Ailanthus altissimus*	10	31.4	50	20	90	No
69	Tree-of-heaven	*Ailanthus altissimus*	8.2	25.8	40	20	90	No
70	Coast redwood	*Sequoia sempervirens*	24	75.4	110	25	90	Yes
71	Coast redwood	*Sequoia sempervirens*	24	75.4	110	18	80	Yes
72	Callery pear	*Pyrus calleryana*	12	37.7	35	20	80	Yes
73	Callery pear	*Pyrus calleryana*	15.8	49.6	35	25	80	Yes
74	Pecan	*Carya illinoinensis*	15.5	48.7	20	30	80	Yes
75	Pecan	*Carya illinoinensis*	16.4	51.5	25	25	70	Yes
76	Italian cypress	*Cupressus sempervirens*	6.9	21.7	20	8	80	No
77	Italian cypress	*Cupressus sempervirens*	10.1	31.7	20	8	90	No
78	Italian cypress	*Cupressus sempervirens*	6.9	21.7	20	8	90	No
79	Italian cypress	*Cupressus sempervirens*	8	25.1	20	8	90	No
80	Italian cypress	*Cupressus sempervirens*	9.5	29.8	20	8	90	No
81	Italian cypress	*Cupressus sempervirens*	6.4	20.1	20	8	90	No
82	Italian cypress	*Cupressus sempervirens*	6.9	21.7	20	8	90	No
83	Italian cypress	*Cupressus sempervirens*	10.6	33.3	20	8	90	No
84	Italian cypress	*Cupressus sempervirens*	8.5	26.7	20	8	90	No
85	**Coast live oak**	***Quercus agrifolia***	**36.3**	**114.0**	**60**	**45**	**90**	**Yes**
86	**Coast live oak**	***Quercus agrifolia***	**36.3**	**114.0**	**60**	**45**	**90**	**Yes**
87	**Coast live oak**	***Quercus agrifolia***	**14.7**	**46.2**	**25**	**30**	**90**	**Yes**
88	Avocado	*Persia americana*	10.2, 9, 5, 13.9	119.7	28	30	60--pruned poorly	Yes
89	Privet	*Ligustrum* sp.	6.5	20.4	22	15	50	No

♦ Condition: Good = 80-100% healthy foliage and no significant defects; Fair = 50-79% healthy foliage and/or minor defects: Poor = 5-49% healthy foliage and/or other significant defects; Dead = less than 5% healthy foliage.

*Ordinance-Sized Trees are 38 inches or more in circumference (12" in Diameter) at 4.5 feet above ground.

TABLE 2. SUMMARY OF ORDINANCE-SIZED AND NON-ORDINANCE-SIZED TREES BY SPECIES OF THE WOZ WAY STUDY AREA, SAN JOSÉ, CALIFORNIA.

Common Name (Species Native to the Region are Bold)	Species	Number of Non-Ordinance-sized Trees per Species	Number of Ordinance-sized Trees per Species	Total Number of Trees
Acacia	*Acacia sp.*	0	1	1
Atlas cedar	*Cedrus atlantica*	0	1	1
Avocado	*Persia americana*	1	2	3
Bradford Callery pear	*Pyrus calleryana*	1	2	3
California bay laurel	***Umbellularia californica***	**0**	**1**	**1**
Coast live oak	***Quercus agrifolia***	**0**	**7**	**7**
Coast redwood	*Sequoia sempervirens*	0	7	7
Common fig	*Ficus carica*	1	0	1
Evergreen huckleberry	*Vaccinium ovatum*	1	0	1
Grapefruit	*Citrus paradisi*	0	1	1
Incense cedar	*Calocedrus decurrens*		1	1
Italian cypress	*Cupressus sempervirens*	9	0	9
Japanese maple	*Acer palmatum*	0	1	1
Juniper	*Juniperus sp.*	3	0	3
London plane	*Platanus × acerifolia*	2	14	16
Mexican fan palm	*Washingtonia robusta*	0	1	1
Orange	*Citrus × sinensis*	1	1	2
Pecan	*Carya illinoinensis*	0	4	4
Pepper	*Schinus mole*	0	1	1
Plum	*Prunus cerasifera*	0	1	1
Privet	*Ligustrum sp.*	1	1	2
Red buckeye	*Aesculus pavia*	1	1	2
Tree-of-heaven	*Ailanthus latissimus*	11	3	14
Unknown	--	0	1	1
White mulberry	*Morus alba*	0	2	2
Willow	*Salix sp.*	1	0	1
Yucca	*Yucca sp.*	1	1	2
Total Number of Species	**22 (3 are Native)**	**34**	**55**	**89**

2.4 SPECIAL STATUS PLANTS AND ANIMALS

Several species of plants and animals within the state of California have low populations, limited distributions, or both. Such species may be considered "rare" and are vulnerable to extirpation as the state's human population grows and the habitats these species occupy are converted to agricultural and urban uses. As described more fully in Section 3.2, state and federal laws have 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 the diversity of plant and animal species native to the state. A sizable number of native plants and animals have been formally designated as threatened or endangered under state and federal endangered species legislation. Others have been designated as "candidates" for such listing. Still others have been designated as "species of special concern" by the CDFW. The California Native Plant Society (CNPS) has developed its own set of lists of native plants considered rare, threatened, or endangered (CNPS 2019). Collectively, these plants and animals are referred to as "special status species."

A number of special status animals and plants occur in the vicinity of the study area. These species, and their potential to occur in the study area, are listed in Table 3. Sources of information for this table included *California Natural Diversity Data Base* (CDFW 2019), *Endangered and Threatened Wildlife and Plants* (USFWS 2019), and the *Annual Report on the Status of California State Listed Threatened and Endangered Animals and Plants* (CDFW 2019).

Supplementing the results of the surveys conducted of the development site and the adjacent riparian habitat of the Guadalupe River by LOA in Fall of 2019, a background special status species investigation was also conducted. A search of published accounts for all of the relevant special status plant and animal species was conducted for the San Jose West USGS 7.5 minute quadrangle in which the project site occurs, and for the eight surrounding quadrangles (Mountain View, Milpitas, Calaveras Reservoir, Cupertino, San Jose East, Castle Rock Ridge, Los Gatos, and Santa Teresa Hills) using the California Natural Diversity Data Base Rarefind5 2019. All species listed as occurring in these quadrangles on CNPS Lists 1A, 1B, 2, or 4 were also reviewed (Figure 5).

The development site is an urban residential area that has been completely graded and developed in its history. No natural plant communities are present, therein. In addition, the bank of the Guadalupe River is completely manipulated for flood control purposes. Of the species of special

status plants that occur within the 9-quad area, LOA has determined that no special status plant species would occur within the site. Species that were reviewed and considered by LOA include the following:

> Bent-flowered fiddleneck (*Amsinckia lunaris*), Bonny Doon manzanita (*Arctostaphylos silvicola*), alkali milk-vetch (*Astragalus tener* var. *tener*), Brittlescale (*Atriplex depressa*), Lesser Saltscale (*Atriplex minuscule*), Big-scale balsamroot (*Balsamorhiza macrolepis*), Santa Cruz Mountains pussypaws (*Calyptridium parryi var. hesseae*), chaparral harebell (*Campanula exigua*), Congdon's Tarplant (*Centromadia parryi* ssp. *congdonii*), dwarf soaproot (*Chlorogalum pomeridianum* var. *minus*), Point Reyes bird's-beak (*Chloropyron maritimum* ssp. *palustre*), Ben Lomond spineflower (*Chorizathe punges* var. *hartwegiana*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Mt. Hamilton fountain thistle (*Cirsium fontinale var. campylon*), Santa Clara red ribbons (*Clarkia concinna ssp. automixa*), San Francisco collinsia (*Collinsia multicolor*), western leatherwood (*Dirca occidentalis*), Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), Hoover's Button-Celery (*Eryngium aristulatum* var. *hooveri*), San Joaquin Spearscale (*Extriplex joaquinana*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), Contra Costa goldfields (*Lasthenia conjugens*), woolly-headed lessingia (*Lessingia hololeuca*), smooth lessingia (*Lessingia micradenia var. glabrata*), Showy Golden Madia (*Madia radiata*), arcuate bush-mallow (*Malacothamnus arcuatus*), Hall's bush-mallow (*Malacothamnus hallii*), Mt. Diablo cottonweed (*Micropus amphibola*), woodland woollythreads (*Monolopia gracilens*), Prostrate Vernal Pool Navarretia (*Navarretia prostrata*), Dudley's lousewort (*Pedicularis dudleyi*), Santa Cruz Mountains beardtongue (*Penstemon rattanii var. kleei*), white-rayed pentachaeta (*Pentachaeta bellidiflora*), white-flowered rein orchid (*Piper candida*), hairless popcornflower (*Plagiobothrys glaber*), California alkali grass (*Puccinellia simplex*), rock sanicle (*Sanicula saxatilis*), chaparral ragwort (*Senecio aphanactis*), maple-leaved checkerbloom (*Sidalcea malachroides*), Metcalf Canyon jewel-flower (*Streptanthus albidus ssp. albidus*), and most beautiful jewel-flower (*Streptanthus albidus ssp. peramoenus*), slender-leaved pondweed (*Stuckenia filiformis* ssp. *alpina*), California seablite (*Sueda californica*), Saline Clover (*Trifolium hydrophilum*), Santa Cruz clover (*Trifolium buckwestiorum*), and Caper-fruited Tropidocarpum (*Tropidocarpum capparideum*).

Only animal species whose current or historic ranges include the Santa Clara Valley were considered.

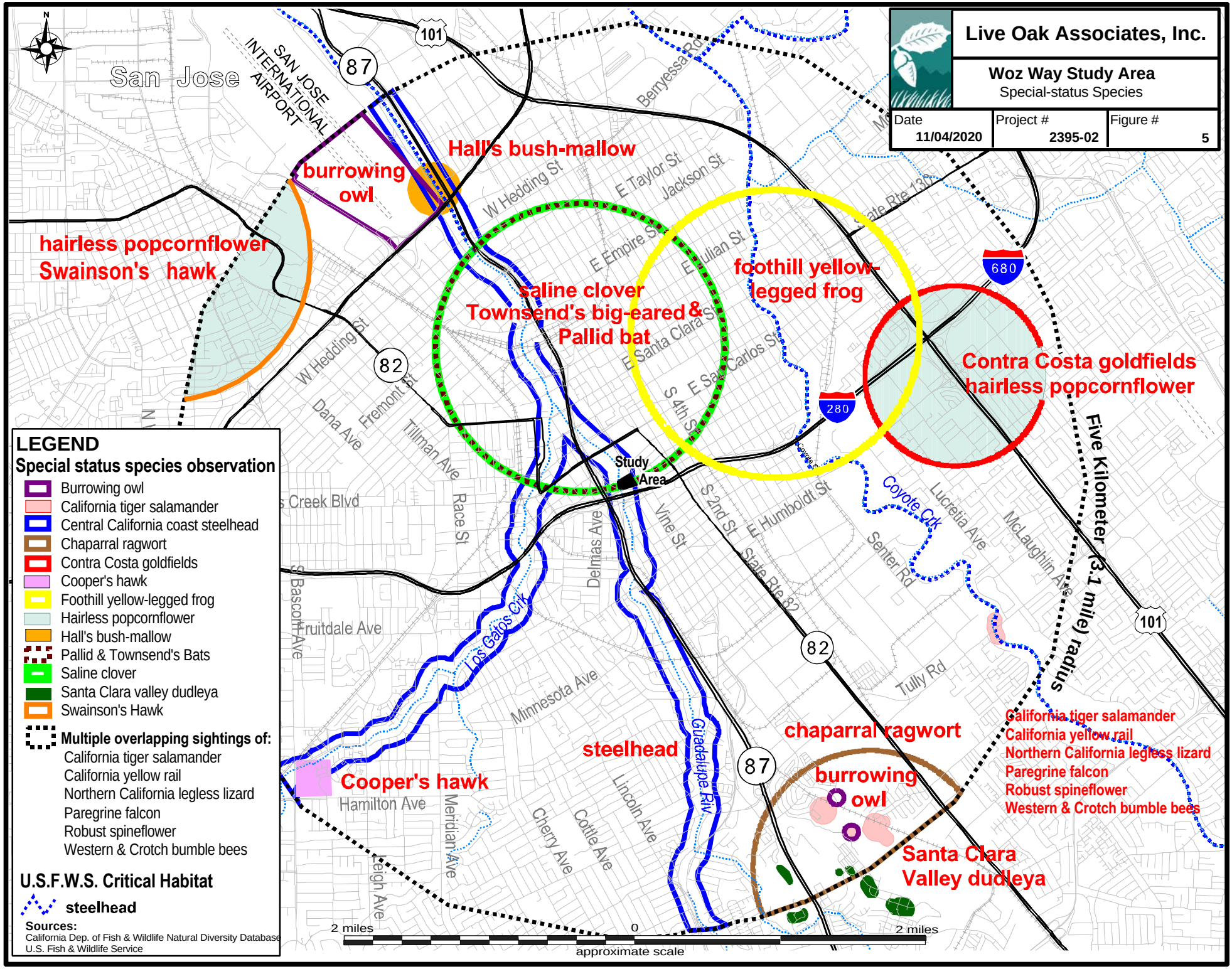

Live Oak Associates, Inc.
Woz Way Study Area
Special-status Species
Date 11/04/2020
Project # 2395-02
Figure # 5
San Jose
SAN JOSE INTERNATIONAL AIRPORT
Study Area
Hall's bush-mallow
burrowing owl
hairless popcornflower
Swainson's hawk
saline clover
Townsend's big-eared &
Pallid bat
foothill yellow-legged frog
Contra Costa goldfields
hairless popcornflower
Five Kilometer (3.1 mile) radius
California tiger salamander
California yellow rail
Northern California legless lizard
Paregrine falcon
Robust spineflower
Western & Crotch bumble bees
chaparral ragwort
burrowing owl
steelhead
Cooper's hawk
Santa Clara Valley dudleya
LEGEND
Special status species observation
Burrowing owl
California tiger salamander
Central California coast steelhead
Chaparral ragwort
Contra Costa goldfields
Cooper's hawk
Foothill yellow-legged frog
Hairless popcornflower
Hall's bush-mallow
Pallid & Townsend's Bats
Saline clover
Santa Clara valley dudleya
Swainson's Hawk
Multiple overlapping sightings of:
California tiger salamander
California yellow rail
Northern California legless lizard
Paregrine falcon
Robust spineflower
Western & Crotch bumble bees
U.S.F.W.S. Critical Habitat
steelhead
Sources:
California Dep. of Fish & Wildlife Natural Diversity Database
U.S. Fish & Wildlife Service
2 miles
0
2 miles
approximate scale

TABLE 3. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE GENERAL PROJECT VICINITY

ANIMALS (adapted from CDFW 2019 and USFWS 2019)

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Development Site
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.** The habitat in the development site and the surrounding area is largely urbanized and lacks natural habitats that would be used by this species. The crotch bumble bee was historically known to occur within the same quadrangle in which the project occurs (CDFW 2019), but it is now considered to be locally extirpated (Xerces Society 2018). Furthermore, the adjacent riparian habitat of the Guadalupe River offers at best low-quality foraging habitat.
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 boarder. 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.** Existing land uses in the development site and the surrounding area is largely urbanized and lacks natural habitats that would be used by this species. The western bumble bee was historically known to occur within the same quadrangle in which the project occurs (CDFW 2019), but this portion of its range now appears to be locally extirpated (Hatfield 2020; Xerces Society 2018). Furthermore, the adjacent riparian habitat of the Guadalupe River offers at best low-quality foraging habitat.
Coho salmon-Central California Coast ESU (*Oncorhynchus kisutch*)	FE, CE	Spawn in freshwater streams, adults live in ocean, usually within 30 km of their natal stream. Occupied California streams are located in central to northern California.	**Absent.** The development site lacks any aquatic habitat for this species. However, the site is adjacent to the Guadalupe River, which has the potential of supporting coho salmon. However, there are no verified records of Coho salmon using the Guadalupe River watershed (M. Jennings, pers.comm., August 2015).
Steelhead - Central California Coast DPS (*Oncorhynchus mykiss irideus*)	FT	Spawn in freshwater rivers or streams in the spring and spend the remainder of their life in the ocean.	**Absent.** The development site lacks any aquatic habitat for this species. However, the Guadalupe River is adjacent to the site and is known to support steelhead. The project will not occur within the bed or banks of the Guadalupe River. Buildout of the project, including added shading of the river, is not expected to adversely affect the usage of the reach of the Guadalupe River for this species.

TABLE 3. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE GENERAL PROJECT VICINITY

ANIMALS – cont'd.

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Development Site
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.** The development site does not support breeding habitat or suitable aestivation habitat for CTS and the surrounding area is built up such that it would exclude their occurrence. The nearest recorded observations are more than 2.5 miles to the southeast of the development site (CDFW 2019).
Foothill Yellow-legged Frog (*Rana boylii*)	CSC	Occurs in swiftly flowing streams and rivers with rocky substrate with open, sunny banks in forest, chaparral, and woodland habitats, and can sometimes be found in isolated pools.	**Absent.** Suitable habitats required by this species are completely absent from the development site. No water features exist therein. While the Guadalupe River is adjacent to the site and supports poor to moderately-suitable habitat for this species, the Foothill yellow-legged frog has not been reported anywhere near the downtown reach of the river's watershed. The nearest recorded observation is centered approximately 1.5 miles to the northeast of the development site in Coyote Creek (CDFW 2019).
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.** The development site does not support breeding habitat. The nearest recorded observation is more than three miles from the site (CDFW 2019). This species has not been reported within the downtown reach of the Guadalupe River nor is it expected to occur therein.
Western snowy plover (nesting) (*Charadrius alexandrines nivosus*)	FT, CSC	Uses man-made agricultural wastewater ponds and reservoir margins. Breeds on barren to sparsely vegetated ground at alkaline or saline lakes, reservoirs, ponds, and riverine sand bar.	**Absent.** Breeding and foraging habitat is absent from the development site and project study area for this species. The nearest recorded observation is more than three miles from the site (CDFW 2019).
California least tern (*Sterna antillarum browni*)	FE, CE, CP	Occurs in central to southern California April to November. Found in and near coastal habitat including coasts, beaches, bays, estuaries, lagoons, lakes, and rivers.	**Absent.** Breeding and foraging habitat is absent from development site and project study area for this species. At most, a California least tern may pass by the site during migratory movements. The nearest recorded observation is more than three miles away (CDFW 2019).
Swainson's hawk (nesting) (Buteo swainsoni)	CT	Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah. Requires adjacent suitable foraging areas such as grasslands or alfalfa fields supporting rodent populations.	**Absent.** Breeding and foraging habitat for Swainson's hawk is not present on the development site. The nearest recorded observation of Swainson's hawk is approximately 3 miles to the northwest; this record is likely outdated. The nearest current record is that of a nesting pair in Coyote Valley near the Bailey Avenue interchange at Highway 101, more than ten miles away.

TABLE 3. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE GENERAL PROJECT VICINITY

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Development Site
Tricolored Blackbird (Agelaius tricolor)	CSC, CT	Breeds near fresh water, primarily emergent wetlands, with tall thickets. Forages in grassland and cropland habitats.	**Unlikely.** Suitable foraging and breeding habitat does not occur within the development site or the adjacent reach of the Guadalupe River for tricolored blackbirds. The nearest recorded observation is more than three miles from the project study area (CDFW 2019).
Western yellow-billed cuckoo (nesting) (*Coccyzus americanus occidentalis*)	FC, CE	Breed in large blocks of riparian habitats, particularly cottonwoods and willows.	**Absent.** Dense riparian habitat required by the western yellow-billed cuckoo is absent from the development site and study area. The nearest recorded observation is more than three miles away (CDFW 2019).
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 does not exist within the development site or adjacent reach of riparian habitat for this species, and the study area is disconnected from the known range for this species.
Northern California legless lizard (*Anniella pulchra*)	CSC	The NCLL (previously called silvery legless lizard) occurs mostly underground in warm moist areas with loose soil and substrate. The NCLL 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 does not exist within the development site or greater study area for this species.
Western Pond Turtle (*Actinemys marmorata*)	CSC	Intermittent and permanent waterways including streams, marshes, rivers, ponds and lakes. Open slow-moving water of rivers and creeks of central California with rocks and logs for basking.	**Unlikely.** Suitable habitat for the western pond turtle is absent from the development site itself, although it may occur in the adjacent Guadalupe River. Buildout of the project is not expected to change the usage of the reach of the Guadalupe River by this species. It is unlikely that the western pond turtle would choose to use the adjacent bank between the channel and the development site for basking due to the high human usage of the bank and the lack of suitable basking habitat features. Furthermore, this species would be apparently blocked from moving onto the development site due to the presence of stairs, fences, and other unsuitable features between the river and the project footprint. The nearest reported occurrences are more than three miles away (CDFW 2019).

TABLE 3. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE GENERAL PROJECT VICINITY

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Development Site
Coast Horned Lizard (*Phrynosoma blainvillii*)	CSC	Occur in grasslands, scrublands, oak woodlands, etc. of central California. Common in sandy washes with scattered shrubs.	**Absent.** Suitable habitats required by coast horned lizards are absent. The development site does not support appropriate soils and the site completely disturbed. The adjacent reach of riparian corridor is also unsuitable for this species. The nearest recorded observation is more than 3 miles away (CDFW 2019).
Golden Eagle (nesting & nonbreeding/wintering) (*Aquila chrysaetos*)	CP	Typically frequents rolling foothills, mountain areas, sage-juniper flats and desert.	**Absent.** Suitable breeding and foraging habitats are absent from the development site and study area. Furthermore, the study area would not attract golden eagles. The nearest recorded observations of nesting habitat is more than 3 miles away (CDFW 2019).
Northern harrier (nesting) (Circus cyaneus)	CSC	Frequents meadows, grasslands, open rangelands, freshwater emergent wetlands; uncommon in wooded habitats.	**Unlikely.** Habitat for this species is absent from the development site, although northern harriers may fly over the development site from time to time. The nearest recorded location for this species is more than three miles away (CDFW 2019).
White-tailed Kite (nesting) (*Elanus leucurus*)	CP	Open grasslands and agricultural areas throughout central California.	**Unlikely.** The busy urban setting of the study area makes it generally unsuitable for this species as nesting and foraging habitat, however, a white-tailed kite could occur in the development site from time to time.
American Peregrine Falcon (nesting) (*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.	**Possible.** This species is known to occur within within San Jose and, specifically, the urban downtown area in which the development site occurs. Therefore, this species could forage over the site from time to time. Breeding habitat is lacking.
Western Burrowing Owl (*Athene cunicularia*)	CSC	Open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. Often associated with California ground squirrels.	**Absent.** The development site does not support suitable burrowing owl habitat. Ground squirrel burrows and other suitable cover habitat were lacking from the development site and the adjacent riparian habitat, and the development site is fully disturbed. The nearest reported burrowing owl record is approximately 2 miles to the northwest of the site near the San Jose International Airport (CDFW 2019).
Black Swift (nesting) (*Cypseloides niger*)	CSC	Migrants found in many habitats of state; in Sierra nests are often associated with waterfalls.	**Absent.** The development site does not provide suitable breeding or foraging habitat for this species. The nearest recorded observation is more than three miles away (CDFW 2019).

TABLE 3. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE GENERAL PROJECT VICINITY

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Development Site
Purple martin (nesting) (*Progne subis*)	CSC	Cavity nester, nests widely in man-made birdhouses. In the west, woodpecker holes are important breeding cavities.	**Possible.** The trees and buildings of the development site and weepholes of bridges in the vicinity may provide potential nesting habitat. The purple martin may be expected to fly over or forage above the development site and/or riparian corridor from time to time. The nearest recorded observation is more than three miles away (CDFW 2019).
Saltmarsh Common Yellowthroat (*Geothlypis trichas sinuosa*)	CSC	Breeds in herbaceous wetlands and salt marshes of the San Francisco Bay, can also be found in along the California Coast. Nests in thick herbaceous vegetation up to one meter above the ground or over water	**Absent.** Suitable habitat for this species is absent from the development site and the adjacent reach of riparian habitat. The nearest recorded observation is more than three miles away (CDFW 2019).
California yellow warbler (*Dendroica petechia brewster*)	CSC	Migrants move through many habitats of Sierra and its foothills. This species breeds in riparian thickets of alder, willow and cottonwoods.	**Unlikely**. Suitable breeding and foraging habitat do not occur within nearby riparian habitat of the Guadalupe River and no suitable habitat exists within the development site. The nearest recorded observation is more than three miles from the site (CDFW 2019).
Alameda song sparrow (*Melospiza melodia pusillula*)	CSC	Found in tidal salt marsh habitat with exposed ground for foraging with no more than 2-5 cm between bases of plants. Current range is generally only along the San Francisco Bay.	**Absent**. Suitable breeding and foraging habitat do not occur within nearby riparian habitat of the Guadalupe River and no suitable habitat exists in the development site. This species is known to occur only along the San Francisco bay lands.
Pallid Bat (*Antrozous pallidus*)	CSC	Grasslands, chaparral, woodlands, and forests of California; most common in dry rocky open areas that provide roosting opportunities.	**Possible.** Foraging habitat is presumed present in the development site for the Pallid bat. This species may roost in some of the residential structures and out-buildings. The nearest recorded observation is generally adjacent to the development site in an area that is centered approximately one mile to the north of the site (CDFW 2019).
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.** Foraging habitat is presumed present on the site, and roosting habitat is possible for the Townsend's big-eared bat in the form of the older residential structures and out-buildings. This species has been recorded within 1 mile of the site (CDFW 2019).
San Francisco Dusky-Footed Woodrat (*Neotoma fuscipes annectens*)	CSC	Found in hardwood forests, oak riparian and shrub habitats.	**Absent.** The development site and adjacent reach of riparian habitat does not support suitable habitat for the San Francisco dusky-footed woodrat; additionally, no woodrat nests were observed during the 2019 study area visits. The nearest recorded observation is more than three miles away (CDFW 2019).

TABLE 3. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE GENERAL PROJECT VICINITY

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Development Site
American Badger (*Taxidea taxus*)	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils, specifically grassland environments. Natal dens occur on slopes.	**Absent.** The development site, adjacent riparian area, and surrounding development is not suitable habitat for the American badger. The nearest recorded observation is more than three miles away (CDFW 2019).
Ringtail (*Bassariscus astutus*)	CP	Occurs in riparian and heavily wooded habitats near water.	**Absent.** Suitable riparian habitat for this species does not exists in the development site or in the low-quality riparian habitat of the Guadalupe River adjacent to the site. Additionally, the nearest recorded observation for this species is more than three miles away (CDFW 2019).

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

Present: Species observed on the sites 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 sites, but it could occur there from time to time.
Unlikely: Species not observed on the sites, and would not be expected to occur there except, perhaps, as a transient.
Absent: Species not observed on the sites, and precluded from occurring there because habitat requirements not met.

***Explanation of Occurrence Designations and Status Codes (cont'd).**

STATUS CODES

FE	Federally Endangered	CE	California Endangered
FT	Federally Threatened	CT	California Threatened
FPE	Federally Endangered (Proposed)	CR	California Rare
FC	Federal Candidate	CP	California Protected
CSC	California Species of Special Concern	CCE	California Candidate Endangered
CNPS	California Native Plant Society Listing		
1A	Plants Presumed Extinct in California	3	Plants about which we need more information – a review list
1B	Plants Rare, Threatened, or Endangered in California and elsewhere	4	Plants of limited distribution – a watch list
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere		

2.5 JURISDICTIONAL WATERS

Jurisdictional waters include rivers, creeks, and drainages that have a defined bed and bank and which, 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). See Section 3.2.4 of this report for additional information.

No jurisdictional waters or wetlands occur onsite and the project is not expected to impact the bed or bank of the Guadalupe River, which occurs adjacent to the development site.

3 IMPACTS AND MITIGATIONS

3.1 SIGNIFICANCE CRITERIA

General plans, area plans, and specific projects are subject to the provisions of the California Environmental Quality Act (CEQA). The purpose of CEQA is to assess the impacts of proposed projects on the environment before they are constructed. For example, site development may require the removal of some or all of its existing vegetation. Animals associated with this vegetation could be destroyed or displaced. Animals adapted to humans, roads, buildings, pets, etc., may replace those species formerly occurring on a site. Plants and animals that are state and/or federally listed as threatened or endangered may be destroyed or displaced. Sensitive habitats such as wetlands and riparian woodlands may be altered or destroyed. These impacts may be considered significant. According to 2019 CEQA Statute and Guidelines (AEP 2019), "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 will:

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

For the purposes of this report, it is assumed that direct impacts will include buildout of the entire development site. The project also plans to build within 35 feet from the edge of the riparian habitat (i.e., the top of bank) of the Guadalupe River. This analysis assumes that no direct impacts to the bed or banks of the Guadalupe River will result from the project. Possible indirect impacts to the species and habitat functions and values riparian habitat of the Guadalupe River are considered.

3.2 RELEVANT GOALS, POLICIES, AND LAWS

3.2.1 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. To "take" a listed species, as defined by the state of California, is "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill" said species (California Fish and Game Code, Section 86). "Take" is more broadly defined by the federal Endangered Species Act to include "harm" of a listed species (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.

3.2.2 Migratory Birds

State and federal laws also protect most bird species. 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., scc. 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.

3.2.3 Birds of Prey

Birds of prey are protected in California under provisions of the State Fish and Game 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.

3.2.4 Jurisdictional Waters and Wetlands

Jurisdictional waters include waters of the United States subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE) and waters of the State of California subject to the regulatory authority of the California Department of Fish and Wildlife (CDFW) and the California Regional Water Quality Control Board (RWQCB).

3.2.4.1 Clean Water Act, Section 404

The USACE regulates the filling or grading of Waters of the U.S. under the authority of Section 404 of the Clean Water Act. Drainage channels and adjacent wetlands may be considered "waters of the United States" or "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.

The definition of waters of the U.S. have changed several times in recent years. In January 2020, the Environmental Protection Agency (EPA) and USACE jointly issued the Navigable Waters Protection Rule. The new rule was published in the Federal Register on April 21, 2020, and took effect on June 22, 2020.

The Navigable Waters Protection Rule (33 CFR §328.3(a)) defines waters of the U.S. as:

<u>Territorial Seas and Traditional Navigable Waters (TNWs)</u>

- The territorial seas and traditional navigable waters include large rivers and lakes and tidally-influenced waterbodies used in interstate or foreign commerce.

Tributaries

- Tributaries include perennial and intermittent rivers and streams that contribute surface flow to traditional navigable waters in a typical year. These naturally occurring surface water channels must flow more often than just after a single precipitation event—that is, tributaries must be perennial or intermittent.
- Tributaries can connect to a traditional navigable water or territorial sea in a typical year either directly or through other "waters of the United States," through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).
- Ditches are to be considered tributaries only where they satisfy the flow conditions of the perennial and intermittent tributary definition and either were constructed in or relocate a tributary or were constructed in an adjacent wetland and contribute perennial or intermittent flow to a traditional navigable water in a typical year.

Lakes, Ponds, and Impoundments of Jurisdictional Waters

- Lakes, ponds, and impoundments of jurisdictional waters are jurisdictional where they contribute surface water flow to a traditional navigable water or territorial sea in a typical year either directly or through other waters of the United States, through channelized non-jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).
- Lakes, ponds, and impoundments of jurisdictional waters are also jurisdictional where they are flooded by a water of the United States in a typical year, such as certain oxbow lakes that lie along the Mississippi River.

Adjacent Wetlands

- Wetlands that physically touch other jurisdictional waters are "adjacent wetlands."
- Wetlands separated from a water of the United States by only a natural berm, bank or dune are also "adjacent."
- Wetlands inundated by flooding from a water of the United States in a typical year are "adjacent."
- Wetlands that are physically separated from a jurisdictional water by an artificial dike, barrier, or similar artificial structure are "adjacent" so long as that structure allows for a direct hydrologic surface connection between the wetlands and the jurisdictional water in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.
- An adjacent wetland is jurisdictional in its entirety when a road or similar artificial structure divides the wetland, as long as the structure allows for a direct hydrologic surface connection through or over that structure in a typical year.

The Navigable Waters Protection Rule also outlines what do not constitute waters of the United States. The following waters/features are not jurisdictional under the rule:

- Waterbodies that are not included in the four categories of waters of the United States listed above.
- Groundwater, including groundwater drained through subsurface drainage systems, such as drains in agricultural lands.
- Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools.
- Diffuse stormwater run-off and directional sheet flow over upland.
- Many farm and roadside ditches.
- Prior converted cropland retains its longstanding exclusion, but is defined for the first time in the final rule. The agencies are clarifying that this exclusion will cease to apply when cropland is abandoned (i.e., not used for, or in support of, agricultural purposes in the immediately preceding five years) and has reverted to wetlands.
- Artificially irrigated areas, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease.
- Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters.
- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel.
- Stormwater control features excavated or constructed in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off.
- Groundwater recharge, water reuse, and wastewater recycling structures, including detention, retention and infiltration basins and ponds, that are constructed in upland or in non-jurisdictional waters.
- Waste treatment systems have been excluded from the definition of waters of the United States since 1979 and will continue to be excluded under the final rule. Waste treatment systems include all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater or stormwater prior to discharge (or eliminating any such discharge).

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 under Section 404 of the Clean Water Act. 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 without a CWA Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards (Section 3.6.2).

3.2.4.2 Porter-Cologne Water Quality Act/Clean Water Act, Section 401

There are nine Regional Water Quality Control Boards (RWQCB) statewide; collectively, they oversee regional and local water quality in California. The RWQCB administers Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act. 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.

Pursuant to Section 401 of the Clean Water Act, the RWQCB regulates waters of the State that are also waters of the U.S. Discharges into such waters require a Section 401 Water Quality Certification from the RWQCB as a condition to obtaining certain federal permits, such as a Clean Water Act Section 404 permit (Section 3.6.1). Discharges into all Waters of the State, even those that are not also Waters of the U.S., require Waste Discharge Requirements (WDRs), or a waiver of WDRs, from the RWQCB.

The Porter-Cologne Water Quality Control Act, Water Code Section 13260, requires that "any person discharging waste, or proposing to discharge waste, within any region that could affect the 'waters of the State' to file a report of discharge" with the RWQCB. Waters of the State as defined in the Porter-Cologne Act (Water Code Section 13050[e]) are "any surface water or groundwater, including saline waters, within the boundaries of the state." This gives the RWQCB authority to regulate a broader set of waters than the Clean Water Act alone; specifically, in addition to regulating waters of the U.S. through the Section 401 Water Quality Certification process, the RWQCB also claims jurisdiction and exercises discretionary authority over "isolated waters," or waters that are not themselves waters of the U.S. and are not hydrologically connected to waters of the U.S.

The RWQCB also administers the Construction Stormwater 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 Stormwater Program. A prerequisite for this permit is the development of a Stormwater Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer. Projects that discharge wastewater, stormwater, or other pollutants into a Water of the U.S. may require a NPDES permit.

3.2.4.3 California Fish and Game Code, Section 1602

The CDFW has jurisdiction over the bed and bank of natural drainages and lakes according to provisions of Section 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 the 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.

3.2.5 Ordinance Sized Trees

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 of an area greater than the development site in conjunction with preparation of this biological evaluation report and the results are presented herein.

3.2.6 Required Riparian Setbacks

Riparian habitats have high conservation value due to their importance for water quality, biological diversity, and/or habitat connectivity. Historically, riparian habitats throughout the west have been substantially altered and degraded. As such, cities, counties and other land planning agencies throughout the west have given priority to preserving functioning riparian systems by establishing suitable setbacks to lessen indirect effects from construction of new roads and associated development on existing riparian habitats.

Relevant to the proposed project, the conditions of the Santa Clara Valley Habitat Plan (SCVHP) and the City of San José's Council Policy 6-34 (Council Policy 6-34), and the City's Envision 2040 General Plan (2040 Plan) address riparian setback distances between extant riparian habitat and planned development, and they address conditions in which exceptions are allowed. The following content addresses the proposed setback with respect to the SCVHP, Council Policy 6-34, and the 2040 Plan.

3.2.6.1 Riparian Setback: Santa Clara Valley Habitat Plan

The SCVHP (Section 3.2.7) includes a condition to minimize impacts on riparian habitat where the primary method for riparian habitat protection is a development-free setback from the riparian community. Setback requirements are dependent on what type of stream community they relate to, whether the project is within the City's Urban Service Area (USA), and the slope of the project site. Stream communities under the SCVHP plan area are categorized into two groups: Category 1 and Category 2 streams. Stream categories are defined in the SCVHP as follows:

- "Category 1. This stream type has sufficient flow to support covered species and riparian habitat. These streams include perennial streams and some intermittent streams. These streams are typically larger than ephemeral drainages and support movement of covered species along the length of the stream. The ability of these streams to also support healthy riparian habitats bolsters the ecological value of the stream.
- "Category 2. This stream type may not have sufficient flow to support covered species and riparian habitat. These streams include all ephemeral streams and some intermittent stream reaches. These reaches provide minimum support of water-quality functions and primary breeding habitat for covered species." (pp. 6-47 & 6-48; ICF International 2012).

Specific riparian setbacks are classified in the SCVHP. For Category 1 streams, the setback set by the SCVHP is 100 feet from the top of bank for projects occurring inside the USA and 150 feet from the top of bank for projects occurring outside the USA. If the proposed project occurs within

an area with a slope of greater than 30% adjacent to a Category 1 stream, the setback is increased by 50 feet. In addition, if the site supports riparian vegetation the setback is equal to the riparian edge plus a 35-foot buffer or the setback as defined above, whichever is greater.

For Category 2 streams the mandated setback is 35 feet from the top-of-bank and edge of riparian regardless of the slope or location of the site.

The SCVHP defines exceptions that allow for reduced setbacks that are "…necessary to allow reasonable use and development of a property based on a variety of constraints and factors that may affect the property," (pp. 6-54; ICF International 2012). Riparian setback exceptions, which are intended to be granted in a minority of cases, are to be considered based the following factors:

- "The existence of legal uses within the setback.
- "The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
- "The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
- "The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies." (pp. 6-54; ICF International 2012).

Regardless of the project location, Category 1 stream setbacks to less than 50 feet for new development or 35 feet for redevelopment (of sites with legal buildings or uses) would not be permitted under the SCVHP. Preliminary mapping of all Category 1 streams has been included in the SCVHP (ICF International 2012). The reach of the Guadalupe River adjacent to the project site is designated by the SCVHP as a Category 1 stream.

3.2.6.2 Riparian Setback: City of San José's Council Policy 6-34

The City of San José adopted a formal riparian setback policy in 2016. Titled "Riparian Corridor Protection and Bird-Safe Design," the City of San José's Council Policy 6-34 provides project design guidance to most projects that require approval of a development permit that occur within 300 feet of stream banks. Such guidance includes measures to reduce impacts to streams, primarily including minimum setbacks from stream courses. Stream setbacks are measured from the outside

dripline of the riparian corridor vegetation or top-of-bank, whichever is further from the channel. All riparian projects are required to implement a standard minimum setback of 100 feet, with potential exceptions granted to projects where no significant environmental impact will occur. The Policy also addresses potential impacts to riparian systems as they relate to construction materials and lighting design of the building. The Policy encourages restoration or rehabilitation of riparian corridors to be included in project designs.

Setbacks of less than 100-feet can be approved under a limited set of circumstances, including;

1. Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.
2. Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.
3. Sites with unique geometric characteristics and/or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback.
4. Pre-existing one- or two-family residential lots, or typical yard area, but only where a frontage road is infeasible to buffer Riparian Corridors from these and the Building Setbacks are consistent with all Riparian Corridor setback requirements.
5. Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.
6. Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback.
7. Recreational facilities deemed to be a critical need and for which alternative site locations are limited.
8. Utility or equipment installations or replacements that involve no significant disturbance to the Riparian Corridor during construction and operation, and generate only incidental human activity.
9. The existence of legal uses within the minimum setback.

10. The extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).
11. The extent to which meeting the minimum setback would require deviations from, exception to or variances from other established policies, legal requirements, or standards.

To receive an exception to a 100-foot setback, a project applicant would be required to submit a report by a qualified biologist, stream hydrologist, or other appropriate professional that certifies that:

1. There is no reasonable alternative for the proposed project that avoids or reduces the encroachment into the setback area.
2. The reduced setback will not significantly reduce or adversely impact the riparian corridor.
3. The proposed used are not fundamentally incompatible with riparian habitats.
4. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the setback area.
5. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

The Council Policy 6-34 goes on to prescribe design guidance related to the materials and lighting of the proposed projects. Specifically, the Policy states that new development should use materials and lighting that reduce light and glare impacts into the riparian habitat and which are not reflective, glossy, brightly colored, see-through, or glare-producing in the material finishes on buildings. Also, night lighting should not be directed into the riparian corridor. Projects are furthermore encouraged by the Council Policy to incorporate habitat restoration or rehabilitation projects into the design and implementation of the project.

The Council Policy also addresses potential impacts to birds from buildings that are designed in ways that do not reduce bird collisions (also called "bird strike") with the building's reflective windows. Specifically, the bird safe building design elements of the Council Policy are specific to new construction within San José, north of State Route 237. This project is therefore not subject to the bird safe design elements of the Council Policy 6-34; however, bird-safe design considerations of the proposed project is addressed in Section 3.3.6, below.

3.2.6.3 Riparian Setback: City of San Jose Envision 2040 General Plan

The 2040 Plan (Section 3.2.6) addresses protection of riparian habitat as it relates to new development. Specifically, the 2040 Plan seeks to ensure that new development projects conform to both the City of San Jose Riparian Corridor Policy Study (City of San José 1999) as well as any relevant Habitat Conservation Plans (e.g., the SCVHP). The 2040 plan recommends "that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur," (Chapter 3, pp. 28; City of San Jose 2011). The 2040 Plan also advises that new development projects are designed to protect adjacent riparian habitat from the biological impacts of night lighting, exotic landscaping, noise, and toxic substances impacting the riparian zone, and endorses restoration of riparian habitat through planting of native plants and removal of exotic/invasive species. Design guidelines of the referenced City of San José Riparian Corridor Policy Study include the following:

- Guideline 2B: Windows on new structures should not have mirrored surfaces that glare into the riparian corridor;
- Guideline 2E: Night lighting should not be oriented directly into riparian areas to avoid light impacts on wildlife;
- Guideline 2F: Operation of mechanical equipment adjacent to the riparian corridor should not exceed open space noise levels as specified in the City of San Jose's General Plan. Stationary, noise-making mechanical equipment should be placed as far from the riparian corridor as necessary to maintain ambient levels within the corridor;
- Guidelines 3A and 4G: Landscaped areas adjacent to the riparian corridor, including vegetated barriers between the corridor and development (4G), should utilize locally adapted native vegetation, and invasive species should not be used;
- Guideline 3B: Irrigation systems within 100-feet of the riparian corridor should be designed so as to avoid negative impacts to the riparian system;
- Guideline 4F: If fences are used between riparian areas and development, they should be designed so that wildlife is not hindered (no higher than 3 or 4 feet).
- Guideline 7B: On-site runoff retention areas should be sited at least 25 feet from the edge of riparian areas.
- Guideline 7E: During project construction, temporary fencing or some other solid barriers should be installed outside of the riparian area to protect riparian habitat from project build-out.

3.2.7 Santa Clara Valley Habitat Plan

The project will be subject to conditions and fees contained in the Santa Clara Valley Habitat Conservation Plan. Six local partners (the County of Santa Clara, Santa Clara Valley Transportation

Authority; SCVWD; and the Cities of San Jose, Gilroy, and Morgan Hill) and two wildlife agencies (the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service) adopted this multi-species habitat conservation plan, which primarily covers southern Santa Clara County as well as the City of San Jose with the exception of the bayland areas. The SCVHP addresses listed species and species that are likely to become listed during the plan's 50-year permit term. The eighteen covered species include nine plants and nine animals. The SCVHP requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value. 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.

3.2.7.1 SCVHP Fees

Chapter 9 of the SCVHP identifies fees that may be required by this project. The following describes fees that are subject to the project based on the 2020-2021 fee schedule; however, fees are calculated based on the fee schedule at the time the project submits for a grading or building permit. Thus the following numbers should be considered approximate. The development site of the Woz Way site would be designated as an urban site, which is a land use category that does not require payment of Fee Zone A, B, or C fees; however, other fees may apply. The 2020-2021 SCVHP Nitrogen Deposition Fee would be required at $5.31 for each new vehicle trip generated by the project and/or $50.09 for each single-family residence, depending on the final project design.

3.2.7.2 Conditions on Covered Activities

The SCVHP provides several conditions for covered activities under the SCVHP. These conditions can be found in Chapter 6 of the SCVHP (Appendix F) and are listed 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. Several of these species are likely to occur on or forage over the site (golden eagle, bald eagle, white-tailed kite, and ringtail). 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. Additionally, page 6-94 and Table 6-8 identify required surveys for breeding habitat of select covered wildlife species.

- **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 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 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 is not limited to trail, bridge, road, and culvert maintenance, bank stabilization, removal of debris, and vegetation management.

  Avoidance and minimization measures for Conditions 3-5 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 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 that Condition 6 includes 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-** See Section 3.2.6.1, above, for an expanded discussion.
- **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. The project would complete a wetland delineation to confirm the distribution and condition of the wetlands onsite.
- **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 areas that support serpentine bunchgrass grassland, serpentine rock outcrops, serpentine seeps, and serpentine chaparral. Fees apply 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.
- **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.
- **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).

3.3 IMPACTS SPECIFIC TO THE PROJECT

The future Woz Way project includes conversion of 2.93 acres of existing residential development into a site with two 20-story buildings with a maximum tower height of 297 feet above grade, an internal driveway accessible from Woz Way and Almaden Boulevard, and an adjacent 4-story parking garage that would also have 4 stories of below-grade parking (8 stories total). The buildings would be set back from the Guadalupe River's top of bank by a minimum distance of 35 feet. Development of the buildings would include removal of residential structure on 16 properties and vegation/landscaping on 17 residental properties. A total of 52 trees are planned for removal. No culverts into or bridges over the Guadalupe River are planned, and no other direct impacts to the bed or bank of the Guadalupe River are planned. The new buildings would comprise 1,211,777 sq. ft. of office buildings and 9,748 sq. ft. of retail space.

3.3.1 Loss of Habitat for Special Status Plants

Potential Impact. No special status plant species that occur within the region would occur within the study area due to a lack of suitable habitat and from complete disturbance of the natural habitats of the site over the years. The saline clover is shown as potentially overlapping the study area in Figure 5; however, this occurrence was dated from 1903 and is considered to be extirpated. No impacts to special status plants will occur during project buildout.

Mitigation. None warranted.

3.3.2 Loss of Habitat for Special Status Animals

Potential Impact. Thirty-two (32) special status animal species occur, or once occurred, regionally. Of these, twenty-eight species would be absent or unlikely to occur within the development site due to a lack of suitable habitat for these species. These species include the crotch bumble bee, western bumble bee, Coho salmon, steelhead, longfin smelt, California black salamander, California tiger salamander, California red-legged frog, foothill yellow-legged frog, coast horned lizard, Northern California legless lizard, western pond turtle, California least tern, western snowy plover, golden eagle, western burrowing owl, Swainson's hawk, northern harrier, white-tailed kite, western yellow-billed cuckoo, tricolored blackbird, black swift, saltmarsh

common yellowthroat, California yellow warbler, Alameda song sparrow, San Francisco dusky-footed woodrat, American badger, and ringtail.

Of these, the steelhead and western pond turtle are known to occur adjacent to the development site within the Guadalupe River channel, but neither would be expected to move onto the development site due to the absence of aquatic habitat and unsuitable basking habitat for the pond turtle. The study area itself is not considered to be regular habitat for any of these twenty-eight species.

The four remaining special status animal species from Table 3 include the American peregrine falcon, purple martin, pallid bat, and Townsend's big-eared bat. The American peregrine falcon is known to occur within urban downtown San Jose, but nesting habitat is currently lacking from the site. At most, the site may provide limited foraging habitat and perching habitat for the falcon, and buildout of the site could actually increase foraging and/or nesting habitat for the falcon in the form of creating an artificial cliff (i.e., a high-rise building) that this species has been known to utilize effectively. The purple martin could nest in tree cavities of the development site, building crevices, or cement weepholes in adjacent bridges, and it may forage over the development site or riparian habitat. Potential impacts to nesting purple martin individuals is discussed further in section 3.3.5. The two bat species could potentially occur more frequently as foragers, transients, or residents to the development site. No evidence of bats was observed during reconnaissance surveys, but potentially suitable roosting habitat was observed within the residential structures of the site. If individual Townsend's big-eared bats and pallid bats were to be present within the buildings of the site, they could potentially be impacted during building demolition. Potential impacts to individuals of these species are discussed further in Section 3.3.7.

Overall, the proposed project would result in conversion of a property that is fully developed to a high-rise building. While the American peregrine falcon, purple martin, Townsend's big-eared bat, and pallid bat could and may use the development site or areas near the site, the development site does not support unique or important habitat for any of these species. Therefore, project buildout is expected to result in a less-than-significant impact to the loss of habitat for all of the special status animal species listed in Table 3. Potential impacts to Townsend's big-eared bat and pallid bat individuals are discussed further below.

Mitigation. No mitigation would be required for loss of habitat for special status animal species.

3.3.3 Loss of Habitat for Native Wildlife

Potential Impact. Natural habitats are completely lacking from the development site. Therefore, the habitat value of the site, consisting of residential properties with landscaping, is generally low-quality for most species of native animals. Animals that would use the site on a regular basis would include species that are adapted to urban land uses. In general, the site is expected to be occupied by a low density and diversity of animal species. Impacts due to the loss of these habitats for native wildlife resulting from the proposed project are considered less-than-significant.

Mitigation. No mitigation would be warranted for the loss of habitat for native wildlife.

3.3.4 Interference with the Movement of Native Wildlife

Potential Impact. While no detailed study of animal movements has been conducted for the study area, knowledge of the development site and site vicinity, its land uses, and the ecology of the species occurring therein permits sufficient predictions about the types of movements occurring in the region and whether or not proposed construction activities within the development site and subsequent project build-out may result in a disruption of local wildlife movements. The development site consists of a residential neighborhood and landscaped yards with generally sparse wildlife species. The adjacent reach of riparian habitat of the Guadalupe River is highly disturbed by human inputs. This reach of riparian and riverine habitat occurs immediately adjacent to the highway interchange of Interstate 280 and Highway 87, which is one of the busiest interchanges in all of metropolitan San Jose, dominates approximately 60 acres of land immediately to the southwest. The interchange includes eight separate bridge crossings over the river just upstream from the subject reach. Downstream from the reach is a highly developed culvert bridge of supporting an approximately 115-foot wide Woz Way overpass. Homeless encampments were observed in high density along the bank of the river and under the road infrastructure. The bank on both sides of the river is comprised of a paved pathways, stone and cement terraced planters, and a rock gabion toe. Very little exposed soil or natural plant community area is present within the reach or under any of the road infrastructure. No mature riparian vegetation is present, and planted riparian species are very sparse relative to typical riparian vegetation. However, the Guadalupe River channel is still a thread of aquatic habitat that moves past the development site, and connects higher quality riparian habitat upstream and downstream.

Given the setting, movement of native wildlife is more likely to take place adjacent to the site within the Guadalupe River corridor. Other than species that are highly adapted to an urban setting that would occur within the residential setting of the development site regardless of the proximity to the river, species that may move from the riparian corridor into the landscaped yards of the Woz Way site during migratory, territorial, and/or dispersing movements would do so to a lesser degree, as the site offers low habitat values for them and does not represent a pathway to higher quality habitat beyond the site. Species that travel through the Guadalupe River corridor would be more likely to continue moving through the low-quality riparian corridor to higher quality riparian habitats than the development site. Therefore, the loss or reduction of the ability to move into the development site due to project buildout would not be considered an impact to native wildlife. Project development, therefore, is expected to have a less-than-significant impact on the movements of native wildlife.

Mitigation. No mitigation would be warranted for interference with the movement of native wildlife.

3.3.5 Potential Impacts to Active Migratory Bird Nests including Purple Martin Nests from Construction Activities During Project Implementation

Potential Impacts. Trees and structures within the development site and immediately adjacent to the development site, including in the adjacent bank of the Guadalupe River, may support nesting birds including nesting purple martins (discussed in Section 3.3). Build-out of the project during the nesting period for migratory birds (i.e., typically between February 1 to August 31), including building demolition, initial site grading, soil excavation, and/or tree and vegetation pruning or removal, poses a risk to any nesting birds within or near the development site in the form of nest abandonment and death of any eggs or young that may be present within the nest. Such an effect would be considered a significant impact. To ensure that any active nests will not be disturbed, and individual birds will not be harmed by construction activities, the following measures shall be followed.

Mitigation. The following measures will ensure that active migratory bird or raptor nests will not be disturbed and individual birds will not be harmed by construction activities, especially including tree removal. If initial site disturbance activities, including tree removal, are to occur during the breeding season (1 February to 31 August), a qualified biologist will conduct pre-construction

surveys for nesting migratory birds within the development site and within 300 feet of the site, where accessible. The survey should occur within 14 days of the onset of ground disturbance if such disturbances are to commence during the nesting bird season. If a nesting migratory bird were to be detected, an appropriate construction-free buffer would be established. Actual size of the buffer, which would be determined by the project biologist, would depend on the nesting species, topographical relationship of the nest to the project disturbance area, and the type of activity that would occur in the vicinity of the nest. The buffer should be monitored periodically by the biologist to check the nest status and to ensure compliance, and the buffer should not be removed until the biologist has confirmed that the nest(s) is complete and young of the nest have fledged.

Completion of these measures will reduce the potential impacts to nesting migratory birds, including raptors, to a less-than-significant level.

3.3.6 Potential Impacts to Birds from Building Collision

Potential Impacts. The proximity of the proposed development project to a known movement corridor, the Guadalupe River, and within the flyway of many migratory birds means that birds could collide with the building under certain circumstances to a higher degree than what would be expected from bird window strikes within the residential neighborhood if the building windows are effectively invisible to birds and if they reflect suitable movement habitat and/or riparian habitat (i.e., vegetation). It is well documented that large windowed building facades can cause injury and mortality to flying birds due to the birds' inability to see certain glass types as anything other than open air and due to the reflection of vegetation that birds view as actual vegetation. Buildings that are designed in ways that includes a high proportion of highly reflective or mirrored surfaces, transparent glass areas where vegetation or sky can be viewed through the glass, and/or up-directed night lighting or bright, un-shielded night lighting, can result in high risk of potential impact to birds from collision with the building.

The proposed project includes conversion of the study area from that of an urban residential neighborhood into a 20-story building. The building is to be predominately clad with glass. The glass façade surfaces will be composed of a glass product designed to be visible to birds. Specifically, the project proposes to include Walker Glass AviProteck bird friendly glass with two different densities of acid-etched visual patterns. The density of etched dots in the glass visibility

pattern will be densest at 2-inch by 2-inch-spaced 5 mm dots in the lower 40 feet of the building (AviProtect Pattern 217), which is the portion of the façade where birds are more likely to collide with buildings. A 4-inch by 4-inch spaced 6 mm etched dot pattern (AviProtect Pattern 220) is proposed above the 40-foot level. The building will also comply with the City of San Jose's Dark Sky Policy, which will ensure that night lighting is directed downward and away from the riparian corridor. Plantings in the interior of the buildings will not be installed close to transparent glass, and the project will follow City of San Jose's green building design measures including achievement of a minimum of a LEED Silver certification. This LEED certification level indicates that the building will have some evening lighting conservation measures such as occupancy sensors on lighting and/or lighting programming to ensure interior lighting is limited after dark.

Given the design measures incorporated into the project, some especially intended to reduce bird impacts, impacts to birds from building collisions has been reduced to a less-than-significant level in project planning.

Mitigation. No mitigation is warranted for impacts to birds from building collisions.

3.3.7 Potential Impacts to Protected Bat Species

Potential Impacts. Bats could forage within the site, and the buildings of the site provide potentially suitable roosting habitat for several species including the Townsend's big-eared bat and pallid bat, as well as more common bat species likewise protected by CDFW code. While there was no evidence of bats (i.e., individuals, guano and/or staining) observed during reconnaissance surveys of the site, bats may use the buildings of the site for roosting habitat. The demolition of the onsite buildings could result in the mortality to bats. The mortality of individuals would constitute a significant adverse impact of the project.

Mitigation. Mitigation measures that protect bat species from possible direct mortality are warranted. The project applicant should implement the following measures to ensure that mortality to special status bats from future ground disturbances is avoided:

- A detailed bat survey shall be conducted by a qualified bat biologist within 14 days of building demolition to determine if bats are roosting or breeding in the buildings or trees of the disturbance footprint of the project. These surveys shall include a visual inspection of potential roosting features and a search for presence of guano within the project site, planned construction

access routes, and 50 feet around these areas. Cavities, crevices, exfoliating bark, and bark fissures that could provide suitable potential nest or roost habitat for bats shall be surveyed. If daytime surveys are inconclusive, night emergence surveys should be employed until the qualified bat biologist can conclude presence or absence. Potential roosting features found during the survey shall be flagged or marked. Ideally, an initial survey should be conducted to provide early notification of the potential for bat occurrence well ahead of demolition; however, this initial survey is not a requirement.

- If no bats are roosting or breeding in these structures within 14 days of site demolition, then a letter report shall be prepared by the biologist and submitted to the City. No further action would be required, and demolition can proceed.
- If bats are found roosting outside of the nursery season (March through August), the qualified bat biologist will create a bat eviction plan that ensures the safety of roosting bats and safely evicts the bats from demolition area during the appropriate time period (e.g., not when flightless young are present). The bat eviction plan will include details for excluding bats from the roost site and monitoring to ensure that all bats have exited the roost prior to the start of activity and are unable to re-enter the roost until activity is completed. Any bat eviction shall be timed to avoid lactation and young-rearing. If bats are found roosting during the nursery season, they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or by monitoring the roost after the adults leave for the night to listen for bat pups. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. Therefore, if a maternal roost is present, a 50-foot buffer zone shall be established around the roosting site within which no construction activities including tree removal or structure disturbance shall occur until after the nursery season. The applicant shall submit evidence of completion of habitat assessment and results to the City Planning Department, prior to issuance of a grading permit. The City should be provided with the bat eviction plan for approval and comment prior to implementation.

Full implementation of the measures identified above would mitigate impacts to protected bat species potentially occurring on the site.

3.3.8 Disturbance to Waters of the United States or Direct Impacts to Riparian Habitats

Potential Impacts. Offsite reaches of the Guadalupe River are considered Waters of the U.S. and are therefore under the jurisdiction of the USACE. The channel and/or riparian habitat of the Guadalupe River is also jurisdictional to the CDFW and RWQCB. However, there is not expected to be any disturbance to the Guadalupe River's bed, bank, or direct impact to riparian habitat. Therefore, the project will not result in disturbances to Waters of the United States of direct impacts to riparian habitats.

Mitigation. No mitigation would be warranted for disturbances to Waters of the United States or direct impacts to riparian habitats.

3.3.9 Potential Degradation of Water Quality in the Guadalupe River

Potential Impact. Eventual site development and construction will require grading that leaves the soil of construction zones barren of vegetation and, therefore, vulnerable to sheet, rill, or gully erosion. Eroded soil is generally carried as sediment in surface runoff to be deposited in natural creek beds, canals, and adjacent wetlands. Furthermore, urban runoff is often polluted with grease, oil, pesticide and herbicide residues, heavy metals, etc. These pollutants may eventually be carried to sensitive wetland habitats used by a diversity of native wildlife species. The deposition of pollutants and sediments in sensitive riparian and wetland habitats would be considered a potentially significant adverse environmental impact. The project will comply with the City's grading requirements and City policies 6-29 and 8-14 and as such will result in a less-than-significant impact to water quality. Potential short-term impacts that could result from project related soil disturbances in the form of sedimentation into the Guadalupe River would be avoided through implementation of water quality best management practices included in the project.

Mitigation. No mitigation is warranted.

3.3.10 Disturbance to Ordinance-Size and Heritage Trees

Potential Impacts. An LOA certified arborist identified 89 trees/shrubs greater than 4 inches in diameter on or immediately adjacent to the development site (see Table 1)—55 of which are ordinance-sized trees; no Heritage Trees were identified in the tree survey study area. According to project plans, 52 of these trees are planned for removal as part of project buildout—31 of which are ordinance-sized. In addition, trees not planned for removal but which may be in close proximity to the site include Trees #38-51 (see Figure 2). Three of these are coast live oaks, three are coast redwoods, and eight are London plane trees. All but one tree (Tree #39, a London Plane Tree) are ordinance-sized trees. These trees located outside of the project boundary could be severely impacted in the form of root damage during grading efforts. The loss of ordinance-sized trees without further compliance with the City's tree policies would constitute a significant adverse impact of the project. The following mitigation measures are provided to reduce impacts to disturbance to ordinance-sized trees to a less-than-significant level.

Mitigation. As trees with a circumference of 19 inches or greater at 4.5 feet above natural grade occur onsite, mitigation for removal of each ordinance-sized tree should follow the City's tree ordinance requirements as shown in Table 4.

TABLE 4. CITY OF SAN JOSÉ REPLACEMENT RATIO GUIDELINES FOR TREES TO BE REMOVED.

Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon container
19 - 38 inches	3:1	2:1	none	15-gallon container
less than 19 inches	1:1	1:1	none	15-gallon container

x:x = tree replacement to tree loss ratio
Note: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a permit is required for removal of trees of any size.
A 38-inch tree equals 12.1 inches in diameter.
A 24-inch box tree is equivalent to two 15-gallon trees.
Single family and two-dwelling properties may be mitigated at a 1:1 ratio.

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

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

Replacement trees that fail within 3 years of planting shall be replaced within the year of failure.

In order to protect trees that are not planned for removal but which may be in close proximity to project activities, a certified arborist shall review the final grading plan and prepare a Tree Resources Protection Plan that identifies which trees are to be removed and which are to be protected during buildout. The plan should incorporate tree protection measures to protect trees planned for retention from development impacts. At a minimum the plan will include the following measures:

1. Each tree to be retained will be enclosed by a "tree protection zone," to be established prior to site grading and retained for the duration of construction. Where possible, tree protection

zones shall be designed to encompass an area approximately 1.5 times the dripline area of the trees. The zones shall be marked with 4-ft tall brightly colored fencing material. Off-limits signs should be posted on the fences that state that no equipment is to enter the tree protection zone. No signs will be posted on the trunk of any trees.

2. Necessary pruning should be done during the winter dormant period. Only dead, weakened, diseased or dangerous branches should be removed. Avoid aesthetic pruning immediately before, during or after construction impact. Perform only that pruning which is unavoidable to conflicts with the proposed development.
3. The project shall be constructed with minimal filling, excavating, compaction, and trenching within the root zone.
4. Soak the ground beneath the canopy of each tree prior to, monthly during, and right after construction. This deep-watering method consists of a slow, several hour soaking within the root zone.
5. Should any roots need to be severed during construction, a certified arborist should be consulted prior to the action to provide guidance on proper methods.
6. Trees that have recently undergone severe pruning or root damage should not be fertilized for six months following disturbance. Fertilize and/or mulch each tree in late winter or early fall prior to any construction activities, using no more than six pounds of nitrogen per 1,000 square feet of dripline.
7. Prevent chemical spill damage within the root zones during construction by avoiding filling of gas tanks, repairing equipment, cleaning paint brushes, rinsing of cement trucks, or burning debris within the general proximity of the trees.
8. Keep the elevation of the soil surface at the existing level within the protected area around the trunk. Do not stockpile any construction material within the root zone, even temporarily.
9. Should any landscaping be proposed within the dripline of any oaks, choose only drought-tolerant native plants that require no summer watering.
10. Provide a copy of these tree protection measure to all contractors and project managers, including the architect, civil engineer, and landscape designer or architect.

These tree replacement requirements and the tree protection plan for trees near the development site to be retained will ensure disturbance to ordinance-sized trees are reduced to a less-than-significant level.

3.3.11 Potential Indirect Impacts to Biological Resources of the Guadalupe River Riparian Corridor

Potential Impact. As discussed elsewhere in this study, the Guadalupe River supports habitat for many species including several special status species, such as steelhead, the western pond turtle, nesting migratory birds, and bat species. In addition, while the adjacent reach is considered to be poor quality riparian habitat given the high levels of degradation, high levels of human inputs, and limited riparian vegetation (discussed further in Section 2.1.2 and Section 3.3.4), the river provides an important migratory/movement corridor for many regionally occurring species of animals and plants (i.e., in the form of seed/propagule transport). The greater Guadalupe River riparian corridor, including a portion of the river immediately downstream from Woz Way to the north, provides habitat for regional wildlife as foraging, roosting, and cover habitat and supports sensitive plant communities that thrive due to the perennial moisture availability. The aquatic channel also serves in nutrient transport and as migratory habitat, cover, and forage habitat for aquatic species (Section 2.1.2). This portion of the riparian habitat adjacent to the development site and elsewhere in downtown San Jose is heavily confined due to the dense urban infrastructure through which it flows. For example, roadways and large developments in the vicinity of the downtown reaches of the Guadalupe River are designed so that they do not contribute to natural river functions such as plant propagule uptake or dispersal, contributions to riverine structural diversity such as with root, log, branch, gravel, or sediment contributions, or even through contribution of sheet flow down the bank during storms, as would be the case in a natural system. Neither are these developed landscapes influenced by the presence of the river in a way that supports local ecosystem functions and values as there is little natural habitat adjacent to the immediately available riparian habitat. The net result is an urban river that is narrow in its influence.

Given these conditions, it is important to consider the potential impacts from development of the Woz Way site on the specific biological resources present within the adjacent reach of the Guadalupe River riparian corridor.

Development of the Woz Way study site would convert a mostly developed residential neighborhood comprised of single-family homes, landscaped yards, and roadways, into two 20-story buildings positioned up to 35 feet from the bank of the Guadalupe River. The project would not result in direct impacts to the Guadalupe River's bed, banks, or limited riparian vegetation. There would be no direct impacts to steelhead or other fish species which occur entirely in the river channel or to the western pond turtle which lives primarily in the aquatic environment but would otherwise be effectively restricted from accessing the site. There would also be no direct impacts to species foraging, roosting, or moving through the riparian habitat of the site, and there would be no direct impacts to riparian vegetation. It is also important to note that the north tower of the project would be located more than 100-feet from the moderate quality riparian habitat downstream from the project, across from Woz Way.

The proposed project could, however, result in the following indirect effects to the Guadalupe River riparian corridor and its constituent biological elements.

- Initial construction disturbances, such as loud noises from vegetation removal, excavation, and grading, implemented during the nesting bird season (i.e., February – August) could result in nest abandonment within the adjacent reach of the riparian corridor. Potential impacts to onsite nesting migratory birds are addressed with measures in Sections 3.3.5 that would reduce impacts to nesting birds to a less-than-significant level.
- Construction disturbances could result in a minor reduction of use of the riparian corridor by species for foraging, breeding, and roosting habitat. This could include migratory birds, bats, and other species. Given the low quality of the adjacent reach of the Guadalupe River (refer to Section 2.1.2), the fact that higher quality riparian habitat occurs upstream and downstream for these species, and that this effect would be temporary (i.e., only during construction), such an impact would be considered less-than-significant. Measures to reduce impacts to individual nesting birds and bats are included in Section 3.3.5 and 3.3.7. Implementation of these measures would reduce impacts to individual birds and bats to a less-than-significant level.
- Development of two 20-story buildings as close as 35-feet from the edge of the extant riparian habitat could include increased bird mortality from colliding with the building after being drawn toward the building from the riparian corridor due to reflectivity of the windows or night lighting. Potential impacts to birds from increased building collisions are offset by project design measures included in the project that are described by Sections 3.3.6.
- The new structure could cast higher levels of lighting into the creek habitat than current conditions, discouraging foraging of nocturnal animals, nesting of migratory birds, and creating unsafe conditions for animals. Impacts from night lighting, however, would be ameliorated by project design guidelines which will ensure night lighting is specifically pointed down and away from the riparian system; therefore, this potential impact is less-than-significant.

- The 20-story structures of the proposed project located 35-feet from the top-of-bank of the Guadalupe River and which, as proposed, lack a vegetative buffer could result in altered movement of wildlife of the riparian area reducing usage (Fontana et al. 2011); though, wildlife that utilize the site are already moving through the exceedingly degraded and built environment through which the Guadalupe River passes under current conditions. These conditions include human access trails, homeless encampments, freeway overpasses, and generally low value habitat. Regardless, the added towers are not an insignificant new element to the experience by migrating or dispersing wildlife in the adjacent riparian corridor. Implementation of mitigation measures described below, which require planting of large trees and shrubs between the towers and the adjacent reach of riparian habitat, would reduce this potential indirect impact on wildlife from the added visual impact of the proposed buildings in an already impacted setting to a less-than-significant level.
- Landscaping near the riparian corridors that could include invasive species (e.g. English ivy (*Hedera helix*) or tree-of-heaven) could result in such plants moving into the riparian corridors and causing adverse impacts to the plant communities upstream or downstream of the site. Landscaping could also include irrigation and chemical inputs (e.g. pesticides and fertilizers) that could negatively impact the riparian environment. Implementation of mitigation measures described below would reduce these potential indirect impacts on the riparian habitat to a less-than-significant level.

In addition to these effects, shading by the proposed towers on the riparian corridor could introduce additional indirect effects. Shading by the two towers would not result in a high-degree of darkness due to dispersion of sunlight in the atmosphere during the period that the buildings cast shade on the riparian habitat, but it would reduce direct sunlight into the riparian channel during the morning hours for an annual average of approximately 4 hours per day of shade over the adjacent reach of the Guadalupe River. This level of shading would slightly reduce photosynthetic capacity of the limited riparian vegetation in the adjacent reach of the riparian corridor, but the anticipated change in light availability for plants is considered insignificant given the average of approximately 9 hours of direct sunlight that would continue to reach the riparian habitat and the fact that many riparian species are adapted to partial shade (Borstein et al. 2005). Plant losses are not anticipated due to shading, and vegetation processes would persist. Shading may create slightly better habitat conditions for fishes in the aquatic channel due to an increase visibility of prey to fishes in shade (Helfman 1981) and the fractionally cooler water that would result, but the likely effects, beneficial or adverse, on wildlife from shading are considered minimal. Many portions of the reaches of the Guadalupe River in the downtown setting are replete with riparian shade from mature riparian trees, other towers, bridges of roadway, freeways, offramps, and walking trails, so this addition of shade would not have a measurable effect of local wildlife. Therefore, project shading would have a less-

than-significant effect on the biological resources of the Guadalupe River and associated riparian corridor.

Mitigation: The following mitigation measures are proposed to reduce impacts to the riparian habitat of the Guadalupe River from development of the Woz Way site to a less-than-significant level.

- To ensure non-native invasive plants do not move into the riparian corridor as a result of the proposed project, all landscaping within 100 feet of the riparian edge should be comprised of locally native or non-invasive species that are not featured on the California Invasive Plant Council's Invasive Plant Inventory (www.cal-ipc.org/ip/nventory).
- To ensure any irrigation associated with the project does not adversely impact the riparian corridor, all irrigation systems installed within 100 feet of the riparian corridor habitat will be designed so that there is no impact to riparian habitat (i.e., no erosion or over-spray into the riparian habitat).
- To reduce the potential indirect impact of the buildings' presence on wildlife and to provide cover habitat and limited screening of the riparian corridor from the proposed towers, the project shall install native tree and large shrub plantings in available space between the buildings and the riparian edge. This is deemed suitable for riparian birds, since planting of large shrubs and trees is regarded as the most effective method to enhance bird species richness and diversity (Fontana et al. 2011). Two areas located immediately west of the two towers, between planned development and the riparian habitats, with a combined area of 4,470 square feet (2,560 sq. ft. and 1,910 sq. ft., respectively) shall be planted with suitable native trees and shrubs. To ensure that a suitable native habitat enhancement planting is achieved, the applicant will develop a site-specific habitat mitigation and monitoring plan (HMMP) prepared by a qualified biologist and submitted to the City planning department for approval. The HMMP, which will be used to guide the onsite habitat restoration process, will include, at a minimum, the following elements:
    - A planting plan that lists the native trees and large shrubs that shall be included in the habitat restoration effort and which describes the site preparation requirements and irrigation requirements for the restoration area. The planting palate shall include primarily trees large shrubs. Trees shall include species such as big-leaf maple (*Acer macrophyllum*), box elder (*A. negundo*), California buckeye (*Aesculus californica*), coast live oak, and valley oak. Shrubs in the plant list shall be comprised of species such as blueblossom ceanothus (*Ceanothus thyrsiflorus*), coffeeberry (*Frangula californica*), and toyon (*Heteromeles arbutifolia*). Species to be used shall be consistent with the City's Riparian Corridor Policy Study (City of San Jose 1999) and the SCVWD's Guidelines and Standards for Land Use Near Streams. For instance, plants to be used shall be comprised of seeds and propagules collected from within the Guadalupe River watershed.
        - Trees shall be large format trees (e.g., 36-inch box trees or larger) at the time of installation. These large trees are preferred in this instance to jump start

the visual buffer between the buildings and the riparian habitat following completion of project development.

- Invasive species removal targets. The plan should identify species within the buffer area that should not be allowed to persist, such as species listed as having a high ecological impact on the California Invasive Plant Council's Invasive Plant Inventory. Specifically, any tree-of-heaven propagules should be eradicated as part of the mitigation effort.
- A map defining the habitat restoration area which will include planned locations for the plantings.
- A monitoring program including target success/goal criteria. The monitoring shall be included to occur once annually starting after the first growing season following installation of the plantings for a total of 5 monitoring years. Monitoring shall be conducted by a qualified biologist and shall focus on the health and development of the individual plantings. Target success goals will include survivorship of trees and shrubs at 80% after 5 years with generally good to excellent health (as determined by the monitoring biologist). It is assumed that after 5 years of monitoring if the planting meets project success criteria that the habitat restoration will continue to progress naturally into a healthy habitat buffer predominated by native over-story vegetation.
- Measures will be included to account for failure to meet the success criteria, including replanting with additional years of monitoring, and adaptive management measures to ameliorate potential barriers to success.
- A maintenance plan. The HMMP will also include a detailed plan for implementation of maintenance, including irrigation monitoring, plant health monitoring, vandalism prevention, and weed management. The maintenance plan will specify restrictions on uses of pesticides and fertilizers that are considered unsafe near natural aquatic habitats.

- The HMMP will be implemented immediately following completion of construction during the suitable installation period (typically November to April).

Successful implementation of these measures will reduced the indirect impacts to the riparian habitat of the Guadalupe River to a less-than-significant level.

3.3.12 Potential Constraints to Development from the San Jose 2040 General Plan

The Envision San Jose 2040 General Plan covers the study area and most notably recommends tree removal permits and setbacks of 100 feet along riparian corridors "in all but a limited number of instances, only where no significant environmental impacts would occur" (Goal ER-2), and measures for storm water/water quality are spelled out (Goal ER-8 and 9). The Project should adhere to local government policies, such as the Envision San Jose 2040 General Plan. Chapters 3 and 6 of the General Plan include several goals that the project must follow. Goals that may relate

to biological issues and are expected to be applicable to this project include Goals MS-21, ER-2, and ER-4 through ER-9 in Chapter 3. These Goals are summarized in Section 3.2.6 above. It is assumed that the project is consistent with all of the above Goals as long as any reduced riparian setback is granted by the City, as discussed in the subsections of Section 3.3.

Mitigation. No mitigation is warranted.

3.3.13 Potential Constraints to Development from City of San Jose's Council Policy 6-34

The project will be subject to the requirements of Council Policy 6-34 (Section 3.2.6.2). This policy requires that development adhere to a 100-foot riparian setback unless the project qualifies for a reduced setback exception. The Woz Way project proposes to maintain a minimum 35-foot riparian setback (Figure 3 & Figure 6). In compliance with the policy, the Woz Way development site is subject to at least three circumstances outlined in the Council Policy, they include:

- Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.
- The existence of legal uses within the minimum setback.
- The extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).

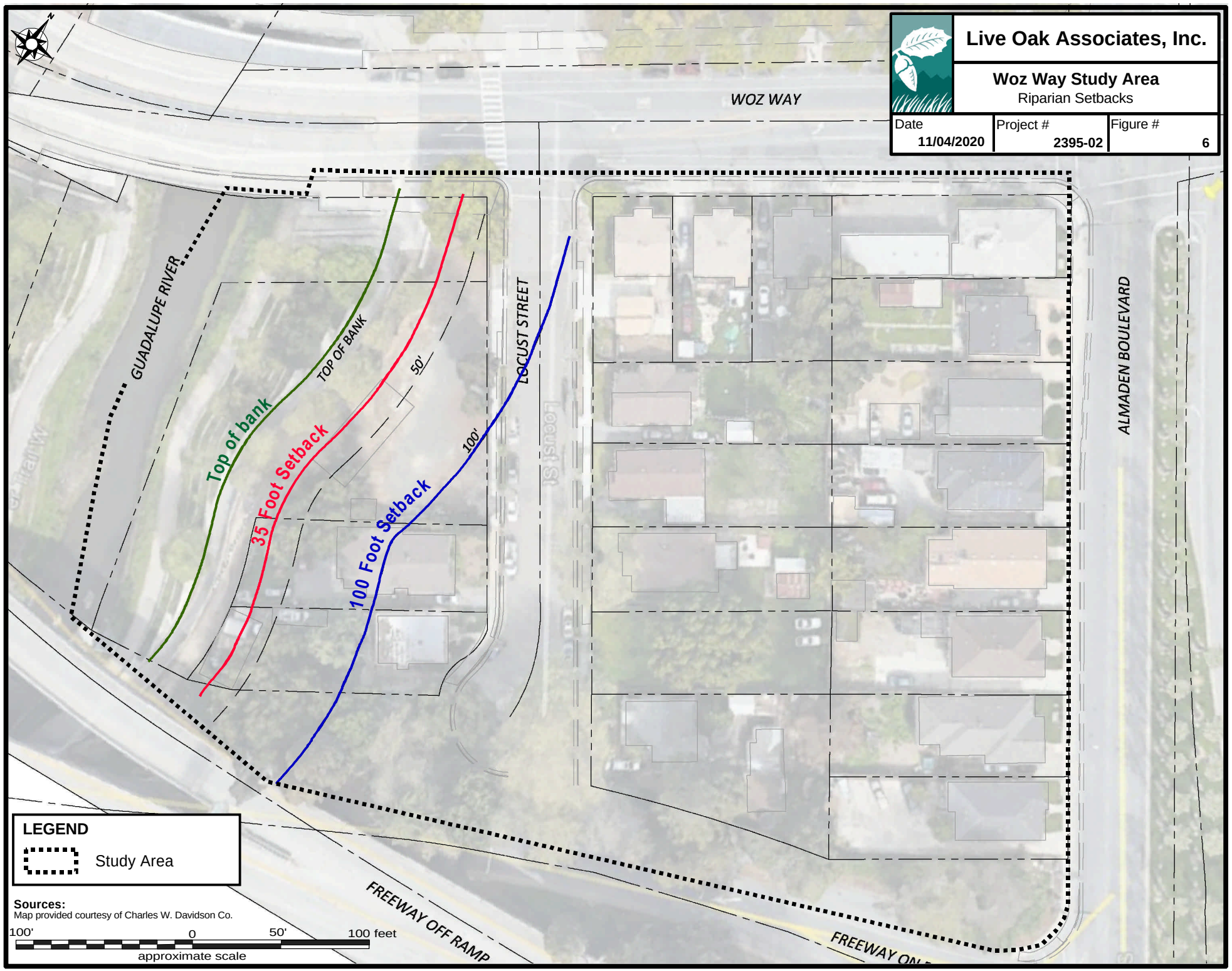
To receive an exception to the 100-foot setback, the project is required to submit a report by a qualified biologist, stream hydrologist, or other appropriate professional that certifies that five conditions listed in in Council Policy 6-34 are met. Each condition is therefore discussed below:

- There is no reasonable alternative for the proposed project that avoids or reduces the encroachment into the setback area.

This biological report is not considering project alternatives. It is our understanding that the project has considered the proposed project with a setback of less than 35 feet, but that those options were not viable.

- The reduced setback will not significantly reduce or adversely impact the riparian corridor.

The proposed project will not reduce or directly impact riparian habitat. Building design measures and mitigations included in this biological analysis will, if successfully implemented, ensure that


Live Oak Associates, Inc.
Woz Way Study Area
Riparian Setbacks
Date 11/04/2020
Project # 2395-02
Figure # 6
WOZ WAY
GUADALUPE RIVER
TOP OF BANK
Top of bank
50'
35 Foot Setback
100'
100 Foot Setback
LOCUST STREET
ALMADEN BOULEVARD
FREEWAY OFF RAMP
LEGEND
Study Area
Sources:
Map provided courtesy of Charles W. Davidson Co.
100' 0 50' 100 feet
approximate scale

the project with the setback of 35 feet does not significantly impact the riparian corridor. The riparian corridor that occurs adjacent to the project is extremely limited in its habitat value and influence; therefore, a 100-foot setback in this densely urban setting is not necessarily biologically relevant. The banks of the river channel are predominantly hardscaped, and the channel flows under busy roadways including highways and a complex freeway interchange immediately adjacent to the channel. Surrounding land uses are highly developed, and there currently exists development within 100-feet of the bank of the river within the development site and, to a significant degree, throughout the downtown portion of San Jose. Therefore, the existing development site does not benefit, in terms of habitat values, from its proximity to the adjacent reach of the Guadalupe River to the degree that a natural reach of the Guadalupe River might affect adjacent lands. For instance, soils of the site, which consist of an urbanized soil type indicative of soils that have been disturbed by human activities, are unlikely to provide nutrient, moisture, and micro-biotic values to the development site. Vegetation of the development site is managed as patches of residential landscaping, and thus the Guadalupe River's proximity does not support the maintenance or development of natural plant communities. Animals that currently arrive at and utilize the development site, mostly including birds, are expected to be predominantly common species that are used to residential landscapes. In addition, the site, which is an urban residential neighborhood, does not contribute in a significant way to the habitat values of the highly impacted and degraded reach of the Guadalupe River. Therefore, development of the project up to 35 feet from the riparian edge of the Guadalupe River, while implementing the mitigations described in this analysis, would not be appreciably different from maintaining an arbitrary 100-foot setback.

- The proposed used are not fundamentally incompatible with riparian habitats.

The adjacent riparian habitat is defined as a riparian habitat due to its proximity to a natural aquatic channel—the Guadalupe River. As discussed in this document, the riparian habitat is very low-quality habitat, mostly hardscaped, for native species due to high levels of human inputs and a lack of natural community characteristics. While a development project of this magnitude would certainly be incompatible adjacent to more natural reaches of the Guadalupe River, the downtown portion of the Guadalupe River is a controlled and urbanized channel throughout many reaches, the adjacent reach included.

In addition, the proposed use is not inconsistent with the riparian habitat in the sense that the project does not include potentially deleterious elements, similar to what might be the case with a chemical manufacturing plant, animal feed lot, or power generation facility. There is expected to be no potential direct harm to the Guadalupe River from this project.

- There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the setback area.

The adjacent reach of the Guadalupe River is highly engineered, in part for flood protection, such that stream banks are hardscaped and soil erosion is highly unlikely. In addition, the project will be engineered to ensure drainage patters from the development do not adversely impact the river. However, commenting on the potential of the project to negatively affect the existing riverbank infrastructure is an engineering concern that falls outside of the scope of this analysis.

- The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

The project as designed and with successful implementation of the mitigation measures detailed in this report will not adversely impact the Guadalupe River; therefore, there would be no impacts downstream of the adjacent reach. The buildings would cast morning shade in the reach adjacent to the site and in a reach of riparian habitat downstream from the site, across from Woz Way. Shade in the downstream reach would be lesser than shade in the adjacent reach, and it would not be appreciably different than if the project maintained a 100-foot setback. Also, the potential effects of shading by the project has been analyzed in Section 3.3.11 and found to be less-than-significant.

While additional professional expertise may be required to fully address these conditions (e.g., civil engineer, economist, etc.), it is expected that the project will comply with the conditions for an exception of Council Policy 6-34. Therefore, there is no identified conflict with or constraint to development from Council Policy 6-34.

Mitigation. No mitigation is warranted.

3.3.14 Potential Constraints to Development from Habitat Conservation Plans

The project will be subject to conditions and fees contained in the Santa Clara Valley Habitat Conservation Plan. Six local partners (the County of Santa Clara, Santa Clara Valley Transportation Authority; SCVWD; and the Cities of San Jose, Gilroy, and Morgan Hill) and two wildlife agencies

(the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service) prepared and adopted this multi-species habitat conservation plan, which primarily covers southern Santa Clara County, as well as the City of San Jose with the exception of the bayland areas. The SCVHP addresses listed species and species that are likely to become listed during the plan's 50-year permit term. 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. The SCVHP requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value. 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.

3.3.14.1 Fees

Chapter 9 of the SCVHP identifies fees that may be required by this project. The Study area is entirely defined as an urban area and would therefore not be subject to Fee Zone fees. A Nitrogen Deposition Fee would be required at $5.31 per new vehicle trip generated by the project.

3.3.14.2 Conditions on Covered Activities

Chapter 6 of the SCVHP includes several additional conditions that must be followed. Conditions that are expected to be applicable to this project include Conditions 1, 3, and 11, which are summarized in Section 3.2.7.

Condition 11 of the SCVHP provides requirements for stream and riparian setbacks (Section 3.2.6). As the development site is within the City's USA and the site does not possess a 30% or greater slope, required stream setbacks measured from the top of the stream bank are required to be 35 to 100 feet depending on the category of the stream. Setbacks for Category 1 streams are at least 100 feet. The Guadalupe River is a Category 1 stream; therefore, development is required to maintain a 100-foot setback. As discussed above, the project seeks a reduced riparian setback from the Guadalupe River. While setbacks that are less than 100 feet do not meet the requirement of the

SCVHP, the SCVHP provides a framework for allowable exceptions to these setbacks. As summarized above, for a project to be considered for a setback, the following factors must be met:

1. "The existence of legal uses within the setback.
2. "The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
3. "The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
4. "The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies," (pp. 6-54, ICF International 2012).

While items #2 or #3 in the above list are not relevant to the biology of the project and thus are not addressed in this analysis, the proposed project is consistent with #1, and, with the incorporation of bird-safe design and installation of a native habitat enhancement plating within the riparian setback (Section 3.3.11), and other mitigation measures described in this analysis, the proposed project would be consistent with #4. Specifically, regarding item #1, the setback area of the development site currently includes two single-family residences, two backyards with associated structures, hardscape, landscaping, and evidence of pet use, a Valley Water gravel storage yard, a Valley Water compacted gravel maintenance road, a hardscape pedestrian sidewalk, Locust Street, and public sidewalks. The riverbank itself includes significant hardscape development as well, including a paved path, cement and paver planters, a floodwall, and rock gabions at the toe of the banks. These are presumed to be legal uses from 100-feet from the riparian edge, right up to the aquatic channel of the Guadalupe River.

Regarding item #4, the development site is not a natural habitat that supports covered species or sensitive natural communities subject to the SCVHP. Development up to 35 feet from the riparian edge would not impact or eliminate habitat for any protected species. The development site is not within or near the SCVHP's defined reserve system. Implementation of the mitigation measures

listed above would ensure that the project "does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies."

A formal exception request that addresses each of these four factors would need to be submitted to the City of San Jose for approval of a reduced setback. This exception would also be provided by the City to the Habitat Agency for consultation for approval. This approval would be required for the project to be allowed to develop within 100-feet of the riparian edge.

It is expected that the project will comply with all required measures of the SCVHP, including submitting payment of appropriate fees, which will be assessed based on the current fee schedule at the time that a grading or building permit is issued (please note that 2020-2021 fees were reported in this document), and with all SCVHP conditions. It is also assumed that the project will apply for an exception to a 100-foot riparian setback, in which case the riparian setback will be subject to approval. Whether the project is approved for a riparian setback exception, it is expected that the project will observe a riparian setback that has been approved by the Habitat Agency and the City of San José.

Mitigation. No mitigation is warranted.

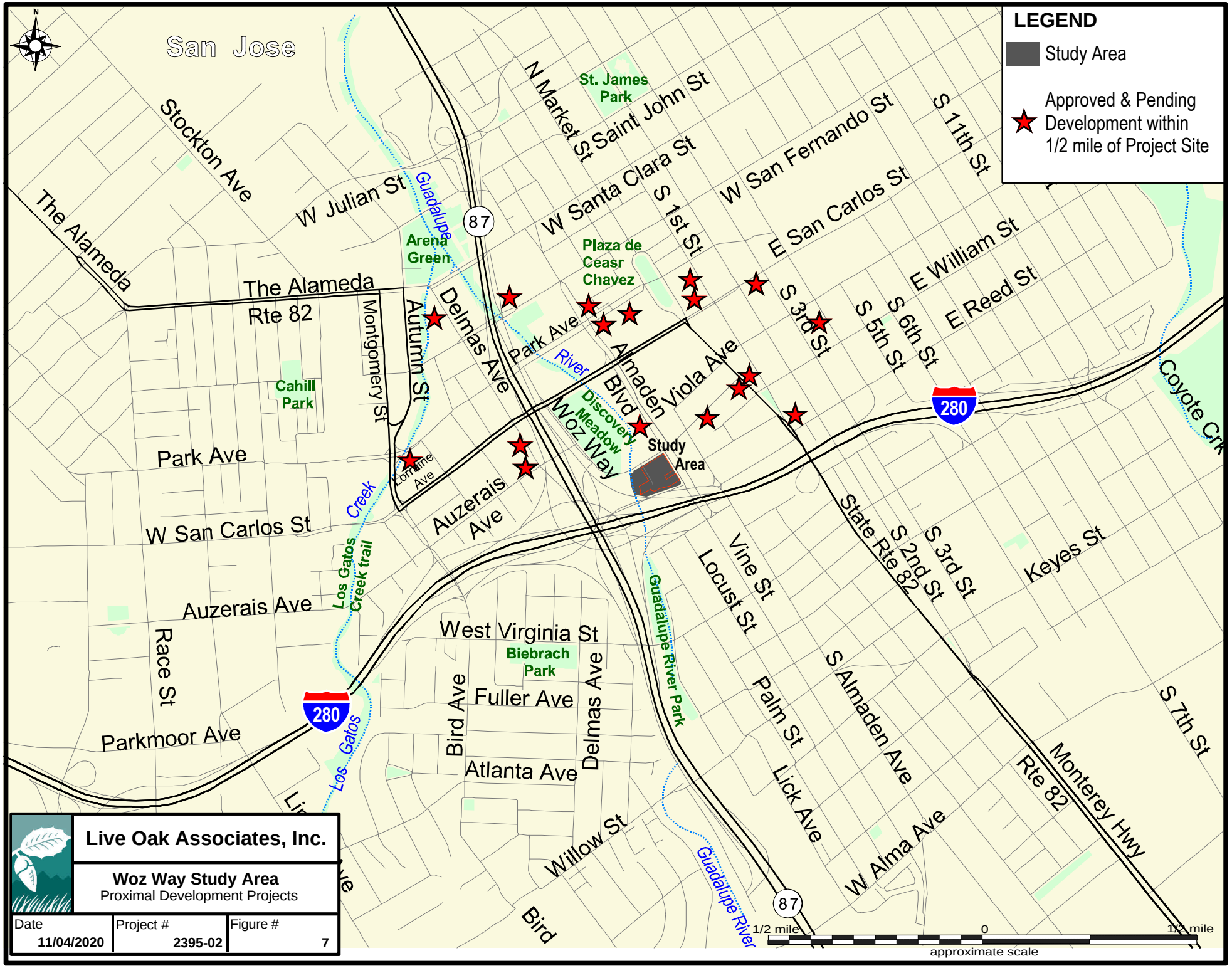
4 CUMULATIVE BIOLOGICAL IMPACT ANALYSIS

The biological analysis in Section 3 addresses the potential individual impacts of the Woz Way project on biological resources of the region; however, given the interconnected nature of certain resources and the potential impacts to biological resources from clusters of regional projects, a cumulative impact analysis—that is an analysis of the contribution of a subject project on collective impacts to biological resources resulting from two or more projects co-occurring within a meaningful distance of each other—can become a necessary consideration in ensuring a thorough investigation of a project's net effect. Given the proximity of the Woz Way project to numerous additional projects that are pending and/or approved for construction within approximately 0.5 miles (Table 4; Figure 7), and the proximity of the Woz Way site to important biological resources—specifically those of the Guadalupe River—a cumulative impact analysis is reasonable in order to identify any potential impacts to biological resources which may be individually minor but cumulatively considerable.

As noted elsewhere in this document, other than a somewhat degraded but contiguous reach of the Guadalupe River, natural biological habitats are generally lacking from the Woz Way site and the vicinity of the site. Given the developed state of the Woz Way site and its urban and somewhat isolated setting, the development site is not considered to be important habitat for any special status species listed in Section 2.4 or Table 3. Sensitive bat species could utilize the site for foraging, roosting, and/or breeding habitat (Table 3), but the site is not considered to be critical or even high-quality for any bat species. Likewise, nesting migratory birds adapted to urban settings could utilized residential yards for breeding and foraging habitat, but the site does not provide important habitat for nesting migratory birds. Therefore, the project would not contribute to any significant cumulative impact to the loss of habitat for any sensitive species.

The only sensitive or biologically important habitat in the vicinity of the study site is the Guadalupe River riparian corridor. Therefore, this cumulative analysis of the potential impacts to biological resources of the study area focuses on cumulative impacts to the Guadalupe River.

The Guadalupe River is one of the dominant waterways of the Santa Clara Valley, draining a 171 square mile watershed. The mainstem of the river travels through the densely developed urban



Live Oak Associates, Inc.

Woz Way Study Area
Proximal Development Projects

Date	Project #	Figure #
11/04/2020	2395-02	7

TABLE 4. APPROVED AND PENDING CONSTRUCTION PROJECTS LOCATED WITHIN APPROXIMATELY 0.5 MILES FROM THE WOZ WAY SITE

Address/Location	Project Name	Project Summary
335 West San Fernando Street	Adobe North Tower	Approximately 1,315,000 ft2 building, 690,328 ft2of R&D and office use, and up to 8,132 ft2 of retail.
402 West Santa Clara Street	Diridon TOD	Up to 1.04 million ft2 of office/commercial space, and up to 325 multi-family residences.
180 Park Avenue	Museum Place11	24-story mixed-use building with approximately 214,000 ft2 of office, 13,402 ft2 of ground floor retail, 60,000 ft2 of museum space, 184 hotel rooms, and 306 residential units.
200 Park Avenue	200 Park Avenue Office	Approximately 1,055,000 ft2 office building with 840,000 ft2 of office space, and 229,200 ft2 of parking.
80 East San Carlos Street	The Graduate	19-story building with up to 260 residential units and approximately 14,800 ft2 of ground floor retail/commercial space.
598 South First Street	Sparq	7-story apartment building with up to 105 residential units and 3,000 ft2 of ground floor retail.
455 South First Street	Gateway Tower	25-story building with up to 308 residential units and approximately 8,000 ft2 of ground floor retail.
180 Balbach Street	Aura	4-story building with up to 101 residential units.
341 Delmas Avenue	363 Delmas Avenue	5-story building with up to 120 residential units.
211 South First Street	Tribute Hotel	24-story, 279 room hotel integrated into a historic building.
425 Auzerais Avenue	425 Auzerais Avenue	6-story residential building and up to 130 attached residential units.
NE corner of Almaden Blvd and Park Avenue	CityView Plaza	Three 19-story buildings with up to approximately 3.8 million ft2 of office and commercial space.
477 South Market Street	South Market Mixed-Use	6-story mixed-use building with 130 residential units and approximately 5,000 ft2 street of commercial space.
439 South Fourth Street	South Fourth Street Mixed-Use	18-story mixed use building consisting of 218 residential units, approximately 1,345 ft2 of commercial use and approximately 12,381 ft2 of public eating establishment.
SE corner of Balbach St. and S. Almaden Blvd intersection	Balbach Affordable Housing	8-story building with 87 residential units.
543 Lorraine Avenue Mixed-Use	543 Lorraine Avenue Mixed-Use	Mixed-use building including up to 70 residential units and approximately 2,200 ft2 of commercial space.
282 South Market Street	Block 8	20-story office building with approximately 568,286 ft2 of office and 16,372 ft2 of ground floor commercial space
Almaden Boulevard and Woz Way	Boston Properties Site	18-story building with up to 1.8 million square feet of office space.

setting of the City of San Jose where its riparian influence is largely confined by development. In the downtown portion of the river, the portion of the channel that flows through the urban downtown of San Jose, the river is comprised of a matrix of fragmented riparian habitat, heavily armored, engineered concrete channel reaches including those passing under a number of bridges, and

engineered benching comprised of concrete and native plantings. For several years the downtown portion of the river has been heavily utilized by homeless people, some of whom have been known to illegally alter the bed and banks and some who regularly illegally dump litter and waste into the riparian and riverine habitat areas (R. Castillo, pers. Comm., 2019).

In spite of these pressures, steelhead, chinook salmon, western pond turtle, and numerous native species of animals and plants continue to utilize the channel as important habitat.

4.1 CUMULATIVE IMPACTS TO BIOLOGICAL RESOURCES OF THE GUADALUPE RIVER

Of the projects listed in Table 4, only two occur along the Guadalupe River: Adobe North Tower and Boston Properties site on Almaden Boulevard, between Woz Way and San Carlos Street (across Woz Way from the subject development site). The Adobe North Tower site, which is currently under construction, is sufficiently set back from the Guadalupe River such that impacts to riparian habitat are lacking from this project. The Boston Properties project, which is pending approval, is immediately adjacent to the Guadalupe River. No other projects in the local vicinity of the Woz Way site poses any potential impact to the Guadalupe River riparian corridor.

Given this setting, the cumulative impact analysis centers on the question of whether the cumulative impact of the Woz Way project and the Boston Properties project significantly impact the Guadalupe River riparian corridor. To answer this question, several assumptions must be stated about the Boston Properties project:

1. Given the narrow shape of the site, the long riparian frontage, and the large height and square footage of the proposed building, it is assumed that the Boston Properties project would require an exception to a 100-foot riparian setback to proceed;
2. Given SCVHP riparian protection requirements and the City's riparian policy, the project cannot build within 35-feet of the Guadalupe River riparian corridor; therefore, this analysis assumes that the project will observe a minimum of a 35-foot setback;
3. If approved, the Boston Properties project would only be approved with mitigation measures to reduce impacts to the riparian habitat to a less-than-significant level; and
4. It is assumed that the Boston Properties project, like the Woz Way project, would avoid direct impacts to the Guadalupe River riparian and riverine habitats.

Also, based on a desktop review of the riparian vegetation adjacent to the Boston Properties project, including a Google Earth survey of the riparian habitat, which enabled street-level views of the site and adjacent riparian corridor, including available imagery from along a walking path along the riparian habitat, it was determined that the Boston Properties project occurs adjacent to a mature riparian canopy of moderate habitat value that is generally intact and is comprised of a mixed-height vegetation canopy dominated by native trees. However, it is presumed that some human-mediated stressors on the riparian habitat are present within the reach of channel adjacent to this project site, including impacts to the channel from homeless people.

4.1.1 Cumulative Impact Analysis Conclusions

As concluded in Section 3, above, the Woz Way project will have a significant impact on riparian habitat of the Guadalupe River. Given the first stated assumption about the Boston Properties project, and considering that the riparian vegetation adjacent to the Boston Properties project is of a higher quality than the riparian habitat adjacent to the Woz Way site, it is presumed that the Boston Properties project would also have a significant impact on riparian habitat of the Guadalupe River. Thus, individually there is an impact to the Guadalupe River riparian habitat and when taken together there is also a cumulative impact.

However, relying on assumption 2 and 3 above regarding the Boston Properties project, each project will propose mitigation measures for potential impacts to the riparian habitat of the Guadalupe River which will reduce those impacts to less than significant.

With neither project likely to directly impact the Guadalupe River riparian corridor, and with both projects reducing indirect impacts to the Guadalupe River to a less-than-significant level, one must therefore consider if there are residual impacts from the two projects that might rise to the level of being a considerable impact from a cumulative perspective.

Given the state of the Guadalupe River in the downtown area, the reduced impacts from these projects in the forms of observing a minimum riparian setback, and for at least the Woz Way site, successfully implementing mitigations described in Sections 3.3.5, 3.3.6, and 3.3.11, the cumulative impact of these projects is unlikely to substantially reduce the usage of riparian habitat by fish or other wildlife species. These projects will not cause any wildlife populations to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or reduce the

number or restrict the range of a rare or endangered plant or animal. The potential for cumulative impacts related to biological resources is not cumulatively significant.

Therefore, the contribution of the Woz Way project to cumulative biological resources impacts would not be cumulatively considerable.

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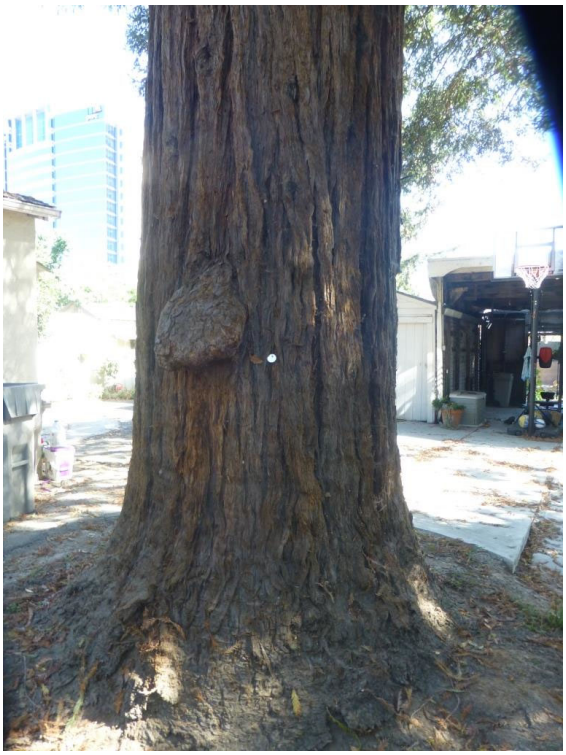
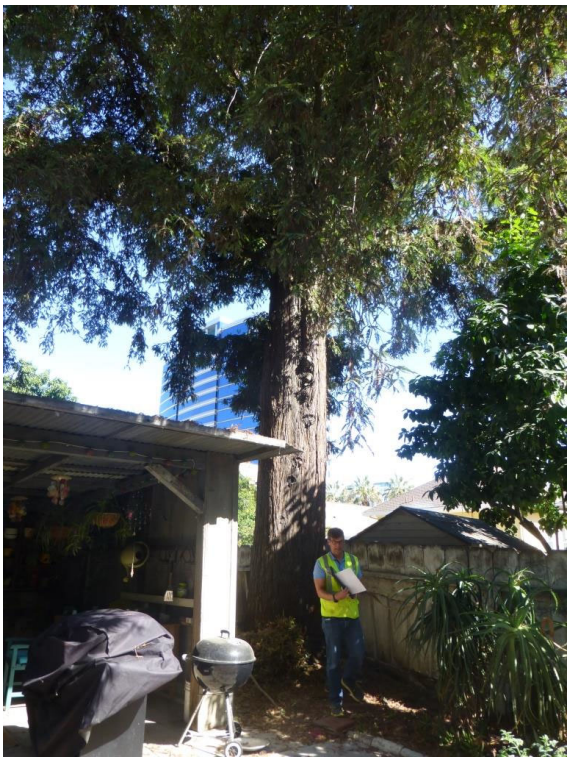
APPENDIX A: PROTECTED TREES OF THE WOZ WAY STUDY AREA

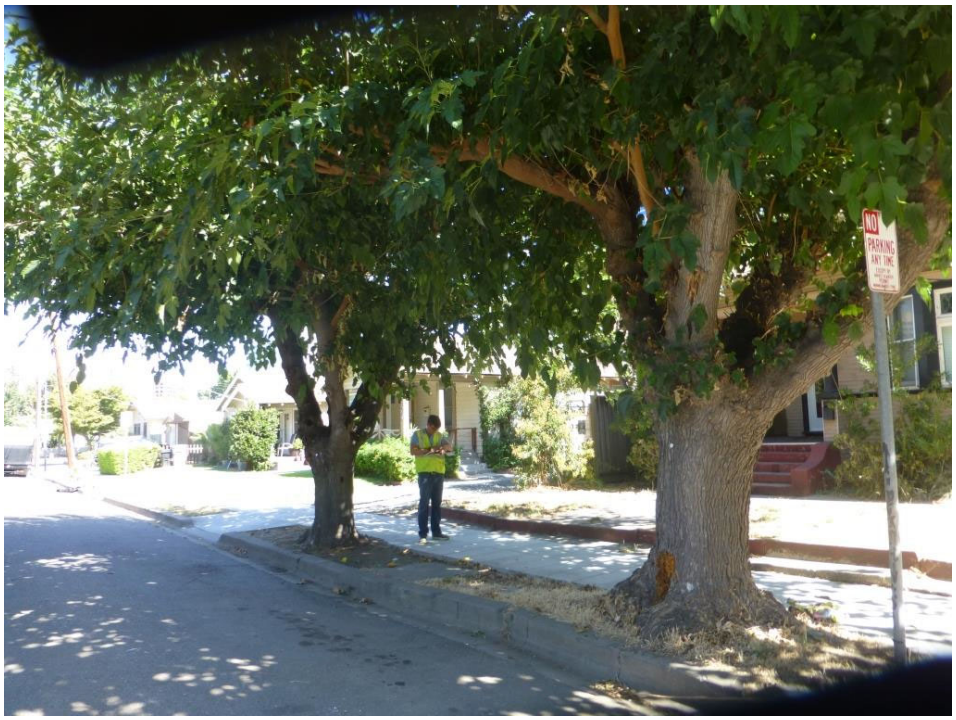
Photograph 1 (above). Tree #1 is a large ornamental atlas cedar (*Cedrus atlantica*) located in the southwest portion of the site. Photograph 2 (below). Tree #2 is a native coast live oak (*Quercus agrifolia*) located on the southwestern project boundary.



Photograph 3 (above). Tree #3 is a large coast redwood (*Sequoia sempervirens*) located near the southern boundary of the site. Photograph 4 (below). Tree #5 is the only incense cedar (*Calocedrus decurrens*). Both coast redwood and incense cedar are indigenous to California, but not native to the bay area.



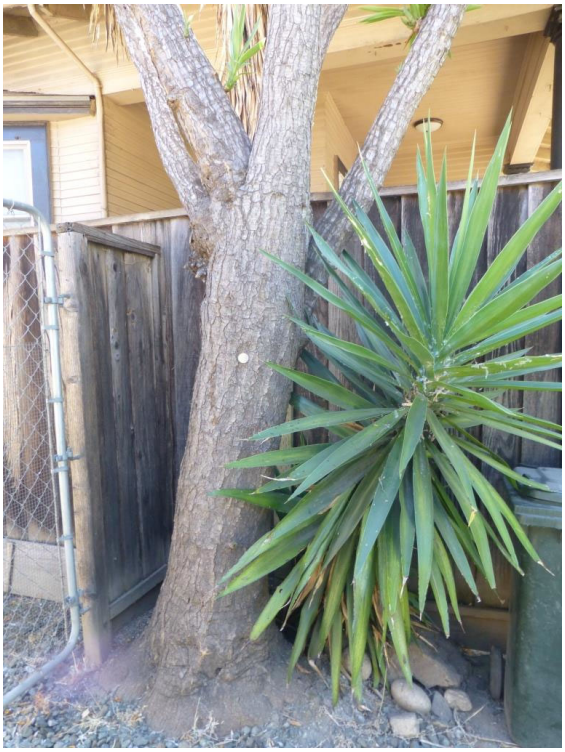
Photograph 5 (above). Tree #7 is a large ornamental coast redwood. Photograph 6 (below). Tree #10 is a London plane tree (*Platanus x acerifolia*) located along Locust Street.



Photograph 7 (above). Tree #12 and Tree #13 (left) are white mulberries (*Morus alba*) growing along Locust Street. Photograph 8 (below). Tree #14 is an indigenous California bay laurel (*Umbellularia californica*) located in the backyard of a residence.

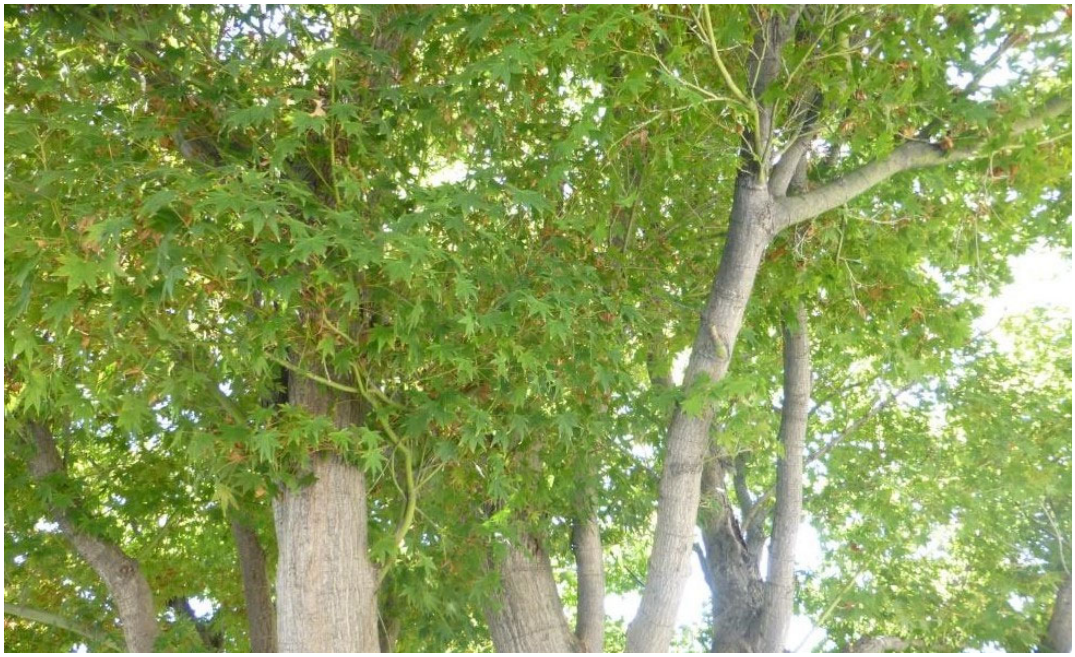
Photograph 9 (above). Tree #15 is an avocado (*Persia americana*) with a previously poor pruning cut. Photograph 10 (below). Tree #16 could not be identified due to lack of flowers and fruits, and was barely large enough to meet the City ordinance.

Photograph 11 (above). Tree #17 is a plum (*Prunus cerasifera*) of poor condition due to a trunk wound. Photograph 12 (below). Tree #21 is a yucca (*Yucca* sp) in the front yard of a residence.



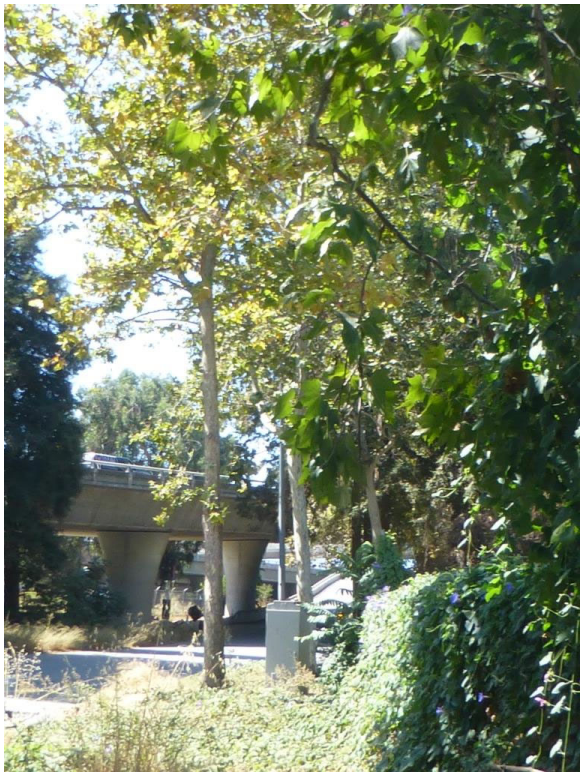
Photograph 11 (above). Trees #22 and #23 are tree-of-heaven (*Ailanthus altissimus*), a noxious tree species taking over native habitats around California. Photograph 12 (below). Tree #24 is a privet (*Ligustrum* sp.) in the backyard of a residence.

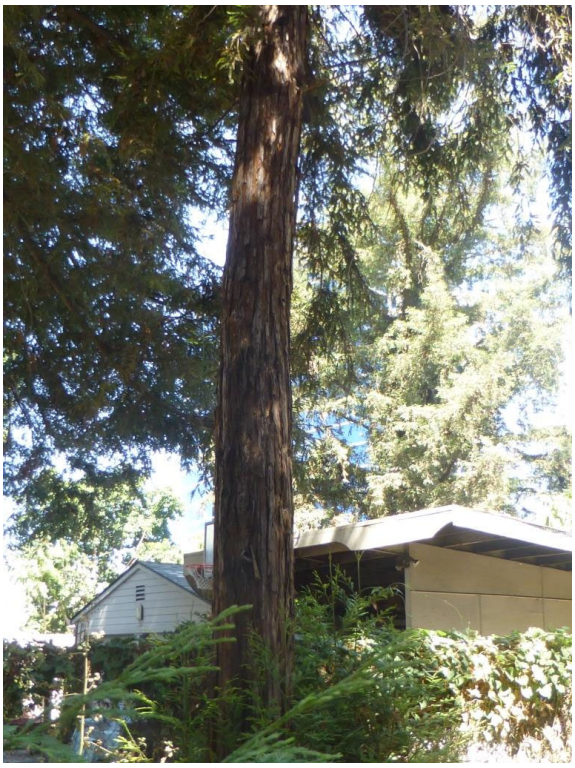
Photograph 13 (above). Trees #25 (left) and #26 (right) are Mexican fan palm (*Washingtonia robusta*) and pepper (*Schinus molle*). Photograph 14 (below). Tree #27 is a robust Japanese maple (*Acer palmatum*).



Photograph 15 (above). Tree #31 is an Acacia (*Acacia* sp.) that is in poor condition as it had been previously topped. Photograph 16 (below). Tree #33 is a red buckeye (*Aesculus pavia*) near the intersection of Vine Street and Woz Way.

Photograph 17 (above). Tree #38 is a London plane tree at the intersection of Vine Street at the Highway 280 on-ramp. Photograph 18 (below). Trees #38 - #41 are London plane trees are adjacent to the site, but have canopies that overlap the site boundary. With implementation of tree protection measures, they may be able to be preserved.

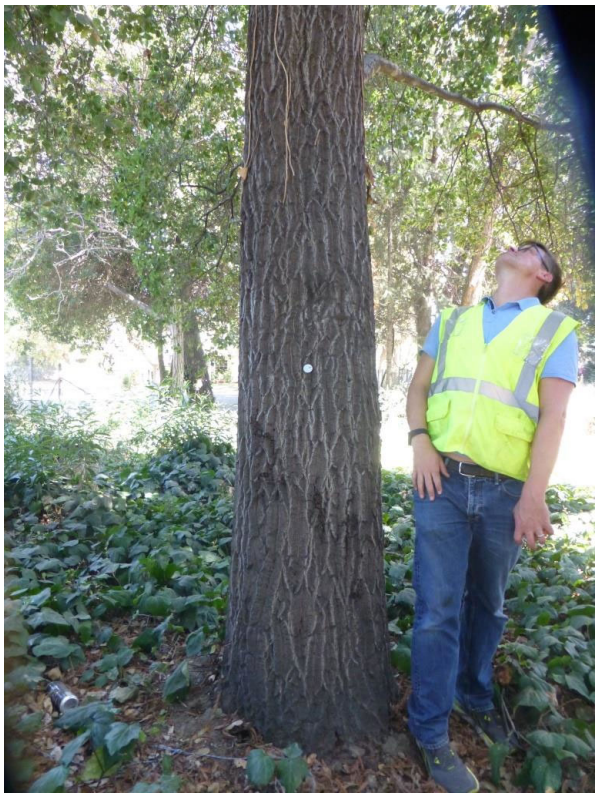




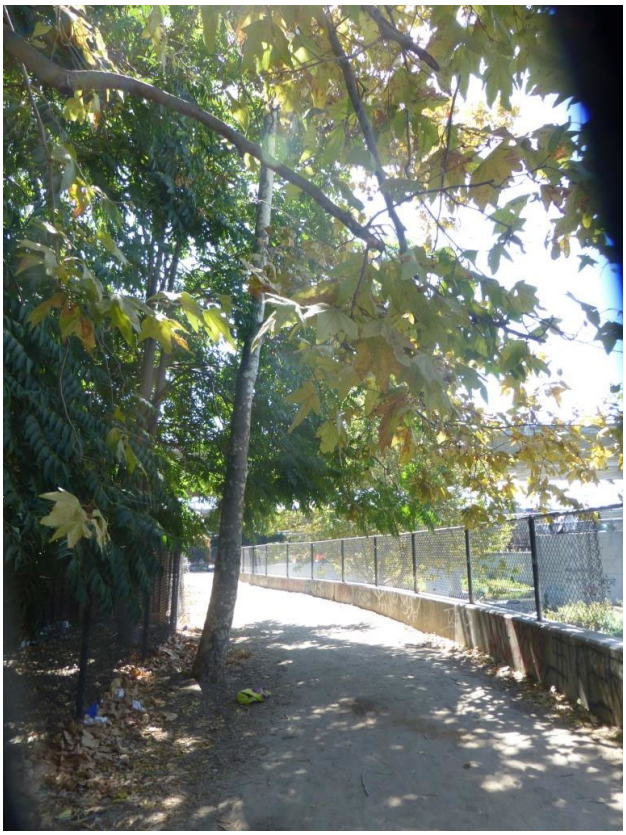
Photograph 17 (above) and 18 (below). Trees #45 and #46 are coast redwoods growing off-site along the Highway 280 on-ramp. They are adjacent to the site and may be able to be protected.

Photograph 19 (above) and 20 (below). Trees #47 (coast redwood) and #48 (London plane tree) are growing off-site along the Highway 280 on-ramp. They are adjacent to the site and may be able to be protected.

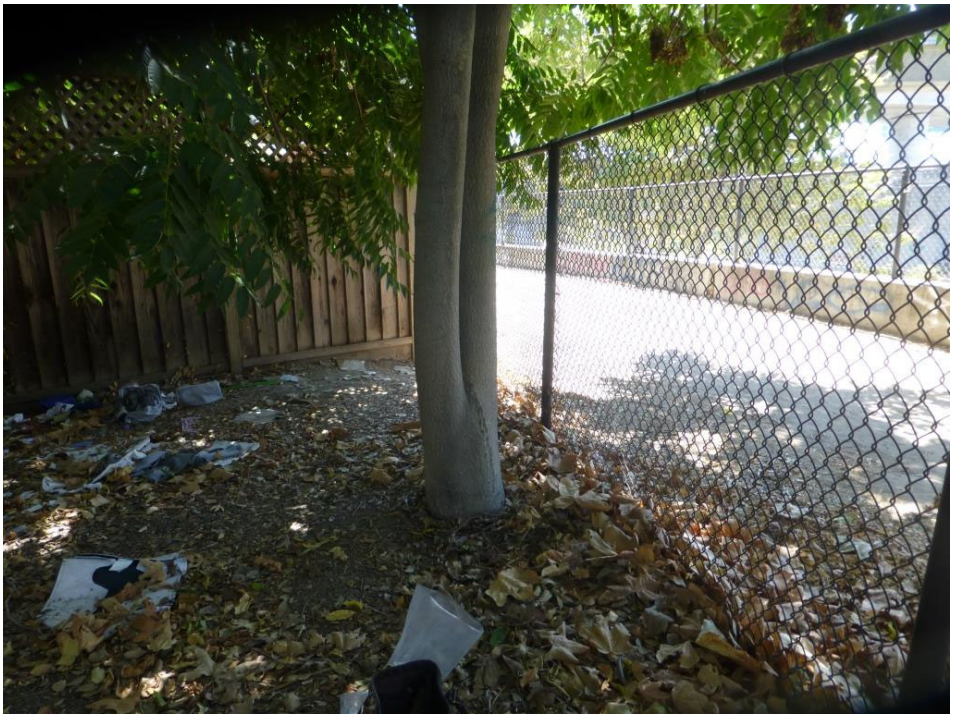
Photographs 21 (above) and 22 (below). Trees #49 and #50 are healthy mature coast live oaks are growing between the site and the Highway 280 on-ramp. Tree 50 has a severe lean, but is healthy.



Photograph 23 (above). Tree #51 is a healthy mature coast live oak growing between the site and the Highway 280 on-ramp. Photograph 24 (below). Tree #52 is the London plane tree growing along the paved walking path along the Guadalupe River.

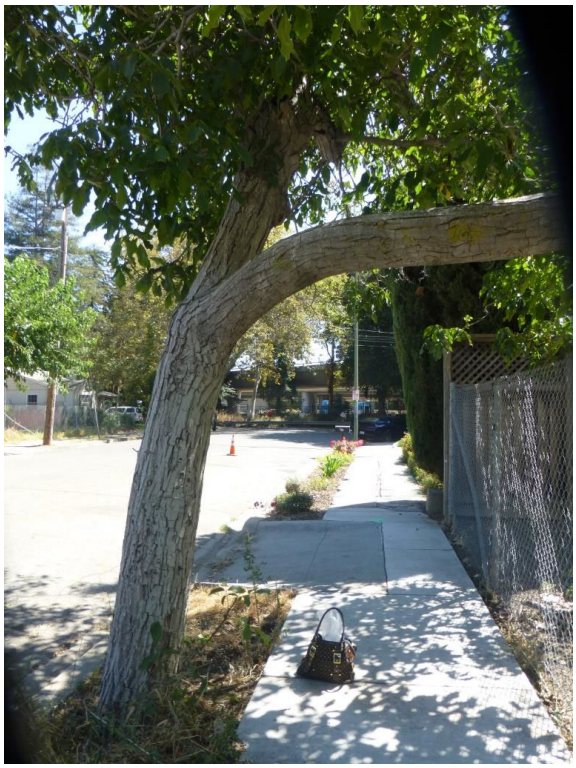


Photograph 25 (above). Tree #55 is a London plane tree growing along the paved walking path along the Guadalupe River. Photograph 26 (below). Trees 59-62 are invasive tree-of-heaven trees that were not large enough to be considered ordinance-sized trees.

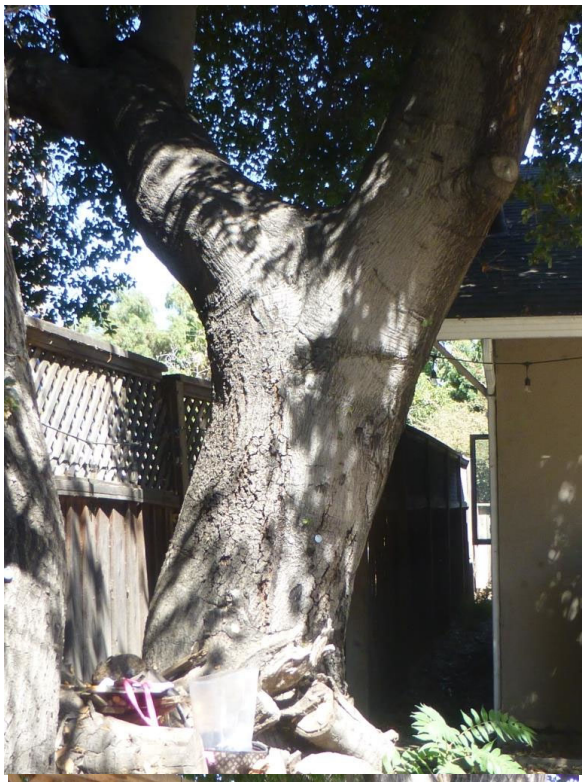


Photograph 27 (above). Tree #58 is a tree-of-heaven growing onsite near the paved walking path along the Guadalupe River. Photograph 28 (below). This coast redwood is sprouting at the base near Locust Street (Tree #70).

Photograph 29 (above). This coast redwood is sprouting at the base near Locust Street (Tree #71).
Photograph 30 (below). Tree 72 is a Bradford callery pear near Woz Way.



Photograph 31 (above). This pecan (*Carya illinoinensis*) grows along Locust Street (Tree #74). Photograph 32 (below). This large mature coast live oak is in the backyard of a home on Locust Street (Tree 85).



Photograph 35 (above). These mature coast live oaks (trees #86 and #87) are in the backyard of a home on Locust Street. Photograph 36 (below). Tree #88 is an avocado near the oaks (#86 and #87), above.

Appendix C-2

Santa Clara Valley Habitat Plan
CONDITION 11 EXCEPTION REQUEST

Date	**April 7, 2020**
Subject	Stream and Riparian Setback Condition (Condition 11) Exception for Woz Way Development Project (City of San Jose, #GP19-008) Preliminary Review
Recommendation	**Not Approve** 30-foot minimum setback, but approve 35-foot minimum setback
Reviewed By	Kim Rook, Planner
Date	April 7, 2020

The City of San Jose is requesting an exception from Condition 11, Stream and Riparian Setback Condition for the Woz Way Project ("Project"), located at the southwestern corner of Woz Way and South Almaden Boulevard, with Freeway 280 located to the south, and the Guadalupe River and Trail located adjacent to the west side of the site. The Guadalupe River is a Category 1 Stream with a required 100-foot stream setback. The Project was submitted for preliminary review for construction of two (2) connected towers for office, residential, or mixed-use purposes. The 3.86-acre site is in the City of San Jose urban service area and currently developed with single-family residential homes with associated driveways/landscaping and a vacant Valley Water utility parcel. Locust Street bisects the site with 2 of the existing single-family residences and vacant Valley Water parcel located adjacent to Guadalupe River and within the required Category 1 stream 100-foot setback. According to the request, due to the unique shape of the site, the project proposes a riparian setback adjacent to Guadalupe River and Trail that varies from 30-feet to 106-feet (Figure 1).

Condition 11 applies to all covered activities that may impact streams. This includes all development inside the urban service area where a stream or the stream setback overlaps any portion of the parcel on which a covered activity is being implemented.

Condition 11 Exception Criteria

For all proposed stream setbacks (inside or outside the urban service area), exceptions will be considered based on the following factors:

- The existence of legal uses within the setback.

- The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.
- The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
- The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Other considerations may be made based on:

- the implications of a reduced setback on the riparian system and covered species, progress toward the biological goals and objectives of the Plan, and potential effects on adjacent properties; and
- if the exception would allow the project to avoid and minimize impacts on covered species and natural land cover types to the maximum extent practicable.

Exception Applicability and Evaluation

The proposed Project is preliminary review for demolition of 18 single-family residences and abandonment of Locust Street (a dead-end road) to construct two (2) connected towers with a maximum height of 298 feet adjacent to the Guadalupe River, a Category 1 stream. The proposed encroachment *into* the required Category 1 stream 100-foot setback of the northwest tower ("Tower 1") is approximately 38-feet and the western tower ("Tower 2") is approximately 69-feet. The overall setback *from edge of riparian vegetation* (identified as "top-of-bank" on LOA Figure 4 and Figure 12, Kimley Horn) would range from approximately 62-feet (Tower 1) to 31-feet (Tower 2) (Figure 6, Kimley Horn).

The following Condition 11 criteria are cited as findings for the recommendation of this Stream Setback Exception Request:

1. *The existence of legal uses within the setback.*

   The proposed project is for preliminary review for a potential Special Use Permit and General Plan Amendment Permit to allow construction of two (2) connected towers for office, residential, hotel, and/or mixed uses. As shown on Figure 4 of the Biologic Report, current development within the required 100-foot stream setback consists of two (2) single-family residences, two (2) backyards with associated structures, hardscape/landscaping, Valley Water gravel storage yard, Valley Water compacted gravel maintenance road, a hardscape pedestrian sidewalk (Guadalupe River Trail), Locust Street, and public sidewalks.

   According to the Setback Exception Request, portions of the project encroaching into the required 100-foot setbacks allow for the project to be designed to allow proper personal and fire access vehicles, parking standards, loading regulations and other design components, as required by the City and applicable Zoning and Building Codes. The project would require review, approval and adoption by the City of San Jose, including conformance

and consistency of uses with the City's Municipal Code, Zoning Ordinance, and major Design Guideline Standards. Therefore, it is anticipated the project would be consistent with legal uses within the setbacks.

2. *The extent to which meeting the required setback would result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant.*

   The 2.64-acre site is bound by the Guadalupe River, South Almaden Boulevard, Woz Way, and Interstate 280. According to the Stream Setback Exception Request, the development would require a Setback Exception for design and operational purposes of the proposed towers, such as location of loading and vehicle entry, parking requirements, and other functionality features.

   Stream setback exceptions are used in a minority of cases with special circumstances that limit or restrict the ability of a landowner to fully apply the stream setback. Examples include geologic and seismic hazards, unusual lot size or configuration, unusual slope, or grading and access issues that may present site constraints that require exceptions to the stream setback conditions. (Chapter 6, pg. 6-54-Exceptions). Because a portion of Locust Street, three existing residences and the bike/pedestrian path transecting the parcel are all within the 100-foot stream and riparian setback, adherence to the full setback in redesigning the site would result in a demonstrable hardship or prohibit redevelopment of the property. However, no project, whether new or redeveloped, may encroach on the 35-foot minimum setback. Therefore, the Habitat Agency considers the 35-foot setback the maximum allowed under the Plan and affords reasonable redevelopment of the site.

3. *The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.*

   The proposed project is designed in a way to allow property personal and fire access vehicles, parking standards, loading regulations, and other design components, as required by the City and Applicable Zoning and Building Codes. The project will require a General Plan Amendment Permit and Special Use Permit from the City of San Jose. It is anticipated that upon approval and adoption of permits by the City, the project would be consistent with the City's Municipal Code and Special Use Permit requirements.

4. *The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.*

   The Guadalupe River is a Category 1 stream, known to provide habitat for several species of fish, including Central California Coast steelhead (*Oncorhynchus mykiss*), and identified in the Plan Conservation Strategy (5-20) as a major stream corridor that provides critical connections for other aquatic and terrestrial species moving though urban areas. A Biological Technical Report (Live Oak Assoc., October 22, 2019) determined the reach of the Guadalupe River adjacent to the project site does not offer high quality foraging, breeding, or cover habitat for local species and no special status plant species were observed in the study area. However, mature patches of riparian vegetation are located upstream and downstream of the site, and small willow (Salix sp.) saplings are located within the river channel. In addition, numerous native and non-native wildlife species would be expected to

utilize the reach as an important migratory corridor. The Biological Technical Report recommends observing a 35-foot development-free riparian setback as avoidance mitigation measures for impacts due to potential bird collisions, creek lighting, and landscaping.

The Habitat Plan Conservation Strategy Biological Goals provides natural community level requirements to minimize potential impacts to sensitive biological resources, including, "Improvement of the quality of streams and the hydrologic and geomorphic processes that support them to maintain a functional aquatic and riparian community to benefit covered species and promote native biodiversity." (5-7). Therefore, developments adjacent to Category 1 streams require a 100-foot setback. In addition, the Plan provides that, regardless of project location, Stream Setback Exceptions may not reduce a Category 1 stream setback to a distance less than 35-feet for existing or previously developed sites.

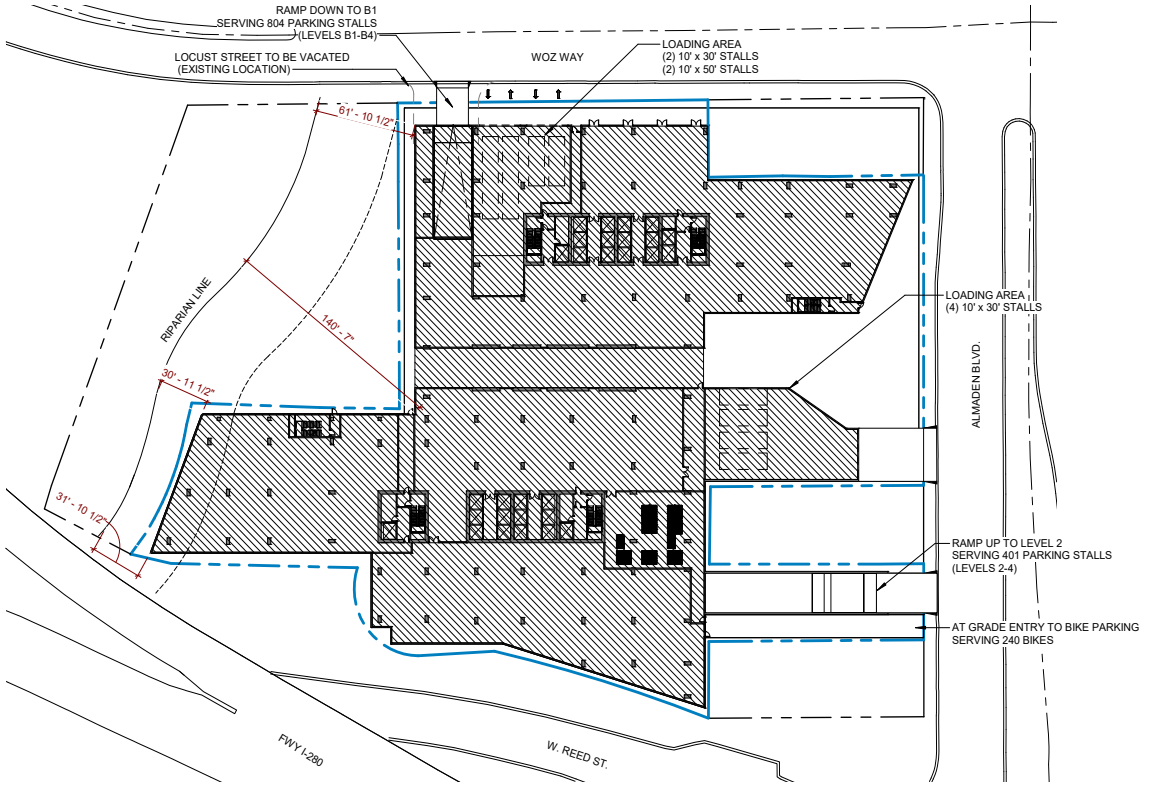
Therefore, as proposed, the Project does not achieve the biological goals and objectives of the Habitat Plan and conflicts with the Habitat Plan stream setback requirements for development adjacent to a Category 1 stream. However, adherence to the minimum 35-foot setback for project design would not conflict with the biological goals and objectives.

Determination

Based on site constraints and the information provided by the City of San Jose, in consultation with USFWS and CDFW, the Habitat Agency determined a reduced stream setback of a minimum of 35-feet is reasonable for this site. The Habitat Agency recommends the City ***not approve*** this Condition 11 Exception Request for a 30-foot stream setback for the South Almaden Office (Boston Properties) Project.

The Habitat Agency recommends the applicant redesign the project to minimize to the maximum extent possible any encroachment into the required Category 1 stream 100-foot stream setback. The Habitat Agency agrees with all mitigation measures included in the Project Biological Technical Report (dated October 22, 2019) and supports the inclusion of those mitigation measures in any Project approval contemplated by the City.

Figure 1. Site Map



Source: C2K Architecture, 2019

Figure 6: Site Map Option 1

Woz Way Project

Not to scale

Kimley»Horn
Expect More. Experience Better.