



LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

**1360 FLEMING AVENUE
TECHNICAL BIOLOGICAL REPORT
SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA**

Prepared by

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TABLE OF CONTENTS

1 INTRODUCTION.....1
 1.1 PROJECT DESCRIPTION.....3

2 EXISTING CONDITIONS.....4
 2.1 BIOTIC HABITATS5
 2.1.1 California Annual Grassland (Grain, Row Crop, Hay and Pasture, Disked/Short-term Fallow)5
 2.1.2 Urban/Suburban (Agricultural Development).....6
 2.1.3 Rural Residential6
 2.1.4 Ornamental Woodland6
 2.2 MOVEMENT CORRIDORS8
 2.3 SPECIAL STATUS PLANTS AND ANIMALS10
 2.4 JURISDICTIONAL WATERS.....24

3 IMPACTS AND MITIGATIONS.....25
 3.1 SIGNIFICANCE CRITERIA25
 3.2 RELEVANT GOALS, POLICIES, AND LAWS26
 3.2.1 Threatened and Endangered Species26
 3.2.2 Migratory Birds26
 3.2.3 Birds of Prey.....27
 3.2.4 Bats.....27
 3.2.5 Wetlands and Other “Jurisdictional Waters”27
 3.2.6 Ordinance Sized Trees.....29
 3.2.7 Envision San Jose 2040 General Plan30
 3.2.8 Santa Clara Valley Habitat Plan.....31
 3.3 IMPACTS SPECIFIC TO THE PROJECT35
 3.3.1 Loss of Habitat for Special Status Plants35
 3.3.2 Loss of Habitat for Special Status Animals.....35
 3.3.3 Loss of Habitat for Native Wildlife.....36
 3.3.4 Interference with the Movement of Native Wildlife36
 3.3.5 Impacts to Nesting Migratory Bird Including Nesting Raptors and other Protected Birds37
 3.3.6 Impacts to Western Burrowing Owls38
 3.3.7 Potential Impacts to American Badgers40
 3.3.8 Potential Impacts to Riparian Habitat and Other Sensitive Natural Communities, Including Federally Protected Wetlands.....40
 3.3.9 Degradation of Water Quality in Seasonal Drainages, Stock Ponds and Downstream Waters41
 3.3.10 Conflict with Local Policies and Ordinances: City of San Jose Tree Ordinance .41
 3.3.11 Conflict with Local Policies and Ordinances: San Jose 2040 General Plan44
 3.3.12 Conflict with Local Policies and Ordinances: Santa Clara Valley Habitat Conservation Plan.....44

4 LITERATURE CITED.....48

1 INTRODUCTION

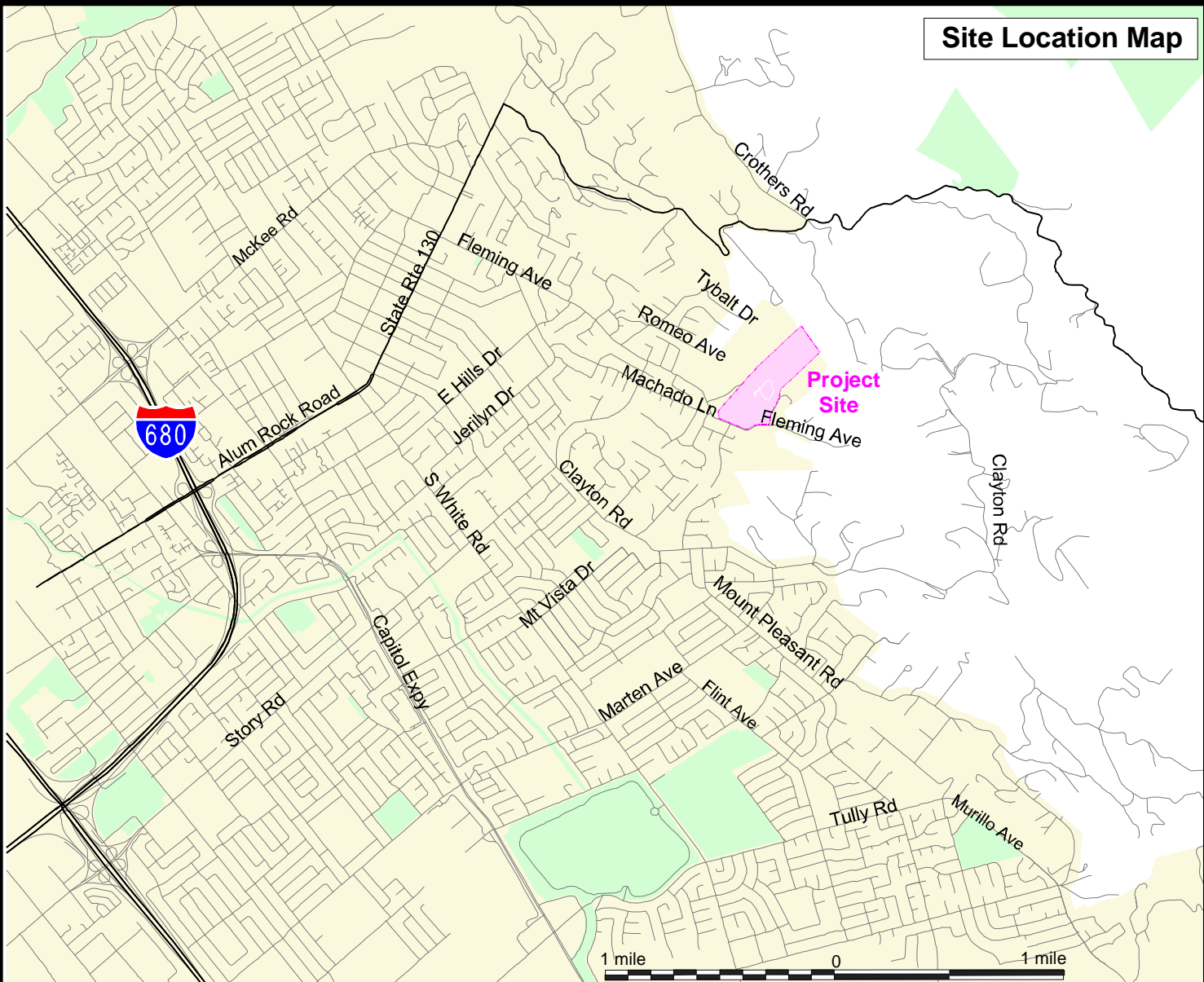
This site was evaluated by Live Oak Associates, Inc. (LOA) to ascertain whether or not build-out of the proposed project would have a significant impact (as defined by CEQA) on the biological resources of the site and region. This report describes the biotic resources of the 1360 Fleming Avenue Property (hereafter referred to as the “study area” or “site”), in San Jose, California and evaluates possible impacts to these resources resulting from the proposed land use changes upon these resources. The site is bordered by Fleming Avenue and dense residential development to the southwest, Murrietta Lane to the northwest, rural residences to the northwest and southeast, and open space/ranch land to the north, east, and south and is located in the City of San Jose, Santa Clara County, California (Figure 1). The site can be found on the San Jose East U.S.G.S. 7.5’ quadrangle in Section 31 of Township 6 South, Range 2 East. The site is comprised of pasture with a residence, barns, stables, and outbuildings.

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, 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) evaluate whether or not the project results in any significant impacts to these resources; and if so, 4) includes mitigation measures to reduce these impacts to less-than-significant (as defined by CEQA).

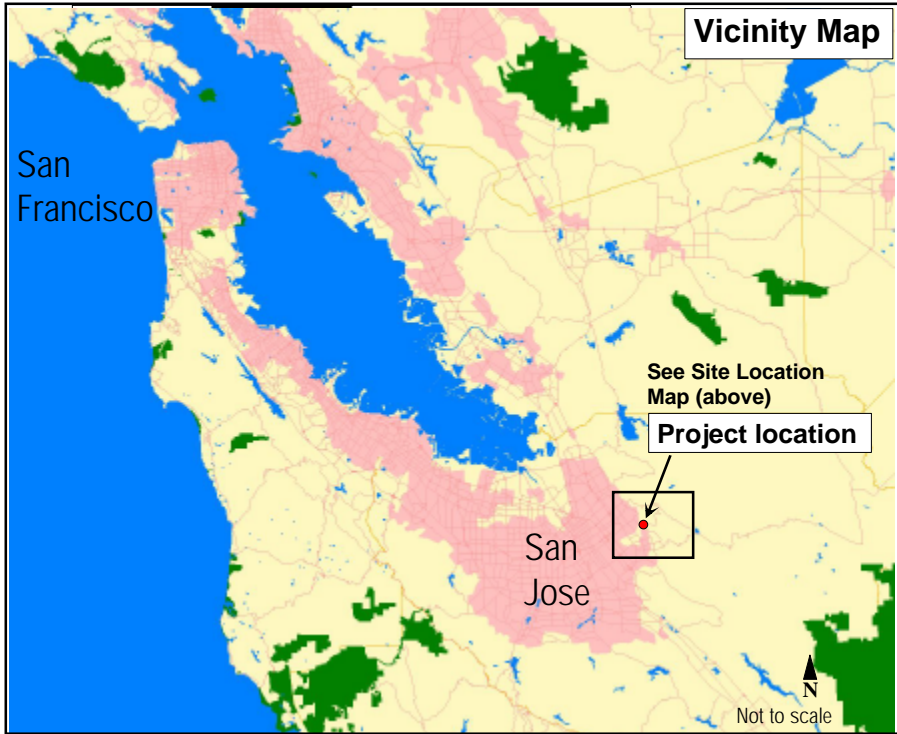
The analysis of impacts, as discussed in Section 3.0 of this report, was based on the known and potential biotic resources of the study area discussed in Section 2.0. Sources of information used in the preparation of this analysis included: 1) the *California Natural Diversity Data Base* (RareFind5, 2018); 2) the *California Rare Plant Rank* (CNPS 2018); 3) manuals and references related to plants and animals of the Santa Clara Valley region; 4) the City of San Jose policies and ordinances; and 5) the Santa Clara Valley Habitat Plan (SCVHP; 2012).

A field survey of the study area was conducted on August 7, 2018 by LOA ecologists Katrina Krakow and Pamela Peterson.

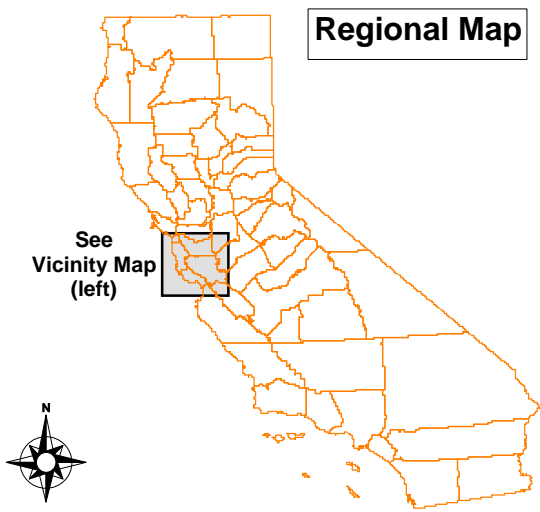
Site Location Map




Vicinity Map



Regional Map



See Vicinity Map (left)

 Live Oak Associates, Inc.		
Fleming Ave. B.E. Site / Vicinity Map		
Date	Project #	Figure #
8/16/2018	2295-01	1

1.1 PROJECT DESCRIPTION

The project, as proposed, would redevelop approximately 2.15 acres of the 49.0-acre site. The project proposes to construct a 10,822 square-foot single-family residence, a 6,030 square-foot detached garage, and a 6,025 square-foot pool house with associated access road, parking areas, landscaping, and a detention basin. None of the existing structures onsite would be demolished.

2 EXISTING CONDITIONS

The project site is located at 1360 Fleming Avenue in San Jose, Santa Clara County, California. The site is bordered by Fleming Avenue and dense residential development to the southwest, Murrietta Lane to the northwest, rural residences to the northwest and southeast, and open space/ranch land to the north, east, and south. The site has a sloped topography with the elevation increasing as the site progresses to the northeast and is approximately 316-862 feet (96-263 meters) National Geodetic Vertical Datum (NGVD).

Annual precipitation in the general vicinity of the study area is about 15-20 inches, almost 85% of which falls between the months of October and March. Virtually all precipitation falls in the form of rain.

Three soil map units occur onsite: Alo-Altamont complex, 15 to 30 percent slopes (moderately deep, well drained soils with slow permeability); Diablo clay, 15 to 30 percent slopes, MLRA 15 (well drained, slow permeability, and mildly alkaline); and Urbanland-Altamont-Alo complex, 15 to 30 percent slopes (moderately deep, well drained soils). None of the soils onsite are considered to be hydric.

2.1 BIOTIC HABITATS

Four land cover types are present on the 1360 Fleming Avenue parcel and these have been named consistent with nomenclature for land cover types contained in the Santa Clara Valley Habitat Plan (SCVHP). These four land cover types include Grain, Row Crop, Hay and Pasture Disked/Short-term Fallow (California Annual Grassland); Urban/Suburban (Agricultural Development); Rural Residential; and Ornamental Woodland. These land cover types are described in greater detail below.

2.1.1 California Annual Grassland (Grain, Row Crop, Hay and Pasture, Disked/Short-term Fallow)

This is the most prevalent land cover type present on the Fleming Avenue property. This land cover type is comprised of California annual grassland habitat that is used as pasture for horses and livestock. This habitat is classified as “Grain, Row Crop, Hay and Pasture, Disked/Short-term Fallow” within the SCVHP, which also supports water tanks and wells. The majority of this land cover type occurs in the eastern portion of the site on a steep west-facing hillside, although some also occurs to the west and south of developed areas of the site. During the August 2018 survey, this land cover type was observed to be heavily impacted by grazing, with senescent annual grasses that were, in some of the most heavily impacted areas, less than three inches in height. Constituent grass species observed in this habitat included non-native annual grasses including farmer’s foxtail (*Hordeum murinum*), wild oat (*Avena* sp.), soft chess (*Bromus hordeaceus*), and ripgut brome (*Bromus diandrus*). In addition to the non-native grasses, several non-native forb species were also observed including black mustard (*Brassica nigra*), fennel (*Foeniculum vulgare*), yellow star thistle (*Centaurea solstitialis*), bull thistle (*Cirsium vulgare*), purple star thistle (*Centaurea calcitrapa*), and willow dock (*Rumex salicifolius*). Woody vegetation in the pasture areas was limited to a few scattered almond trees (*Prunus amygdala*) and coyote brush shrubs (*Baccaris pilularis*).

Wildlife observed within or flying over the grasslands of the site during the August survey included the western fence lizard (*Sceloporus occidentalis*), turkey vulture (*Cathartes aura*), American kestrel (*Falco sparverius*), red-tailed hawk (*Buteo jamaicensis*), American crow (*Corvus brachyrhynchos*), mourning dove (*Zenaida macroura*), rock pigeon (*Columba livia*), barn swallow (*Hirundo rustica*), western bluebird (*Sialia mexicana*), lesser goldfinch (*Spinus psaltria*), European starling (*Sturnus vulgaris*), house finch (*Haemorhous mexicanus*), California ground squirrel (*Otospermophilus beecheyi*), black-tailed jackrabbit (*Lepus californicus*), coyote (*Canis latrans*),

and domestic chickens (*Gallus gallus domesticus*), goats (*Capra aegagrus hircus*), pigs (*Sus scrofa domesticus*), and horses (*Equus caballus*).

2.1.2 Urban/Suburban (Agricultural Development)

The next most prevalent land cover type on the parcel is comprised of agricultural development. This is the land cover type that would be impacted by the proposed residential development. These areas of the site are primarily comprised of a horse boarding facility and are heavily impacted by roads, agricultural storage facilities, horse barns, round pens, horse pens, and other livestock pens, such as pig and cattle pens. This habitat is classified as “Agricultural Development” within the SCVHP. Vegetation occurring in this portion of the site is generally limited to vegetation that occurs within heavily disturbed, ruderal environments and includes grass and forb species observed within the pastures of the site described above, as well as ornamental shrubs and trees and fruit trees such as Peruvian pepper (*Schinus molle*), Monterey pine (*Pinus radiata*), tree of heaven (*Ailanthus altissima*), poplar (*Populus* sp.), walnut (*Juglans* sp.), olive (*Olea europaea*), almond, and lemon (*Citrus limon*), among others.

Wildlife occurring in adjacent habitats are likely to occur within this habitat as well.

2.1.3 Rural Residential

A home and associated driveway and outbuildings are present in the northern central portion of the site and is not expected to be impacted by the proposed development. This land cover also supports ornamental shrubs and trees similar to those present in the Urban/Suburban areas.

Wildlife occurring in adjacent habitats are likely to occur within this habitat as well.

2.1.4 Ornamental Woodland

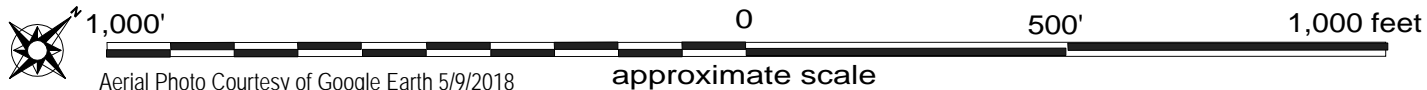
Along the southern central portion of the site there is a small ornamental woodland comprised of planted coast redwood trees (*Sequoia sempervirens*), which is not expected to be impacted by the proposed development. The understory generally supports species similar to those observed in the pastures of the site.

Wildlife occurring in adjacent habitats are likely to occur within this habitat as well.




LEGEND

-  Urban-Suburban (Agricultural Development)
-  Rural Residential
-  California Annual Grassland (Grain, Row Crop, Hay & Pasture, Disked / Short-term Fallow)
-  Ornamental Woodland



Aerial Photo Courtesy of Google Earth 5/9/2018

	Live Oak Associates, Inc.		
	Fleming Ave. B.E. Biotic Habitats		
Date	Project #	Figure #	
8/16/2018	2295-01	2	

2.2 MOVEMENT CORRIDORS

Ecologists and conservation biologists have expended a great deal of energy since the early 1980's advocating 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 Gallager 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).

Beier and Noss (1998) evaluated the claims of the efficacy of wildlife corridors of 32 scientific papers. In general, these authors believed that the utility of corridors was demonstrated in fewer than half of the reviewed papers, and they believed that study design played a role in whether or not given corridors were successful. Examples of well-designed studies supported the value of corridors. They believed, however, that connectivity questions make sense only in terms "of a particular focal species and landscape." For example, volant (flying) species are less affected by barriers than small, slow moving species such as frogs or snakes (Beier and Noss 1998). In addition, large mammals such as carnivores that can move long distances in a single night (e.g., cougars) are more capable of making use of poor quality or inhospitable terrain than species that move more slowly and can easily fall prey to various predators or that are less able to avoid traffic or other anthropogenic effects (Beier 1996). Therefore, it is reasonable to conclude that landscape linkages, even poor ones, can be and are useful, especially for terrestrial species.

Therefore, while the importance of landscape linkages is well demonstrated in the scientific literature, the cautionary note of Beier and Noss (1998) that consideration of context and ecological scale are also of critical importance in evaluating linkages.

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.

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.

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*), dogwood (*Cornus* sp.), California hazelnut (*Corylus cornuta* var. *californica*), elderberry (*Sambucus* sp.), Oregon ash (*Fraxinus latifolia*), walnut (*Juglans* sp.), California laurel (*Umbellularia californica*), toyon (*Heteromeles arbutifolia*), oaks (*Quercus* sp.), and willow (*Salix* sp.).

Beier and Loe (1992) noted five functions of corridors (rather than physical traits) that are relevant when conducting an analysis regarding the value of linkages. The following five functions should be used to evaluate the suitability of a given tract of land for use as a habitat corridor:

1. Wide ranging mammals can migrate and find mates;
2. Plants can propagate within the corridor and beyond;
3. Genetic integrity can be maintained;
4. Animals can use the corridor in response to environmental changes or a catastrophic event;
5. Individuals can recolonize areas where local extinctions have occurred.

A corridor is “wide enough” when it meets these functions for the suite of animals in the area. It is important to note that landscape linkages are used differently by different species. For instance, medium to large mammals (or some bird species) may traverse a corridor in a matter of minutes or hours, while smaller mammals or other species may take a longer period of time to move through the same corridor (e.g., measured in days, weeks and even years). For example, an individual

cougar may traverse the entire length of a long narrow corridor in an hour while travel of smaller species (such as rodent or rabbit species) may best be measured as gene flow within regional populations. These examples demonstrate that landscape linkages are not simply highways that animals use to move back and forth. While linkages may serve this purpose, they also allow for slower or more infrequent movement. Width and length must be considered in evaluating the value of a landscape linkage. A long narrow corridor would most likely only be useful to wide ranging animals such as cougars and coyotes when moving between core habitat areas.

To the extent practicable, conservation of linkages should address the needs of “passage species” (those species that typically use a corridor for the express purpose of moving from one intact area to another) *and* “corridor dwellers” (slow moving species such as plants and some amphibians and reptiles that require days or generations to move through the corridor).

The project site does not fall within any regional corridor defined by the SCVHP. Movements on and across the site consists of normal movements associated with an individual animal’s home range or territory, or animals dispersing from their natal range.

2.3 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 2001). Collectively, these plants and animals are referred to as “special status species.”

A number of special status plants and animals occur in the vicinity of the study area. These species, and their potential to occur in the study area, are listed in Table 1. Sources of information for this

table included *California Natural Diversity Data Base* (CDFW 2018), *Endangered and Threatened Wildlife and Plants* (USFWS 2018), and the *Annual Report on the Status of California State Listed Threatened and Endangered Animals and Plants* (CDFW 2018).

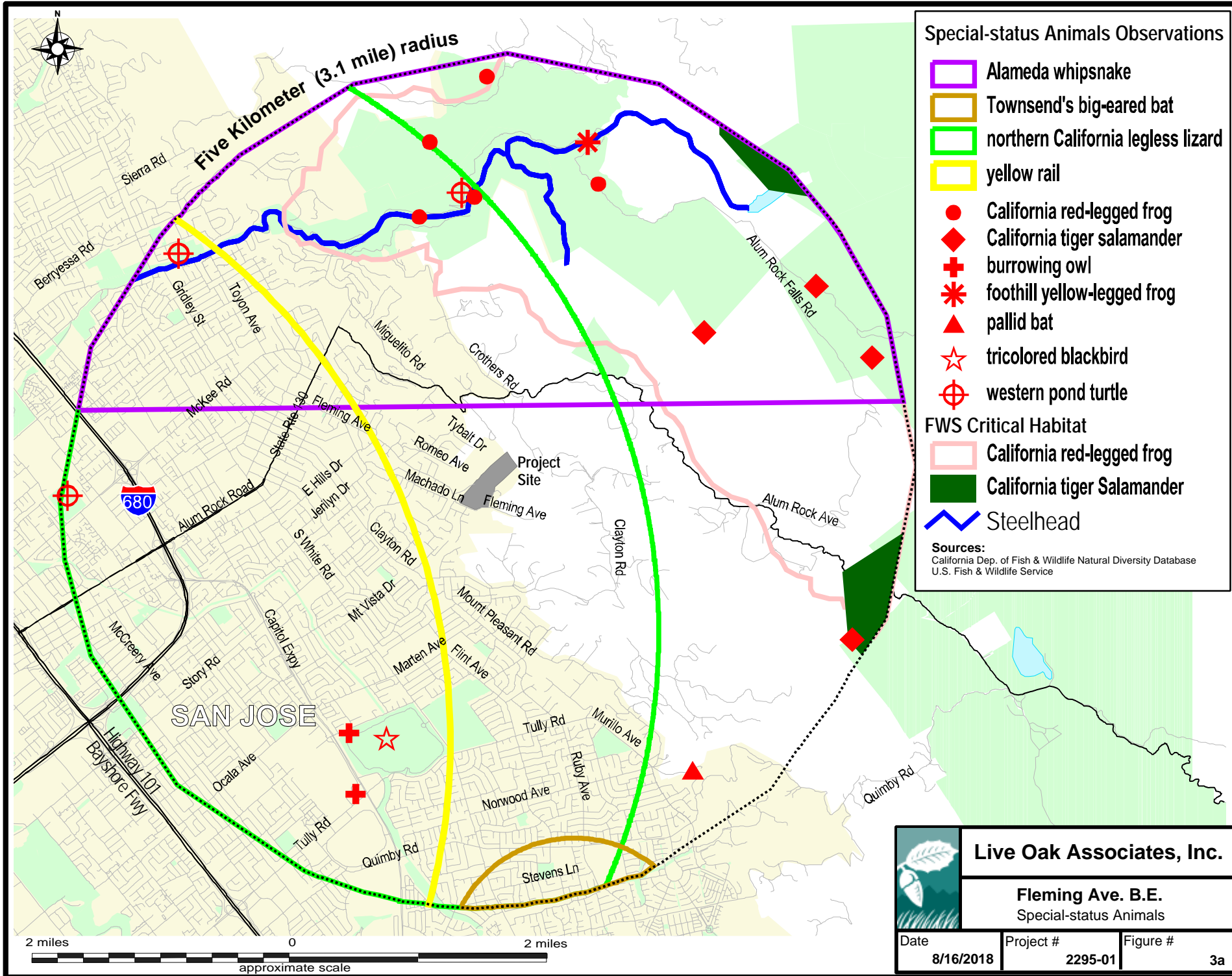
A search of published accounts for all of the relevant special status plant and animal species was conducted for the San Jose East USGS 7.5 minute quadrangle in which the project site occurs, and for the eight surrounding quadrangles (Milpitas, Calaveras Reservoir, Mt. Day, San Jose West, Lick Observatory, Los Gatos, Santa Teresa Hills, and Morgan Hill) using the California Natural Diversity Data Base (CNDDDB) Rarefind5. All species listed as occurring in these quadrangles on CNPS Lists 1A, 1B, 2, or 4 were also reviewed (See Figures 3a and 3b).

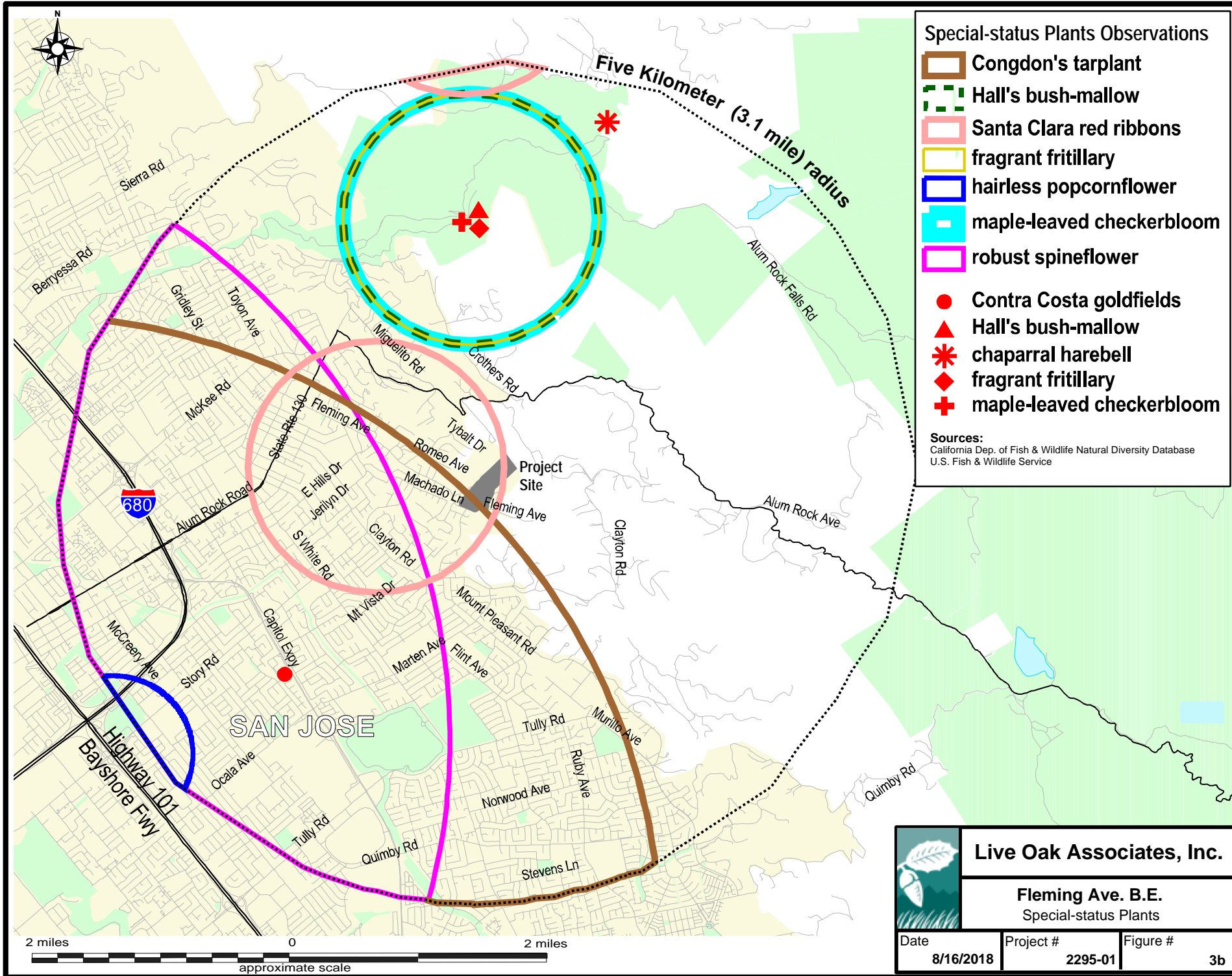
Serpentine soils are absent from the site; as such, those species that are uniquely adapted to serpentine conditions in the project's vicinity are considered absent from the site. These latter species include the Bay checkerspot butterfly (*Euphydryas editha bayensis*), Santa Clara thorn-mint (*Acanthomintha lanceolata*), big-scale balsamroot (*Balsamorhiza macrolepis* var. *macrolepis*), Oakland star-tulip (*Calochortus umbellatus*), chaparral harebell (*Campanula exigua*), Tiburon Indian paintbrush (*Castilleja affinis* ssp. *neglecta*), pink creamsacs (*Castilleja rubicundula* ssp. *rubicundula*), coyote ceanothus (*Ceanothus ferrisiae*), dwarf soaproot (*Chlorogalum pomeridianum* var. *minus*), Mt. Hamilton fountain thistle (*Cirsium fontinale* var. *campylon*), Brewer's clarkia (*Clarkia breweri*), San Francisco collinsia (*Collinsia multicolor*), South Coast Range morning-glory (*Calystegia collina* ssp. *venusta*), clustered lady's-slipper (*Cypripedium fasciculatum*), Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), phlox-leaf serpentine bedstraw (*Galium andrewsii* ssp. *gatense*), smooth lessingia (*Lessingia micradenia* ssp. *glabrata*), woolly-headed lessingia (*Lessingia hololeuca*), woodland woollythreads (*Monolopia gracilens*), Metcalf Canyon jewel-flower (*Streptanthus albidus* ssp. *albidus*), and most beautiful jewel-flower (*Streptanthus albidus* ssp. *peramoenus*).

Several other special status plant species have been ruled out on the site as they occur in habitats not present in the study area (e.g., vernal pool, chaparral, broadleafed forest, coastal prairie, coastal scrub, etc.) or at elevations significantly below or above elevations of the site (which range from 96 to 263 meters NGVD) and, therefore, are also considered absent from the site. These species include the Anderson's manzanita (*Arctostaphylos andersonii*), Bonny Doon manzanita (*Arctostaphylos silvicola*), Brewer's calandrinia (*Calandrinia breweri*), Santa Cruz Mountains

pussypaws (*Calyptridium parryi* var. *hesseae*), bristly sedge (*Carex comosa*), deceiving sedge (*Carex saliniformis*), Monterey spineflower (*Chorizanthe pungens* var. *pungens*), Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Santa Clara red ribbons (*Clarkia concinna* ssp. *automixa*), Lewis' clarkia (*Clarkia lewisii*), mountain lady's-slipper (*Cypripedium montanum*), California bottle-brush grass (*Elymus californicus*), California seablite (*Suaeda californica*), Point Reyes bird's-beak (*Cordylanthus maritimus* ssp. *palustris*), Mt Hamilton coreopsis (*Coreopsis hamiltonii*), Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*), Santa Cruz wallflower (*Erysimum teretifolium*), minute pocket moss (*Fissidens pauperculus*), Mt. Hamilton lomatium (*Lomatium observatorium*), coast iris (*Iris longipetala*), arcuate bush-mallow (*Malacothamnus arcuatus*), Hall's bush-mallow (*Malacothamnus hallii*), Santa Cruz Mountains beardtongue (*Penstemon rattanii* var. *kleei*), Choris' popcorn-flower (*Plagiobothrys chorisianus* var. *chorisianus*), Hickman's popcornflower (*Plagiobothrys chorisianus* var. *hickmanii*), hairless popcorn-flower (*Plagiobothrys glaber*), chaparral ragwort (*Senecio aphanactis*) and Santa Cruz clover (*Trifolium buckwestiorum*).

Other species having potential to occur on the project site or immediate vicinity because suitable habitats are present are discussed further below.





Live Oak Associates, Inc.

Fleming Ave. B.E.
Special-status Plants

Date	Project #	Figure #
8/16/2018	2295-01	3b

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS (adapted from CDFW 2018 and CNPS 2018)

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

Species	Status	Habitat	Occurrence in the Study Area
Ben Lomond spineflower (<i>Chorizanthe pungens</i> var. <i>hartwegiana</i>)	FE, CNPS 1B	<u>Habitat</u> : Occurs in vernal pools and mesic areas of valley and foothill grasslands, typically alkaline. <u>Elevation</u> : 0-470 meters. <u>Blooms</u> : Annual herb; April-July.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Also, this species is only known from Santa Cruz County.
Santa Cruz tarplant (<i>Holocarpha macradenia</i>)	FT, CE, CNPS 1B	<u>Habitat</u> : Occurs coastal prairie, coastal scrub, and valley and foothill grasslands, often in clay or sandy soils. <u>Elevation</u> : 10-220 meters. <u>Blooms</u> : Annual herb; June-October.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Also, this species is only known from Alameda, Contra Costa and Santa Cruz Counties.
Contra Costa Goldfields (<i>Lasthenia conjugens</i>)	FE, CNPS 1B	<u>Habitat</u> : Occurs in vernal pools and mesic areas of valley and foothill grasslands, typically alkaline. <u>Elevation</u> : 0-470 meters. <u>Blooms</u> : Annual herb; March-June.	Absent. Vernal pools and mesic alkaline areas are absent from the study area.
San Francisco popcornflower (<i>Plagiobothrys diffusus</i>)	CE, CNPS 1B	<u>Habitat</u> : Occurs in coastal prairie and valley and foothill grassland. <u>Elevation</u> : 60-360 meters. <u>Blooms</u> : March-June.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, there are no known occurrences of this species within a three-mile radius of the site.
Scotts Valley polygonum (<i>Polygonum hickmanii</i>)	FE, CE, CNPS 1B	<u>Habitat</u> : Occurs in alkaline, vernal mesic, sinks, flats, and lake margins within chenopod scrub, meadows and seeps, Valley and foothill grasslands, and vernal pools. <u>Elevation</u> : 2-930 meters. <u>Blooms</u> : Annual grass; March-May.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, there are no known occurrences of this species within a three-mile radius of the site.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS (adapted from CDFW 2018 and CNPS 2018)

Other special status plants listed by CNPS

Species	Status	Habitat	Occurrence in the Study Area
Bent-flowered fiddleneck (<i>Amsinckia lunaris</i>)	CNPS 1B	<u>Habitat</u> : Coastal bluff scrub, cismontane woodland, and valley and foothill grasslands. <u>Elevation</u> : 3-500 meters. <u>Blooms</u> : Annual herb; March–June.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Also, there have only been two observances of this species in Santa Clara County, both occurring within or near Joseph D. Grant park more than five miles east of the Fleming property.
California androsace (<i>Androsace elongata ssp. acuta</i>)	CRPR 4.2	<u>Habitat</u> : Occurs on alkaline soils within playas, valley and foothill grasslands and in vernal pools <u>Elevation</u> : 1-60 meters <u>Blooms</u> : Annual herb; March–June.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, there are no documented occurrences of this species within three miles of the site.
Alkali Milk-vetch (<i>Astragalus tener</i> var. <i>tener</i>)	CNPS 1B	<u>Habitat</u> : Occurs on alkaline clay soils in chenopod scrub, meadows and seeps, playas, valley and foothill grasslands, and vernal pools. <u>Elevation</u> : 1-320 meters. <u>Blooms</u> : Annual herb; April–October.	Absent. Alkaline soils are absent from the study area for this species.
Brittlescale (<i>Atriplex depressa</i>)	CRPR 1B	<u>Habitat</u> : Occurs in seasonal alkali wetlands or alkali sink scrub within chenopod scrub and grassland habitats. <u>Elevation</u> : 1-835 meters <u>Blooms</u> : Annual herb; April–October.	Absent. Alkaline soils are absent from the study area for this species.
San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	CNPS 1B	<u>Habitat</u> : Occurs in alkaline and sandy soils in chenopod scrub, playas, and valley and foothill grasslands. <u>Elevation</u> : 15-200 meters <u>Blooms</u> : Annual herb; May–October.	Absent. Alkaline soils are absent from the study area for this species.
Lesser saltscale (<i>Atriplex minuscula</i>)	CRPR 1B.1	<u>Habitat</u> : Occurs on rocky slopes within chaparral and is known from only one occurrence on Mt. Day. <u>Blooms</u> : Perennial herb; April–May.	Absent. Alkaline soils are absent from the study area for this species.
Mount Day rockcress (<i>Boechera rubicundula</i>)	CNPS 1B	<u>Habitat</u> : Occurs on alkaline soils within valley and foothill grasslands. <u>Elevation</u> : 1-230 meters <u>Blooms</u> : Annual herb; May–November.	Absent. Suitable habitat is absent from the site for this species.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS (adapted from CDFW 2018 and CNPS 2018)

Other special status plants listed by CNPS

Species	Status	Habitat	Occurrence in the Study Area
California androsace (<i>Androsace elongata</i> ssp. <i>acuta</i>)	CRPR 4.2	<u>Habitat:</u> Occurs on alkaline soils within playas, valley and foothill grasslands and in vernal pools <u>Elevation:</u> 1-60 meters <u>Blooms:</u> Annual herb; March-June.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, there are no documented occurrences of this species within three miles of the site.
Alkali Milk-vetch (<i>Astragalus tener</i> var. <i>tener</i>)	CNPS 1B	<u>Habitat:</u> Occurs on alkaline clay soils in chenopod scrub, meadows and seeps, playas, valley and foothill grasslands, and vernal pools. <u>Elevation:</u> 1-320 meters. <u>Blooms:</u> Annual herb; April-October.	Absent. Alkaline soils are absent from the study area for this species.
Brittlescale (<i>Atriplex depressa</i>)	CRPR 1B	<u>Habitat:</u> Occurs in seasonal alkali wetlands or alkali sink scrub within chenopod scrub and grassland habitats. <u>Elevation:</u> 1-835 meters <u>Blooms:</u> Annual herb; April-October.	Absent. Alkaline soils are absent from the study area for this species.
San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	CNPS 1B	<u>Habitat:</u> Occurs in alkaline and sandy soils in chenopod scrub, playas, and valley and foothill grasslands. <u>Elevation:</u> 15-200 meters <u>Blooms:</u> Annual herb; May-October.	Absent. Alkaline soils are absent from the study area for this species.
Lesser saltscale (<i>Atriplex minuscula</i>)	CRPR 1B.1	<u>Habitat:</u> Occurs on rocky slopes within chaparral and is known from only one occurrence on Mt. Day. <u>Blooms:</u> Perennial herb; April-May.	Absent. Alkaline soils are absent from the study area for this species.
Mount Day rockcress (<i>Boechera rubicundula</i>)	CNPS 1B	<u>Habitat:</u> Occurs on alkaline soils within valley and foothill grasslands. <u>Elevation:</u> 1-230 meters <u>Blooms:</u> Annual herb; May-November.	Absent. Suitable habitat is absent from the site for this species.
Congdon's tarplant (<i>Centromadia parryi</i> ssp. <i>congdonii</i>)	CNPS 1B	<u>Habitat:</u> Occurs chaparral and cismontane woodlands. <u>Elevation:</u> 90-1500 meters. <u>Blooms:</u> Annual herb; April-May.	Absent. Although species is known to occur in disturbed grasslands, alkaline soils are absent from the study area for this species.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS (adapted from CDFW 2018 and CNPS 2018)

Other special status plants listed by CNPS

Species	Status	Habitat	Occurrence in the Study Area
Douglas' spineflower (<i>Chorizanthe douglasii</i>)	CRPR 4.3	<u>Habitat</u> : Occurs in sandy or gravelly areas within chaparral, cismontane woodland, coastal scrub, and lower montane coniferous forest. <u>Elevation</u> : 55-1600 meters. <u>Blooms</u> : Annual herb; April-July.	Absent. No suitable habitat occurs on the parcel for this species.
Santa Clara red ribbons (<i>Clarkia concinna ssp. automixa</i>)	CNPS 4.3	<u>Habitat</u> : Occurs on clay soils within coastal prairie, and scrub, and valley and foothill grasslands, often on serpentine. <u>Elevation</u> : 3-410 meters <u>Blooms</u> : Bulbiferous; February-April.	Absent. Suitable habitat is absent from the site for this species.
Fragrant fritillary (<i>Fritillaria liliacea</i>)	CNPS 1B	<u>Habitat</u> : Occurs in grassland, chaparral, cismontane woodland, riparian woodland, often on serpentine. <u>Elevation</u> : 30-860 meters. <u>Blooms</u> : Perennial herb; May-October.	Absent. Although species is known to occur in grassland habitats and on clay soils, which are present on the site, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, this species is now found primarily on serpentine soils which are absent from the site and the closest known occurrence of this species is approximately two miles north of the site in Alum Rock Park.
Loma Prieta hoita (<i>Hoita strobilina</i>)	CNPS 1B	<u>Habitat</u> : Occurs in chaparral, cismontane woodland, coastal prairie, and valley and foothill grassland. <u>Elevation</u> : 55-1500 meters. <u>Blooms</u> : Annual herb; April-July.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, this species is generally found on serpentine soils which are absent from the site and there are no known occurrences within a 3-mile radius of the site.
Bristly leptosiphon (<i>Leptosiphon acicularis</i>)	CRPR 4.2	<u>Habitat</u> : Usually occurs in serpentine within cismontane woodland, coastal scrub, and valley and foothill grasslands. <u>Elevation</u> : 120-1130 meters. <u>Blooms</u> : Annual herb; March-June.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS (adapted from CDFW 2018 and CNPS 2018)

Other special status plants listed by CNPS

Species	Status	Habitat	Occurrence in the Study Area
Serpentine leptosiphon (<i>Leptosiphon ambiguus</i>)	CRPR 4.2	<u>Habitat</u> : Occurs in usually sandy areas within coastal bluff scrub, closed-cone coniferous forest, cismontane woodland, coastal dunes, coastal prairie, coastal scrub, and valley and foothill grasslands. <u>Elevation</u> : 5-1220 meters. <u>Blooms</u> : Annual herb; April-August.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, this species usually occurs on serpentine soils which are absent from the site.
Large-flowered leptosiphon (<i>Leptosiphon grandiflorus</i>)	CRPR 4.2	<u>Habitat</u> : Occurs in rocky soils in broadleaved upland forest, chaparral, cismontane woodland, and valley and foothill grassland. <u>Elevation</u> : 45-825 meters. <u>Blooms</u> : Annual herb; March-May.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, there are no known occurrences of this species within a three-mile radius of the site.
Mt. Diablo cottonweed (<i>Micropus amphibolus</i>)	CRPR 3	<u>Habitat</u> : Occurs in coastal scrub, meadows and seeps, valley and foothill grasslands on alkaline soils, and vernal pools on mesic soils. <u>Elevation</u> : 15-700 meters. <u>Blooms</u> : Annual herb; April-July.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, rocky soils are generally absent from the site and there are no known occurrences of this species within a three-mile radius of the site.
Prostrate navarretia (<i>Navarretia prostrata</i>)	CNPS 1B	<u>Habitat</u> : Occurs in rocky chaparral and cismontane woodland. <u>Elevation</u> : 500-1370 meters. <u>Blooms</u> : Annual herb; April-May.	Absent. Mesic and alkaline soils do not occur on the site.
Mt. Diablo phacelia (<i>Phacelia phacelioides</i>)	CNPS 1B	<u>Habitat</u> : Occurs in coastal prairie and valley and foothill grassland. <u>Elevation</u> : 60-360 meters. <u>Blooms</u> : March-June.	Absent. Suitable habitat is absent from the site.
California alkali grass (<i>Puccinellia simplex</i>)	CNPS 1B	<u>Habitat</u> : Occurs in mesic areas within cismontane woodland, north coast coniferous forest, valley and foothill grasslands, and vernal pools. <u>Elevation</u> : 15-470 meters. <u>Blooms</u> : Annual herb; February-May	Absent. Suitable habitat is absent on the site for this species.
Lobb's aquatic buttercup (<i>Ranunculus lobbii</i>)	CRPR 4.2	<u>Habitat</u> : Broadleaved upland forest, chaparral, and valley and foothill grassland. <u>Elevation</u> : 620-1175 meters. <u>Blooms</u> : April-May.	Absent. Suitable habitat is absent on the site for this species.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS (adapted from CDFW 2018 and CNPS 2018)

Other special status plants listed by CNPS

Species	Status	Habitat	Occurrence in the Study Area
Rock sanicle (<i>Sanicula saxatilis</i>)	CR, CNPS 1B	<u>Habitat:</u> Occurs in broadleaved upland forests, coastal prairie, coastal scrub, North Coast coniferous forests, and riparian woodland, often in disturbed areas. <u>Elevation:</u> 0-730 meters. <u>Blooms:</u> March-August.	Absent. Although species is known to occur in grassland habitats, the grasslands of the site are heavily disturbed and heavily dominated by annual grasses, and therefore do not provide suitable habitat for this species. Additionally, the site occurs well below the elevation range of this species and there are no known occurrences within a three-mile radius.
Maple-leaved checkerbloom (<i>Sidalcea malachroides</i>)	CNPS 1B	<u>Habitat:</u> Marshes and swamps, mesic and alkaline areas of valley and foothill grasslands, and vernal pools. <u>Elevation:</u> 0-300 meters. <u>Blooms:</u> Annual herb; April-June.	Absent. Suitable habitat is absent from the site. Additionally, there is only one occurrence known from Santa Clara County in Alum Rock Park and has not been observed since 1896.
Saline clover (<i>Trifolium hydrophilum</i>)	CNPS 1B	<u>Habitat:</u> Marshes and swamps, mesic and alkaline areas of valley and foothill grasslands, and vernal pools. <u>Elevation:</u> 0-300 meters. <u>Blooms:</u> Annual herb; April-June.	Absent. Suitable habitat is absent on the site for this species.

ANIMALS (adapted from CDFW 2018 and USFWS 2018)

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

Species	Status	Habitat	Occurrence in the Study Area
Vernal pool tadpole shrimp (<i>Lepidurus packardii</i>)	FE	Occurs in vernal pools of California. Vernal pools and swales in the Sacramento Valley containing clear to highly turbid water.	Absent. Suitable habitat for vernal pool tadpole shrimp in the form of vernal pools is absent from the study area. The nearest recorded observation of VPTS is more than 3 miles from the site.
California Tiger Salamander (<i>Ambystoma californiense</i>)	FT, CT	Breeds in vernal pools and stock ponds of central California; adults aestivate in grassland habitats adjacent to the breeding sites.	Absent. Suitable breeding habitat for this species in the form of stagnant pools with continuous inundation for a minimum of three months is absent from the site and the immediate vicinity. The nearest recorded observation of CTS is more than 1.5 miles from the site.
Foothill yellow-legged frog (<i>Rana boylei</i>)	CSC CCT	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. Habitats required by this species are absent. No suitable water features exist on the site. The nearest documented observation of this species is approximately 2.5 miles to the north of the site.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS (adapted from CDFW 2018 and USFWS 2018)

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

Species	Status	Habitat	Occurrence in the Study Area
California Red-legged Frog (<i>Rana aurora draytonii</i>)	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and Bay Area, preferring pools with overhanging vegetation.	Absent. Aquatic habitat suitable for the California red-legged frog is absent from the site. No suitable water features exist on the site. The nearest documented observation of this species is approximately 2 miles to the north of the site, with CRLF Critical Habitat being approximately 1 mile to the north of the site.
Alameda Whipsnake (<i>Masticophis lateralis euryxanthus</i>)	FT, CT	Occurs in chaparral foothills, shrublands with scattered grass patches, rocky canyons, and watercourses. Occurs in the San Francisco Bay area including Alameda, Contra Costa, Santa Clara and San Joaquin Counties, CA.	Absent. Habitats required by this species are absent from the site. The nearest documented observation of this species is within the quadrangle to the north of the site.
Tricolored Blackbird (<i>Agelaius tricolor</i>)	CSC, CCE	Breeds near fresh water in dense emergent vegetation.	Absent. Suitable nesting habitat is absent from the site. The nearest documented observation of this species is approximately 2 miles to the south of the site.
Swainson’s hawk (nesting) (<i>Buteo swainsoni</i>)	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. Although potential breeding habitat for the Swainson’s hawk is present on the rural residential portion of the site, the SWHA is only known in the region from one pair which breeds each year in Coyote Valley. Therefore, Swainson’s hawks are not expected to occur onsite.
Western snowy plover (nesting) (<i>Charadrius alexandrinus nivosus</i>)	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 project area. The nearest documented observation of this species is more than three miles from the site.

State Species of Special Concern and Protected Species

Species	Status	Habitat	Occurrence in the Study Area
Northern California legless lizard (<i>Anniella pulchra</i>)	CSC	The NCLL (previously called black 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.	Unlikely. Habitats required by northern California legless lizards are moderately suitable, as the site lacks sandy soils. The location on Figure 3a (observation #130 in the CNDDDB) was observed between downtown San Jose and downtown Alum Rock in 1941 and 1949 and is listed as possibly extirpated (CNDDDB 2018).

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS (adapted from CDFG 2018 and USFWS 2018)

State Species of Special Concern and Protected Species (cont.)

Species	Status	Habitat	Occurrence in the Study Area
Coast horned lizard (<i>Phrynosoma blainvillii</i>)	CSC	Occur in grasslands, scrublands, oak woodlands, etc. of central California. Common in sandy washes with scattered shrubs.	Unlikely. Habitats required by coast horned lizards are moderately suitable, as the site lacks sandy soils. The nearest documented observation of this species is more than 3 miles from the site.
Western pond turtle (<i>Actinemys marmorata</i>)	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.	Absent. Habitat for the western pond turtle is not available on the site. The nearest documented observation of this species is approximately 2 miles to the north of the site.
Northern harrier (nesting) (<i>Circus cyaneus</i>)	CSC	Frequents meadows, grasslands, open rangelands, freshwater emergent wetlands; uncommon in wooded habitats.	Possible. Although the nearest documented observation of this species is more than 3 miles from the site, the site provides suitable foraging habitat for this species.
White-tailed Kite (nesting) (<i>Elanus leucurus</i>)	CP	Open grasslands and agricultural areas throughout central California.	Possible. Although the nearest documented observation of this species is more than 3 miles from the site, suitable breeding habitat exists onsite for this species within the rural residential portion of the site and the site supports foraging habitat onsite and in the vicinity of the site.
Golden Eagle (nesting & nonbreeding/wintering) (<i>Aquila chrysaetos</i>)	CP	Typically frequents rolling foothills, mountain areas, sage-juniper flats and desert.	Possible. Although suitable breeding habitat for the golden eagle is absent from the site, foraging habitat exists onsite. The nearest documented occurrence of the GE is more than 3 miles from the site.
Peregrine Falcon (<i>Falco peregrinus</i>)	CP	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	Absent. Nesting habitat is not present on the site or in the immediate vicinity of the site.
Burrowing Owl (<i>Athene cunicularia</i>)	CSC	Found in open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. This species is often associated with California ground squirrels.	Possible. Suitable overwintering habitat is present onsite. The nearest documented occurrence of BUOW is nearly 2 miles to the southwest of the site.
Loggerhead Shrike (nesting) (<i>Lanius ludovicianus</i>)	CSC	Frequents open habitats with sparse shrubs and trees, other suitable perches, bare ground, and low herbaceous cover. Nests in tall shrubs and dense trees. Forages in grasslands, marshes, and ruderal habitats. Can often be found in cropland.	Possible. Suitable breeding and foraging habitat exist onsite and they are known to occur in the area.

TABLE 1. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PROJECT VICINITY

ANIMALS (adapted from CDFW 2018 and USFWS 2018)

State Species of Special Concern and Protected Species (cont.)

Species	Status	Habitat	Occurrence in the Study Area
Purple martin (nesting) <i>(Progne subis)</i>	CSC	Cavity nester, nests widely in man-made birdhouses.	Unlikely. The trees of the site may provide potential nesting habitat; however, these birds are known to nest near open water, which is not present onsite or in the vicinity of the site. The purple martin may be expected to fly over or forage on the site from time to time.
Yellow-breasted chat <i>(Icteria virens)</i>	CSC	Frequently breeds in dense shrubs and blackberry thickets and uses areas of dense vegetation during migration.	Unlikely. Potential nesting habitat of dense vegetation is generally absent from the site. The YBC may be expected to fly over or forage on the site from time to time.
Grasshopper sparrow <i>(Ammodramus savannarum)</i>	CSC	Occurs in California during spring and summer in open grasslands with scattered shrubs.	Possible. Suitable breeding habitat exists onsite. The nearest documented occurrence is more than 3 miles from the site.
Townsend’s Big-eared bat <i>(Corynorhinus townsendii)</i>	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats.	Possible. Suitable foraging and roosting habitat for this species is present on the site.
Pallid Bat <i>(Antrozous pallidus)</i>	CSC	Grasslands, chaparral, woodlands, and forests; most common in dry rocky open areas providing roosting opportunities.	Possible. Suitable foraging and roosting habitat for this species is present on the site.
San Francisco Dusky-Footed Woodrat <i>(Neotoma fuscipes annectens)</i>	CSC	Found in hardwood forests, oak riparian and shrub habitats.	Absent. Suitable habitat is absent from the site.
American Badger <i>(Taxidea taxus)</i>	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils, specifically grassland environments. Natal dens occur on slopes.	Possible. Suitable habitat is present onsite from the site. The nearest documented occurrence is more than 3 miles from the site.

***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.

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 | | |

2.4 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. The site does not support jurisdictional waters or wetlands.

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 *Guide to the California Environmental Quality Act* (Remy et al. 1996), “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 Game or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (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.

- Reduce substantially the habitat of a fish or wildlife species, including causing a fish or wildlife population to drop below self-sustaining levels or threaten to eliminate an animal community.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

For the purposes of this report, it is assumed that impacts will be buildout of the entire property outside of the proposed riparian setbacks.

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 Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., sec. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory

birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

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, 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.

Additionally, the Bald and Golden Eagle Protection Act (16 U.S.C., sec. 668-668c) prohibits anyone from taking bald or golden eagles, including their parts, nests, or eggs, unless authorized under a federal permit. The act prohibits any disturbance that directly affects an eagle or an active eagle nest as well as any disturbance caused by humans around a previously used nest site during a time when eagles are not present such that it agitates or bothers an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.

3.2.4 Bats

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

3.2.5 Wetlands and Other “Jurisdictional Waters”

Natural drainage channels and adjacent wetlands may be considered “Waters of the United States” (hereafter referred to as “jurisdictional waters”) subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE). The extent of jurisdiction has been defined in the Code of Federal

Regulations but has also been subject to interpretation of the federal courts. Jurisdictional waters generally include:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters including interstate wetlands;
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce;
- All impoundments of waters otherwise defined as waters of the United States under the definition;
- Tributaries of waters identified in paragraphs (a)(1)-(4) (i.e. the bulleted items above).

As determined by the United States Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (the SWANCC decision), channels and wetlands isolated from other jurisdictional waters cannot be considered jurisdictional on the basis of their use, hypothetical or observed, by migratory birds. However, the U.S Supreme Court decisions *Rapanos v. United States* and *Carabell v. U.S. Army Corps of Engineers* (referred together as the Rapanos decision) impose a "significant nexus" test for federal jurisdiction over wetlands. In June 2007, the USACE and Environmental Protection Agency (EPA) established guidelines for applying the significant nexus standard. This standard includes 1) a case-by-case analysis of the flow characteristics and functions of the tributary or wetland to determine if they significantly affect the chemical, physical, and biological integrity of downstream navigable waters and 2) consideration of hydrologic and ecologic factors (EPA and USACE 2007).

The USACE regulates the filling or grading of such waters under the authority of Section 404 of the Clean Water Act. The extent of jurisdiction within drainage channels is defined by "ordinary high water marks" on opposing channel banks. Wetlands are habitats with soils that are intermittently or permanently saturated, or inundated. The resulting anaerobic conditions select for plant species known as hydrophytes that show a high degree of fidelity to such soils. Wetlands are identified by the presence of hydrophytic vegetation, hydric soils (soils saturated intermittently or

permanently saturated by water), and wetland hydrology according to methodologies outlined in the 1987 Corps of Engineers Wetlands Delineation Manual (USACE 1987).

All activities that involve the discharge of fill into jurisdictional waters are subject to the permit requirements of the USACE (Wetland Training Institute, Inc. 1991). Such permits are typically issued on the condition that the applicant agrees to provide mitigation that results in no net loss of wetland functions or values. No permit can be issued until the Regional Water Quality Control Board issues a certification (or waiver of such certification) that the proposed activity will meet state water quality standards. The filling of isolated wetlands, over which the USACE has disclaimed jurisdiction under the SWANCC decision, is regulated by the RWQCB. It is unlawful to fill isolated wetlands without filing a Notice of Intent with the RWQCB. The RWQCB is also responsible for enforcing National Pollution Discharge Elimination System (NPDES) permits, including the General Construction Activity Storm Water Permit. All projects requiring federal money must also comply with Executive Order 11990 (Protection of Wetlands).

The California Department of Fish and Wildlife has jurisdiction over the bed and bank of natural drainages according to provisions of Section 1601 and 1602 of the California Fish and Game Code (2003). Activities that would disturb these drainages are regulated by the CDFW via a Streambed Alteration Agreement. Such an agreement typically stipulates that certain measures will be implemented which protect the habitat values of the drainage in question.

3.2.6 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 56 inches (diameter of 18 inches) at 24 inches above the natural grade of slope. For multi-trunk trees,

the circumference is measured as the sum of the circumferences of all trunks at 24 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.

3.2.7 Envision San Jose 2040 General Plan

The Envision San Jose 2040 General Plan (General Plan) aims to protect biological resources when properties are developed in San Jose. Generally, similar types of requirements occur in the General Plan as in the SCVHP. The General Plan includes several policies relevant to biological protections including, but are not limited to, the following:

- Policy MS-21.4: Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
- Policy MS-21.5: As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and City of San José 33 Initial Study One South Market Street Residential Project December 2012 construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
- Policy MS-21.6: As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.
- Policy MS-21.9: Where urban development occurs adjacent to natural plant communities (e.g., oak woodland, riparian forest), landscape plantings shall incorporate tree species native to the area and propagated from local sources (generally from within 5-10 miles and preferably from within the same watershed).

- Policy ER-1.4: Minimize the removal of ecologically valuable vegetation such as serpentine and non-serpentine grassland, oak woodland, chaparral, and coastal scrub during development and grading for projects within the City.
- Policy ER-1.5: Preserve and protect oak woodlands, and individual oak trees. Any loss of oak woodland and/or native oak trees must be fully mitigated.
- Policy ER-1.7: Prohibit planting of invasive non-native plant species in oak woodlands, grasslands, chaparral and coastal scrub habitats, and in hillside areas.
- Policy ER-4.1: Preserve and restore, to the greatest extent feasible, habitat areas that support special-status species. Avoid development in such habitats unless no feasible alternatives exist and mitigation is provided of equivalent value.
- Policy ER-4.2: Limit recreational uses in wildlife refuges, nature preserves and wilderness areas in parks to those activities which have minimal impact on sensitive habitats.
- Policy ER-4.3: Prohibit planting of invasive non-native plant species in natural habitats that support special-status species.
- Policy ER-4.4: Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
- Policy ER-5.2: Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
- Policy ER-6.3: Employ low-glare lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.
- Policy ER-6.6: Encourage the use of native plants in the landscaping of developed areas adjacent to natural lands.
- Policy ER-6.8: Design and construct development to avoid changes in drainage patterns across adjacent natural areas and for adjacent native trees, such as oaks.

Projects must be consistent with all measures (Goals) of the General Plan.

3.2.8 Santa Clara Valley Habitat Plan

Six local partners (i.e., County of Santa Clara, Santa Clara Valley Transportation Authority; Santa Clara Valley Water District; and the Cities of San Jose, Gilroy, and Morgan Hill) and two wildlife agencies (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.

The project is considered a covered project under the SCVHP. As a result, the project would be subject to conditions and fees of the SCVHP.

3.2.8.1 SCVHP Fees

Chapter 9 of the SCVHP identifies fees that would be required by this project. The following describes fees that are based on the 2018 fee schedule; however, fees are calculated at the time the project submits the SCVHP application, which corresponds to application timing of grading and/or building permits. Thus, the following numbers are provided for a sense of magnitude and should be considered approximate.

The site is within Fee Zone B “Mostly Cultivated Agricultural Lands” and “Urban Lands”. The 2018-2019 SCVHP fees for development of Zone B lands are \$14,725 per acre. In addition, a Nitrogen Deposition Fee would also be required at \$4.96 per new vehicle trip or \$48.33 per new single-family residence. Temporary impact fees, such as for utility trenching, are assessed at a fraction of these fees.

3.2.8.2 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 and are summarized below.

- **Condition 1 (page 6-7). Avoid Direct Impacts on Legally Protected Plant and Wildlife Species-** Condition 1 instructs developers to avoid direct impacts on legally protected plant and wildlife species, including federally endangered Contra Costa goldfields and fully protected wildlife species including the golden eagle, bald eagle, American peregrine falcon, southern bald eagle, white-tailed kite, California condor, and ring-tailed cat. 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 applies to project)-** Condition 3 is for all projects due to the fact that implementation of projects could result in impacts on watershed health, including impacts to aquatic habitat for species, through changes in hydrology and water quality. This condition incorporates all of the most important measures for water quality protection of the National Pollutant Discharge Elimination System (NPDES) Program of the Clean Water Act. Required measures of Condition 3 are located in Table 6-2 of the SCVHP; these measures relate to water quality and habitat protection during and after project construction. They include measures typically included in a Storm Water Pollution Prevention Plan (SWPPP) but may include measures that are in addition to such plans.
- **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.
- **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-** Condition 11 provides requirements for stream and riparian setbacks; as the development area is within the Urban Service Area, stream setbacks measured from the top of the stream bank should be 35 to 150 feet depending on the category rating of the stream and the slope class. Setbacks for Category 1 streams with 0-30% slopes should be at least 100 feet, and with >30% slopes should be at least 150 feet. Category 2 streams should have a setback of 35 feet.
- **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.
- **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 project, as proposed, would redevelop approximately 2.15 acres of the 49.0-acre site. The project proposes to construct a 10,822 square-foot single-family residence, a 6,030 square-foot detached garage, and a 6,025 square-foot pool house with associated access road, parking areas, landscaping, and a detention basin. None of the existing structures onsite would be demolished. As discussed above, activities resulting in impacts to biotic resources may be regulated by local, state, and federal laws. The natural resource issues specific to this project are discussed in detail below.

3.3.1 Loss of Habitat for Special Status Plants

Potential Impact. Of the special status plant species that occur, or that once occurred, regionally, habitat in the form of serpentine and/or alkaline soils, woodlands, vernal pools, etc., are absent from the site and therefore most of these plant species that occur on those soils or in those habitat types are considered absent from the site. Additionally, special status plant species that occur in grassland habitats are considered absent due to the highly disturbed nature of the grasslands on the site and their overwhelming dominance by non-native annual grasses.

Mitigation. None warranted.

3.3.2 Loss of Habitat for Special Status Animals

Potential Impact. Twenty-four (24) special status animal species occur, or once occurred, regionally. Of these, fifteen species would be absent or unlikely to occur on the site due to a lack

of suitable habitat for these species. The species that would be absent or unlikely to occur include the vernal pool tadpole shrimp, California tiger salamander, Foothill yellow-legged frog, California red-legged frog, Alameda whipsnake, northern California legless lizard, Coast horned lizard, western pond turtle, Swainson's hawk, peregrine falcon, purple martin, yellow-breasted chat, tricolored blackbird, western snowy plover, and San Francisco dusky-footed woodrat.

The remaining nine special status animal species from Table 1 potentially occur more frequently as potential foragers, transients, may be resident to the site, or they may occur within areas adjacent to the site. These include northern harrier, white-tailed kite, golden eagle, burrowing owl, loggerhead shrike, grasshopper sparrow, Townsend's big-eared bat, pallid bat, and American badger.

No evidence of bats was observed during reconnaissance surveys; however, the site is an active farm, and no buildings are proposed to be removed, therefore, the only potential habitat is not expected to be removed as a part of this project, however, individual Townsend's big-eared bats and pallid bats may forage within the site from time to time.

Potential impacts to specific species are discussed further below.

Mitigation. No mitigation warranted.

3.3.3 Loss of Habitat for Native Wildlife

Potential Impact. The habitats of the site comprise only a small portion of the regionally available habitat for plant and animal species that are expected to use the habitat. The proposed project would result in the loss of Urban-Suburban (Agriculture Developed) habitat. This is not expected to result in a significant effect on local wildlife. Therefore, impacts due to the loss of 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. Buildout of the site would not constrain native wildlife movement, as the site and the properties surrounding the site are already developed and do not support a wildlife movement corridor.

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

3.3.5 Impacts to Nesting Migratory Bird Including Nesting Raptors and other Protected Birds

Potential Impacts. Trees and shrubs of landscaped areas onsite as well as the building (including the flat roof) may support nesting birds and raptors. Buildout of the project during the nesting period for migratory birds (i.e., typically between February 1 to August 31), including initial site grading, soil excavation, and/or tree and vegetation removal, poses a risk of nest abandonment and death of any live eggs or young that may be present within the nest within or near the site. 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 should be followed.

Mitigation. The following measures will ensure that active migratory bird and raptor nests will not be disturbed and individual birds will not be harmed by construction activities, especially including tree removal. Completion of the following measures, including Mitigation Measure 3.3.5a, will reduce the potential impacts to nesting migratory birds to a less-than-significant level.

Mitigation Measure 3.3.5a. If initial site disturbance activities, including tree, shrub, or vegetation removal, are to occur during the breeding season (typically February 1 to August 31), a qualified biologist would conduct pre-construction surveys for nesting migratory birds onsite and within 250 feet (for raptors) of the site, where accessible. The survey should occur within 14-days prior to the onset of ground disturbance if disturbances are to commence between February 1 and June 30 and within 30-days prior to the onset of ground disturbance between July 1 and August 31. If a nesting migratory bird were to be detected, an appropriate construction-free buffer would be established. Actual size of buffer, which would be determined by the project biologist, would depend on species, topography, and type of activity that would occur in the vicinity of the nest. The project buffer would be monitored periodically by the project biologist to ensure compliance. After the nesting is completed, as determined by the biologist, the buffer would no longer be required.

3.3.6 Impacts to Western Burrowing Owls

Potential Impacts. The site outside of the burrowing owl fee area for the SCVHP, however, the site provides overwintering habitat for burrowing owls in the form of California ground squirrel burrows and foraging land. As burrowing owls are protected under Condition 1 of the SCVHP, following measures within Condition 15 of the SCVHP is required, and the project shall conduct pre-construction surveys in accordance with the Condition 15 of the SCVHP. Measures to ensure compliance with this condition are included below as Mitigation Measure 3.3.6.

Should site grading occur during the nesting season for this species (February 1 through August 31), nests and nestlings that may be present would likely be destroyed. Overwintering burrowing owls may also be buried in their roost burrows outside of the nesting season (September 1 through January 31). Any actions related to site development that result in the mortality of burrowing owls would constitute a violation of the federal Migratory Bird Treaty Act and provisions of the California Fish and Game Code. Therefore, the mortality of burrowing owls would constitute a significant impact under CEQA.

Mitigation. The following measures will ensure that burrowing owls will not be harmed by construction activities. Completion of the following measures will reduce the potential impacts to burrowing owls to a less-than-significant level.

Mitigation Measure 3.3.6a: Preconstruction surveys are required to ascertain whether or not burrowing owls occupy burrows on the site and off-site elements prior to construction. These surveys consist of a minimum of two surveys, with the first survey no more than 14 days prior to initial construction activities (i.e. vegetation removal, grading, excavation, etc.) and the second survey conducted no more than 2 days prior to initial construction activities. If no burrowing owls or fresh sign of burrowing owls are observed during pre-construction surveys, construction may continue; however, if a burrowing owl is observed during these surveys, occupied burrows will be identified by the monitoring biologist and a buffer, as described in Mitigation Measure 3.3.6b, will be established.

- If an active nest is found onsite, a 250-foot non-disturbance buffer will be established around all nest sites as identified and defined by a qualified biologist. If the biologist determines that the nest is vacant, the non-disturbance buffer zone may be removed. The

SCVHP specifies that a vacation from the site for a week or more by a burrowing owl, as determined by a qualified biologist, would constitute a voluntary relocation by the owl, and the qualified biologist could then take measures to collapse suitable burrows of the site to discourage reoccupation. The biologist will supervise hand excavation of the burrow to prevent reoccupation only after receiving approval from the wildlife agencies (SCVHP, Chapter 6, Condition 15)

For permission to encroach within 250 feet of such burrows during the nesting season (February 1 through August 31), an Avoidance, Minimization, and Monitoring Plan would need to be prepared and approved by the Implementing Entity and the Wildlife Agencies prior to such encroachment (review Chapter 6, pp. 6-64 & 6-65, of the SCVHP for further detail).

- Should a burrowing owl be located onsite in the non-breeding season (September through January), construction activities would not be allowed within this 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to:
 - A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
 - The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
 - If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities will cease within the 250-foot buffer.
 - If the owls are gone for at least one week, the project proponent may request approval from the Implementing Entity that a qualified biologist excavates usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone will be removed and construction may continue;

Mitigation Measure 3.3.6b: The SCVHP stipulates that passive relocation or exclusion of burrowing owls would not be allowed until a positive regional growth trend is achieved as defined in Section 5.4.6 of the SCVHP; however, a project may qualify for an exception to this prohibition. In the event that voluntary relocation of site burrowing owls does not occur (defined as owls of the site having vacated the site for 10 or more consecutive days), permission to engage in passive relocation during the non-breeding season would need to be requested through the standard application process (Section 6.8 of the SCVHP). Application for an exception would need additional information including a relocation plan/schedule and documentation by a qualified biologist that owls have occupied the site for the full year without vacating the site for 10 or more

consecutive days. The application would need to be submitted to the Implementing Entity, and the Wildlife Agencies would then evaluate the application and make a determination for granting the exception. If passive relocation is granted, additional measures may be required by the Implementing Entity.

However, if the owls voluntarily vacate the site for 10 or more consecutive days, as documented by a qualified biologist, the applicant could seek permission to have the qualified biologist take measures to collapse vacated and other suitable burrows to ensure that owls do not recolonize the site.

3.3.7 Potential Impacts to American Badgers

Potential Impacts. Although badger burrows were not observed onsite during the August site visit, the site supports suitable habitat for badgers. Should project activities harm individual badgers, that would constitute a significant impact under CEQA.

Mitigation The following measures will ensure that badgers will not be harmed by construction activities. Completion of the following measures will reduce the potential impacts to badgers to a less-than-significant level.

- **Mitigation Measure 3.3.7a:** Pre-construction surveys conducted for burrowing owls should also be used to determine the presence or absence of badgers in the development footprint.
- **Mitigation Measure 3.3.7b:** If an active badger den is identified during pre-construction surveys within or immediately adjacent to the construction envelope, a construction-free buffer of up to 300 ft. (or distance specified by the resource agencies, i.e., CDFG) should be established around the den. Because badgers are known to use multiple burrows in a breeding burrow complex, a biological monitor should be present onsite during construction activities to ensure the buffer is adequate to avoid direct impact to individuals or nest abandonment. The monitor would be necessary onsite until it is determined that young are of an independent age and construction activities would not harm individual badgers.
- **Mitigation Measure 3.3.7c:** Once it has been determined that badgers have vacated the site, the burrows can be collapsed or excavated, and ground disturbance can proceed.

3.3.8 Potential Impacts to Riparian Habitat and Other Sensitive Natural Communities, Including Federally Protected Wetlands

Potential Impacts. Riparian habitat and other sensitive natural communities and protected wetlands are absent from the site.

Mitigation No mitigation is warranted.

3.3.9 Degradation of Water Quality in Seasonal Drainages, Stock Ponds and Downstream Waters

Potential Impact. Eventual site development and construction may 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 would comply with the City's grading requirements. Therefore, the project buildout would result in a less-than-significant impact to water quality.

Mitigation. No mitigation is warranted.

3.3.10 Conflict with Local Policies and Ordinances: City of San Jose Tree Ordinance

Potential Impacts. A tree survey was not conducted as a part of this project. A tree survey should be conducted should any trees onsite in order to confirm whether Heritage Trees occur onsite. Should protected trees occur onsite, replacement ratios should be followed as listed in Table 2 below.

Mitigation. Currently we understand that no tree is planned for removal, however, should protected trees be found to occur onsite and require removal, compensatory mitigation for loss of trees of the site is described in the Mitigation Measures below. Successful completion of these measures, where they ultimately apply to the project design, will reduce impacts to trees to a less-than-significant level.

Mitigation Measure 3.3.8a. Minimization measures should be implemented to the maximum extent practicable to avoid impacts to trees. While it is currently unknown if trees of the site are planned for retention, if any trees are retained during the construction and operation phases of the project, including trees immediately adjacent to the project boundary but with canopy coverage onto the site, such trees should be protected from impacts by conforming to the following guidelines:

- An arborist should be consulted prior to any ground disturbance activities. The consulting arborist should develop a tree-protection plan outlining specific procedures to ensure that retained trees are protected during the construction phase.
- Prior to any ground disturbance activities, fencing should be installed at the drip-line of all retained trees occurring near the project development envelope. The fencing should remain in place throughout the construction phase of the project. The type of fencing and exact alignment to be utilized would be determined by the consulting arborist.
- Any limb or root pruning to be conducted on retained trees should be approved and supervised by the consulting arborist and should follow best management practices developed by the International Society of Arboriculture.
- Supplemental irrigation to retained trees should be applied as determined by the consulting arborist.
- If any of the retained trees should be damaged during the construction phase, they would need to be evaluated at the earliest possible time by the consulting arborist so that appropriate measures can be taken. Such measures could include monitoring of the tree to ensure the tree is not mortally wounded and/or replacement.

All mitigations for trees are subject to agreement with the Director of the Department of Planning, Building and Code Enforcement.

Mitigation Measure 3.3.8b. Tree removal as a result of the project will require mitigation at replacement-to-removal ratios set-forth by the City of San Jose and described more fully in Table 2. Mitigation trees should be ecologically equivalent species where native trees are impacted (e.g., Mexican elderberry, coast live oak, valley oak, blue oak, toyon, and buckeye). For non-native trees, native replacement trees are recommended, but at a minimum they should be species that are not considered to be invasive by the California Invasive Plant Council (Cal-IPC) and species that are generally drought tolerant and suited to the planting location. Street trees required for project planning do not count toward this tree mitigation. The exact number and species of trees to be utilized for the mitigation will be determined based on consultation with the City Arborist and with the Director of the Department of Planning, Building and Code Enforcement.

If it is determined that the site lacks sufficient areas to accommodate all of the replacement plantings, one or more of the following measures will be implemented:

- Replacement tree plantings may be accommodated at an alternative site(s). An alternative site may include local parks or schools, or an adjacent property where such plantings may be utilized for screening purposes. However, any alternatively proposed site will be pursuant to agreement with the Director of the Department of Planning, Building and Code Enforcement.
- A donation may be made to an appropriate program that focuses on preservation of the City of San Jose’s urban forest. Such donation will be equal to the cost of the required replacement trees, including associated installation costs, for off-site tree planting in the local community. A receipt for any such donation will be provided to the City of San Jose Planning Project Manager prior to the removal of the trees.

TABLE 2. TREE REPLACEMENT-TO-REMOVAL RATIOS (CITY OF SAN JOSE 2006).				
Diameter of Tree to be Removed	Native	Non-native	Orchard	Minimum Size of Replacement Trees
≥ 18”	5:1	4:1	3:1	24” box
≥ 12” but < 18”	3:1	2:1	none	24” box
< 12”	1:1	1:1	none	15-gallon container
x:x = tree replacement to tree loss ratio				
Note: Trees greater than 18” diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.				

Mitigation Measure 3.3.8c. Upon completion of avoidance measures (Mitigation Measure 3.3.8a) where trees are planned for retention; completion of any mitigation planting and/or donation in lieu of replacement (Mitigation Measure 3.3.8b), a final report should be prepared and submitted to the Environmental Principal Planner documenting satisfactory completion of required mitigation measures. The report should, at a minimum, state:

- The number of trees that were impacted during buildout (if possible, cross-referenced with the project tree report);
- If tree protection standards achieved the desired result for retained trees;
- If any retained trees were impacted during buildout and whether any long-term monitoring of retained and impacted trees is being conducted by the project arborist;

- How many mitigation trees were planted and where, and/or if and what money was donated and to which City Planning approved organization, including a receipt and contact information.

3.3.11 Conflict with Local Policies and Ordinances: San Jose 2040 General Plan

The Envision San Jose 2040 General Plan includes policies adopted by the City of San Jose that aim to protect biological resources during implementation of new projects. Failure to comply with the General Plan policies (Section 3.2.7) could constitute a significant impact under CEQA. However, the proposed project would ensure compliance with the General Plan which would ensure there is no project conflict with the General Plan.

Mitigation. No mitigation is warranted.

3.3.12 Conflict with Local Policies and Ordinances: Santa Clara Valley Habitat Conservation Plan

Proposed redevelopment of approximately 2.15 acres of the 49.0-acre site would be considered a covered project under the SCVHP and, as such, would be subject to conditions and fees of the SCVHP. Failure to comply with the SCVHP would constitute a significant impact under CEQA.

Compliance with the SCVHP includes payment of fees according to the “Fee Zone” designation of the property, payment of nitrogen deposition fees related to the number of residential units and/or anticipated car trips (for non-residential projects) resulting from the development, and any surcharge fees that are required based on site-specific impacts to sensitive habitats or sensitive species. The onsite portion of the proposed project would be subject to Zone B fees, which are currently \$14,725 per acre (2018-2019 rates), and nitrogen deposition fees associated with the residence (\$4.96 for each new vehicle trip or 48.33 per new single-family residence). For any temporary impacts, all the same fees are applied, but at a fraction of the total cost depending on how long the project expects the temporary impact to last.

In addition to fees, the project would be required to comply with applicable conditions of the SCVHP. Conditions of the SCVHP, summarized above (Section 3.2.8.2), that would apply to the project include Conditions 1, 3, 7, 10, and 15 (Table 3).

TABLE 3. Applicable Santa Clara Valley Habitat Plan (SCVHP) conditions of the proposed 1360 Fleming Avenue Project, located in the City of San Jose, California.		
Condition (page references ICF International 2012)	Applicable to project	Comments/Requirements
Condition 1 (page 6-7). Avoid Direct Impacts on Legally Protected Plant and Wildlife Species	Applies	This condition requires actions conducted under the SCVHP to comply with existing laws protecting plant and wildlife species including those species not covered as part of the SCVHP. This requires compliance with Migratory Bird Treaty Act, which prohibits killing or possessing covered migratory birds, their young, nests, feathers, or eggs. Several species of nesting bird that could use the project site are protected by the MBTA. Project mitigations for pre-construction surveys for migratory birds, including for burrowing owls, ensures compliance with this condition.
Condition 2 (page 6-9). Incorporate Urban-Reserve System Interface Design Requirements	N/A	The project is not interfacing with the reserve system.
Condition 3 (page 6-12). Maintain Hydrologic Conditions and Protect Water Quality	Applies	This condition requires all projects to incorporate appropriate measures itemized in the SCVHP's Table 6-2 (refer to ICF International 2012) to minimize indirect and direct effects to covered species and their aquatic habitat. This condition also requires the local jurisdiction (i.e. the City of San Jose) to verify that all appropriate measures from Table 6-2 are implemented. Measures from Table 6-2 should be incorporated into project engineering and SWPPP plans.
Condition 4 (page 6-14). Avoidance and Minimization for In-Stream Projects	N/A	The project is not impacting streams.
Condition 5 (page 6-18). Avoidance and Minimization Measures for In-Stream Operations and Maintenance	N/A	The project is not impacting streams.
Condition 6 (Page 6-21). Design and Construction Requirements for Covered Transportation Projects	N/A	Project is not a transportation project.
Condition 7 (page 6-28). Rural Development Design and Construction Requirements	Applies	The project is outside of the urban service area and is a rural development, therefore, the project is required to follow all measures within Condition 7 of the SCVHP.
Condition 8 (page 6-35). Implement Avoidance and Minimization Measures for Rural Road Maintenance	N/A	No rural road maintenance.
Condition 9 (page 6-37). Prepare and Implement a Recreation Plan	N/A	Project is not part of the Reserve System.

TABLE 3. Applicable Santa Clara Valley Habitat Plan (SCVHP) conditions of the proposed 1360 Fleming Avenue Project, located in the City of San Jose, California.		
Condition (page references ICF International 2012)	Applicable to project	Comments/Requirements
Condition 10 (page 6-42). Fuel Buffer	Applies	A fuel buffer is required for this project.
Condition 11 (page 6-44). Stream and Riparian Setbacks	N/A	The project is not impacting streams and will not require stream setbacks.
Condition 12 (page 6-56). Wetland and Pond Avoidance and Minimization	N/A	The project is not impacting wetlands or ponds.
Condition 13 (page 6-58). Serpentine and Associated Covered Species Avoidance and Minimization	N/A	Serpentine habitat and species are absent.
Condition 14 (page 6-60). Valley Oak and Blue Oak Woodland Avoidance and Minimization	N/A	Valley and blue oak woodlands are absent.
Condition 15 (page 6-62). Western Burrowing Owl	Applies	Although the site is outside the burrowing owl fee zone, overwintering burrowing owls may occur onsite, and therefore, in order to comply with Condition 1, this project must also comply with Condition 15, including preconstruction surveys and avoidance measures for owls and nests, and requirements for construction monitoring. Measure 3.3.6 (above) defines the required actions for compliance with this condition.
Condition 16 (page 6-68). Least Bell's Vireo	N/A	Project does not occur within the Pajaro Watershed—the only watershed currently associated with this species in the SCVHP coverage area.
Condition 17 (page 6-69). Tricolored Blackbird	Applies	The project occurs within 250 feet of area mapped in the SCVHP as tricolored blackbird habitat. And the outfall work is within the mapped habitat. Mitigation Measure 3.3.5 (above) defines the required actions for compliance with this condition.
Condition 18 (page 6-71). San Joaquin Kit Fox	N/A	Project outside of modeled habitat for the San Joaquin kit fox.
Condition 19 (page 6-74). Plant Salvage when Impacts are Unavoidable	N/A	Covered plants are absent.
Condition 20 (page 6-76). Avoid and Minimize Impacts to Covered Plant Occurrences	N/A	Covered plants are absent.

Implementation of the measures listed and described above, including payment of Land Zone B, and nitrogen deposition fees and compliance with Conditions 1, 3, 7, 10, and 15, the project would be in compliance with the SCVHP. The project would follow the required measures of the SCVHP; therefore, the project would not conflict with this local policy. To ensure compliance, it is recommended that the project proponent thoroughly review the identified sections of the SCVHP, including Table 6-2.

Mitigation. No mitigation is warranted.

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