LIVE OAK ASSOCIATES, INC.
an Ecological Consulting Firm

May 17, 2021

Danae Hall, AICP
Kimley-Horn
1300 Clay Street, Suite # 325
Oakland, CA 94612

RE: Biological Evaluation Letter for the 551 Keyes Street site in the City of San Jose, Santa Clara County, California (PN 2573-01)

Dear Ms. Hall:
Live Oak Associates, Inc. (LOA) evaluated the biological resources of the approximately 0.7-acre project site located at 551 Keyes Street (APN 472-12-086) in the City of San Jose, Santa Clara County, California. The property consists of an undeveloped ruderal field that appears to have been part of a borrow pit at some point in history. This proposed project is the development of 77 affordable housing rental units.

Site disturbance may be regulated by state or federal agencies, subject to provisions of the California Environmental Quality Act (CEQA) or covered by policies and ordinances of the City of San Jose. This report addresses issues related to sensitive biotic resources occurring on the study area, the federal, state, and local laws related to such resources, and mitigation measures to offset any impacts.

Field Surveys
LOA ecologist Katrina Krakow conducted a reconnaissance level survey on April 22, 2021 to provide a biotic evaluation of the study area. The objectives of this survey were to 1) evaluate the principal habitats of the study area and identify the constituent plants and animals of each of the habitats; 2) assess the potential of the site to support suitable habitat for special status plant or animal species or sensitive habitats (e.g., wetlands, riparian habitats); and 3) evaluate potential impacts to the biotic resources of the site and region from future development.

During the April 22, 2021 survey, potential bat habitat was identified in the form of the palm and eucalyptus trees with peeling bark. The site also provides habitat which could support nesting migratory birds and raptors.

Existing Condition of the Site

The site currently consists of a ruderal field with some area for accessing Coyote Creek Trail included within the parcel boundary. Surrounding properties consist mainly of residential development. Site terrain is similar to that of a basin with three sides sloped towards a flat center and with the bottom approximately level with the neighboring apartment building's parking lot; it appears to have been a borrow pit or other previously moved earth.

Habitat Type: Two habitats are present onsite: Ruderal Grassland and Urban-Suburban Developed which are described below.

Ruderal Grassland. Ruderal grassland habitat makes up the majority (approximately 0.7 acres) of the parcel. This habitat would be named "California Annual Grassland" under the Santa Clara Valley Habitat Plan (SCVHP) naming requirements. The ruderal field appears to have been used as a borrow pit in the past, as the entire ruderal area is below the level of the sidewalk and streets adjacent to it by at least 15-20 feet. It does not appear to hold water, as the northeastern portion of the site has topography level with the parking lot for the apartments on the adjacent parcel. The site supports a few large trees within the ruderal habitat along the perimeter, including canary palm (*Phoenix canariensis*) and eucalyptus (*Eucalyptus* sp.).

Vegetation: Vegetation onsite consisted largely of non-native ruderal species commonly occurring in non-native California annual grasslands. Plant species observed in this habitat included but may not be limited to wild oats (*Avena* sp.), ripgut brome (*Bromus diandrus*), Italian thistle (*Carduus pycnocephalus*),filaree (*Erodium sp.*), bedstraw (*Galium sp.*), bristly oxtongue (*Helminthotheca echioides*),barley (Hordeum sp.), prickly lettuce (*Lactuca serriola*), giraffe head (*Lamium amplexicaule*), Italian rye (*Lolium multiflorum*), burclover (*Medicago polymorpha*), smilo grass (*Piptatherum miliaceum*), Russian thistle (*Salsola tragus*), common groundsel (*Senecio vulgaris*), milk thistle (*Silybum marianum*), and sow thistle (*Sonchus* sp.).

Wildlife: Wildlife observed onsite during the April 2021 site visit includes western fence lizard (*Sceloporus occidentalis*), California ground squirrel (*Otospermophilus beecheyi*) burrows, and eastern fox squirrel (*Sciurus niger*). Additionally, the large trees along the perimeter of the site may support suitable habitat for roosting bats and nesting migratory birds and raptors. A number of locally occurring wildlife species commonly found in urban environments may occur on the project site, including the raccoon (*Procyon lotor*), Virginia opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis*), and domestic cat (*Felis catus*).

Urban-Suburban Developed. The remainder of the site consists of a very small area of access for the Coyote Creek Trail. This land use type has very little habitat value.

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. 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 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 2021). Collectively, these plants and animals are referred to as "special status species."

Several special status plants and animals occur in the vicinity of the study area. A search of published accounts for all 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 (CNDDB), Rarefind (CDFW 2021). Sources of information for this table included *California Natural Diversity Data Base* (CDFW 2021), *Listed Plants* and *Listed Animals* (USFWS 2021), *State and Federally Listed Endangered and Threatened Animals of California* (CDFW 2021), *The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California* (CNPS 2021), *California Bird Species of Special Concern* (Shuford and Gardall 2008), and *California Amphibian and Reptile Species of Special Concern* (Thompson et al. 2016). This information was used to evaluate the potential for special status plant and animal species that occur on the site. Figures 3a and 3b depict the location of special status species found by the California Natural Diversity Data Base (CNDDB).

These species and their potential to occur in the study area and a map of special status species in the vicinity of the project site are listed in Appendix A (Figures 3a and 3b and Table 1). 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. 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.), at elevations significantly below or above elevations of the site, or have ranges that occur outside of the project site were excluded from this analysis as they would certainly not occur on the site or in the immediate vicinity. Additionally, the apparent historic use of the site as a borrow pit and the current ruderal nature of the site precludes many special status plants from occurring on the site. Therefore, we have determined that suitable habitat for special status plants is absent from the site; potential project impacts to animal species that could occur onsite and mitigation requirements are discussed further below.

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 CDFW, and the California Regional Water Quality Control Board (RWQCB).

Jurisdictional waters are absent from the site.

Potential Impacts from Site Development

The following describes the biotic resources of the project site that could be significantly impacted by a development of the site.

Special Status Plant Species: All special status plant species that are known to occur in the vicinity of the project site and may have historically occurred on or near the property would be expected to be absent onsite due to the assumed historical use as a borrow pit and the current ruderal condition of the site.

Special Status Animal Species: There are 24 special status animal species that are known to occur in the vicinity of the site and may have historically occurred on or near the property (Appendix A). Of these, 20 are considered to be either absent or unlikely to occur on the site due to the unsuitability of habitat for these species. Special status species that may occur onsite include the white-tailed kite, burrowing owl, pallid bat, and Townsend's big-eared bat. None of these species were observed onsite during the April 2021 site visit; however, all four of these species are volant, thereby making it possible for individuals to use the site in the future. In addition to special status species, non-special status species avian species, such as the red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), and Cooper's hawk (*Accipiter cooperi*), which are protected under the Migratory Bird Treaty Act, could potentially nest onsite or within the immediate vicinity of the site during the nesting season (February 1 through August 31). Potential impacts and mitigations for protected animal species are discussed further below.

White-tailed Kite, Non-listed Raptors, and Other Non-listed Breeding Birds: Site development during the breeding bird season (February 1 through August 31) could result in the abandonment of an active nest. The mortality of individuals that may result would constitute a significant adverse impact of the project; the loss of habitat would not constitute a significant adverse impact. The following mitigation measures are warranted:

- ***Mitigation Measure 1:*** Should project construction be scheduled to commence between February 1 and August 31, a pre-construction survey will be conducted by a qualified biologist for nesting birds onsite and adjacent to the site as public access allows. This survey will occur within 14 days prior to the start of construction.
- ***Mitigation Measure 2:*** If pre-construction surveys undertaken during the nesting season locate active bird nests within or near construction zones, these nests, and an appropriate buffer around them (as determined by a qualified biologist) will remain off-limits to construction until the nest has been determined to be no longer active. Suitable setbacks from occupied nests will be established by a qualified biologist and maintained until the it has been determined the nest is no longer active or until the conclusion of the nesting season.

Burrowing Owls: Site development could result in the mortality of an individual and/or abandonment of an active nest. The mortality of individuals that may result would constitute a significant adverse impact of the project; the loss of habitat would not constitute a significant adverse impact. The following mitigation measures are warranted and would follow the protocol in the Condition 15 of the SCVHP. Two surveys are required, one within 14 days prior to start of construction and one within two days prior to start of construction; the surveys must be at least two days apart, meaning the first survey can be conducted no less than 4 days prior to start of construction. A construction-free buffer of 250 feet must be established around any active burrowing owl burrow until it abandons the burrow.

Pallid bat, Townsend's big-eared bat, and other Non-listed bats: Suitable roosting habitat onsite exists in the form of the large trees onsite including the canary palm and eucalyptus trees. Site development will potentially result in the mortality of bats if they roost in onsite trees. Mitigation measures that protect bats from possible direct mortality or abandonment of young is warranted. Therefore, the project applicant will implement the following measures to ensure that bat mortality from project construction is avoided.

- ***Mitigation Measure 3:*** A bat survey should be conducted prior to removal of trees onsite. It is important to note a man-lift will likely be required for a biologist to appropriately survey the trees.

  Alternatively, night-emergence surveys can be conducted during the volant season for bats (March 1-October 15); night emergence surveys cannot be conducted between October 16 and February 29 due to the potential for the survey to result in a false-negative, as bats go through torpor during these months. Night emergence surveys consists of two evening surveys extending from Sunset to four hours after sunset on fair weather nights.

  If a non-breeding bat colony is found, or if the tree supports suitable roosting habitat that cannot be fully visibly surveyed (such as peeling bark or cavities in trees, especially high up in trees), the individuals should be humanely evicted via two-step removal as directed by a qualified biologist to ensure no harm or "take" would occur to any bats as a result of demolition activities. Two-step removal shall occur during the volant seasons and outside of the maternity season for bats (March 1-April 15 or September 1-October 15). On the first day of two-step removal, the biologist will direct tree trimmers to remove particular branches in order to open up the canopy and make it appear to be unsuitable and create vibrations into tree cavities so bats choose a different roost that night. The next day the rest of the trees would be taken down. Mitigation would not be required for the loss of roosting or foraging habitat for bats, as such habitat is abundantly available regionally.

Full implementation of the measures identified above would mitigate impacts to special status animal species potentially occurring on the site.

Sensitive Natural Communities, Including Wetlands: No sensitive natural communities, such as jurisdictional waters, were identified on the site.

Wildlife Habitat and Movement: Knowledge of the site, its habitats, and the ecology of local species permit sufficient predictions about the species that may utilize the site and the types of movements occurring in the region. Although the site is not developed, development exists on three sides of the site. The Coyote Creek riparian corridor exists approximately 100 feet to the northeast of the site. Therefore, it is likely animals using this corridor may also travel across the site from time to time. However, the site itself is not a regional corridor and as the other three boarders of the site are developed, any animals leaving the Coyote Creek riparian corridor to move across the site would likely move back due to unsuitable habitat on the other side of the site. Development of the site will not significantly impact wildlife. Therefore, impacts to wildlife habitat and movement are considered less than significant.

Local, Regional, and State Policies/Ordinances:

Tree Ordinance: A few large trees are present on the site. Should these trees be intended for removal as part of development of the site, permits would be required from the City of San Jose. As such, conditions of tree removal permits are likely to include payment of fees and/or tree mitigation in the form of replacement trees at ratios determined by the City of San Jose's Tree Ordinance. This ordinance is summarized in Appendix B.

City of San Jose's Council Policy 6-34: Projects adjacent to creeks are subject to the City of San Jose's Council Policy 6-34, which requires a 100-foot development-free setback from the edge of riparian habitat (defined as the top of bank or the outer dripline of riparian vegetation, whichever is further from the channel). The site is just more than 100 feet from the riparian habitat of Coyote Creek; therefore, construction of the site would be consistent with this document.

HCP/NCCP: The site is within the boundaries of the Santa Clara Valley Habitat Plan and the site is approximately 0.7 acres, therefore, the project will be required to prepare an application to the SCVHP. We confirmed on the SCVHP Geobrowser on April 29, 2021 that the site is outside of the Burrowing Owl Fee Zone. The SCVHP Geobrowser also shows Coyote Creek to require a 150-foot setback at this location instead of the typical 100-foot setback for Category 1 Streams as a 150-foot setback is required for areas with a >30% slope. This variable is assumed throughout the SCVHP plan area and requires an on-the-ground assessment per project to confirm whether the additional 50 feet of setback is warranted. LOA ground-truthed this area during the site visit and the area between the top-of-bank and the site is relatively flat with the site sloping away from the creek at the boundary of the property, resulting in a <30% slope; therefore, the additional 50 feet of setback is not warranted for this site and the project is in compliance with the 100-foot setback required by the SCVHP. As the site supports California annual grassland included within Fee Zone B (Agricultural and Valley Floor Lands), appropriate fees would include Fee Zone B ($15,043 per acre; 2020-2021 fee schedule) and a nitrogen deposition fee of ($5.31 per new vehicle trip or $50.09 per new single-family residence; 2020-2021 fee schedule). These fees must be paid and SCVHP conditions must be followed. Conditions 1, 3 and 15 would apply to the proposed Project. Additional information is included in Appendix B.

If you have any further questions or comments in regards to the biological analysis of the 551 Keyes Street Property please feel free to contact us at your earliest convenience.

Sincerely,

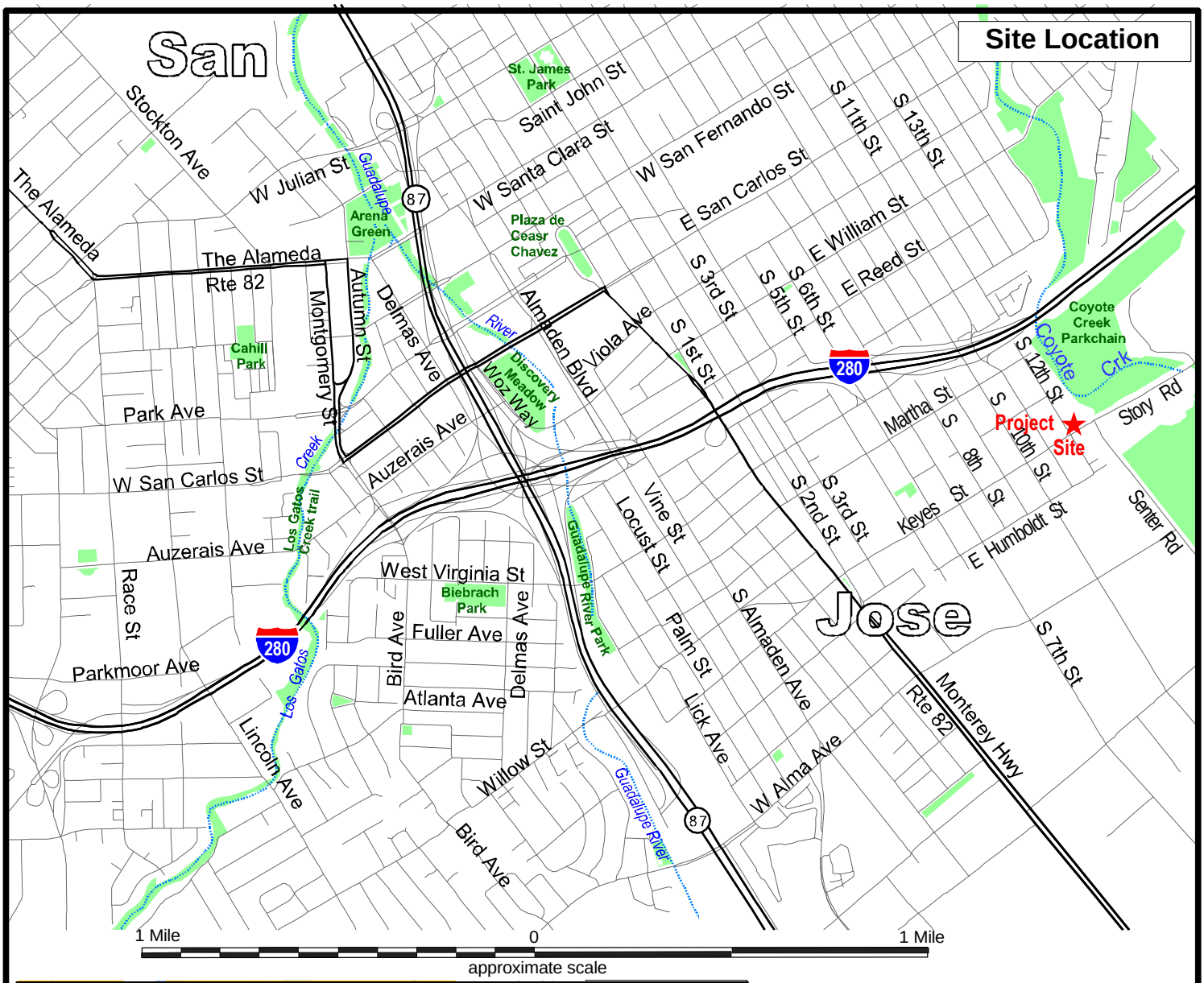
Katrina Krakow, M.S.
Senior Project Manager
Staff Ecologist

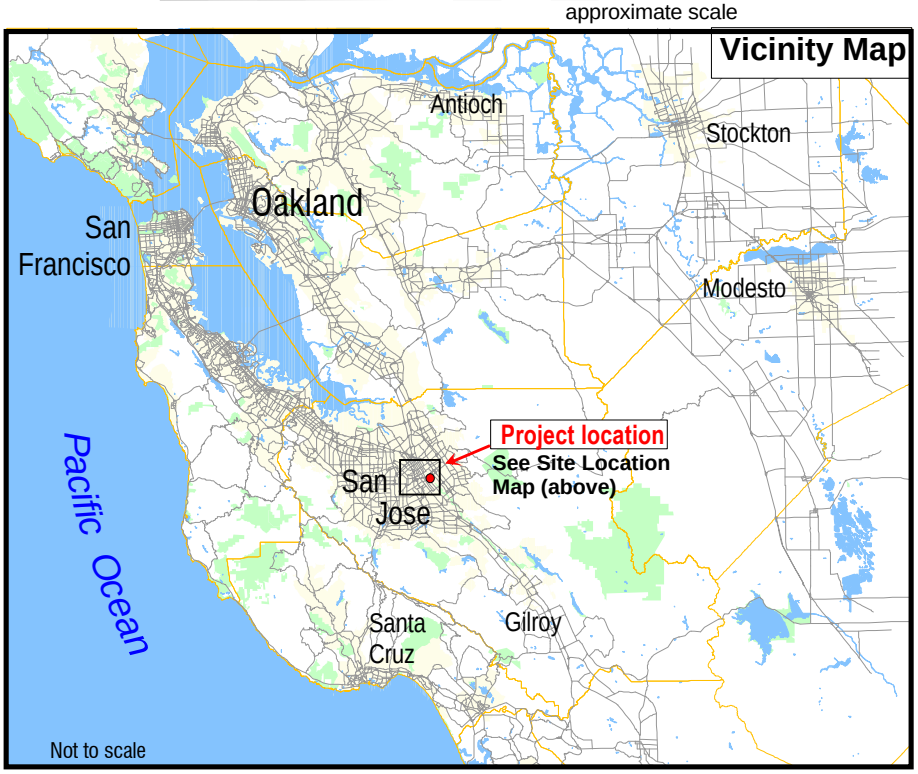
APPENDIX A:

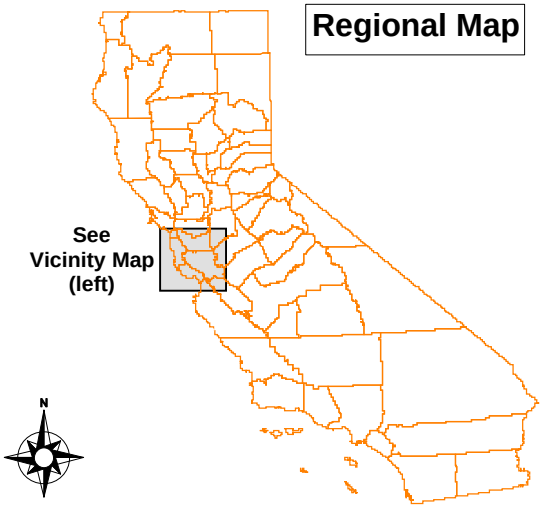
SPECIAL STATUS SPECIES

A number of special status plants and animals occur in the site's vicinity (Figures 3 and 3b); these species and their potential to occur on the site are listed in the table below.

Due to the site's condition and previous use, special status plants have been determined to be absent from the site. Additionally, those species for which suitable habitat is absent from the site's vicinity as well as those who's range is not within the site's vicinity have been eliminated from the analysis as they would certainly not occur on the site or in the immediate vicinity. Therefore, we have determined that suitable habitat for special status plants is absent from the site; potential project impacts to animal species that could occur onsite and mitigation requirements are discussed further below.







Live Oak Associates, Inc.

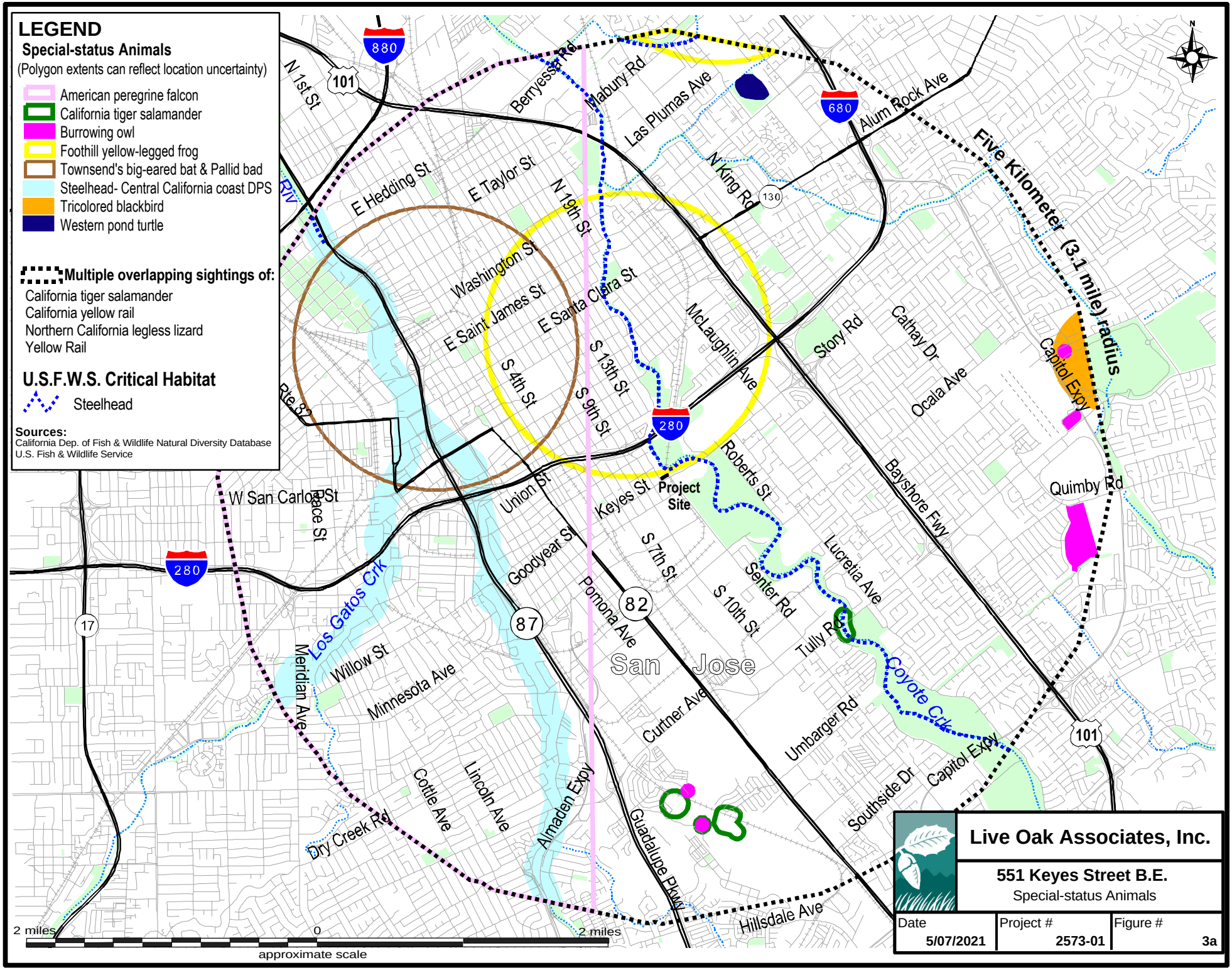
551 Keyes Street B.E.
Site / Vicinity Map

Date	Project #	Figure #
5/07/2021	2573-01	1

Live Oak Associates, Inc.

551 Keyes Street B.E.
Biotic Habitats

Date	Project #	Figure #
5/07/2021	**2573-01**	**2**


LEGEND
Special-status Animals
(Polygon extents can reflect location uncertainty)
American peregrine falcon
California tiger salamander
Burrowing owl
Foothill yellow-legged frog
Townsend's big-eared bat & Pallid bad
Steelhead- Central California coast DPS
Tricolored blackbird
Western pond turtle
Multiple overlapping sightings of:
California tiger salamander
California yellow rail
Northern California legless lizard
Yellow Rail
U.S.F.W.S. Critical Habitat
Steelhead
Sources:
California Dep. of Fish & Wildlife Natural Diversity Database
U.S. Fish & Wildlife Service
Five Kilometer (3.1 mile) radius
Project Site
San Jose
Los Gatos Crk
Coyote Crk
880
101
680
280
17
87
82
130
N 1st St
Berryessa Rd
Mabury Rd
Las Plumas Ave
Alum Rock Ave
N King Rd
E Hedding St
E Taylor St
N 19th St
Washington St
E Saint James St
E Santa Clara St
S 4th St
S 9th St
S 13th St
McLaughlin Ave
Story Rd
Cathay Dr
Ocala Ave
Capitol Expy
Quimby Rd
Bayshore Fwy
Roberts St
Keyes St
Union St
Goodyear St
S 7th St
S 10th St
Senter Rd
Lucretia Ave
Tully Rd
Pomona Ave
W San Carlos St
Race St
Willow St
Minnesota Ave
Meridian Ave
Curtner Ave
Umbarger Rd
Southside Dr
Cottle Ave
Lincoln Ave
Almaden Expy
Guadalupe Pkwy
Dry Creek Rd
Hillsdale Ave
2 miles
0
2 miles
approximate scale
Live Oak Associates, Inc.
551 Keyes Street B.E.
Special-status Animals
Date 5/07/2021
Project # 2573-01
Figure # 3a

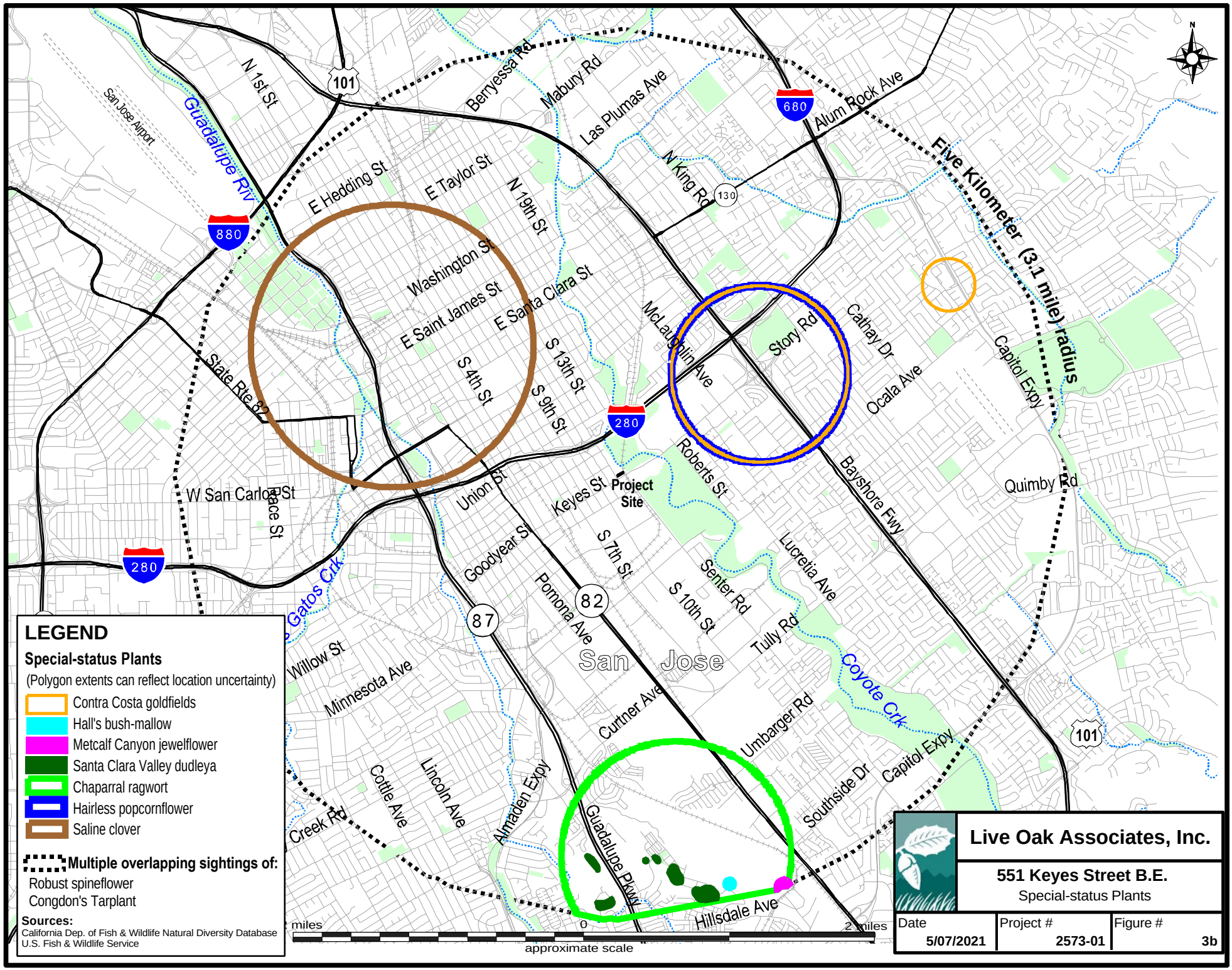

Five Kilometer (3.1 mile) radius
Project Site
San Jose
Guadalupe Riv
Coyote Crk
Los Gatos Crk
San Jose Airport
N 1st St
Berryessa Rd
Mabury Rd
Las Plumas Ave
Alum Rock Ave
N King Rd
E Hedding St
E Taylor St
N 19th St
Washington St
E Saint James St
E Santa Clara St
S 4th St
S 9th St
S 13th St
McLaughlin Ave
Story Rd
Cathay Dr
Ocala Ave
Capitol Expy
Roberts St
Keyes St
Union St
Goodyear St
S 7th St
S 10th St
Senter Rd
Lucretia Ave
Tully Rd
Bayshore Fwy
Quimby Rd
Pomona Ave
Willow St
Minnesota Ave
Curtner Ave
Umbarger Rd
Southside Dr
Capitol Expy
Cottle Ave
Lincoln Ave
Almaden Expy
Guadalupe Pkwy
Hillsdale Ave
Creek Rd
W San Carlos St
State Rte 82
Race St
101
880
280
680
130
87
82
LEGEND
Special-status Plants
(Polygon extents can reflect location uncertainty)
Contra Costa goldfields
Hall's bush-mallow
Metcalf Canyon jewelflower
Santa Clara Valley dudleya
Chaparral ragwort
Hairless popcornflower
Saline clover
Multiple overlapping sightings of:
Robust spineflower
Congdon's Tarplant
Sources:
California Dep. of Fish & Wildlife Natural Diversity Database
U.S. Fish & Wildlife Service
miles
0
2 miles
approximate scale
Live Oak Associates, Inc.
551 Keyes Street B.E.
Special-status Plants
Date
5/07/2021
Project #
2573-01
Figure #
3b

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

ANIMALS (adapted from CDFW 2021 and USFWS 2021)

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

Species	Status	Habitat	*Occurrence in the Study Area
Steelhead - Central California Coast ESU (*Oncorhynchus mykiss irideus*)	FT	Spawn in freshwater rivers or streams in the spring and spend the remainder of their life in the ocean.	**Absent.** Steelhead are known to occur in Coyote Creek and Coyote Creek is designated as Critical Habitat for steelhead, however, the site is far enough away and does not plan to impact the Creek, therefore, steelhead are considered to be absent from the site.
California tiger salamander (*Ambystoma californiense*)	FT, CT	Breeds in vernal pools and stock ponds of central California. Adults estivate in grassland habitats adjacent to the breeding sites.	**Absent.** The site and the site vicinity do not support suitable habitat for this species. The nearest recorded occurrence of this species is within Coyote Creek approximately 1.5 miles upstream from the site (CNDDB 2021).
California red-legged frog (*Rana draytonii*)	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and coast range, preferring pools with overhanging vegetation.	**Absent.** The site does not support suitable habitat for this species. The off-site Coyote Creek may act as a movement corridor for this species, although it is unlikely to occur on the site. The nearest recorded occurrence of this species is more than three miles from the site (CNDDB 2021).
Foothill yellow-legged frog (*Rana boylii*)	CE, CSC	Occurs in swiftly flowing streams and rivers with rocky substrate with open, sunny banks in forest, chaparral, and woodland habitats, and can sometimes be found in isolated pools.	**Absent.** The site does not support suitable habitat for this species however Coyote Creek may act as a movement corridor for this species, although it is unlikely to occur on the site. The nearest recorded occurrence of this species is from 1922 and is a proximity polygon centered approximately one mile downstream from the site (CNDDB 2021). There are no recent records (last 30 or 40 years) downstream of Anderson Dam.
Swainson's hawk (*Buteo swainsoni*)	CT	Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah. Requires adjacent suitable foraging areas such as grasslands or alfalfa fields supporting rodent populations.	**Absent.** A Swainson's Hawk (SWHA) pair has been nesting in Coyote Valley over the last several years. This site provides extremely marginal forging habitat and they are not expected to occur on the site. (CNDDB 2021).

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

ANIMALS (adapted from CDFW 2021 and USFWS 2021)

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

Species	Status	Habitat	*Occurrence in the Study Area
Tricolored blackbird (*Agelaius tricolor*)	CT, CSC	Breeds near fresh water, primarily emergent wetlands, with tall thickets. Forages in grassland and cropland habitats.	**Absent.** Breeding habitat is absent from the site**.** Breeding habitat for this species may be present off-site within the riparian habitat of the adjacent Coyote Creek. This reach of Coyote Creek supports a large number of homeless which greatly limits the likelihood of a tricolored blackbird colony from breeding in this location. The nearest recorded observation of this species is nearly three miles to the east of the site (CNDDB 2021).
Western snowy plover (*Charadrius alexandrines nivosus*)	FT, CSC	Uses man-made agricultural wastewater ponds and reservoir margins. Breeds on barren to sparsely vegetated ground at alkaline or saline lakes, reservoirs, ponds, and riverine sand bar.	**Absent.** Breeding and foraging habitat is absent from the site and vicinity of the site, however, this species may migrate over the site. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)	FC, CE	Breed in large blocks of riparian habitats, particularly cottonwoods and willows.	**Unlikely.** Although the western yellow-billed cuckoo has been observed in Santa Clara County, it is limited to the area near the San Francisco Bay and does not appear to be a large range extension beyond that point. Additionally, although breeding habitat for this species may be present within the riparian habitat of the adjacent Coyote Creek, the large amount of transients living in this area is likely to preclude any western yellow-billed cuckoos from breeding in this location. In addition, the site itself does not support suitable breeding habitat for this species and the nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).

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

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
Santa Cruz black salamander (*Aneides niger*)	CSC	Occurs in deciduous woodland, coniferous forests, and coastal grasslands around the Santa Cruz Mountains and foothills. This species is also known to occur on the developed flats in pockets within older developments. They can be found under rocks near streams, in talus, under damp logs, rotting wood, and other objects.	**Absent.** Suitable habitat for this species is absent from the site. Additionally, the nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
Northern California legless lizard (*Anniella pulchra*)	CSC	The NCLL (previously called silvery legless lizard) occurs mostly underground in warm moist areas with loose soil and substrate. The NCLL occurs in habitats including sparsely vegetated areas of beach dunes, chaparral, pine-oak woodlands, desert scrub, sandy washes, and stream terraces with sycamores, cottonwoods, or oaks.	**Absent.** The site is not within the range of the northern California legless lizard. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
Western pond turtle (*Actinemys marmorata*)	CSC	An aquatic turtle of ponds, marshes, slow-moving rivers, streams and irrigation ditches with aquatic vegetation. Needs basking sites and sandy banks or grassy open fields for egg laying.	**Absent.** The western pond turtle may occur within Coyote Creek, however, the large amount of transients living in this area is likely to preclude any a western pond turtle from moving from other areas of Coyote Creek to the site In addition, the site itself does not support suitable breeding habitat and the nearest recorded observation of this species is nearly three miles to the north of the site CNDDB 2021).
Coast horned lizard (*Phrynosoma blainvillii*)	CSC	Grasslands, scrublands, oak woodlands, etc. of central California. Common in sandy washes with scattered shrubs.	**Absent.** Suitable habitat for the CHL and sandy soil are absent from the site. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
American peregrine falcon (*Falco peregrines anatum*)	CP	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	**Absent.** Although this species is known to breed in San Jose, suitable breeding habitat for this species is absent from the site.
White-tailed kite (*Elanus leucurus*)	CP	Open grasslands and agricultural areas throughout central California.	**Possible.** The site supports suitable nesting habitat for the WTK in the form of large trees. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
Golden eagle (*Aquila chrysaetos*)	CP	Typically frequents rolling foothills, mountain areas, woodland areas, sage-juniper flats, and desert habitats.	**Absent.** Breeding habitat for this species is lacking onsite. At most, this species might inadvertently pass over the site in route to suitable habitat from time to time. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).

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

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
Western burrowing owl (*Athene cunicularia*)	CSC	Open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. Often associated with California ground squirrels.	**Possible.** Suitable burrows exist on the site, and the nearest recorded observation of this species is approximately two miles from the site (CNDDB 2021).
Yellow-breasted chat (*Icteria virens*)	CSC	Frequently breeds in dense shrubs and blackberry thickets and uses areas of dense vegetation during migration.	**Absent.** Suitable habitat for this species is absent from the site. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
Loggerhead Shrike (*Lanius ludovicianus*)	CSC	Frequents open habitats with sparse shrubs and trees, other suitable perches, bare ground, and low herbaceous cover. Nests in tall shrubs and dense trees. Forages in grasslands, marshes, and ruderal habitats. Can often be found in cropland.	**Unlikely.** Suitable habitat for this species is absent from the site. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
California yellow warbler (*Dendroica petechia brewsteri*)	CSC	Nests in riparian thickets, especially in willows. Also frequents shrubby areas and old fields.	**Absent.** Breeding habitat for this species is lacking onsite. This species would likely inadvertently pass over the site in route to suitable habitat from time to time. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
Grasshopper sparrow (*Ammodramus savannarum*)	CSC	Occurs in California during spring and summer in open grasslands with scattered shrubs.	**Unlikely.** Suitable habitat for this species is absent from the site. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
Townsend's Big-eared bat (*Corynorhinus townsendii*)	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats.	**Possible.** Although potentially suitable roosting habitat for the Townsend's big-eared bat in the form of buildings and structures with suitable access points are absent from the site, this species may be expected to forage over the site. Additionally, the nearest recorded observation of this species is a proximity polygon centered approximately 1.5 miles from the site (CNDDB 2021).
Pallid bat (*Antrozous pallidus*)	CSC	Occurs in grasslands, chaparral, woodlands, and forests; most common in dry rocky open areas providing roosting opportunities. Roost sites include caves, mines, rock crevices, and large cavities of trees.	**Possible.** Potentially suitable roosting habitat for the pallid bat in the form of large trees with potential cavities occurs onsite. This species may also be expected to forage over the site. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).
San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*)	CSC	Hardwood forests, oak riparian and shrub habitats.	**Absent.** Riparian habitat is absent from the site, additionally, no woodrats or nests were observed onsite during the April 2021 site visit. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).

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

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
American badger (*Taxidea taxus*)	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils.	**Absent.** Although suitable habitat for badgers is present on the site, the amount of dense urban development between the site and other suitable habitat precludes this species from the site. The nearest recorded observation of this species is more than three miles from the site (CNDDB 2021).

***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)	CPE	California Endangered (Proposed)
FC	Federal Candidate	CR	California Rare
		CP	California Protected
CSC	California Species of Special Concern		
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		

APPENDIX B:

SIGNIFICANCE CRITERIA AND RELEVANT GOALS, POLICIES, AND LAWS

Significance Criteria

General plans, area plans, and specific projects are subject to the provisions of the California Environmental Quality Act. 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 existing vegetation. Animals associated with this vegetation could be destroyed or displaced. Animals adapted to humans, roads, buildings, pets, etc., may replace those species formerly occurring on a site. Plants and animals that are state and/or federally listed as threatened or endangered may be destroyed or displaced. Sensitive habitats such as wetlands and riparian woodlands may be altered or destroyed. These impacts may be considered significant. According to *2019 CEQA Status and Guidelines* (2019), "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest. Specific project impacts to biological resources may be considered "significant" if they will:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; and
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan

Furthermore, CEQA Guidelines Section 15065 state that a project may trigger the requirement to make a "mandatory findings of significance" if "the project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory."

Relevant Goals, Policies, and Laws

Threatened and Endangered Species

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

Migratory Birds

Federal law also protects most bird species. The federal Migratory Bird Treaty Act (MBTA: 16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. This act applies to all native birds in the United States except upland game birds such as quail, grouse, and pheasants. Project implementation 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 would be considered a significant affect under CEQA.

Birds of Prey

Birds of prey are further protected in California under provisions of the State Fish and Game Code, Section 3503.5, (1992), which states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes (vultures, hawks, eagles, and falcons) or Strigiformes (owls) 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." Project Implementation disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the CDFW.

Bats

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

considered to be sensitive and therefore, disturbances that cause harm to bat colonies are unlawful.

Jurisdictional Waters

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

Clean Water Act, Section 404. The USACE regulates the filling or grading of Waters of the U.S. under the authority of Section 404 of the Clean Water Act. Drainage channels and adjacent wetlands may be considered "waters of the United States" or "jurisdictional waters" subject to the jurisdiction of the USACE. The extent of jurisdiction has been defined in the Code of Federal Regulations and clarified in federal courts.

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

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

Territorial Seas and Traditional Navigable Waters (TNWs)

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

Tributaries

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

Lakes, Ponds, and Impoundments of Jurisdictional Waters

- Lakes, ponds, and impoundments of jurisdictional waters are jurisdictional where they contribute surface water flow to a traditional navigable water or territorial sea in a typical year either directly or through other waters of the United States, through channelized non-

jurisdictional surface waters, through artificial features (including culverts and spillways), or through natural features (including debris piles and boulder fields).

- Lakes, ponds, and impoundments of jurisdictional waters are also jurisdictional where they are flooded by a water of the United States in a typical year, such as certain oxbow lakes that lie along the Mississippi River.

Adjacent Wetlands

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

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

- Waterbodies that are not included in the four categories of waters of the United States listed above.
- Groundwater, including groundwater drained through subsurface drainage systems, such as drains in agricultural lands.
- Ephemeral features, including ephemeral streams, swales, gullies, rills, and pools.
- Diffuse stormwater run-off and directional sheet flow over upland.
- Many farm and roadside ditches.
- Prior converted cropland retains its longstanding exclusion, but is defined for the first time in the final rule. The agencies are clarifying that this exclusion will cease to apply when cropland is abandoned (i.e., not used for, or in support of, agricultural purposes in the immediately preceding five years) and has reverted to wetlands.
- Artificially irrigated areas, including fields flooded for agricultural production, that would revert to upland should application of irrigation water to that area cease.
- Artificial lakes and ponds, including water storage reservoirs and farm, irrigation, stock watering, and log cleaning ponds, constructed or excavated in upland or in non-jurisdictional waters.
- Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel.

- Stormwater control features excavated or constructed in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off.
- Groundwater recharge, water reuse, and wastewater recycling structures, including detention, retention and infiltration basins and ponds, that are constructed in upland or in non-jurisdictional waters.
- Waste treatment systems have been excluded from the definition of waters of the United States since 1979 and will continue to be excluded under the final rule. Waste treatment systems include all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater or stormwater prior to discharge (or eliminating any such discharge).

All activities that involve the discharge of dredge or fill material into waters of the U.S. are subject to the permit requirements of the USACE under Section 404 of the Clean Water Act. Such permits are typically issued on the condition that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values. No permit can be issued without a CWA Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards (Section 3.6.2).

Porter-Cologne Water Quality Act/Clean Water Act, Section 401. There are nine Regional Water Quality Control Boards statewide; collectively, they oversee regional and local water quality in California. The RWQCB administers Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act. The RWQCB for a given region regulates discharges of fill or pollutants into waters of the State through the issuance of various permits and orders.

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

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

The RWQCB also administers the Construction Stormwater Program and the federal National Pollution Discharge Elimination System (NPDES) program. Projects that disturb one or more acres of soil must obtain a Construction General Permit under the Construction Stormwater

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

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

Local Ordinances

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

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

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

Should mitigation be required to replace ordinance-sized trees, 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. City of San Jose Replacement Ratio Guidelines for trees to be removed.

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 - 17 inches	3:1	2:1	none	24-inch box
less than 12 inches	1:1	1:1	none	15-gallon container

x:x = tree replacement to tree loss ratio
Note: Trees greater than 12" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

Santa Clara Valley Habitat Plan

The site is within the boundaries of the Santa Clara Valley Habitat Plan and the site is approximately 0.7 acres, therefore, the project will be required to prepare an application to the SCVHP. We confirmed on the SCVHP Geobrowser on April 29, 2021 that the site is outside of the Burrowing Owl Fee Zone.

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.

SCVHP Fees

Chapter 9 of the SCVHP identifies fees that would be required by this project. 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 parcel is within two fee zones: the Urban Area Fee Zone, which does not require a fee, however, a fee is assessed for California annual grassland habitats under Fee Zone B (Agricultural and Valley Floor Lands) at $15,043 per acre (2020-20201 SCVHP fees). Official acreage calculations would occur prior to the application and follow the current fee schedule. A Nitrogen Deposition Fee would also be required at $5.31 per new vehicle trip or $50.09 per new single-family residence (2020-2021 SCVHP fees). Temporary impact fees, are assessed at a fraction of these fees.

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. While all conditions are summarized, Conditions 1, 3 and 15 would apply to the proposed Project:

- **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 1 would apply to project.***

- **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.
  - ***Not applicable to the project.***

- **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, which is attached below (Appendix B); 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 3 would apply to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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 15 would apply to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **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.

  - ***Not applicable to the project.***

- **Condition 19 (page 6-74). Plant Salvage when Impacts are Unavoidable-** Condition 19 provides salvage guidance and requirements for covered plants.

  - ***Not applicable to the project.***

- **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).

  - ***Not applicable to the project.***