APPENDIX B
Biological Resources and Due Diligence Reports

H. T. HARVEY & ASSOCIATES
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Second Harvest Food Bank
Biological Resources Report

Project #3382-06

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List of Abbreviated Terms

ac	acre
BMPs	best management practices
Cal-IPC	California Invasive Plant Council
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CNDDB	California Natural Diversity Database
CNPS	California Native Plant Society
CRPR	California Rare Plant Rank
CWA	Clean Water Act
DA	development agreement
EFH	Essential Fish Habitat
FESA	Federal Endangered Species Act
ft	feet/foot
FMP	Fisheries Management Plan
LSAA	Lake and Streambed Alteration Agreement
MBTA	Migratory Bird Treaty Act
mi	mile
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
OHW	ordinary high water
Porter-Cologne	Porter-Cologne Water Quality Control Act
RWQCB	Regional Water Quality Control Board
RWF	Regional Wastewater Facility
SCVHA	Santa Clara Valley Habitat Agency
SWRCB	State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
Valley Water	Santa Clara Valley Water District
VegCAMP	Vegetation Classification and Mapping Program
VHP	Santa Clara Valley Habitat Plan

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Section 1. Introduction

This report describes the biological resources present in the Second Harvest Food Bank development area, the potential biological impacts of proposed construction of two Second Harvest Food Bank buildings on the site, and the adequacy of previous environmental review to cover the project's impacts on biological resources. The project site is a subset of the project area addressed in the *Cisco Systems, Inc. Site 6 Integrated Final Environmental Impact Report* (EIR) (City of San José 2000), so to the extent that the project involves development activities similar to those envisioned by that EIR, project impacts may already have been addressed by that EIR. Therefore, our report also addresses whether the potential biological impacts of proposed Second Harvest Food Bank development activities are within the scope of the impacts disclosed in that EIR, whether the mitigation measures required by that EIR are adequate to reduce project impacts to less-than-significant levels under the California Environmental Quality Act (CEQA), and whether the project's habitat impacts have been adequately compensated by mitigation already provided by Cisco in accordance with that EIR. Finally, this report incorporates a peer review of the *Cisco Site 6 Due Diligence Report* (WRA Report) prepared for the site on September 15, 2021, by WRA Environmental Consultants (WRA 2021). Our assessment is based on the project maps and description provided to H. T. Harvey & Associates by David J. Powers & Associates through October 2021.

1.1 Project Location

The Second Harvest Food Bank property is located at 4553 and 4653 North First Street in San José, California (Figure 1). The 10.5-acre (ac) vacant property is located southwest of North First Street, north of State Highway 237, and east of the Guadalupe River, along the southwestern boundary of the original Cisco Site 6 project area (Figure 2). It is situated within the development matrix of the Cisco Site 6 development, with office/research/manufacturing buildings and associated parking lots to the north, east, and south. An undeveloped property to the southwest contains an historical channel of the Guadalupe River; the Guadalupe River, located approximately 500 feet (ft) west of the project site, flows south to northwest to the San Francisco Bay. The property is near the northern edge of the city of San José's urban development, with open lands of the San José-Santa Clara Regional Wastewater Facility (RWF) to the northeast beyond the immediate surrounding development, and salt evaporation ponds, tidal marshes and channels, and open water of the San Francisco Bay to the northwest. The project site is located on the *Milpitas*, *California* 7.5-minute United States Geological Survey (USGS) quadrangle. For the purpose of this report, the proposed development within the Second Harvest Food Bank development area is referred to as the proposed project, and the vacant parcels are referred to as the project site.

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Figure 1. Site Vicinity
237@First Second Harvest Food Bank (3382-06)
February 2022

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Figure 2. Project Site
237@First Second Harvest Food Bank (3382-06)
February 2022

1.2 Project Description

The proposed project consists of the construction of two warehouse/office buildings totaling 249,230 square feet. Building 1 would be a one-story, 85,680 square-foot storage and warehouse building, and Building 2 would be a one-story, 103,240 square foot storage and warehouse facility. Plans also include a one-story 20,627-square-foot connection building and a 39,627-square-foot mezzanine office space included within Building 1 and the connection area. The site will also be developed with new paved parking and drives, landscape, and loading structures.

The proposed project is located within the Santa Clara Valley Habitat Plan (VHP) permit area, and is eligible to be considered a covered project under the VHP (ICF International 2012). Development of the original 152-ac Cisco Site 6, of which the project site is a subset, was covered by a City of San José development agreement (DA) that was approved in 2000 with a 20-year term. The DA provided assurances that the site could be developed in accordance with existing policies, regulations, ordinances, and resolutions in place on the effective date of the agreement. Because the VHP became effective in 2013 during the term of the DA, developments in the Cisco Site 6 project area subsequent to its enactment were not automatically subject to VHP provisions. However, because the 20-year DA term has expired, the City of San José has determined that the project is now considered a VHP-covered project and will need to comply with the provisions of the VHP. As a result, the proposed project will implement conservation measures specified by VHP conditions. Thus, all applicable VHP conditions (see Section 6.3) are considered part of the proposed project description rather than mitigation measures.

Section 2. Methods

2.1 Background Review

Prior to conducting field work, H. T. Harvey & Associates ecologists reviewed the project description, plans, and maps provided by David J. Powers & Associates; the WRA Report (WRA 2021); the 2000 EIR (City of San José 2000); aerial images (Google Inc. 2021); a USGS topographic map; the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDB) (2021); habitat and species information from the VHP (ICF International 2012); and other relevant reports, scientific literature, and technical databases.

In addition, for plants, we reviewed all species on the California Native Plant Society (CNPS) Rare Plant Inventory (CNPS 2021a), which includes California Rare Plant Rank (CRPR) 1A, 1B, 2A, 2B, 3 and 4 occurring within the *Milpitas, California* USGS 7.5-minute quadrangles and surrounding eight quadrangles (*Newark, Niles*, *La Costa Valley*, *Mountain View*, *Calaveras Reservoir*, *Cupertino*, *San José West*, and *San José East*). Plant nomenclature follows that of the Jepson Flora Project (2021). In addition, we queried the CNDDB (2021) for natural communities of special concern that occur within a 5-mi radius, and we perused records of birds reported in nearby areas, such as along the Guadalupe River, on eBird (Cornell Lab of Ornithology 2021) and on the South-Bay-Birds List Serve (2021).

2.2 Site Visits

Since 2012, H. T. Harvey & Associates has performed a number of burrowing owl (*Athene cunicularia*) surveys for various proposed projects on this property. In addition to our experience on this site for the past decade, reconnaissance-level field surveys of the project site and surrounding areas were conducted to provide an updated description of existing conditions by H. T. Harvey & Associates plant ecologist Katie Gallagher, M.S. and wildlife ecologist Jane Lien, B.S., on October 22, 2021. The purpose of these surveys was to provide an impact assessment specific to the proposed construction of the Second Harvest Food Bank buildings. Specifically, surveys were conducted to (1) assess existing biotic habitats and plant and animal communities on the project site, (2) assess the project site for its potential to support special-status species and their habitats, and (3) identify potential jurisdictional and sensitive habitats, such as waters of the U.S./state and riparian habitat.

Because the proposed project is considered a covered project under the approved VHP (ICF International 2012), the VHP's preliminary mapping of land cover types was field-verified and modified as necessary based upon site conditions observed during the surveys. In addition, because the historical channel of the Guadalupe River, located 150 feet southwest of the project site, is mapped by the VHP as potentially suitable nesting habitat for the tricolored blackbird (*Agelaius tricolor*), Lien conducted a habitat survey to determine whether any potential nesting substrate for tricolored blackbirds was present within 250 ft of the project site, per Condition

17 of the VHP. In addition, Lien conducted a focused survey for suitable burrowing owl roosting and nesting habitat (i.e., burrows of California ground squirrels [*Otospermophilus beecheyi*]), and for any evidence of recent burrowing owl occurrence, on and within 250 ft of the project site, per VHP Condition 15. Also, Gallagher looked for Congdon's tarplant (*Centromadia parryi* var. *congdonii*) on the project site during the October 22, 2021 survey.

Section 3. Regulatory Setting

Biological resources on the project site are regulated by a number of federal, state, and local laws and ordinances, as described below.

3.1 Federal Regulations

3.1.1 Clean Water Act

The Clean Water Act (CWA) functions to maintain and restore the physical, chemical, and biological integrity of waters of the U.S., which include, but are not limited to, tributaries to traditionally navigable waters currently or historically used for interstate or foreign commerce, and adjacent wetlands. Historically, in non-tidal waters, U.S. Army Corps of Engineers (USACE) jurisdiction extends to the ordinary high water (OHW) mark, which is defined in Title 33, Code of Federal Regulations, Part 328.3. If there are wetlands adjacent to channelized features, the limits of USACE jurisdiction extend beyond the OHW mark to the outer edges of the wetlands. Wetlands that are not adjacent to waters of the U.S. are termed "isolated wetlands" and, depending on the circumstances, may be subject to USACE jurisdiction. In tidal waters, USACE jurisdiction extends to the landward extent of vegetation associated with salt or brackish water or the high tide line. The high tide line is defined in 33 Code of Federal Regulations Part 328.3 as "the line of intersection of the land with the water's surface at the maximum height reached by a rising tide." If there are wetlands adjacent to channelized features, the limits of USACE jurisdiction extend beyond the OHW mark or high tide line to the outer edges of the wetlands.

Construction activities within jurisdictional waters are regulated by the USACE. The placement of fill into such waters must comply with permit requirements of the USACE. No USACE permit will be effective in the absence of Section 401 Water Quality Certification. The State Water Resources Control Board (SWRCB) is the state agency (together with the Regional Water Quality Control Boards [RWQCBs]) charged with implementing water quality certification in California.

Project Applicability: The project site does not support wetland or aquatic habitats. The Guadalupe River, located off-site to the southwest, would be considered waters of the U.S. based upon the presence of an OHW mark, regular flow, and direct hydrologic connectivity to the San Francisco Bay. The historical channel of the river is no longer connected directly to the Guadalupe River, but we expect that it would also be considered waters of the U.S. These jurisdictional wetlands and waters are located approximately 150 ft outside of the project site. As a result, the project will avoid direct and indirect impacts to wetlands or waters subject to the CWA, and a permit from the USACE would not be required for the project.

3.1.2 Rivers and Harbors Act

Section 10 of the Rivers and Harbors Act of 1899 prohibits the creation of any obstruction to the navigable capacity of waters of the U.S., including discharge of fill and the building of any wharfs, piers, jetties, and other structures without Congressional approval or authorization by the Chief of Engineers and Secretary of the Army (33 U.S.C. 403).

Navigable waters of the U.S., which are defined in 33 CFR, Part 329.4, include all waters subject to the ebb and flow of the tide, and/or those which are presently or have historically been used to transport commerce. The shoreward jurisdictional limit of tidal waters is further defined in 33 CFR, Part 329.12 as "the line on the shore reached by the plane of the mean (average) high water." It is important to understand that the USACE does not regulate wetlands under Section 10, only the aquatic or open waters component of bay habitat, and that there is overlap between Section 10 jurisdiction and Section 404 jurisdiction. According to 33 CFR, Part 329.9, a waterbody that was once navigable in its natural or improved state retains its character as "navigable in law" even though it is not presently used for commerce as a result of changed conditions and/or the presence of obstructions. Historical Section 10 waters may occur behind levees in areas that are not currently exposed to tidal or muted-tidal influence, and meet the following criteria: (1) the area is presently at or below the mean high water line; (2) the area was historically at or below mean high water in its "unobstructed, natural state"; and (3) there is no evidence that the area was ever above mean high water.

As mentioned above, Section 404 of the CWA authorizes the USACE to issue permits to regulate the discharge of dredged or fill material into waters of the U.S. If a project also proposes to discharge dredged or fill material and/or introduce other potential obstructions in navigable waters of the U.S., a Letter of Permission authorizing these impacts must be obtained from the USACE under Section 10 of the Rivers and Harbors Act.

Project Applicability: The Guadalupe River contains current Section 10 waters located approximately 500 ft southwest of the project site, along the river's lower reaches where it is subject to tidal influence. However, no current or historical Section 10 Waters are present within or close to the project site. Therefore, a Letter of Permission from the USACE is not required.

3.1.3 Federal Endangered Species Act

The Federal Endangered Species Act (FESA) protects federally listed wildlife species from harm or *take*, which is broadly defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct." *Take* can also include habitat modification or degradation that directly results in death or injury of a listed wildlife species. An activity can be defined as *take* even if it is unintentional or accidental. Listed plant species are provided less protection than listed wildlife species. Listed plant species are legally protected from take under the FESA only if they occur on federal lands.

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) have jurisdiction over federally listed, threatened, and endangered species under FESA. The USFWS also maintains

lists of proposed and candidate species. Species on these lists are not legally protected under FESA, but may become listed in the near future and are often included in their review of a project.

Project Applicability: No federally listed or candidate plant or animal species occur on the project site. The federally threatened Central California Coast steelhead (*Oncorhynchus mykiss*) is known to occur in the Guadalupe River approximately 500-ft west of the project site, and the Guadalupe River has been designated as critical habitat for this species. The lower, tidal reaches of the river may also be considered critical habitat for the southern green sturgeon (*Acipenser medirostris*). However, due to the distance between the project and the river, as well as the presence of a 10-ft levee between the channel and the project site, project activities are not expected to directly or indirectly affect these listed fish species.

3.1.4 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act governs all fishery management activities that occur in federal waters within the United States' 200-nautical-mi limit. The Act establishes eight Regional Fishery Management Councils responsible for the preparation of fishery management plans (FMPs) to achieve the optimum yield from U.S. fisheries in their regions. These councils, with assistance from NMFS, establish Essential Fish Habitat (EFH) in FMPs for all managed species. Federal agencies that fund, permit, or implement activities that may adversely affect EFH are required to consult with NMFS regarding potential adverse effects of their actions on EFH, and respond in writing to recommendations by NMFS.

Project Applicability: The Pacific Fisheries Management Council has designated EFH for the Pacific Coast Salmon FMP within the Guadalupe River, 500 ft west of the project site, due to the presence of the Chinook salmon (*Oncorhynchus tshawytscha*). However, due to the distance between the site and the river, as well as the presence of a 10-ft levee between the channel and the project site, project activities are not expected to directly or indirectly affect this species.

3.1.5 Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA), 16 U.S.C. Section 703, prohibits killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. The MBTA protects whole birds, parts of birds, and bird eggs and nests, and it prohibits the possession of all nests of protected bird species whether they are active or inactive. An *active* nest is defined as having eggs or young, as described by the USFWS in its June 14, 2018 memorandum "Destruction and Relocation of Migratory Bird Nest Contents". Nest starts (nests that are under construction and do not yet contain eggs) and inactive nests are not protected from destruction.

In recent years, there have been changes to how the MBTA is implemented and enforced with respect to incidental take of protected birds. However, on October 4, 2021, the USFWS published a final rule revoking a January 7, 2021 regulation that limited the scope of the MBTA. The final rule goes into effect on December 3, 2021. With this final and formal revocation of the January 7, 2021 rule, the USFWS returns to implementing

the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent.

Project Applicability: Most native bird species that occur on the project site are protected under the MBTA.

3.2 State Regulations

3.2.1 Porter-Cologne Water Quality Control Act

The SWRCB works in coordination with the nine RWQCBs to preserve, protect, enhance, and restore water quality. Each RWQCB makes decisions related to water quality for its region, and may approve, with or without conditions, or deny projects that could affect waters of the state. Their authority comes from the CWA and the Porter-Cologne Water Quality Control Act (Porter-Cologne). Porter-Cologne broadly defines waters of the state as "any surface water or groundwater, including saline waters, within the boundaries of the state." Because Porter-Cologne applies to any water, whereas the CWA applies only to certain waters, California's jurisdictional reach overlaps and may exceed the boundaries of waters of the U.S. For example, Water Quality Order No. 2004-0004-DWQ states that "shallow" waters of the state include headwaters, wetlands, and riparian areas. Moreover, the San Francisco Bay Region RWQCB's Assistant Executive Director has stated that, in practice, the RWQCBs claim jurisdiction over riparian areas. Where riparian habitat is not present, such as may be the case at headwaters, jurisdiction is taken to the top of bank.

On April 2, 2019, the SWRCB adopted the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State*. In these new guidelines, riparian habitats are not specifically described as waters of the state but instead as important buffer habitats to streams that do conform to the State Wetland Definition. The *Procedures* describe riparian habitat buffers as important resources that may both be included in required mitigation packages for permits for impacts to waters of the state, as well as areas requiring permit authorization from the RWQCBs to impact.

Pursuant to the CWA, projects that are regulated by the USACE must also obtain a Section 401 Water Quality Certification permit from the RWQCB. This certification ensures that a proposed project will uphold state water quality standards. Because California's jurisdiction to regulate its water resources is much broader than that of the federal government, proposed impacts on waters of the state require Water Quality Certification even if the area occurs outside of USACE jurisdiction. Moreover, the RWQCB may impose mitigation requirements even if the USACE does not. Under the Porter-Cologne, the SWRCB and the nine regional boards also have the responsibility of granting CWA National Pollutant Discharge Elimination System (NPDES) permits and Waste Discharge Requirements for certain point-source and non-point discharges to waters. These regulations limit impacts on aquatic and riparian habitats from a variety of urban sources.

Project Applicability: No waters of the state or riparian habitat occur on the project site. Adjacent to the project site, waters of the state include all potential waters of the U.S., including the historical channel and the Guadalupe River and its associated wetlands. The RWQCB may also consider the riparian vegetation and areas

of the riparian banks above OHW and below top of bank to be important buffers to waters of the state associated with the river. No impacts to waters of the state or riparian habitat will result from the project because no work is proposed adjacent to or within the riparian corridor for the historical channel or the Guadalupe River, and a Section 401 permit or Waste Discharge Requirement from the RWQCB would not be required.

3.2.2 California Endangered Species Act

The California Endangered Species Act (CESA; California Fish and Game Code, Chapter 1.5, Sections 2050-2116) prohibits the take of any plant or animal listed or proposed for listing as rare (plants only), threatened, or endangered. In accordance with CESA, the CDFW has jurisdiction over state-listed species (Fish and Game Code 2070). The CDFW regulates activities that may result in *take* of individuals (i.e., "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill"). Habitat degradation or modification is not expressly included in the definition of *take* under the California Fish and Game Code. The CDFW, however, has interpreted *take* to include the "killing of a member of a species which is the proximate result of habitat modification."

Project Applicability: No suitable habitat for any state-listed plant or animal species occurs within or near the project site. For example, the aforementioned habitat survey for the tricolored blackbird determined that no suitable nesting habitat is present on or within 250 ft of the project site. Therefore, no state-listed plants or animals are reasonably expected to occur on or near the project site.

3.2.3 California Environmental Quality Act

CEQA is a state law that requires state and local agencies to document and consider the environmental implications of their actions and to refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. CEQA requires the full disclosure of the environmental effects of agency actions, such as approval of a general plan update or the projects covered by that plan, on resources such as air quality, water quality, cultural resources, and biological resources. The State Resources Agency promulgated guidelines for implementing CEQA known as the State CEQA Guidelines.

Section 15380(b) of the State CEQA Guidelines provides that a species not listed on the federal or state lists of protected species may be considered rare if the species can be shown to meet certain specified criteria. These criteria have been modeled after the definitions in the FESA and the CESA and the section of the California Fish and Game Code dealing with rare or endangered plants and animals. This section was included in the guidelines primarily to deal with situations in which a public agency is reviewing a project that may have a significant effect on a species that has not yet been listed by either the USFWS or CDFW or species that are locally or regionally rare.

The CDFW has produced three lists (amphibians and reptiles, birds, and mammals) of "species of special concern" that serve as "watch lists". Species on these lists are of limited distribution or the extent of their habitats has been reduced substantially, such that threat to their populations may be imminent. Thus, their populations should be monitored. They may receive special attention during environmental review as potential rare species, but do not have specific statutory protection. All potentially rare or sensitive species, or habitats capable of supporting rare species, are considered for environmental review per the CEQA Section 15380(b). The CNPS, a non-governmental conservation organization, has developed CRPRs for plant species of concern in California in the CNPS Inventory of Rare and Endangered Plants (CNPS 2021a). The CRPRs include lichens, vascular, and non-vascular plants, and are defined as follows:

- CRPR 1A Plants considered extinct.
- CRPR 1B Plants rare, threatened, or endangered in California and elsewhere.
- CRPR 2A Plants considered extinct in California but more common elsewhere.
- CRPR 2B Plants rare, threatened, or endangered in California but more common elsewhere.
- CRPR 3 Plants about which more information is needed - review list.
- CRPR 4 Plants of limited distribution-watch list.

The CRPRs are further described by the following threat code extensions:

- .1—seriously endangered in California;
- .2—fairly endangered in California;
- .3—not very endangered in California.

Although the CNPS is not a regulatory agency and plants on these lists have no formal regulatory protection, plants appearing as CRPR 1B or 2 are, in general, considered to meet CEQA's Section 15380 criteria, and adverse effects to these species may be considered significant. Impacts on plants that are listed by the CNPS on CRPR 3 or 4 are also considered during CEQA review, although because these species are typically not as rare as those of CRPR 1B or 2, impacts on them are less frequently considered significant.

Compliance with CEQA Guidelines Section 15065(a) requires consideration of natural communities of special concern, in addition to plant and wildlife species. Vegetation types of "special concern" are tracked in Rarefind (CNDDB 2021). Further, the CDFW ranks sensitive vegetation alliances based on their global (G) and state (S) rankings analogous to those provided in the CNDDB. Global rankings (G1–G5) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas S rankings are a reflection of the condition of a habitat within California. If an alliance is marked as a G1–G3, all of the associations within it would also be of high priority. The CDFW provides the Vegetation Classification and Mapping Program's (VegCAMP's) currently accepted list of vegetation alliances and associations (CDFW 2021).

Project Applicability: All potential impacts on biological resources were considered during CEQA review of the project in the 2000 EIR and are currently being considered in the context of this biological resources report. Project impacts are discussed in Section 6 below.

3.2.4 California Fish and Game Code

Ephemeral and intermittent streams, rivers, creeks, dry washes, sloughs, blue line streams on USGS maps, and watercourses with subsurface flows fall under CDFW jurisdiction. Canals, aqueducts, irrigation ditches, and other means of water conveyance may also be considered streams if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife. A *stream* is defined in Title 14, California Code of Regulations Section 1.72, as "a body of water that follows at least periodically or intermittently through a bed or channel having banks and that supports fish and other aquatic life. This includes watercourses having surface or subsurface flow that supports or has supported riparian vegetation." Using this definition, CDFW extends its jurisdiction to encompass riparian habitats that function as a part of a watercourse. California Fish and Game Code Section 2786 defines *riparian habitat* as "lands which contain habitat which grows close to and which depends upon soil moisture from a nearby freshwater source." The lateral extent of a stream and associated riparian habitat that would fall under the jurisdiction of CDFW can be measured in several ways, depending on the particular situation and the type of fish or wildlife at risk. At minimum, CDFW would claim jurisdiction over a stream's bed and bank. Where riparian habitat is present, the outer edge of riparian vegetation is generally used as the line of demarcation between riparian and upland habitats.

Pursuant to California Fish and Game Code Section 1603, CDFW regulates any project proposed by any person that will "substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds." California Fish and Game Code Section 1602 requires an entity to notify CDFW of any proposed activity that may modify a river, stream, or lake. If CDFW determines that proposed activities may substantially adversely affect fish and wildlife resources, a Lake and Streambed Alteration Agreement (LSAA) must be prepared. The LSAA sets reasonable conditions necessary to protect fish and wildlife, and must comply with CEQA. The applicant may then proceed with the activity in accordance with the final LSAA.

Certain sections of the California Fish and Game Code describe regulations pertaining to protection of certain wildlife species. For example, Code Section 2000 prohibits take of any bird, mammal, fish, reptile, or amphibian except as provided by other sections of the code.

The California Fish and Game Code Sections 3503, 3513, and 3800 (and other sections and subsections) protect native birds, including their nests and eggs, from all forms of take. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered *take* by the CDFW. Raptors (e.g., eagles, hawks, and owls) and their nests are specifically protected in California under Code Section 3503.5. Section 3503.5 states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to

take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto."

Bats and other non-game mammals are protected by California Fish and Game Code Section 4150, which states that all non-game mammals or parts thereof may not be taken or possessed except as provided otherwise in the code or in accordance with regulations adopted by the commission. Activities resulting in mortality of non-game mammals (e.g., destruction of an occupied nonbreeding bat roost, resulting in the death of bats), or disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), may be considered *take* by the CDFW.

Project Applicability: CDFW jurisdiction under Section 1602 of the California Fish and Game Code would extend up to the top of bank of the historical channel and of the Guadalupe River near the project site. There will be no project impacts on riparian habitat subject to CDFW jurisdiction because no work is proposed within the top of bank of the historical channel or the Guadalupe River. Therefore, a CDFW LSAA would not be required for the project.

Most native bird, mammal, and other wildlife species that occur on the project site and in the immediate vicinity are protected under the California Fish and Game Code. Project impacts on these species are discussed in Section 6.

3.2.5 State Water Resources Control Board Stormwater Regulation

Construction Phase. Construction projects in California causing land disturbances that are equal to 1 ac or greater must comply with state requirements to control the discharge of stormwater pollutants under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended and administratively extended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of best management practices (BMPs) to protect water quality until the site is stabilized.

Standard permit conditions under the Construction General Permit requires that the applicant utilize various measures including: on-site sediment control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors. Additionally, the Construction General Permit does not extend coverage to projects if stormwater discharge-related activities are likely to jeopardize the continued existence, or result in take of any federally listed endangered or threatened species.

Post-Construction Phase. In many Bay Area counties, including Santa Clara County, projects must also comply with the California RWQCB, San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit (Water Board Order No. R2-2015-0049, as amended). This permit requires that all projects implement

BMPs and incorporate Low Impact Development practices into the design that prevent stormwater runoff pollution, promote infiltration, and hold/slow down the volume of water coming from a site. In order to meet these permit and policy requirements, projects must incorporate the use of green roofs, impervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors.

Project Applicability. The project will comply with the requirements of the NPDES Statewide Storm Water Permit and Statewide General Construction Permit. Therefore, construction-phase activities would not result in detrimental water quality effects on biological or regulated resources.

3.3 Local Regulations

3.3.1 City of San José Tree Ordinance

The City of San José promotes the health, safety, and welfare of the city by regulating the planting, removal, and maintenance of trees in the city. The City provides tree protection under the Municipal Code Section 13.28 (street trees, hedges, and shrubs), 13.32 (tree removal controls), and 13.44.220 (damaging park property). The Municipal Code details permit requirements for tree related work, including removal, pruning, and planting. Removal of trees within the street right-of-way are subject to tree removal permitting by the City of San José. Street trees are located in the public right-of-way between the curb and the sidewalk. Pruning or removal of street trees is illegal without a permit issued by the City. Replacement trees are required for the removal of ordinance-size street trees. A single trunk tree qualifies as an ordinance-size tree if it measures 38 inches or more in circumference at 4.5 ft above ground (approximately 12 inches diameter at breast height). A multi-trunk tree qualifies as ordinance-size if the combined measurement of each trunk circumference (at 4.5 ft above ground) adds up to 38 inches or more. As part of the permit application, it is required to contact the planning division with regard to the replacement of ordinance-size trees.

Removal of trees on private property, commercial, and industrial properties are also subject to tree removal permitting by the City of San José. A permit is required to remove a tree of "any size" from a commercial and industrial property. A separate "permit adjustment application" is required to be filed for non-ordinance-sized trees that will be removed from commercial and industrial properties. As part of the permit application it is required to contact the City's planning division with regard to the replacement of trees on private, commercial and industrial properties.

Project Applicability: No ordinance-sized trees are present on the project site.

3.3.2 City of San José Riparian Corridor Protection and Bird-Safe Design Policy

Measures to protect riparian corridors are provided in the City's *Riparian Corridor Policy Study* (City of San José 1999), which was incorporated into the City's Envision San José 2040 General Plan (City of San José 2020); the Zoning Code (Title 20 of the San José Municipal Code); and the City Council-adopted VHP, specifically Condition 11. The term *riparian corridor* as defined by the City means any defined stream channel, including the

area up to the bank full-flow line, as well as all characteristic streamside vegetation in contiguous adjacent uplands.

In 2016, the City released Council Policy 6-34 to provide guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that provide for riparian protection. Council Policy 6-34 indicates that riparian setbacks should be measured from the outside edges of riparian habitat or the top of bank, whichever is greater, and that development of new buildings and roads generally should be set back 100 ft from the riparian corridor. However, Council Policy 6-34 also indicates that a reduced setback may be considered under limited circumstances, including the existence of legal uses within the minimum setback, and utility or equipment installations or replacements that involve no significant disturbance to the riparian corridor during construction and operation and that generate only incidental human activity.

In addition, Council Policy 6-34 provides guidance for bird-safe design on buildings located in areas north of State Route 237 in riparian and bayland habitats. To be bird-safe, buildings should: 1) avoid mirrors and large areas of reflective glass; 2) avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent building corners; 3) avoid funneling open space to a building façade; 4) strategically place landscaping to reduce reflection and views of foliage inside or through glass; 5) avoid or minimize up-lighting and spotlights; and 6) turn non-emergency lighting off, or shield it, at night to minimize light from buildings that are visible to birds, especially during bird migration season (February – May and August – November).

Project Applicability: The project site does not support riparian corridor habitat. A historical channel for the Guadalupe River, is located about 150 ft southwest of the project site and the Guadalupe River is located about 500 ft southwest of the project site. The project will not directly or indirectly impact the riparian corridor, and a permit from the City would not be required for the project.

The project's building plans and landscape features would comply with Council Policy 6-34 bird-safe design guidance. Detailed descriptions of proposed building and landscape designs and their potential impact on birds is discussed in Section 6.4.5.

3.3.3 Santa Clara Valley Habitat Plan

The VHP (ICF International 2012) provides a framework for promoting the protection and recovery of natural resources, including endangered and threatened species, while streamlining the permitting process for planned development, infrastructure, and maintenance activities. The VHP allows the County of Santa Clara, Santa Clara Valley Water District (Valley Water), the Santa Clara Valley Transportation Authority, and the cities of Gilroy, Morgan Hill, and San José (collectively, the Local Partners or Permittees) to receive endangered species permits for activities and projects they conduct and those under their jurisdiction. The Santa Clara Valley Open Space Authority also contributed to VHP preparation. The VHP will protect, enhance, and restore natural resources in specific areas of Santa Clara County and contribute to the recovery of endangered species. Rather than separately permitting and mitigating individual projects, the VHP evaluates natural-resource impacts and

mitigation requirements comprehensively in a way that is more efficient and effective for at-risk species and their essential habitats.

The VHP was developed in association with the USFWS and CDFW and in consultation with stakeholder groups and the general public. The USFWS has issued the Permittees a 50-year permit that authorizes incidental take of listed species under FESA, while CDFW has issued a 50-year permit that authorizes take of all covered species under the Natural Community Conservation Planning Act. This approach allows the Permittees to streamline future mitigation requirements into one comprehensive program. In addition to obtaining take authorization for each participating agency's respective activities, the cities and County will be able to extend take authorization to project applicants under their jurisdiction.

The USFWS and CDFW will also provide assurances to the Permittees that no further commitments of funds, land, or water will be required to address impacts on covered species beyond that described in the VHP to address changed circumstances. In addition to strengthening local control over land use and species protection, the VHP provides a more efficient process for protecting natural resources by creating new habitat reserves that will be larger in scale, more ecologically valuable, and easier to manage than the individual mitigation sites created under the current approach.

The VHP and associated documents are approved and adopted by the six Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Transportation Authority, and Valley Water).

Project Applicability. The project is located within the VHP permit area. Because the original 20-year DA that waived participation in the VHP for development activities at the Cisco Site 6 has lapsed, project activities are now considered covered under the VHP. The City of San José considers the project to be a VHP-covered activity, which would be required to comply with the following VHP conditions (ICF International 2012): 1) Avoid Direct Impacts on Legally Protected Plant and Wildlife Species; 3) Maintain Hydrologic Conditions and Protect Water Quality; 15) Western Burrowing Owl [Avoidance and Minimization Measures]; and 17) Tricolored Blackbird [Avoidance and Minimization Measures]. These VHP conditions are described in further detail in Section 6.3.

Section 4. Environmental Setting and Peer Review of WRA Due Diligence Report

The following sections summarize our opinions regarding biological resources issues on the project site in the context of a peer review of the WRA Report. Below, we provide our assessment of the existing general habitat conditions, potential for occurrence of special-status plants and animals, occurrence of sensitive/regulated habitats, biological resources impacts, and appropriate mitigation measures. For each of the issues addressed in the WRA Report, we discuss the degree to which we concur with the contents of the WRA Report. Additionally, we discuss in greater detail some issues that were not addressed in WRA's assessment.

4.1 WRA Report Findings

On September 10, 2021, WRA biologists conducted a field assessment of the project site to evaluate conditions for the presence of sensitive biological communities and habitats for special status plants and wildlife species. The assessment focused on sensitive resources identified as potentially present in the 2000 EIR, and on species that are known to occur on disturbed sites in the project vicinity. With the exception of the burrowing owl, the assessment found no habitat for any special-status species identified in the EIR, including the northern harrier (*Circus hudsonius*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), salt marsh harvest mouse (*Reithrodontomys raviventris*), tricolored blackbird, and Congdon's tarplant. In addition, the assessment identified no jurisdictional wetlands or heritage trees protected by the City of San José's Tree Ordinance on the project site.

The assessment did, however, identify foraging habitat for the burrowing owl throughout the project site, but reported that the species is not known to occur there (CNDDB 2021, Cornell Lab of Ornithology 2021). Scattered ground squirrel burrows were observed in the western portion of the project site, and habitat for nesting non-special-status birds was noted as present throughout the site as well. As described below, our findings are generally in agreement with those of the WRA Report.

4.2 General Project Area Description

The project site is located in San José in Santa Clara County, California (Figure 1). The climate in the project vicinity is coastal Mediterranean, with most rain falling in the winter and spring. Mild, cool temperatures are common in the winter. Hot to mild temperatures are common in the summer. Climate conditions in the vicinity include a 30-year average of approximately 15 inches of annual precipitation with a monthly average temperature range from 50.0ºF to 69.3ºF (PRISM Climate Group 2021). Elevations on the project site range from 27–32 ft above mean sea level (Google LLC 2021). The Natural Resource Conservation Service (NRCS) has mapped two soil units on the project site: (1) Clear Lake silty clay, 0 to 2% slopes, drained and (2) Campbell silt loam, 0–2% slopes, protected (NRCS 2021). The Clear Lake silt loam is found on basin floors, and is composed of alluvium derived from metamorphic, sedimentary rock, or metavolcanics parent materials. The

Campbell silt loam is found in alluvial fans and is derived from similar parent material as the Clear Lake silt loam. Clear Lake silty clay is classified as a hydric soil (NRCS 2021).

A small portion of the site closest to the historical Guadalupe River channel recently experienced a low-intensity burn. There was a light layer of charred annual grasses below a sparse layer of unburned senesced annual plants, indicating the fire occurred prior to the growing season of 2021.

4.3 Land Cover

Biotic habitats on the project site were classified according to the land cover classification system described in the VHP (ICF International 2012). The reconnaissance-level survey identified one VHP land cover type on the project site: California annual grassland (Figure 3). This land cover type is described in detail below. Plant species observed during the reconnaissance survey are listed in Appendix A.

4.3.1 California Annual Grassland

Photo 1 California annual grassland in the project area.

Vegetation. California annual grassland (10.5 ac) is the sole land cover type on the project site (Photo 1). This habitat type is dominated by nonnative grasses such as wild oat (*Avena* sp.) and ripgut brome (*Bromus diandrus*), as well as weedy forbs such as field bindweed (*Convolvulus arvensis*), short-podded mustard (*Hirschfeldia incana*), broadleaved pepperweed (*Lepidium latifolium*), and salsify (*Tragopogon* sp.). Small patches of non-native stickwort (*Dittrichia graveolens*) and wild fennel (*Foeniculum vulgare*), as well as patches of native coyote brush (*Baccharis pilularis*) and seaside heliotrope (*Heliotropium curassavicum* var. *oculatum*) occur sporadically throughout the grassland. A small cluster of native alkali-mallow (*Malvella leprosa*) was observed along the south edge of the project site nearest the historical channel of the Guadalupe River. The grassland contains a number of species ranked by the California Invasive Plant Council (Cal-IPC 2021) as being moderately or highly invasive, as discussed in Section 5.3.5 below.

The grassland habitat has been regularly mowed for decades, forming a dense thatch layer composed of loose grass fragments. This thatch layer tends to crowd out other species. Patches of bare ground are evident where fragments of construction material were discarded and along an old gravel road that bisects the site. Historical aerial photos (Google LLC 2021) show the site was graded and used as a dumping site for spoils and possibly for a construction staging area from about 2014 to 2017. Outside the project site, ornamental landscaping was

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Figure 3. Land Cover Map
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installed somewhat recently, including zebra grass (*Miscanthus* sp.), deergrass (*Muhlenbergia rigens*), and ornamental elm (*Ulmus* sp.).

Wildlife. Wildlife use of grasslands on the project site is limited by human disturbance (e.g., due to mowing), the limited extent of the grassland area, and the isolation of this habitat from more extensive grasslands in the region (i.e., in the Diablo Range to the east). As a result, some of the wildlife species associated with extensive grasslands in the South Bay, such as the grasshopper sparrow (*Ammodramus savannarum*), are absent from the grasslands on the project site. Many of the wildlife species that use this grassland area are more regularly associated with adjacent developed, landscaped, or marsh areas and use the grasslands on the project site for foraging. Such species include birds such as the Brewer's blackbird (*Euphagus cyanocephalus*), house finch (*Haemorhous mexicanus*), bushtit (*Psaltriparus minimus*), and lesser goldfinch (*Spinus psaltria*), which forage on seeds in grassland areas. The black phoebe (*Sayornis nigricans*), cliff swallow (*Petrochelidon pyrrhonota*), and Mexican free-tailed bat (*Tadarida brasiliensis*) forage aerially over grassland habitats for insects. Great blue herons (*Ardea herodius*), which forage in the nearby aquatic habitat of the Guadalupe River, may also forage terrestrially for small mammals on the project site.

Consistent with the WRA Report's findings, we observed sparsely clustered burrows of California ground squirrels within the project site, primarily along the northwestern boundary, during the October 2021 site visits. This fossorial mammal species is an important component of grassland communities, providing a prey base for diurnal raptors and terrestrial predators and providing burrows that can be used by burrowing owls. However, no ground squirrels were observed during reconnaissance surveys, and many of the burrows appeared inactive (i.e., no fresh scat was present, and cobwebs covered many burrow openings). Additionally, many of the burrows were too small or shallow for burrowing owls to inhabit, and many were collapsed or otherwise inaccessible due to age and disuse. Other rodent species that can potentially occur in the grassland habitat on the project site include the Botta's pocket gopher (*Thomomys bottae*), California vole (*Microtus californicus*) and deer mouse (*Peromyscus maniculatus*). Diurnal raptors such as red-tailed hawks (*Buteo jamaicensis*) and red-shouldered hawks (*Buteo lineatus*) forage for these small mammals over grasslands during the day, and at night nocturnal raptors, such as barn owls (*Tyto alba*), will forage for nocturnal rodents.

Several reptile species regularly occur in grassland habitats, including the southern alligator lizard (*Elgaria multicarinata*), which was observed during the October 2021 surveys, and the western fence lizard (*Sceloporus occidentalis*) and gopher snake (*Pituophis melanoleucus*). Burrows of California ground squirrels provide refuges for these reptile species. Mammals observed during our October 2021 surveys included the native black-tailed jackrabbit (*Lepus californicus*) and nonnative feral cat (*Felis catus*). Other mammals expected to forage here include the native striped skunk (*Mephitis mephitis*) and raccoon (*Procyon lotor*), and the nonnative Virginia opossum (*Didelphis virginiana*).

4.4 Adjacent Habitat Areas

Photo 2. Limited salt marsh habitat along the historical channel of the Guadalupe River near the project area.

Vegetation. The project site is located approximately 500 ft east of the Guadalupe River and adjacent to a historical channel of the river. The two channels support coastal and valley freshwater marsh.

The eastern top of bank of the Guadalupe River adjacent to the project site is well-defined by the Guadalupe River Trail. This lower reach is where the river transitions from freshwater wetlands to wetlands influenced by brackish water. Within the banks of the Guadalupe River, brackish marsh habitat is characterized by a dense groundcover of marsh jaumea (*Jaumea carnosa*) and fat hen (*Atriplex prostrata*). Clustered throughout the groundcover is coast gumplant (*Grindelia stricta*) and the non-native short-podded mustard. The margin of the river's edge supports narrow stands of cattails (*Typha* sp.) and several large stands of bulrush (*Schoenoplectus* sp.). The banks of the adjacent levee are dominated by non-native annual grasses and herbs.

The historical channel appears to have been cut off from the main channel when the levee was constructed decades ago. No clear culvert connecting the two channels hydrologically was observed. The historical channel contains poor quality water that is hemmed in by bare mudbanks, indicating the water originates from tidally influenced groundwater. The margins of the bare banks support a narrow band of saltmarsh including pickleweed (*Salicornia pacifica*) and saltgrass (*Distichlis spicata*). Non-native herbs such as perennial pepperweed (*Lepidium latifolium*) and short-podded mustard are clustered throughout the banks (Photo 2).

A homeless encampment first appeared along the banks of the historical channel in 2017 (Google LLC 2021) and has expanded since then. Large amounts of debris have been placed in and around the historical channel. Many user trails have formed, and native vegetation has been severely trampled in many locations.

Wildlife. Because the water within the historical channel and the nearby reach of the Guadalupe River is brackish, it is unlikely to support amphibians. Small numbers of shorebirds, such as sandpipers (*Calidris* spp.), and greater yellowlegs (*Tringa melanoleuca*), the latter being observed during the October 2021 surveys, may forage in the historical channel of the Guadalupe River. However, the salt marsh vegetation surrounding the historical channel is too limited in extent and disturbed by homeless encampments to provide suitable cover or breeding habitat for common and special-status salt marsh species, such as the salt marsh wandering shrew and the salt marsh harvest mouse. Several species of birds, including the Alameda song sparrow (*Melospiza melodia*

pusillula), San Francisco common yellowthroat (*Geothlypis trichas sinuosa*), and red-winged blackbird (*Agelaius phoeniceus*) nest in the marshes along the Guadalupe River, and ducks and other waterfowl forage here year-round. Southwestern pond turtles (*Emys pallida*) may also be present in this reach of the Guadalupe River, as discussed in Section 5.2. The California vole is a common small mammal species found in the project vicinity, and will breed in adjacent terrestrial habitats and forage in the brackish marshes; it in turn serves as prey for the great blue heron and great egret (*Ardea alba*), as well as raptors.

4.5 Wildlife Movement

Wildlife movement within and in the vicinity of the project site takes many forms, and is different for the various suites of species associated with these lands. Bird and bat species move readily over the landscape in the project vicinity, foraging over and within both natural lands and landscaped areas. Fish species move along the Guadalupe River corridor, some as residents and some as occasional foragers from the San Francisco Bay. Mammals of different species move within their home ranges, but also disperse between patches of habitat. Generally, reptiles and amphibians similarly settle within home ranges, sometimes moving to central breeding areas, upland refugia, or hibernacula in a predictable manner, but also dispersing to new areas. Some species, especially among the birds and bats, are migratory, moving into or through the project vicinity during specific seasons. Aside from bats, there are no other mammal species in the vicinity of the site that are truly migratory. However, the young of many mammal species disperse from their natal home ranges, sometimes moving over relatively long distances in search of new areas in which to establish.

Movement corridors are segments of habitat that provide linkage for wildlife through the mosaic of suitable and unsuitable habitat types found within a landscape while also providing cover. On a broader level, corridors also function as paths along which wide-ranging animals can travel, populations can move in response to environmental changes and natural disasters, and genetic interchange can occur. In California, environmental corridors often consist of riparian areas along streams, rivers, or other natural features.

Due to the density of development in the project region and the lack of continuous, well-vegetated pathways through the area, there are currently no well-defined movement corridors for terrestrial mammals or reptiles within or through the project site. Wildlife species may move through the area using cover and refugia as they find them available. However, most dispersal by wildlife species in the region likely occurs along higher-quality habitats, such as the Guadalupe River corridor to the southwest, and along the edges of the San Francisco Bay to the north.

The Guadalupe River, which drains to the open waters of the San Francisco Bay approximately 0.75 mi downstream of the project site, and its associated riparian corridor serve as a movement corridor for several common and special-status species of birds, fish, mammals, and reptiles in the project vicinity, connecting aquatic habitats associated with the San Francisco Bay with high-density residential and commercial habitats to the south. The reach of the river and riparian vegetation adjacent to the project site is relatively narrow, and measures approximately 215 ft, between the north and south levees. The aquatic and brackish marsh habitats

near the site are useful for migrating birds, which stop to rest and forage there. In addition, the adjacent upland habitats on the project site support a suite of native medium-sized mammals (e.g., raccoons, skunks, and black-tailed jackrabbits) and small mammals (e.g., California ground squirrels and deer mice), and is a corridor of movement for mammals through the predominately developed project region.

Section 5. Special-Status Species and Sensitive Habitats

CEQA requires assessment of the effects of a project on species that are protected by state, federal, or local governments as "threatened, rare, or endangered"; such species are typically described as "special-status species". For the purpose of the environmental review of the project, special-status species have been defined as described below. Impacts on these species are regulated by some of the federal, state, and local laws and ordinances described in Section 3 above.

For purposes of this analysis, "special-status" plants are considered plant species that are:

- Listed under FESA as threatened, endangered, proposed threatened, proposed endangered, or a candidate species.
- Listed under CESA as threatened, endangered, rare, or a candidate species.
- Listed by the CNPS as CRPR 1A, 1B, 2, 3, or 4.

For purposes of this analysis, "special-status" animals are considered animal species that are:

- Listed under FESA as threatened, endangered, proposed threatened, proposed endangered, or a candidate species.
- Listed under CESA as threatened, endangered, or a candidate threatened or endangered species.
- Designated by the CDFW as a California species of special concern.
- Listed in the California Fish and Game Code as fully protected species (fully protected birds are provided in Section 3511, mammals in Section 4700, reptiles and amphibians in Section 5050, and fish in Section 5515).

Information concerning threatened, endangered, and other special-status species that potentially occur on the project site was collected from several sources and reviewed by H. T. Harvey & Associates biologists as described in Section 2.1 above. Figure 4 depicts CNDDB records of special-status plant species in the general vicinity of the project site and Figure 5 depicts CNDDB records of special-status animal species. These generalized maps show areas where special-status species are known to occur or have occurred historically.

Legend

Project Location

5-mile Radius

CNDDB Records

Plants

Specific Location

Approximate Location

General Area

Terrestrial Communities

General Area

Northern Coastal Salt Marsh

prostrate vernal pool navarretia
Contra Costa goldfields
Hoover's button-celery
Contra Costa goldfields
Congdon's tarplant
California seablite
Congdon's tarplant
alkali milk-vetch
Congdon's tarplant
prostrate vernal pool navarretia
lesser saltscale
saline clover
Contra Costa goldfields

most beautiful jewelflower

San Joaquin spearscale

most beautiful jewelflower

most beautiful jewelflower

most beautiful jewelflower

Northern Coastal Salt Marsh

alkali milk-vetch
Hoover's button-celery

Congdon's tarplant
Congdon's tarplant
Congdon's tarplant
Congdon's tarplant
Congdon's tarplant

Point Reyes salty bird's-beak
Hoover's button-celery
saline clover
alkali milk-vetch

Congdon's tarplant

arcuate bush-mallow

alkali milk-vetch

Congdon's tarplant

Congdon's tarplant

Congdon's tarplant
Congdon's tarplant

Hoover's button-celery

robust spineflower

Hall's bush-mallow

hairless popcornflower

saline clover

Congdon's tarplant

Contra Costa goldfields

Hall's bush-mallowfragrant fritillary

Santa Clara red ribbons

Santa Clara red ribbons

N 1.2 0.6 0 1.2

Miles

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Figure 4. CNDDB-Mapped Records of Special-Status Plants

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Legend

- Project Location
- 5-mile Radius

CNDDB Records

Wildlife

- Specific Location
- Approximate Location
- General Area

Aquatic

- General Area

Note: CTS = California Tiger Salamander, CRLF = California Red-legged Frog

N 1.2 0.6 0 1.2
Miles

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Figure 5. CNDDB-Mapped Records of Special-Status Animals
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5.1 Special-Status Plant Species

The CNPS (2021a) and CNDDB (2021) identify 52 special-status plant species as potentially occurring in at least one of the nine USGS 7.5-minute quadrangles containing the project site. Of the 52 potentially occurring special-status plant species, all but one were determined to be absent from the project site for at least one of the following reasons: (1) absence of suitable habitat types; (2) lack of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range of the project site; and/or (4) the species is presumed extirpated from the project region. Many species are known to occur in marsh habitat associated with the San Francisco Bay to the northwest, or serpentine and alkaline soils associated with the Diablo Range to the northeast where outcrops of serpentine geology and soils are present. Serpentine soils do not occur within or adjacent the project site. Project activities will be restricted to previously developed areas and California annual grassland that is regularly disturbed by routine mowing.

Suitable habitat, edaphic requirements, and elevation range are present on the project site for only one special-status plant species, Congdon's tarplant. Congdon's tarplant has been documented by the CNDDB in the project vicinity (Figure 4) and can persist in disturbed grasslands, including grasslands that are regularly mowed. An expanded discussion of this species is provided below.

Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*). Federal Listing Status: None; State Listing Status: None; CRPR: 1B.1. Congdon's tarplant is an annual herb in the composite family (*Asteraceae*) that is endemic to California. It has a variable blooming period extending from May through November. Congdon's tarplant occurs in valley and foothill grassland habitat, floodplains, and swales, particularly those with alkaline substrates; and in disturbed areas with nonnative grasses such as wild oat, ripgut brome, Italian rye grass (*Festuca perennis*), and seaside barley (*Hordeum marinum*) (Jepson Flora Project 2021, CNDDB 2021, CNPS 2021a). Congdon's tarplant occurs in Alameda, Contra Costa, Monterey, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, and Solano Counties (CNDDB 2021). In Santa Clara County, populations are known to occur in ruderal grassland at Moffett Federal Airfield; in ruderal grassland and seasonal wetland habitats within Sunnyvale Baylands Park; in annually disked ruderal grassland in Alviso, north of Highway 237 and east of North First Street; and in ruderal grassland along railroad tracks in Milpitas.

Four occurrences of Congdon's tarplant are recorded on CNDDB (2021) within 5 mi of the project site: Occurrences #17, #18, #40, and #41. The closest record to the project site, Occurrence #41 (CNDDB 2021), is about 0.5 mile northwards and contains highly disturbed, ruderal grassland habitat and Clear Lake clay, similar to the habitat and soil on the project site. It was mapped as part of the EIR and is presumed extant. Occurrence #18 occurs at the Sunnyvale Baylands Park, about 1.8 miles westwards in relatively high-quality grassland habitat. Occurrence #17 contains disturbed ruderal grassland habitat similar to the project site and is about 3.7 miles eastwards within the City of Milpitas. Occurrence #40 was a historical population from a general area recorded as "eastern San José," and is presumed extirpated due to the level of development in this area.

The California annual grassland habitat located within the project site provides some suitable habitat for Congdon's tarplant. Due to the dense annual grass thatch cover and regular disturbance from mowing, the habitat on the project site is considered only marginally suitable for this species (CNPS 2021a).

Because of the potential for this species' occurrence on the project site, a targeted survey for Congdon's tarplant was conducted on September 10, 2021 by WRA ecologists (WRA 2021); this species was also surveyed for on October 22, 2021 by H. T. Harvey & Associates plant ecologist Katie Gallagher. Prior to conducting the survey, H. T. Harvey & Associates ecologists visited a reference population at Sunnyvale Baylands Park in Sunnyvale, California (CNDDB Occurrence #18) to confirm that the species was blooming and identifiable, thereby documenting that this survey was conducted during the appropriate time of year. The focused survey area included all areas of California annual grassland on the project site.

No Congdon's tarplant was observed on the project site by either WRA or H. T. Harvey ecologists. Thus, Congdon's tarplant is determined to be absent from the project site.

5.2 Special-Status Animal Species

The legal status and likelihood of occurrence on the project site of special-status animal species known to occur, or potentially occurring, in the surrounding region are presented in Table 1. Most of the special-status species listed in Table 1 are not expected to occur on the project site because it lacks suitable habitat, is outside the known range of the species, and/or is isolated from the nearest known extant populations by development or otherwise unsuitable habitat.

The following special-status species that are present in less urbanized settings in the South Bay, or in specialized habitats in the South Bay, are absent from the project site due to a lack of suitable habitat and/or isolation of the site from populations by urbanization or other barriers to dispersal: California tiger salamander (*Ambystoma californiense*), Northern California legless lizard (*Anniella pulchra*), southwestern pond turtle (*Emys pallida*), California least tern (*Sternula antillarum browni*), bald eagle (*Haliaeetus leucocephalus*), western snowy plover (*Charadrius nivosus nivosus*), California Ridgway's rail (*Rallus obsoletus obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), salt marsh harvest mouse (*Reithodontomys raviventris*), Townsend's big-eared bat (*Corynorhinus townsendii*), pallid bat (*Antrozous pallidus*), and American badger (*Taxidea taxus*). While bald eagles may fly over the project site at times, and forage in nearby habitats along the San Francisco Bay, none are expected to nest in, or make regular/heavy use of, any resources on the project site.

No aquatic habitats to support special-status fish species are present on the project site. The site is located approximately 500 ft east of the Guadalupe River, which provides habitat for the Central California Coast steelhead, Central Valley fall-run Chinook salmon, Pacific lamprey (*Entosphenus tridentatus*), Sacramento hitch (*Lavinia exilicauda exilicauda*), and Central California roach (*Lavinia symmetricus symmetricus*), and possibly the longfin smelt (*Spirinchus thaleichthys*). These special-status species will not be directly or indirectly affected by

project activities due to the distance of the project from the river and the presence of an approximately 10-ft tall levee in between the project site and the Guadalupe River. As a result, these species are not discussed further in this report.

A number of special-status bird species can occasionally occur on the project site as nonbreeding foragers, but they do not nest on the site. These are the Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), tricolored blackbird, white-tailed kite (*Elanus leucurus*), northern harrier, golden eagle (*Aquila chrysaetos*), and American peregrine falcon (*Falcon peregrinus anatum*). These species are not expected to nest or roost in or immediately adjacent to the project site due to a lack of suitable habitat, and they are expected to forage on the site infrequently.

The Alameda song sparrow and San Francisco common yellowthroat nest in marsh habitat along the Guadalupe River west of the project site. However, the distance of the project from the Guadalupe River (approximately 500 ft) will preclude any effects of the project on nesting individuals. The yellow warbler (*Setophaga petechia*), considered a California species of special concern during nesting, may forage in the riparian vegetation of the Guadalupe River during migration, as well, but it is not expected to nest there. None of these species are expected to occur on the project site itself, which does not provide suitable nesting or foraging habitat.

The monarch butterfly (*Danaus plexippus*) may occur on the project site as a nonbreeder, especially during spring and fall migration. However, no milkweeds (*Asclepias* spp.), which provide this species' larval host plant, were detected on the site during reconnaissance surveys, so monarchs are not expected to breed on the site. Similarly, this species is not known to form wintering roosts anywhere in Santa Clara County, so this species would occur only as an occasional nonbreeding visitor, in low numbers.

We concur with the WRA Report's finding that the burrowing owl, a VHP-covered species, may occur on the project site as a forager or dispersant from nearby breeding areas. This species is addressed in greater detail in Table 1 below.

Table 1. Special-status Animal Species, Their Status, and Potential Occurrence on the Project Site

Name	*Status	Habitat	Potential for Occurrence in the Project Site
Federal or State Endangered, Threatened, or Candidate Species			
Monarch butterfly (*Danaus plexippus*)	FC	Requires milkweeds (*Asclepias* spp.) for egg-laying and larval development, but adults obtain nectar from a wide variety of flowering plants in many habitats. Individuals congregate in winter roosts, primarily in Mexico and in widely scattered locations on the central and southern California coast.	**Absent as Breeder.** The monarch butterfly occurs within the project region primarily as a migrant, though small numbers breed in some parts of the South Bay. Small numbers of adults may nectar on the project site, especially during spring and fall migration, but larval hostplants are absent from the site. No current or historical overwintering concentrations are known in Santa Clara County. Occurs on the site as a scarce migrant.
Central California Coast steelhead (*Oncorhynchus mykiss*)	FT	Cool streams with suitable spawning habitat and conditions allowing migration between spawning and marine habitats.	**Absent.** While steelhead are known to occur in the Guadalupe River, approximately 500 ft west of the project site, no suitable aquatic habitats are present, and the species is absent from project impact areas.
Longfin smelt (*Spirinchus thaleichthys*)	FC, ST	Spawns in fresh water in the upper end of the San Francisco Bay; occurs year-round in the South Bay.	**Absent.** No aquatic habitats are present on the project site to provide suitable habitat for longfin smelt, and this species is absent from the project impact areas.
California tiger salamander (*Ambystoma californiense*)	FT, ST, VHP	Vernal or temporary pools in annual grasslands or open woodlands.	**Absent.** Populations located on the Santa Clara Valley floor have been extirpated due to habitat loss, and the species is now considered absent from the majority of the Valley floor, including the project site (H. T. Harvey & Associates 1999a, 2012, Valley Water 2011). No recent records of California tiger salamanders are located anywhere in the project vicinity (CNDDB 2021). Determined to be absent.
California least tern (*Sternula antillarum browni*)	FE, SE, SP	Nests along the coast on bare or sparsely vegetated, flat substrates. In the San Francisco Bay, nests in salt pannes and on an old airport runway. Forages for fish in open waters.	**Absent.** Known in the project vicinity as a postbreeding forager in managed ponds along the edge of the South Bay. However, no suitable nesting or foraging habitat is present in the project site or surrounding area. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence in the Project Site
Western snowy plover (*Charadrius nivosus nivosus*)	FT	Sandy beaches on marine and estuarine shores and salt pans in San Francisco Bay saline managed ponds.	**Absent.** Breeds and forages in managed ponds along the edge of the Bay, and in New Chicago Marsh, as close as 0.8 mi northwest of the project site. However, no suitable nesting or foraging habitat for snowy plovers occurs on the project site. Determined to be absent.
California Ridgway's rail (*Rallus obsoletus obsoletus*)	FE, SE, SP	Salt marsh habitat dominated by pickleweed and cordgrass.	**Absent.** Known to occur in Alviso Slough (CNDDB 2021), but no Ridgway's rails have ever been recorded breeding along Alviso Slough upstream from Gold Street (which is downstream of the project site). Suitable breeding habitat is not present on the project site, in the reach of the Guadalupe River 500 ft west of the project site, or in the remnant channel of the Guadalupe River adjacent to the site. Although nonbreeding individuals could potentially wander upstream as far as the nearby reach of the Guadalupe River, no foraging habitat is present in the remnant river channel or on the site itself. Determined to be absent.
California black rail (*Laterallus jamaicensis coruniculus*)	ST	Breeds in fresh, brackish, and tidal salt marshes.	**Absent.** Known to occur in Alviso Slough in tidal salt marsh and brackish marsh upstream as far as Alviso Marina County Park, 0.5 mile to the northwest (CNDDB 2021). However, suitable habitat is not present within the project site, and this species has not been recorded as far upstream as the vicinity of the project site. Determined to be absent.
Bald eagle (*Haliaeetus leucocephalus*)	SE, SP	Occurs mainly along seacoasts, rivers, and lakes; nests in tall trees or in cliffs, occasionally on electrical towers. Feeds mostly on fish.	**Absent as Breeder.** Nests and forages in the region primarily at inland reservoirs, though scattered pairs nest in other areas as well. No suitable nesting or foraging habitat is present in the project site, but the species forages in nearby habitats along the edge of the San Francisco Bay.

Name	*Status	Habitat	Potential for Occurrence in the Project Site
Tricolored blackbird (*Agelaius tricolor*)	ST, VHP	Nests near fresh water in dense emergent vegetation.	**Absent as Breeder.** In Santa Clara County, has bred in only a few scattered locations, and is absent from, or occurs only as a nonbreeder in, most of the County (Rottenborn 2007a). Typically nests in extensive stands of tall emergent herbaceous vegetation in non-tidal freshwater marshes and ponds. No suitable nesting habitat is present on the project site or along the Guadalupe River near the project site; this species (whose colonies are loud and conspicuous) has never been recorded nesting within or adjacent to the project site, and high levels of adjacent disturbance likely preclude nesting by this species. Thus, this species is expected to occur only in low numbers, and only occasionally, as a nonbreeding forager.
Salt marsh harvest mouse (*Reithrodontomys raviventris*)	FE, SE	Salt marsh habitat dominated by common pickleweed.	**Absent.** Known to occur in salt marsh habitats of the Bay to the northwest of the project site (CNDDB 2021); however, suitable salt marsh habitat is not present within the project site, or in the reach of the Guadalupe River near the project site. Furthermore, the small patches of salt marsh vegetation associated with the historical channel of the Guadalupe River approximately 150 ft southwest of the site are too isolated from more extensive areas of suitable habitat for this species to have dispersed to the site from areas of known occurrence. Determined to be absent.
California Species of Special Concern			
Northern California legless lizard (*Anniella pulchra*)	CSSC	Sandy or loose loamy soils under the sparse vegetation of beaches, chaparral and pine-oak woodland; or sycamores, cottonwoods or oaks that grow on stream terraces.	**Absent.** Known from a single, geographically imprecise historical record in the project region, approximately 8 mi southeast of the project site (CNDDB 2021). However, this historical occurrence is likely extirpated due to subsequent urbanization, and suitable habitat is not present within or surrounding the project site. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence in the Project Site
Southwestern pond turtle (*Emys pallida*)	CSSC, VHP	Permanent or nearly permanent water in a variety of habitats.	**Absent.** This species is known in the Guadalupe River from a 1997 record approximately 4 mi upstream of the project site (CNDDB 2021). However, no suitable aquatic habitat is present on the project site. Ostensibly suitable nesting habitat is present in grassland areas on the project site; however, impassable barriers to dispersal, including a 3-ft-tall retaining wall, a pedestrian pathway, and several chain link fences separate the upland grassland habitats of the project site from the Guadalupe River. Determined to be absent.
Northern harrier (*Circus hudsonius*)	CSSC (nesting)	Nests in marshes and moist fields with tall vegetation and sufficient moisture to inhibit accessibility of nest sites to predators. Forages over open areas.	**Absent as Breeder.** The species is fairly widespread as a forager in the grasslands, extensive wetlands, and agricultural areas in the project region during migration and winter. However, suitable nesting habitat is absent from the project site and its immediate surroundings. Nearby annual grasslands and diked brackish marshes may provide suitable nesting habitat, and the species may be encountered on the project site as a year-round forager.
Burrowing owl (*Athene cunicularia*)	CSSC, VHP	Nests and roosts in open grasslands and ruderal habitats with suitable burrows, usually those made by California ground squirrels.	**Absent as Breeder.** There are no CNDDB records of burrowing owls on the project site, but there are several within 1 mi (CNDDB 2021). Surveys associated with the original Cisco Site 6 EIR identified three breeding pairs of owls in close proximity, in the open lands on the northeast side of North First Street (City of San José 2000). However, locations where owls were originally detected in the vicinity have since been developed, and the species no longer occurs there. Subsequent surveys in 2012, 2013, and 2015 detected no nests and no individual owls using the project site (H. T. Harvey & Associates 2012, 2013, and 2015), and no owls or signs of owl use of the site were detected during focused surveys for burrowing owls by WRA in September 2021 or by H. T. Harvey in October 2021. Nevertheless, recent surveys by the Santa Clara Valley Habitat Agency have detected breeding burrowing owls at the San José Regional Waste Treatment Facility buffer lands, approximately 0.5 mi northeast of the site (SCVHA 2020) and these owls may also nest in the adjacent mitigation lands provided as part of the Cisco Site 6 development. While development now separates the project site from these known nesting areas, suitable foraging habitat is present on the project site, and burrowing owls may occasionally disperse onto the project site to forage or roost.

Name	*Status	Habitat	Potential for Occurrence in the Project Site
Yellow warbler (*Setophaga petechia*)	CSSC (nesting)	Nests in riparian woodlands.	**Absent.** No suitable nesting habitat for yellow warblers is present on the project site, or in riparian areas surrounding the Guadalupe River, located approximately 500 ft to the west. Yellow warblers forage along the Guadalupe River in large numbers during migration, but no suitable foraging habitat is present on the project site itself.
San Francisco common yellowthroat (*Geothlypis trichas sinuosa*)	CSSC	Nests in herbaceous vegetation, usually in wetlands or moist floodplains.	**Absent.** No suitable nesting habitat for common yellowthroats is present on the project site. Suitable nesting and foraging habitat for common yellowthroats is present in the riparian habitat along the Guadalupe River approximately 500 ft west of the site, but no suitable foraging habitat is present on the project site itself.
Alameda song sparrow (*Melospiza melodia pusillula*)	CSSC	Nests in salt marsh, primarily in marsh gumplant and cordgrass along channels.	**Absent.** Nests in salt marshes and is occasionally found in brackish marshes dominated by bulrushes, but is apparently very sedentary and not known to disperse upstream into freshwater habitats. No suitable nesting or foraging habitat for Alameda song sparrow is present on the project site.
Grasshopper sparrow (*Ammodramus savannarum*)	CSSC (nesting)	Nests and forages in grasslands, meadows, fallow fields, and pastures.	**Absent.** Known to occur in the region primarily in grasslands and less frequently disturbed agricultural habitats, mostly in the foothills. This species does not breed in grassland on the Santa Clara Valley floor and is not expected to occur here even as a nonbreeder.
Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*)	CSSC	Nests in pickleweed dominant salt marsh and adjacent ruderal habitat.	**Absent as Breeder.** In the South San Francisco Bay, nests primarily in short pickleweed-dominated portions of diked/muted tidal salt marsh habitat and in adjacent ruderal habitats (Rottenborn 2007b). No suitable nesting habitat occurs in the project site. Individuals of several savannah sparrow subspecies, including *alaudinus*, may forage on the project site during migration and winter.

Name	*Status	Habitat	Potential for Occurrence in the Project Site
Pallid bat (*Antrozous pallidus*)	CSSC	Forages over many habitats; roosts in caves, rock outcrops, buildings, and hollow trees.	**Absent.** Historically, pallid bats were likely present in a number of locations throughout the project region, but their populations have declined in recent decades. This species has been extirpated as a breeder from urban areas close to the Bay, as is the case in the project vicinity. No suitable roosting habitat is present on the project site, and no known maternity colonies of this species are present within or adjacent to the project site. Therefore, this species is not expected to occur on the site even as a nonbreeder.
Townsend's big-eared bat (*Corynorhinus townsendii*)	CSSC	Roosts in caves and mine tunnels, and occasionally in deep crevices in trees such as redwoods or in abandoned buildings, in a variety of habitats. Forages in edge habitats along streams and adjacent to and in a variety of woodland habitats.	**Absent.** No known extant populations of the Townsend's big-eared bat occur on the Santa Clara Valley floor. Suitable breeding habitat is not present in the project site, and no colonies are known from the site vicinity. Determined to be absent.
Salt marsh wandering shrew (*Sorex vagrans halicoetes*)	CSSC	Occurs primarily in medium-high, wet tidal marsh (6 to 8 feet above mean sea level) with abundant driftwood, plentiful invertebrate prey, and dense cover. Has also been recorded in diked marshes.	**Absent.** Known in the project vicinity from a single record in New Chicago Marsh, Don Edwards National Wildlife Refuge, located approximately 0.7 mi north of the project site. Suitable habitat is absent from the project site, and nearby pickleweed marshes are too isolated and degraded for individuals to have dispersed from known populations. Determined to be absent.
San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*)	CSSC	Nests in a variety of habitats including riparian areas, oak woodlands, and scrub.	**Absent.** Suitable habitat for this species is absent from the grassland habitats in the project site and surroundings. Determined to be absent.
American badger (*Taxidea taxus*)	CSSC	Burrows in grasslands and occasionally in infrequently disked agricultural areas.	**Absent.** Known to occur in the project region primarily in extensive grasslands and agricultural habitats, mostly in the foothills. Suitably extensive grasslands or agricultural habitats are not present within or near the project site, and the grasslands within the project site are isolated from more extensive grasslands in the foothills to the east and the mountains to the northwest by high-density urban development. Determined to be absent.
State Fully Protected Species			

Name	*Status	Habitat	Potential for Occurrence in the Project Site
American peregrine falcon (*Falco peregrinus anatum*)	SP	Forages in many habitats; nests on cliffs and tall bridges and buildings.	**Absent as Breeder.** Peregrine falcons are known to nest on City Hall in downtown San José and on other structures around the edge of the South Bay, but are not known or expected to nest in the project site due to a lack of suitable habitat. Nevertheless, the peregrine falcon may occur on the project site as an occasional forager.
Golden eagle (*Aquila chrysaetos*)	SP	Breeds on cliffs or in large trees (rarely on electrical towers); forages in open areas.	**Absent as Breeder.** A pair of golden eagles has been known to nest annually in a palm tree in an open field approximately 0.8 mi east of the project site since 2018 (P. Higgins, pers. comm.) However, no suitable nesting habitat for golden eagles in the form of tall trees or electrical towers is present on the project site. Focused surveys for burrowing owl activity in October 2021 detected low levels of ground squirrel activity on the site. However, given the close proximity of a known nest, it is possible that golden eagles may occasionally forage over the project site.
White-tailed kite (*Elanus leucurus*)	SP	Nests in tall shrubs and trees; forages in grasslands, marshes, and ruderal habitats.	**Absent as Breeder.** No suitable nesting trees are present on the project site. Potentially suitable nesting habitat for this species is present in trees along the Guadalupe River, located approximately 500 ft southwest of the project site, with suitable foraging habitat present in grasslands within the project site. White-tailed kites may occur on the project site as occasional foragers year-round.

Key to Abbreviations:

Status: Federally Endangered (FE); Federally Threatened (FT); Federal Candidate for Listing (FC); State Endangered (SE); State Threatened (ST); State Fully Protected (SP); California Species of Special Concern (CSSC); Santa Clara Valley Habitat Plan Covered Species (VHP).

5.3 Sensitive Natural Communities, Vegetation Alliances, and Habitats

Natural communities have been considered part of the Natural Heritage Conservation triad, along with plants and animals of conservation significance, since the state inception of the Natural Heritage Program in 1979. The CDFW determines the level of rarity and imperilment of vegetation types, and tracks sensitive communities in its Rarefind database (CNDDB 2021). Global rankings (G) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas state (S) rankings are a reflection of the condition of a habitat within California. Natural communities are defined using NatureServe's standard heritage program methodology as follows (Faber-Langendoen et al. 2012):

G1/S1: Critically imperiled

G2/S2: Imperiled

G3/S3: Vulnerable.

G4/S4: Apparently secure

G5/S4: Secure

In addition to tracking sensitive natural communities, the CDFW also classifies vegetation alliances, defined by repeating patterns of plants across a landscape that reflect climate, soil, water, disturbance, and other environmental factors (CNPS 2021b). If an alliance is marked G1-G3, all of the vegetation associations within it will also be of high priority. The CDFW provides VegCAMP's currently accepted list of vegetation alliances and associations (CDFW 2021).

Impacts on CDFW sensitive natural communities, vegetation alliances/associations, or any such community identified in local or regional plans, policies, and regulations, must be considered and evaluated under CEQA (Title 14, Division 6, Chapter 3, Appendix G of the California Code of Regulations). Furthermore, aquatic, wetland and riparian habitats are also protected under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the USACE, RWQCB, CDFW, and/or the USFWS.

5.3.1 Sensitive Natural Communities

A query of sensitive habitats in the CNDDB (2021) identified two sensitive natural communities as occurring within the nine 7.5-minute USGS quadrangles containing or surrounding the project site: (1) sycamore alluvial woodland (Rank G1/S1.1) and (2) northern coastal salt marsh (Rank G3/S3.2). No riparian habitat occurs on the project site. Additionally, neighboring riparian habitat occurring along the Guadalupe River adjacent to the project site does not meet the definition of sycamore alluvial woodland, which is dominated by western sycamore (*Platanus racemosa*), and occurs within braided, depositional channels of intermittent streams, usually

with cobble or boulder substrate (Holland 1986). Similarly, no marsh habitat was mapped during the survey; therefore, no northern coastal salt marsh occurs on the project site.

5.3.2 Sensitive Vegetation Alliances

The majority of the project site is dominated by wild oats and *Bromus* spp. and would be considered "Wild oats and annual brome grasslands (*Avena* spp. – *Bromus* spp.)" alliance (CDFW 2021). This alliance does not have a global or state ranking. Because it is defined by dominance of nonnative species, it is not considered sensitive by VegCAMP. No sensitive alliances occur on the project site.

5.3.3 CDFW Riparian Habitat

Due to its rarity and disproportionately high habitat values and functions to wildlife, the CDFW considers riparian habitat to be a sensitive habitat type. As described above in Section 3.2.4, the CDFW would likely claim jurisdiction over areas at, and below, the top of bank lines on either side of the historical channel to the Guadalupe River and of the river itself regardless of the vegetative composition of these areas. Riparian habitat associated with the Guadalupe River corridor or the historical channel does not occur on the project site, nor would it be directly or indirectly impacted by project activities.

5.3.4 Sensitive Habitats (Waters of the U.S./State)

No waters or wetlands of the U.S./state occur on the project site.

5.3.5 Nonnative and Invasive Species

Several nonnative, invasive plant species occur on the project site (Appendix A). Of these, the following have a rating of "limited" invasiveness (considered invasive but their ecological impacts are minor on a statewide level and their reproductive biology and other attributes result in low to moderate rates of invasiveness) according to the Cal-IPC (2021): field mustard (*Brassica rapa*), redstem filaree (*Erodium cicutarium*), curly dock (*Rumex crispus*), and smilo grass (*Stipa miliacea*). The following species have a "moderate" rating, indicating that they have substantial and apparent-but generally not severe-ecological impacts on physical processes, plant and animal communities, and vegetation structure, and that their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment would be generally dependent upon ecological disturbance: stinkwort (*Dittrichia graveolens*), short-podded mustard, Australian saltbush (*Atriplex semibaccata*), tree tobacco (*Nicotiana glauca*), and wild oats. Species with a "high" invasive rating by the Cal-IPC have the potential to cause severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment, and most are widely distributed ecologically (Cal-IPC 2021). On the project site, the following species with a "high" rating were observed: fennel (*Foeniculum vulgare*), perennial pepperweed, and yellow starthistle (*Centaurea solstitialis*). Himalayan blackberry (*Rubus armeniacus*; Cal-IPC rank High) occurs along the outside of the fence line adjacent to the historical Guadalupe River channel. Fennel, perennial pepperweed, and yellow starthistle were observed commonly throughout the California annual grassland land cover on the project site. Due to their ubiquity in the region, and the fact that proposed project activities are expected to

clear and develop all areas where populations of invasive species are located, project activities are not expected to result in the spread of nonnative and invasive plant species.

Section 6. Impacts and Mitigation Measures

CEQA and the State CEQA Guidelines provide guidance in evaluating impacts of projects on biological resources and determining which impacts will be significant. The Act defines "significant effect on the environment" as "a substantial adverse change in the physical conditions which exist in the area affected by the proposed project."

Appendix G of State CEQA Guidelines provides a checklist of other potential impacts to consider when analyzing the significance of project effects. The impacts listed in Appendix G (Chapter IV) may or may not be significant, depending on the level of the impact. For biological resources, these impacts include whether the project would:

A. "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"

B. "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"

C. "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"

D. "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"

E. "conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance"

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

Potential impacts on biological resources as a result of the proposed project were systematically evaluated at the project level. These impacts were first evaluated to qualitatively describe how proposed project activities could impact biological resources, and whether impacts would be temporary (i.e., occurring only during project construction and the period immediately following) or permanent. Impacts were then evaluated to determine whether they fall within the scope of impacts disclosed in the 2000 EIR, including whether those impacts have been adequately compensated by mitigation provided by Cisco in accordance with that 2000 EIR. Finally, impacts were evaluated with the application of any relevant VHP conditions.

6.1 Cisco Systems, Inc. Integrated Final Environmental Impact Report Findings (2000)

Biological resources present on the Cisco Site 6 project site (of which the proposed project is a subset), potential impacts of the proposed development on biological resources, and measures necessary to reduce these impacts to less-than-significant levels under CEQA were previously described in the 2000 EIR (City of San José 2000). These impacts, as well as the significance determinations from that EIR, were as follows:

- The loss of agricultural and ruderal habitats as a result of the project would contribute to a reduction in the diversity of wildlife species present in the project area, including special-status species (less than significant). The project would also result in a loss of occasional foraging habitat for several special-status animal species (less than significant).
- The project would result in the direct disturbance and/or removal of a population of Congdon's tarplant (less than significant with mitigation). The project is unlikely to result in impacts on other special-status plant species (less than significant).
- The project would not result in impacts on the vernal pool tadpole shrimp (*Lepidurus packardi*) or its habitat (no impact).
- The potential increase of pollutants in runoff from the site could result in impacts on the steelhead, salt marsh harvest mouse, salt marsh wandering shrew, and habitats within the Guadalupe River near the project site (less than significant with mitigation).
- The project could result in impacts on nesting white-tailed kites and northern harriers, as well as individual burrowing owls (less than significant with mitigation). The project would also result in a loss of burrowing owl nesting and foraging habitat on the site (significant and unavoidable).
- The project could result in impacts on the salt marsh wandering shrew and salt marsh harvest mouse that use the site incidentally (less than significant).
- Development of the project would result in the loss of approximately 3.2 ac of non-jurisdictional wetlands (less than significant) and the filling of approximately 0.45 ac of jurisdictional wetlands (less than significant with mitigation). Development of the project would increase the potential for runoff from the site to contain pollutants which would impact jurisdictional waters on the site (less than significant with mitigation). Construction activities could also result in indirect impacts on jurisdictional waters (less than significant with mitigation).
- Development of the project would result in the removal of approximately 14 ordinance-size trees on the site and 15 off-site ordinance-size trees along North First Street and Zanker Road (less than significant with mitigation).

It is our opinion that development of the project site is not expected to exceed the magnitude of effects on these biological resources, or introduce new impacts on these resources beyond what was disclosed in the 2000

EIR. Thus, the majority of the mitigation measures identified on pages 85–90 of the EIR, including preparing and implementing a Stormwater Pollution Prevention Plan, conducting preconstruction surveys for nesting special-status birds, and implementing best management practices, are appropriate to avoid or minimize impacts of development of the project site on biological resources.

However, as noted above, the 2000 EIR identified significant and unavoidable impacts to burrowing owl nesting and foraging habitat. Due to the rarity of the species and continuing declines in the South Bay over the last 20 years, loss of any burrowing owl habitat from the proposed project would be considered a significant impact under CEQA, consistent with the findings of the 2000 EIR. See section 6.4.4 for further discussion of burrowing owl impacts and appropriate mitigation.

6.2 WRA Report Findings

The WRA Report concluded that no impacts to any sensitive resources identified in the 2000 EIR will occur, with the exception of potential impacts to individual burrowing owls and loss of burrowing owl foraging habitat. These impacts to burrowing owls and their habitat were previously identified and disclosed in the 2000 EIR, and WRA did not identify any impacts that are outside the scope of the previously evaluated impacts. WRA reported that the project site may be required by the City of San José to participate in the VHP, and that the project site falls within Fee Zone A (Ranchlands and Natural Lands) and the burrowing owl fee zone. We concur with the conclusions of WRA's report with respect to these issues.

6.3 Santa Clara Valley Habitat Plan

The City of San José determined that the proposed project is a "covered project" under the VHP, thus, the project is classified as an "Urban Development" project (ICF International 2012). Urban Development projects include private development projects within the planning limits of urban growth in San José. The Santa Clara Valley Habitat Agency (SCVHA) leads the implementation of the VHP, which is a regional partnership between the CDFW, the USFWS, and six local partners, including Valley Water, the County of Santa Clara, the Santa Clara Valley Transportation Authority, and the Cities of San José, Gilroy, and Morgan Hill. The VHP was adopted in 2013 by all local participating agencies, and permits were issued from the USFWS and CDFW. The VHP is both a habitat conservation plan and natural community conservation plan, or HCP/NCCP. The planning document helps private and public entities plan and conduct projects and activities in ways that lessen impacts on natural resources, including specific threatened and endangered species. The VHP identifies regional lands (called reserves) to be preserved or restored to the benefit of at-risk species, and describes how reserves will be managed and monitored to ensure that they benefit those species. In providing a long-term, coordinated planning for habitat restoration and conservation, the VHP aims to enhance the viability of threatened and endangered species throughout the Santa Clara Valley.

The VHP defines measures to avoid, minimize, and mitigate impacts on covered species and their habitats while allowing for the implementation of certain *covered projects*. Chapter 6 of the VHP includes detailed and

comprehensive conditions to avoid and minimize impacts on the 18 "covered species" (nine animal species and nine plant species) included in the plan area, which consists of 519,506 acres, or approximately 62% of Santa Clara County. These conditions are designed to achieve the following objectives:

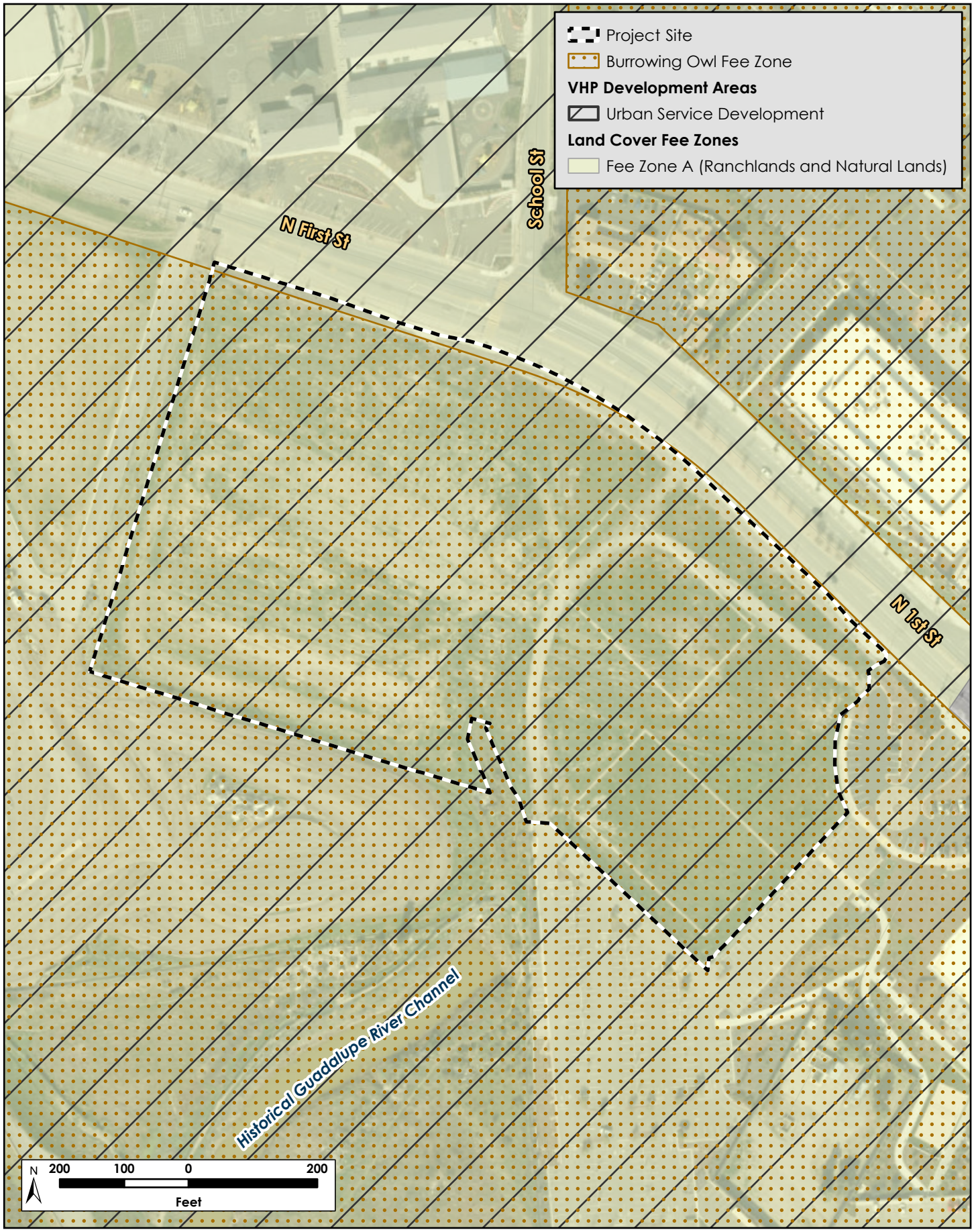
- provide avoidance of certain covered species during implementation of covered activities throughout the project site;
- prevent take of individuals of certain covered species from covered activities as prohibited by law (e.g., take of fully protected species);
- minimize impacts on natural communities and covered species where conservation actions will take place; and
- avoid and minimize impacts on jurisdictional wetlands and waters throughout the study area to facilitate project-by-project wetland permitting.

In conformance with the VHP, proponents of covered projects are required to pay impact fees in accordance with the types and acreage of habitat or "land cover" impacted, and to implement conservation measures specified by the VHP. Land cover impacts are used because it is the best predictor of potential species habitat, and is applicable to all of the covered species (with the exception of the burrowing owl). The SCVHA has mapped the following three fee zones in the VHP area: (1) ranchland and natural lands, (2), agricultural and valley floor lands, and (3) small vacant sites (SCVHA 2021). The following areas are exempt from land cover fees:

- all development that occurs on land mapped by the VHP as urban-suburban, landfill, reservoir (excluding dams), or agriculture developed land cover types;
- urban development in Fee Zones A–C on parcels less than 0.5 ac;
- additions to structures within 50 ft of an existing structure that result in less than 5,000 ft of impervious surface so long as there is no effect on wetland or serpentine land cover types; and
- construction of recreational facilities within the reserve system.

Additional fees in-lieu of providing compensatory mitigation are imposed for projects that impact serpentine habitat, wetlands, and burrowing owls, and for certain projects that result in atmospheric nitrogen emissions, although in some cases, project proponents may provide land to restore or create habitats protected by the VHP in lieu of payment of fees.

The project is located within the VHP Urban Service Area for the City of San José (Figure 6). As the WRA report noted, the project site is in Fee Zone A (Ranchlands and Natural Lands) and within the burrowing owl fee zone (Figure 6).



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H. T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 6. VHP Urban Service Area, Development Areas, and Fee Zones
237@First Second Harvest Food Bank (3382-06)
February 2022

Because the City of San José has determined that the proposed project is a "covered project" under the VHP, we would expect the following VHP conditions to apply to the proposed project:

Condition 1. Avoid Direct Impacts on Legally Protected Plant and Wildlife Species

A number of wildlife species that occur in the project vicinity are protected under state and federal laws. Some of these animal species are listed as fully protected under the California Fish and Game Code (e.g., the white-tailed kite), and eagles are protected under the Bald and Golden Eagle Protection Act. Further, all native bird species and their nests are protected under the MBTA and California Fish and Game Code. Actions conducted under the VHP must comply with the provisions of the MBTA and California Fish and Game Code.

Condition 3. Maintain Hydrologic Conditions and Protect Water Quality

Condition 3 applies to all projects and identifies a set of programmatic BMPs, performance standards, and control measures to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during project construction. These requirements include preconstruction, construction site, and post-construction actions. Preconstruction conditions are site design planning approaches that protect water quality by preventing and reducing the adverse impacts of stormwater pollutants and increases in peak runoff rate and volume. They include hydrologic source control measures that focus on the protection of natural resources. Construction site conditions include source and treatment control measure to prevent pollutants from leaving the construction site and minimizing site erosion and local stream sedimentation during construction. Post-construction conditions include measures for stormwater treatment and flow control.

Condition 15. Western Burrowing Owl

Condition 15 requires the implementation of measures to avoid and minimize direct impacts on burrowing owls, including pre-construction surveys, establishment of 250-ft non-disturbance buffers around active nests during the breeding season (February 1 through August 31), establishment of 250-ft non-disturbance buffers around occupied burrows during the nonbreeding season, and construction monitoring. Pre-construction surveys for burrowing owls are required by the VHP in areas mapped as breeding habitat. As mentioned above, additional fees in-lieu of providing compensatory mitigation are imposed for VHP covered projects that impact burrowing owls or their habitat. Because the project site includes habitat for burrowing owls as mapped by the VHP, a specialty fee for impacts on habitat for this species may apply.

Exhibit A: Corrections, Clarifications, and Updates to the Santa Clara Valley Habitat Plan (HCP/NCCP), dated April 4, 2013, Section 1.2 Errata, 1.2.3, states that the implementation of the VHP will not add or remove any of the rights and obligations to any DA between the Implementing Agency (here, the City of San José) and a private applicant. The provision applies to any DA that was entered into and adopted prior to the operative date of the VHP and remains consistent with the City of San José's land use approvals for the project. The valid DA for the Cisco Site 6 project was adopted in 2000, prior to the 2013 operative date of the VHP. However, the 20-

year term of the DA has expired. We concur with the WRA Report that because impacts of Cisco Site 6 development has been at least partially mitigated through establishment of biological preserves, the City may be willing to provide flexibility regarding whether the proposed project is required to fully participate in the VHP (e.g., by paying burrowing owl impact fees). However, as we discuss in Section 6.3.4 below, it is our opinion that it is appropriate for the project to comply with the requirements of Condition 15, given the lapse of the DA and the significant and unavoidable impacts to burrowing owl habitat disclosed in the 2000 EIR. In our opinion, compliance with Condition 15 would reduce project impacts on burrowing owls and burrowing owl habitat in the context of current conditions to less than significant levels under CEQA.

Condition 17. Tricolored Blackbird

This condition applies to projects that are located within 250 ft of any riparian, coastal, and valley freshwater marsh and helps to protect tricolored blackbirds by prescribing preconstruction surveys, construction buffer zones, biological monitoring, and other requirements. If a project is located within 250 ft of habitat mapped as pond by the VHP, a qualified biologist must confirm that the pond land cover type is present. If a qualified biologist verifies that the project area is within 250 ft of pond habitat, a qualified biologist must conduct a field investigation to identify and map potential nesting substrate. If suitable nesting substrate is identified, avoidance and minimization measures must be implemented (see pages 4-43 to 4-44 of the VHP).

Although tricolored blackbirds have never been recorded nesting on or near the project site, the proposed project is located within 250 ft of an area (i.e., the historical channel of the Guadalupe River) mapped by the VHP as suitable nesting habitat for the tricolored blackbird (ICF International 2012). Therefore, per Condition 17 of the VHP, H. T. Harvey & Associates wildlife ecologist Jane Lien, B.S.., conducted a field investigation to identify and map potential nesting substrate for tricolored blackbirds on October 22, 2021. No suitable vegetation for nesting by tricolored blackbirds was present within 250 ft of the project site due to the predominance of relatively low-statured saltmarsh vegetation surrounding the channel, and the absence of large stands of emergent vegetation or other tall, dense herbaceous vegetation. Thus, no tricolored blackbird nesting colonies are expected to occur on or within 250 ft of the site, and no additional surveys or avoidance and minimization measures pertaining to this species are necessary, in our opinion.

6.4 Impacts on Special-Status Species: 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 CDFW or USFWS (Less than Significant)

6.4.1 Impacts on California Annual Grassland and Associated Common Plant and Wildlife Species (Less than Significant)

Proposed project activities would result in permanent impacts on 10.5 ac of California annual grassland habitat on the project site. These impacts would reduce the extent of vegetation within the impact area and would result in a reduction in abundance of some of the common plant and wildlife species that occur on the site. However, the area of California annual grassland to be impacted occurs in a location in San José that has been subject to disturbance and fragmentation in the past and is embedded within a highly developed urban area, such that these areas do not provide regionally rare or especially high-value habitat for native vegetation or wildlife, or special-status species aside from the burrowing owl (discussed in Section 6.4.4 below). In addition, California annual grassland is abundant and widespread regionally and is not particularly sensitive, and the habitat on the project site is not especially valuable (from the perspective of providing important plant or wildlife habitat [again, aside from habitat for the burrowing owl discussed in Section 6.4.4]) or an exemplary occurrence of this habitat type. Therefore, impacts on this habitat are considered less than significant. Further, because the number of individuals of any common plant or animal species within this habitat, and the proportion of these species' regional populations that could be disturbed, is very small, the project's impacts would not substantially reduce regional populations of these species. Thus, these impacts do not meet the CEQA standard of having a *substantial* adverse effect, and would not be considered significant under CEQA.

6.4.2 Impacts on Water Quality and Special-Status Fish (Less Than Significant)

The 2000 EIR concluded that impacts on water quality and Central California Coast steelhead would be less than significant with mitigation consisting of preparation of a Stormwater Pollution Prevention Plan.

No direct impacts are proposed within the bed and banks of the Guadalupe River, which flows approximately 500 ft west of the project site, and we concur with the findings of the WRA report that no indirect impacts on the Guadalupe River, water quality within the channel, or fish species inhabiting the river are expected to occur as a result of project activities. In addition to the distance from the project site, the river is separated from the project site by an approximately 10-ft tall levee, and any fuel leaks or spills within the project site would be well contained by the intervening upland and the levee. No outfalls from the site to the Guadalupe River are proposed as part of the project. Thus, the project will have no impact on water quality within the Guadalupe River or special-status fish species within the river channel.

Construction projects in California causing land disturbances that are equal to 1 ac or greater must also comply with state requirements to control the discharge of storm water pollutants under the NPDES *General Permit for*

Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended and administratively extended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of BMPs to protect water quality until the site is stabilized. Standard permit conditions under the Construction General Permit require that the applicant utilize various measures including: on-site sediment control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors.

In many Bay Area counties, including Santa Clara County, projects must also comply with the California Regional Water Quality Control Board, San Francisco Bay Region, Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Water Board Order No. R2-2015-0049). This permit requires that all projects implement BMPs and incorporate Low Impact Development practices into the design to prevent stormwater runoff pollution, promote infiltration, and hold/slow down the volume of water coming from a site after construction has been completed. In order to meet these permit and policy requirements, projects must incorporate the use of green roofs, impervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors.

In addition, because the City considers the project a covered activity under the VHP, the project will comply with all VHP conditions, including Condition 3, which requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during construction.

Thus, with compliance with NPDES permit requirements described above and VHP Condition 3, potential project impacts on water quality and special-status fish would be less than significant under CEQA.

6.4.3 Impacts on Nonbreeding Special-Status Invertebrates, Birds, and Mammals (Less than Significant)

The 2000 EIR concluded that impacts to nesting birds would be less than significant with mitigation consisting of pre-construction surveys and avoidance of nests during the nesting season. The Habitat Plan includes Condition 1, to avoid impacts to legally protected plant and wildlife species and Condition 17, to protect nesting tricolored blackbirds, which replaces the mitigation for nesting birds discussed in the 2000 EIR. The 2000 EIR also concludes that impacts associated with the loss of occasional foraging habitat for non-breeding special-status animal species would be less than significant.

Several special-status invertebrate, bird, and mammal species may occur on the project site as nonbreeding migrants, transients, or foragers, but they are not known or expected to breed or occur in large numbers within or near the project impact area. These include the monarch butterfly, tricolored blackbird, Bryant's savannah sparrow, American peregrine falcon, golden eagle, white-tailed kite, and northern harrier.

The monarch butterfly (a federal candidate) may forage in the site vicinity, especially during spring and fall migration, but is not expected to breed or overwinter on the project site due to a lack of suitable habitat. The tricolored blackbird (a state threatened species and covered under the VHP) is not expected to occur within or close to the project site as a breeder due to the absence of suitable habitat, but individuals may occur occasionally as foragers during the nonbreeding season. The Bryant's savannah sparrow, a California species of special concern, breeds in marshes along the San Francisco Bay to the north, and individuals may forage in California annual grassland on the project site during the nonbreeding season. The American peregrine falcon, golden eagle, and white-tailed kite (which are state fully protected species), and the northern harrier (a California species of special concern), are not expected to breed on or near the project site due to a lack of suitable nesting habitat, though individuals of these species may occasionally forage across the project site in small numbers.

Proposed project activities would impact potential foraging habitats and/or may disturb foraging individuals of these species. Construction activities might result in a temporary direct impact through the alteration of foraging patterns (e.g., avoidance of work sites because of increased noise and activity levels during maintenance activities) but would not result in the loss of individuals, as individuals of these species would fly away from any construction areas or equipment before they could be injured or killed. Further, the project site does not provide important foraging habitat used regularly or by large numbers of individuals of any of these species. As a result, impacts of the project will have little impact on these species' foraging habitat and no substantive impact on regional populations of these species. Therefore, this impact would be less than significant.

6.4.4 Impacts on the Burrowing Owl (Less than Significant)

The 2000 EIR concluded that impacts upon individual burrowing owls would be less than significant with mitigation consisting of pre-construction surveys, avoidance of occupied burrows during the nesting season, and passive relocation of owls outside of the nesting season; however, impacts related to the loss of burrowing owl nesting and foraging habitat would be significant and unavoidable notwithstanding the project's preservation and dedication of 21.7 ac of burrowing owl habitat.

As noted in the 2000 EIR, the number of breeding burrowing owls in the Greater San Francisco Bay area, and in the South Bay area in particular, has declined. While the 2000 EIR documented three breeding pairs adjacent to the proposed project site in 1998, these habitats have since been developed, and burrowing owls no longer breed in the developed portions of the Cisco Site 6 project area. However, they continue to breed in small but declining numbers on adjacent open lands at the nearby San José-Santa Clara RWF (SCVHA 2020). These lands include approximately 21.7 ac of the original Cisco project site improved by Cisco (including construction of artificial burrows) and dedicated to the City for inclusion in the buffer lands.

The project site does not provide high-quality roosting habitat for this species due to the low numbers of suitable ground squirrel burrows on the site. Further, the species has not been detected on the site during a number of focused surveys for the species conducted since 2012 (H. T. Harvey & Associates 2012, 2013a,

2013b, 2015, our 2021 surveys associated with this assessment, and WRA 2021). Nevertheless, we concur with the findings of the WRA Report that burrowing owls may occur as a wintering resident or migrant, and nonbreeding individuals could potentially forage and roost on the project site in small numbers. Given the approximately 0.5-mi distance between the project site and areas where burrowing owls are currently present on the San José-Santa Clara RWF bufferlands, and intervening development, burrowing owls breeding near the RWF likely forage infrequently, if at all, on the project site. However, the possibility that owls breeding near the RWF forage on the site, and that they or owls from other populations may roost on the site, cannot be eliminated.

If burrowing owls use the project site, project activities could potentially disturb foraging and roosting individuals. Because they roost underground, burrowing owls may be killed or injured during construction activities if occupied burrows are destroyed or compacted by heavy equipment. Construction activities that occur in close proximity to active burrows may disturb owls to the point of abandoning their burrows, exposing them to increased predation risk as they disperse. The loss of individual burrowing owls would be significant under CEQA, as indicated in the 2000 EIR. The 2000 EIR includes measures to avoid and minimize impacts on individual burrowing owls, such as maintaining a 250-ft buffer between construction activities and active burrowing owl nests during the breeding season and passively relocating owls from construction areas using one-way doors during the nonbreeding season. The City of San José considers the proposed project a VHP-covered activity, thus, the project would need to comply with analogous avoidance and minimization measures described in VHP Condition 15.

In addition, the project would result in the loss of suitable foraging and roosting habitat. The 2000 EIR identified significant, unavoidable impacts to burrowing owls via the loss of approximately 130.9 ac of breeding and foraging habitat. While 21.7 ac in the northern corner of the original Cisco Site 6 project area was preserved and enhanced as burrowing owl habitat to compensate for impacts, even with this mitigation, the 2000 EIR nonetheless concluded that the project would result in significant unmitigated impacts to burrowing owl habitat. The 2000 EIR determined that mitigating the impacts to burrowing owl habitat to less-than-significant levels was infeasible because the acreage of available mitigation habitat in the region was inadequate to compensate for project impacts. Lacking any other feasible mitigation alternatives, the 2000 EIR determined that no feasible mitigation to reduce impacts to less-than-significant levels was available. In our opinion, and as acknowledged in the 2000 EIR, the loss of 130.9 acres of burrowing owl foraging and breeding habitat lost due to development of the site was only partially compensated by the provision of 21.7 ac of mitigation habitat.

In the absence of further mitigation, impacts on burrowing owl habitat from development of the proposed project would remain significant under CEQA, despite mitigation already in place as a result of the 2000 EIR, consistent with the conclusion of the 2000 EIR. Because the DA that exempted projects covered by this EIR from VHP compliance has expired, it is our opinion that payment of VHP burrowing owl impact fees to the VHP would be appropriate to reduce the proposed project's impacts to less-than-significant levels under CEQA. The Santa Clara Valley Habitat Agency would use such funds to further the conservation of the South Bay burrowing owl population through management of existing burrowing owl habitat and by implementing

conservation actions directed toward increasing the survival and productivity of individual owls. For example, in recent years, the Habitat Agency has used burrowing owl impact fees to fund a supplemental feeding study geared toward increasing the number of burrowing owl chicks that survive to fledging age, captive-rearing of smaller chicks, and translocation of owls to sites that are particularly well managed for the species.

Payment of in-lieu fees (e.g., per VHP requirements) was not available in 2000, but this method of reducing impacts to burrowing owls and their habitat is now the standard approach to burrowing owl mitigation for VHP-covered projects in the City of San José and elsewhere in the VHP area. The City of San José considers payment of such fees to constitute adequate mitigation to reduce impacts on burrowing owls and their habitat from VHP-covered projects to less-than-significant levels. Therefore, given that the City of San José considers the proposed project to be a covered activity under the VHP, payment of VHP fees is now a feasible measure for avoiding or minimizing for burrowing owl impacts that was not available in 2000, and will be employed to reduce impacts of the proposed project to less-than-significant levels.

Because some compensatory habitat mitigation (21.7 ac) was provided per the 2000 EIR, and that mitigation was intended to apply to the 130.9 ac of impact from development of the entire Cisco Site 6 area, it is our opinion that a portion of that mitigation should apply to the proposed project. The 10.5 ac of potential burrowing owl habitat that will be impacted by the proposed project represents 8.0% of the 130.9 ac of habitat impacted by development of the entire Cisco Site 6 area. Therefore, 8.0% of the 21.7-ac mitigation area, or 1.74 ac, could be allocated to the proposed project. The 21.7-ac mitigation area is not known to be currently occupied by burrowing owls, but it has supported owls in the past, and it is managed by the City to provide suitable habitat for this species. Therefore, 1.74 ac of mitigation toward the proposed project's impacts have already been provided. Thus, to reduce impacts on burrowing owl habitat from the proposed project to less-than-significant levels, VHP impact fees, including burrowing owl impact fees for 8.76 ac, should be paid. Payment of burrowing owl impact fees for 8.76 ac would reduce impacts on burrowing owl habitat from the proposed project to less-than-significant levels.

6.4.5 Impacts due to Bird Collisions (Less than Significant)

Under existing conditions, the 10.5-ac project site is undeveloped and dominated by nonnative annual grassland habitat. The surrounding developed areas support limited available habitat for birds in the site vicinity, and bird species that occur in more extensive grasslands in the region are not expected to be present on the project site. Nevertheless, the grassland habitat on the site provides nesting and foraging resources for common species of birds that are tolerant of high levels of human disturbance. These bird species will regularly use the vegetation on the site and surrounding developed areas, though they typically do so in low numbers. As a result, the number of individual landbirds that inhabit and regularly use vegetation on the project site at any given time is relatively low under existing conditions.

Under proposed conditions, based on the project plans provided, the site is expected to provide habitat of lower value to landbirds compared to existing conditions. The site will be converted from ruderal grassland into buildings and parking areas with limited areas of landscaping. The landscape vegetation on the site will

provide some habitat structure and foraging opportunities for landbirds, but this vegetation will be much less extensive compared to existing areas of grassland and is not expected to provide sufficient habitat structure or nesting and foraging resources to support large numbers of birds. Nevertheless, landbirds that will occur on the site and in the vicinity will be attracted to trees and landscaped areas, and will primarily move between the small areas of landscaping on the site and other habitats in the surrounding vicinity.

Migratory songbirds are often concentrated at the edge of the San Francisco Bay during spring and fall migration, and birds migrating along the Pacific Flyway are expected to fly over the site during migration. While riparian areas often have disproportionately high levels of species diversity, the reach of the Guadalupe River located near the project site supports only a relatively moderate diversity of bird species due to its lack of woody riparian vegetation. Ebird records from the Valley Transit Authority Mitigation Pond, 0.2 mi southwest of the project site and adjacent to the Guadalupe River, indicate that approximately 90 species of birds, including waterfowl, shorebirds, and songbirds have been documented in the area. In the project vicinity, a more diverse group of migrants are expected to move along the coastline and drop in to high-quality habitat at locations such as mudflats along the Bay edge, Alviso Slough, and Don Edwards National Wildlife Refuge approximately 1 mi to the northwest. Ebird records at Alviso Marina County Park, for example, indicate that approximately 240 species of birds have been observed in the tidal marshes and mudflats in that area, including groups of thousands of wintering shorebirds and flocks of migrating waterfowl. Because the buildings on the project site would be nearly a mile inland, and separated from these higher quality habitats by housing and commercial development, these large groups of shorebirds and waterfowl are not expected to encounter and collide with the proposed buildings in large numbers.

Nevertheless, due to the proximity of the site to these high quality habitat areas, moderate numbers of migrating birds may fly past the project site relative to regional populations. The birds that do pass through the site will vary by time of year and by species. Many birds, such as waterfowl, often tend to move in large groups, while other species, such as flycatchers, warblers, and vireos, will move through individually. Local bird numbers also vary by time of year, as many birds form small to large flocks during winter and migration, and occur in more widely spaced pairs during the breeding season.

It has been well documented that glass windows and building façades can result in injury or mortality of birds due to birds' collisions with these surfaces (Klem 2009, Sheppard and Phillips 2015). Because birds do not perceive glass as an obstruction the way humans do, they may collide with glass when the sky or vegetation is reflected in glass (e.g., they see the glass as sky or vegetated areas); when transparent windows allow birds to perceive an unobstructed flight route through the glass (such as at corners); and when the combination of transparent glass and interior vegetation (such as in planted atria) results in attempts by birds to fly through glass to reach that vegetation. The greatest risk of avian collisions with buildings occurs in the area within 40–60 ft of the ground because this is the area in which most bird activity occurs (San Francisco Planning Department 2011, Sheppard and Phillips 2015). Very tall buildings (e.g., buildings 500 ft or more high) may pose a threat to birds that are migrating through the area, particularly to nocturnal migrants that may not see the buildings or that may be attracted to lights on the buildings (San Francisco Planning Department 2011).

The proposed one-story Buildings 1 and 2 will have moderate amounts of glazing on the north façade along North First Street (Exhibit 1), minimal glazing on the east and west façades (Exhibit 2), and minimal to no glazing on the south façade (Exhibit 3). The glazed façades of the buildings will result in some bird collisions. Landscape vegetation will be planted immediately adjacent to the buildings' glazing on the north façade, which has the most extensive glazing (Exhibit 4). Such vegetation is expected to attract small numbers of birds, drawing them towards the glass on the buildings. Further, the vegetation would reflect in the glass of the building's walls, potentially causing birds to attempt to fly in to the reflected "vegetation" and strike the glass. As a result, some birds that are attracted to the trees and other landscaping that is adjacent to the glass walls are expected to collide with the glass.

However, the number of birds that would collide with the proposed buildings will be low, in our opinion. The majority of birds that occur on the site are expected to approach from the undeveloped habitats of the historical Guadalupe River channel and the Guadalupe River to the southwest; therefore, the near absence of glass on the buildings' south façade (which faces these undeveloped habitats) is expected to substantially reduce the potential for avian collisions with the proposed buildings. Further, larger areas of glazing on the building's north façades incorporates overhangs and vertical columns, which break up the expanses of glass and make it more visible to birds. Relatively low numbers of native, resident birds and occasional migrants are expected to occur in landscape vegetation located north, east and south of the buildings, but even during migration, the number of native birds expected to occur in these areas will be low, due to the limited amount of vegetative cover and foraging opportunities they provide. As a result, the façades on Buildings 1 and 2 are expected to result in collisions by very few birds.

Exhibit 1. The north façades of Buildings 1 and 2 have moderate amounts of glazing, which incorporates overhangs and vertical columns, making it more visible to birds.

Exhibit 2. Minimal glazing is present on the east and west façades. Overhangs make these features more visible to birds.

Exhibit 3. Minimal glazing is present on the south façade of Building 1 (top image), and no glazing is present on the south façade of Building 2 (bottom image); these façades face the undeveloped habitat of the historical Guadalupe River channel.

Exhibit 4. Vegetation will be planted adjacent to glazed surfaces on the north facade.

In summary, we expect some avian collisions with glass façades on the proposed buildings to occur; such collisions are likely highest where landscape vegetation is located immediately adjacent to glazed facades. However, due to the minimal glazing present on the south, east, and west sides of the buildings, and the presence of overhangs, vertical columns, and other features which make the glazing more visible to birds, we expect the frequency of such collisions to be low.

In addition, the proposed building design is consistent with Council Policy 6-34 bird-safe design guidelines in that the buildings do not include any exterior mirrors; large areas of reflective glass; transparent glass skyways, walkways, or entryways; free-standing glass walls; or transparent building corners. Further, the location of building facades would not be facing large open spaces, thus, avoiding a funneling effect of migratory birds passing through the project area; landscaping would strategically be placed to reduce reflections of foliage inside or through glass; and building operations would avoid or minimize up-lighting, spotlights, and non-emergency lighting at night from buildings that are visible to birds.

As a result, avian injury or mortality due to bird collisions with the proposed buildings would affect only a very small proportion of regional populations of the bird species that use the site or fly through the site during migration. In our opinion, this impact would not meet the threshold of having a substantial adverse effect on these populations, and would be less than significant by CEQA standards.

6.4.6 Nitrogen Deposition Impacts (Less than Significant)

Several special-status plant and animal species that are absent from the project site and its vicinity occur on serpentine substrates in hills on either side of the Santa Clara Valley. These species include the Bay checkerspot butterfly (*Euphydryas editha bayensis*) and a number of rare plants, including the VHP-covered Tiburon Indian

paintbrush (*Castilleja affinis* var. *neglecta*), coyote ceanothus (*Ceanothus ferrisiae*), Mount Hamilton thistle (*Cirsium fontinale* var. *campylon*), Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), and most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*).

The USFWS has identified critical habitat for the federally threatened Bay checkerspot butterfly (73 FR 50406) south of U.S. Route 101 and Yerba Buena Road in San José, approximately 11 mi southeast of the project site (Unit 6 at Communications Hill) (USFWS 2008). The conservation of critical habitat is considered essential for the conservation of the Bay checkerspot butterfly, and this serpentine habitat also supports serpentine-associated rare plant species (including the VHP-covered species listed above). Nonnative grasses have been reported to increase in these habitats, crowding out native rare plants as well as the native larval host plants needed by the Bay checkerspot butterfly, due to increased nitrogen deposition from human sources throughout San José and the greater Bay Area.

Nitrogen deposition contribution estimates in Santa Clara County were made as a part of the development of the VHP (ICF International 2012). About 46% of nitrogen deposition on habitat areas of concern for the base years (2005–2007) was estimated to come from existing development and traffic generated locally within the VHP study area, which includes all of San José. The remainder of Santa Clara County was estimated to contribute a substantially smaller amount (17% of the nitrogen deposition) while the other eight Bay Area counties account for about 11%. Nitrogen deposition modeling completed for future years (2035 and 2060) as a part of the VHP process assumed that urban and rural development in the County and broader San Francisco Bay Area is expected to increase air pollutant emissions due to an increase in passenger and commercial vehicle trips and other new industrial and nonindustrial sources.

New vehicle trips associated with new development will result in an increase in NOx emissions, which in turn will contribute to the effects of nitrogen deposition on the serpentine grassland ecosystem. To mitigate this impact, a conservation strategy in the VHP includes collection of fees within the VHP area based upon the generation of new vehicle trips to fund acquisition and management of serpentine grasslands in the Coyote Ridge area and elsewhere in the foothills along the Santa Clara Valley. The goal of this strategy is to improve the viability of existing populations of the Bay checkerspot butterfly and rare plants, increase the number of populations, and expand the geographic distribution to ensure the long-term persistence of serpentine-associated species in the VHP area.

A nexus study was completed for the VHP to assist with identifying appropriate fees to fund measures in the VHP. The nitrogen deposition fee was calculated and adopted based on VHP costs related to mitigating the impacts of airborne nitrogen deposition from covered activities in the VHP area. The amount of the fee is based on the number of new daily vehicle trips generated by a covered activity. The fee-per-vehicle-trip is a surrogate that captures the overall effects of a project, recognizing that vehicle trips are not the only source of a project's NOx emissions.

Given that the City of San José considers the project to be a covered activity under the VHP, the project applicant will be required to pay a nitrogen deposition fee, which will then be used to fund the acquisition and management of habitat for the serpentine-associated species potentially impacted by nitrogen deposition. Payment of this fee would ensure that the project's contribution to nitrogen deposition impacts will be less than significant under CEQA.

6.5 Impacts on Sensitive Communities: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFW or USFWS (Less than Significant)

6.5.1 Impacts on Riparian Habitat or Other Sensitive Natural Communities (Less than Significant)

The CDFW defines sensitive natural communities and vegetation alliances using NatureServe's standard heritage program methodology (CDFW 2021), as described above in Section 5.3. Aquatic, wetland, and riparian habitats are also protected under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the USACE, RWQCB, CDFW, and/or the USFWS. Project impacts on sensitive natural communities, vegetation alliances/associations, or any such community identified in local or regional plans, policies, and regulations, were considered and evaluated.

Riparian habitat or other sensitive natural communities are not present on the project site. The Guadalupe River and its associated riparian habitat occurs outside the project site approximately 500 feet to the southwest. The historical channel of the Guadalupe River, and associated brackish marsh habitat, occur approximately 150 feet outside the project site. Thus, the proposed project will have no direct impacts on sensitive natural communities or riparian habitat. As described above in Section 6.4.2, the project will implement the construction period BMPs and post-construction storm water requirements of the NPDES permit. In addition, if the City considers the project a covered activity under the VHP, the project will comply with all VHP conditions, including Condition 3, which requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during construction. With implementation of these measures, indirect impacts on riparian or sensitive natural community habitat along the Guadalupe River or the historical channel will be avoided and would be considered less than significant under CEQA.

6.6 Impacts on Wetlands: 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 (Less than Significant)

Wetlands and other waters of the U.S./state are not present on the project site. Thus, no wetland habitat will be impacted directly by the project. Project compliance with water quality protection requirements in NPDES permit requirements (and VHP Condition 3, if the project is considered a VHP-covered activity) will ensure that indirect impacts to the historical channel approximately 150 feet outside the project site are avoided. Thus, potential indirect impacts from the project on wetlands and waters of the U.S./State off-site would be less than significant under CEQA.

6.7 Impacts on Wildlife Movement: 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 (Less than Significant)

The project site already consists of disturbed and fragmented habitat that is currently of little value to migrating wildlife. The marsh and upland habitats along the Guadalupe River serve as a movement pathway for terrestrial species, and the marshes of the San Francisco Bay to the north provide important coastal wintering and migratory stopover foraging habitats for Pacific Flyway shorebirds and waterfowl. However, the project site does not extend into these habitats and does not link these habitats with other natural areas; thus, development of the site would not impede animal movement along these pathways. The development of the project site will have very little impact on wildlife movement, especially given that the nearby movement corridors will remain intact and navigable. Further, the terrestrial wildlife species that use the habitats on the project site are acclimated to high levels of disturbance and habitat fragmentation in the area. Therefore, construction of the project is not expected to result in significant impacts on the movements of individuals, and would not rise to the level of a substantial adverse effect on habitat connectivity and wildlife movement under CEQA.

6.8 Impacts due to Conflicts with Local Policies: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance (No impact)

No project activities conflict with any local policies.

6.9 Impact due to Conflicts with an Adopted Habitat Conservation Plan: Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or

other approved local, regional, or state habitat conservation plan (Less Than Significant)

The City of San José is a signatory to the VHP, which is a Habitat Conservation Plan and Natural Community Conservation Plan. As described in Section 6.1, the City considers the project a covered activity under the VHP. All VHP-covered species that may be affected by the proposed project are discussed in this report, including the burrowing owl (Section 6.2.5 above). Similarly, impacts on sensitive habitats, such as stream and serpentine habitats for which the VHP requires specific impact fees, are discussed in this report. Therefore, the project will comply with all VHP conditions, and it would therefore not conflict with the VHP.

6.10 Cumulative Impacts

With respect to cumulative impacts, the 2000 EIR concluded that the Cisco project and other cumulative development would result in a significant, unavoidable cumulative impact due to the loss of burrowing owl habitat. Cumulative impacts arise due to the linking of impacts from past, current, and reasonably foreseeable future projects in the region. Future development activities in the City of San José and development activities covered by the VHP will result in impacts on the same habitat types and species that will be affected by the proposed project. The proposed project, in combination with other projects in the area and other activities that impact the species that are affected under the project, could contribute to cumulative effects on special-status species. Other projects in the area include both development and maintenance projects that could adversely affect these species and restoration projects that will benefit these species.

The cumulative impact on biological resources resulting from the project in combination with other projects in the region would be dependent on the relative magnitude of adverse effects of these projects on biological resources compared to the relative benefit of impact avoidance and minimization efforts prescribed by planning documents, CEQA mitigation measures, and permit requirements for each project; compensatory mitigation and proactive conservation measures associated with each project, and the benefits to biological resources accruing from the VHP. In the absence of such avoidance, minimization, compensatory mitigation, and conservation measures, cumulatively significant impacts on biological resources would occur.

However, the San José General Plan contains conservation measures that would benefit biological resources, as well as measures to avoid, minimize, and mitigate impacts on these resources and the VHP includes numerous conservation measures to offset adverse effects on covered activities. Many projects in the region that impact resources similar to those impacted by the proposed project will be covered activities under the VHP and will mitigate impacts on sensitive habitats and many special-status species through that program, which will require payment of fees for habitat restoration. While the 2000 EIR identified significant and unavoidable impacts to burrowing owl habitat resulting from the development of the original Cisco Site 6 development area, of which the proposed project was a subset, it is our opinion that compliance with the VHP, including payment of fees for impact to burrowing owls, will reduce the contribution of the proposed project in the current environmental context to a less than cumulatively considerable impact to burrowing owls.

Similarly, payment of nitrogen deposition fees per VHP standards would compensate for the project's contributions to cumulative impacts on serpentine species to a less-than-cumulatively considerable level. With implementation of these measures, the project will not have a cumulatively considerable contribution to significant cumulative effects on biological resources.

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PERSONAL COMMUNICATIONS

Higgins, Philip. City of Mountain View. Email communication dated October 21, 2021. Subject: Alviso Golden Eagle Nest.

Appendix A. Plant Species Observed on the Project Site

Scientific Name	Common Name	Cal-IPC Rank
EUDICOTS		
*Foeniculum vulgare**	fennel	High
Baccharis pilularis ssp. *consanguinea*	coyote brush	
*Centaurea solstitialis**	yellow star-thistle	High
*Dittrichia graveolens**	stinkwort	Moderate
Erigeron canadensis	horseweed	
*Sonchus oleraceus**	common sow thistle	
Tragopogon sp.*	goat's beard	
Heliotropium curassavicum var. *oculatum*	seaside heliotrope	
*Brassica rapa**	field mustard	Limited
*Hirschfeldia incana**	grayish shortpod mustard	Moderate
*Lepidium latifolium**	perennial pepperweed	High
*Atriplex semibaccata**	Australian saltbush	Moderate
*Salsola tragus**	Russian thistle	
*Convolvulus arvensis**	bindweed	
*Erodium cicutarium**	redstem filaree	Limited
*Malva parviflora**	cheeseweed	
Malvella leprosa	alkali-mallow	
Epilobium brachycarpum	short-fruited willowherb	
*Rumex crispus**	curly dock	Limited
Prunus sp.*	peach	
Datura wrightii	Wright's jimsonweed	
*Nicotiana glauca**	tree tobacco	Moderate
*Avena barbata**	slender wild oat	Moderate
Miscanthus sp.*	zebra grass	

Scientific Name	Common Name	Cal-IPC Rank
*Bromus madritensis**	foxtail chess	
Distichlis spicata	salt grass	
Muhlenbergia rigens	deer grass	
*Stipa miliacea var. miliacea**	smilo grass	Limited

* Non-native or invasive species

Cal-IPC Rank

Limited: These species are invasive, but their ecological impacts are minor on a statewide level. They have low to moderate rates of colonization. Although their distribution is generally limited, these species may be locally persistent and problematic.

Moderate: These species have substantial and apparent—but generally not severe—ecological impacts on the surrounding habitat. They have moderate to high rates of dispersal. Distribution may range from limited to widespread.

High: These species have severe ecological impacts on the surrounding habitat. They have moderate to high rates of dispersal and establishment, and most are widely distributed.

MEMORANDUM

To:	Nolan Granberry Second Harvest NGranberry@shfb.org	**From:**	Molly Matson molly.matson@wra-ca.com Justin Semion semion@wra-ca.com
cc:	Kirstin Gidzinski		
Date:	September 15, 2021		
Subject:	Cisco Site 6 Due Diligence Report		

The purpose of this memorandum is to provide an analysis of biological constraints for an approximately 10.5-acre property located at 4553 and 4653 North First Street (Study Area) in the City of San Jose, Santa Clara County, California. This memo identifies potential biological constraints to development of the Study Area, with a focus on species previously identified in the Cisco Systems, Inc. (Cisco) Site 6 Environmental Impact Report (EIR; 2000). This memorandum provides this analysis based on the professional experience and judgment of WRA, Inc. (WRA) and the information available at the time of this analysis.

Background and Existing Conditions

The Study Area is an approximately 10.5-acre area surrounded on all sides by developed land, with the exception of a small section along the southwestern boundary adjacent to the Guadalupe River. The Study Area is bordered by a four-lane, divided roadway (North 1st Street) to the north, commercial office buildings to the east and southeast, and a Topgolf facility to the west and southwest. Guadalupe River runs parallel to the Study Area, approximately 600 feet to the south. The Study Area consists entirely of ruderal herbaceous vegetation.

The Study Area is within the larger Cisco Site 6 Project Area, as assessed in the Cisco Site 6 EIR (2000). Since 2000, the majority of the Cisco Site 6 Project Area has been developed. The Study Area has been subject to ongoing disturbance since at least 1948, including agriculture, paving, and grading[1]. The Study Area has been graded on several occasions, including most recently in 2019[2]. It was also mowed at some point in 2021 prior to the site visit.

Methods

This evaluation is based on a review of literature and database sources as well as a site visit completed by WRA on September 10, 2021. Prior to the site visit, WRA biologists reviewed literature resources and performed database searches to assess the potential for sensitive biological communities (e.g., wetlands) and special-status species (e.g., endangered plants), including:

[1] *Nationwide Environmental Title Research (NETR). 2021. Historic Aerials. Available online at: https://historicaerials.com/viewer. Most recently accessed: September 2021.*

[2] *Google Earth. 2021. Aerial Imagery 1985-2021. Most recently accessed: September 2021.*

- California Natural Diversity Database hosted by the California Department of Fish and Wildlife
- California Native Plant Society's Electronic Inventory of Rare and Endangered Plants
- Consortium of California Herbaria database
- U.S. Fish and Wildlife Service Information for Planning and Consultation database
- Biological Resources Mitigation and Monitoring Plan Cisco Site 6 (Zander Associates 2000)
- Cisco 6 EIR Certificate of Resolution (No. 69636)
- Biological and Wetlands Evaluation of Cisco Systems Parcels 3 and 4 (ESA 2012)
- 237 @ First Street Office Project Western Burrowing Owl Repeat Survey Results (ESA 2015)
- 237 @ First Street Office Project White-tailed Kite, Northern Harrier, and Western Burrowing Owl Initial Survey Results (ESA 2014)
- Integrated Final Environmental Impact Report Cisco Systems, Inc. Site 6 (2000)

On September 10, 2021, two WRA biologists conducted a field assessment of the Study Area to observe conditions for presence of sensitive biological communities and potential to support habitat for special status plant and wildlife species. Potentially jurisdictional areas and sensitive habitats, if present, were mapped using a combination of mapping-grade GPS devices and hand-drawn boundaries on high-resolution aerial imagery. The site visit focused on all species and habitats identified as potentially present in the project EIR, with particular focus on those species and habitats that can occur on disturbed sites in the vicinity, given the history of disturbance at the site.

Biological Constraints

Table 1 summarizes the potential biological constraints for the Study Area.

Table 1. Biological Resources within the Study Area

Biological Resource	Potential Impacts Identified in Cisco Site 6 Final EIR (2000)	Potential Impacts from development within the Study Area (2021)
Congdon's tarplant (*Centromadia parryi ssp. congdonii*)	Direct disturbance or removal	None. This species was not observed during a focused survey on September 10, 2021.
Steelhead (*Oncorhynchus mykiss irideus*)	Potential increase of pollutants in runoff from site could impact Guadalupe River	None. The Study Area is over 500 feet from the Guadalupe River, and is separated from the Guadalupe River by an approximately 10 foot berm along the Guadalupe River Trail. Construction within the Study Area is unlikely to result in an increase of pollutants in the Guadalupe River.
White-tailed kite (*Elanus leucurus*)	Impacts to nesting white-tailed kites	None. No trees or shrubs are present within the Study Area. The surrounding land is developed and subject to a high level of anthropogenic disturbance. This species is unlikely to nest within or adjacent to the Study Area.

Biological Resource	Potential Impacts Identified in Cisco Site 6 Final EIR (2000)	Potential Impacts from development within the Study Area (2021)
Northern harrier (*Circus hudsonius*)	Impacts to nesting northern harriers	None. The Study Area does not provide tall, dense vegetation to support nesting by this species.
Burrowing owl (*Athene cunicularia*)	Impacts to individual burrow owls and impacts to burrowing owl nesting or foraging habitat	The site visit found low quality potentially suitable habitat, with no evidence of nesting or over-wintering burrowing owl. While it is unlikely that burrowing owls would be present, impacts to this species still may occur if individuals occupy the area prior to construction. Adhering to survey requirements from the Santa Clara Valley Habitat Plan described further below would avoid and mitigate for potential impacts to this species.
Saltmarsh wandering shrew (*Sorex vagrans halicoetes*) and salt marsh harvest mouse (*Reithrodontomys raviventris*)	Potential runoff due to development could result in impacts to adjacent habitat	None. The Study Area does not contain suitable habitat for these species and is over 500 feet from the Guadalupe River and any associated salt marsh vegetation, and is separated from the Guadalupe River by an approximately 10 foot berm along the Guadalupe River Trail. Construction within the Study Area is unlikely to result in an increase of pollutants in salt marsh habitat.
Jurisdictional wetlands	Development would fill 0.45 acres of wetlands on the site. Development would increase potential for runoff to jurisdictional waters.	None. No jurisdictional wetlands are present within the Study Area.
Heritage Trees or other trees protected by the City of San Jose Tree Ordinance	Development would result in the removal of 14 ordinance size trees.	None. No trees are present within the Study Area.

Biological Resource	Potential Impacts Identified in Cisco Site 6 Final EIR (2000)	Potential Impacts from development within the Study Area (2021)
Guadalupe River	Development could increase potential for stormwater runoff and contribute to pollutants into the Guadalupe River.	None. The Study Area is over 500 feet from the Guadalupe River, and is separated from the Guadalupe River by an approximately 10 foot berm along the Guadalupe River Trail. Construction within the Study Area is unlikely to result in an increase of pollutants in the Guadalupe River. Adherence to City and State requirements for stormwater management during and after construction would avoid potential water quality impacts.
Tricolored blackbird (*Agelaius tricolor*)	None. Breeding habitat not present.	None. Breeding habitat is not present within or adjacent to the Study Area. However, the southern extent of the Study Area is within the tricolored blackbird survey area, as mapped in the Santa Clara Valley Habitat Plan.

Many of the biological resources identified in the Cisco Site 6 EIR (2000) are not likely to occur in the Study Area under current conditions. Biological resources with potential to be impacted by development in the Study Area are discussed further below.

Burrowing Owl

Extensive grading and surrounding development have reduced the quality and extent of suitable habitat within the vicinity. Burrowing owl has not been documented within the Study Area[3]. However, several scattered ground squirrel burrows were observed in the western portion of the Study Area during the September 10, 2021 survey. To avoid impacts to burrowing owl, two preconstruction surveys should be conducted within 14 days and 48 hours, respectively, of initiation of construction activities as described in the Santa Clara Valley Habitat Plan (2012). A 250-foot non-disturbance buffer should be placed around any occupied burrows found during the breeding season (February 1 through August 31). A reduced buffer may be allowed during the non-breeding season if a qualified biologists monitors the owls and finds no haven in behavior in response to construction activities. Once the burrow is no longer active and after receiving approval from the Habitat Agency, the buffer zone may be removed.

The Study Area may also be suitable foraging habitat for burrowing owl. Impacts to burrowing owl habitat within the Cisco Site 6 Project Area assessed in the 2000 EIR were mitigated through preservation and enhancement of a 21.4-acre preserve. The site is also within the Burrowing Owl Habitat Overlay for the

[3] *California Department of Fish and Wildlife. 2021. California Natural Diversity Database. Biogeographic Data Branch, Vegetation Classification and Mapping Program, Sacramento, California. Available online at: https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data; most recently accessed: September 2021;*
Cornell Lab of Ornithology. 2021. eBird: An online database of bird distribution and abundance. Available online at: Ithaca, NY. http://www.ebird.org. Most recently accessed: September 2021.

Santa Clara Valley Habitat Plan. This overlay means that the site may be subject to fees for burrowing owl mitigation, despite the previous establishment of the burrowing owl preserve. These fees are described in more detail below as part of the discussion of the Habitat Plan.

Nesting Birds

While tricolored blackbird, northern harrier, and white-tailed kite are unlikely to nest within the Study Area, non-special status nesting birds may nest in disturbed or developed areas including areas with minimal vegetation. In addition to the sensitive biological resources described above, most nesting birds in California are protected by the Migratory Bird Treaty Act and California Fish and Game Code. As a result of these protections, the removal and disturbance of active nests is prohibited. While no specific permit is required for nesting bird protection, avoidance and minimization measures are typically required under the California Environmental Quality Act (CEQA) to avoid impacts to nesting birds. To avoid impacts to nesting birds, typical avoidance and minimization measures include pre-construction surveys for nesting birds prior to construction during the breeding season (between February 15 and August 31). If nesting birds are found, a non-disturbance buffer should be placed around the nests until after the young have fledged or the nest otherwise becomes inactive.

Congdon's Tarplant

Congdon's tarplant is an annual herb that blooms from May to November. During initial mapping of Congdon's tarplant within the Cisco Site 6 Project Area in 1998, the species was only observed north of North First Street, with the densest population at the north east extent of the Cisco Site 6 Project Area, approximately 1000 feet from the Study Area. Much of this area has since been developed, with the exception of a 21-acre preserve located approximately 1600 feet north of the Study Area. A survey for Congdon's tarplant was conducted within the Study Area on September 10, 2021. This date corresponds to the blooming period for this species. Also on September 10, 2021, Congdon's tarplant was observed in bloom at a nearby reference site located approximately 2 miles from the Study Area. No individuals were observed within the Study Area, and impacts to this species from development of the site are not anticipated.

No potential habitat is present in the Study Area for other special status plant species addressed in the EIR.

Special Considerations for the Santa Clara Valley Habitat Plan

The Santa Clara Valley Habitat Plan provides a framework for the protection and recovery of endangered species and other natural resources within certain geographic areas in Santa Clara County. The Habitat Plan covers 18 species present within the Plan Area. Projects proposed within the area covered by the Habitat Plan are required to pay development fees that fund protection of priority conservation areas identified within the Plan Area. The Study Area lies within the Santa Clara Valley Habitat Plan Area. The City of San Jose typically requires participation in the plan and payment of all applicable fees as a prerequisite to project approval.

The Study Area is within the Fee Zone A (Ranchlands and Natural Lands) and within the burrowing owl fee zone. The development fees are $22,518 per acre within Zone A, and $64,845 per acre within the

burrowing owl fee zone[4]. For a 10.5 acre parcel in these zones, the associated fee would be approximately $917,311.

While applicants are not required by federal and State laws to participate in the Habitat Plan, the City typically requires participation for projects located within the Plan Area. Given that the project has already mitigated for potential impacts through establishment of biological preserves, the City may be willing to provide flexibility in its typical requirements to participate in the Habitat Plan. However, there is no guarantee that the City would provide this flexibility, and the payment of this Habitat Plan fee remains a risk that should be accounted for in the decision to develop on the property.

The entire Study Area is mapped as western burrowing owl wildlife survey area. In addition, approximately 0.5 acre in the southern extent of the Study Area is within the tricolored blackbird wildlife survey area. As such, the project would be required to implement conditions 15 (western burrowing owl) and conditions 17 (tricolored blackbird) as summarized below.

Burrowing owl

For projects within the burrowing owl survey area, a habitat survey must be conducted by a qualified biologist. If suitable burrow habitat is present at a site, one survey is required during the breeding season (between February 1 and August 31), and one surveys is required during the non-breeding season (between September 1 and January 31). WRA's survey on September 10, 2021 could be relied upon as a non-breeding season survey if a site plan sufficient to support City and Habitat Plan permitting were available sometime prior to mid-2022. The site visit found low quality potentially suitable habitat, with no evidence of nesting or over-wintering burrowing owl. No indication of use by burrowing owl (tracks, feathers, pellets, excrement) was observed. A ground squirrel burrow complex was located along the western perimeter, and along the northern perimeter across from Tony P. Santos Street. A few scattered and isolated burrows were present along the interior of the site.

Based on the site visit, preconstruction surveys would also be required under the Santa Clara Valley Habitat Plan. Two surveys would be required within 14 days prior to construction, the second survey occurring within 48 hours of construction. A 250-foot non-disturbance buffer is required around any occupied burrows found during the breeding season (February 1 through August 31). A reduced buffer may be allowed during the non-breeding season if a qualified biologists monitors the owls and finds no haven in behavior in response to construction activities. Once the burrow is no longer active and after receiving approval from the Habitat Agency, the buffer zone may be removed. Avoidance measures including construction monitoring and passive relocation are described in further detail in the Santa Clara Valley Habitat Plan.

Tricolored blackbird

A habitat survey for tricolored blackbird must be conducted if the project is within 250 feet of riparian, marsh, or pond habitat. A pond is present approximately 200 feet south of the Study Area. During the September 10, 2021 site visit, the pond was surveyed from the Study Area with binoculars for the presence of nesting substrate. The pond did not have suitable dense vegetation (i.e. cattails, bulrushes) to support a nesting colony. Nesting has not been documented in the feature. Based on the lack of nesting habitat

[4] *Based on the July 2021-June 2022 Fee Schedule*

within and adjacent to the Study Area, development of the Study Area would not impact tricolored blackbird.

Summary

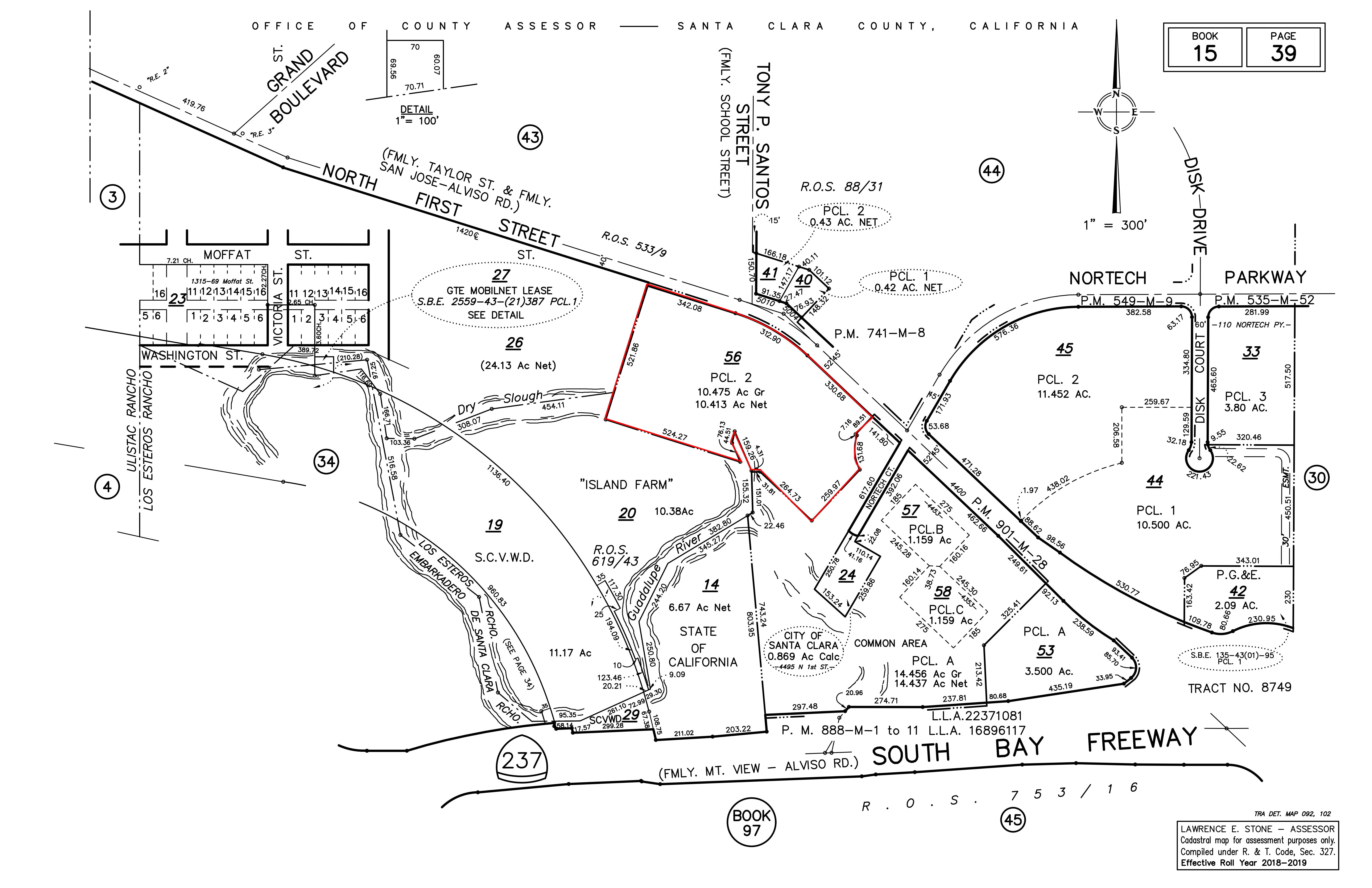
Key considerations for development within the Study Area include:

- The project may affect burrowing owl. Impacts to burrowing owl may require preconstruction surveys and/or mitigation.
- The project should anticipate developing a Stormwater Pollution and Prevention Plan (SWPPP) as part of construction and a post construction Stormwater Management Plan (SMP) to prevent impacts to nearby sensitive habitats as a result of potential stormwater pollutants. The SWPPP is required during construction for any project disturbing more than one acre of land, and is typically prepared by the construction contractor. The SMP is required as part of City engineering review for the project and is typically prepared by the project's engineers during the design process.
- The project may be required to conduct preconstruction nesting bird surveys if work is initiated during the nesting bird season (February 15 through August 31).
- The City may require payment of approximately $917,311 to the Santa Clara Valley Habitat Plan based on the location within the Plan Area, Zone A development fee category, and presence within the Burrowing Owl fee overlay area.

Attachments

Attachment 1 – Parcel Map

Attachment 2 – Burrowing Owl Habitat Assessment



OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA
BOOK 15
PAGE 39
DETAIL 1" = 100'
1" = 300'
GRAND BOULEVARD
NORTH FIRST STREET
(FMLY. TAYLOR ST. & FMLY. SAN JOSE-ALVISO RD.)
R.O.S. 533/9
TONY P. SANTOS STREET
(FMLY. SCHOOL STREET)
R.O.S. 88/31
PCL. 2 0.43 AC. NET
PCL. 1 0.42 AC. NET
P.M. 741-M-8
MOFFAT ST.
1315-69 Moffat St.
VICTORIA ST.
WASHINGTON ST.
ULISTAC RANCHO
LOS ESTEROS RANCHO
GTE MOBILNET LEASE
S.B.E. 2559-43-(21)387 PCL.1
SEE DETAIL
(24.13 Ac Net)
Dry Slough
56 PCL. 2 10.475 Ac Gr 10.413 Ac Net
"ISLAND FARM"
20 10.38Ac
19 S.C.V.W.D.
11.17 Ac
LOS ESTEROS EMBARKADERO
RCHO. DE SANTA CLARA RCHO.
(SEE PAGE 34)
R.O.S. 619/43
Guadalupe River
14 6.67 Ac Net
STATE OF CALIFORNIA
CITY OF SANTA CLARA 0.869 Ac Calc
4495 N 1st St.
COMMON AREA
PCL. A 14.456 Ac Gr 14.437 Ac Net
57 PCL.B 1.159 Ac
58 PCL.C 1.159 Ac
NORTECH CT.
P.M. 901-M-28
PCL. A 53 3.500 Ac.
NORTECH PARKWAY
DISK DRIVE
DISK COURT
P.M. 549-M-9
P.M. 535-M-52
110 NORTECH PY.
45 PCL. 2 11.452 AC.
33 PCL. 3 3.80 AC.
44 PCL. 1 10.500 AC.
P.G.&E. 42 2.09 AC.
S.B.E. 135-43(01)-95 PCL. 1
TRACT NO. 8749
L.L.A.22371081
P. M. 888-M-1 to 11 L.L.A. 16896117
SCVWD 29
237
SOUTH BAY FREEWAY
(FMLY. MT. VIEW - ALVISO RD.)
R.O.S. 753/16
BOOK 97
TRA DET. MAP 092, 102
LAWRENCE E. STONE - ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2018-2019

Burrowing Owl Habitat Assessment

09.10.2021

Legend

- Burrow complex
- Study Area

N 1st St

Balaji Temple

N 1st St

Nortech Pkwy

N 1st St

Google Earth

300 ft

N

Rambus