BIOLOGICAL RESOURCES REPORT
5977-6001 SILVER CREEK VALLEY ROAD PROJECT
SAN JOSE, CALIFORNIA

Prepared for:

Duke Realty
409 13th Street, 16th Floor
Oakland, CA 94612
Contact: Jason Bernstein

Prepared by:

HUFFMAN-BROADWAY GROUP, INC.
828 Mission Avenue
San Rafael, CA 94901
Contact: Terry Huffman
Telephone: (415) 385-1045 ▪ Fax: (415) 925-2006

January 2022

TABLE OF CONTENTS

LIST OF ATTACHMENTS

This report should be cited as: Huffman-Broadway Group, Inc. 2022. *Biological Resources Report, 5977-6001 Silver Creek Valley Road Project, San Jose, California.* San Rafael, California. 33 pp. plus attachments. Prepared for Duke Realty, Oakland, California. January 2022

1.0 INTRODUCTION

On behalf of Duke Realty, Huffman-Broadway Group, Inc. (HBG) has prepared this Biological Resources Report for Duke's proposed state-of-the-art industrial project on an approximately 15.13-acre property comprising adjacent parcels 5977 and 6001 Silver Creek Valley Road, San Jose, California (Project Site). It is expected that this Biological Resources Report will be used for project planning and design and in decision-making with respect to the documentation necessary for the project pursuant to the California Environmental Quality Act (CEQA).

The objective of this study was to determine the potential for the Project Site to support sensitive habitats as defined by state and/or federal statutes and regulations and/or pursuant to CEQA, or for the Project Site to support special status species of flora and fauna. The objective of the study was also to determine whether construction of the proposed project would result in potentially significant biological impacts and, if so, to recommend mitigation measures to reduce biological impacts to levels of insignificance as defined by CEQA guidelines.

HBG's analysis included:

(1) Review of pertinent literature on habitat characteristics of the Project Site, including species of plants and animals expected to utilize the site, and review of planning documents referencing ecological aspects of the site;
(2) Review of the California Natural Diversity Data Base (CNDDB) to determine if any populations of endangered, threatened, or rare species have occurred historically or are currently known to exist in the project vicinity;
(3) Conduct field surveys of the site conducted by an HBG biologist in August and November 2021; and
(4) Evaluate whether the proposed construction would result in impacts to sensitive habitats or special status species.

2.0 PROPOSED PROJECT

2.1 Detailed Description of Project Location

The Project Site is a 15.13-acre property in San Jose, California, composed of two adjacent Santa Clara County parcels, 5977 and 6001 Silver Creek Valley Road, Assessor's Parcels (APNs) 679-02-011 and 679-02-012, respectively. Silver Creek Valley Road forms the southern boundary of the site and Fontanosa Avenue forms its eastern boundary (see Attachment 1, Figure 1). The site lies within in the San Jose East 7.5-minute U.S. Geological Survey (USGS) quadrangle in Township 8 south, Range 2 east, Mount Diablo Base and Meridian (Figure 2). At a central point on the Project Site, latitude is 37.258386, longitude is -121.788194. Figure 3 is an aerial photo of the Project Site.

2.2 Detailed Project Description

The applicant proposes to develop a state-of-the-art industrial building and related amenities on a speculative basis. The project can accommodate a variety of uses, ranging from office to industrial, that will attract a wide variety of users to build out their space to suit. The proposed 282,430-square-foot building includes up to 10,000 square feet of office space (including mezzanine). Amenities include an outdoor employee amenity area and attractive landscaping. The project will include up to 40 dock doors, up to 220 surface auto parking spaces, up to 54 trailer stalls and up to 4,000 amps of power, which can be expandable. The proposed facility would be approximately 40 – 50 feet tall, and devisable down to +/- 100,000 square feet. A site plan for the proposed project, prepared by HPA Architecture dated October 1, 2021, is shown in Attachment 1, Figure 4.

The architectural design intent for the building is to accentuate the façade along Silver Creek Valley Road using high quality finishes that wrap the building corner, with colors and glazing that emphasize the public entrances. The proposal is intended to convey a high-quality site and building design to meet the intent of the goals and policies of the City's *EnvisionSanJose2040 General Plan* (as amended 2021), while remaining flexible to meet market demands.

3.0 REGULATORY BACKGROUND

This section describes federal, state, and local environmental laws, regulations, and policies that are relevant to the CEQA review process.

3.1 Federal Laws and Regulations

3.1.1 Clean Water Act-Section 404

The U.S. Army Corps of Engineers (USACE or Corps) regulates discharges of dredged or fill material into Waters of the United States under Section 404 of the Clean Water Act (CWA; 33 U.S.C. §1251 et seq.). "Discharge of fill material" is defined as the addition of fill material into Waters of the U.S., including but not limited to the following: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; and fill for intake and outfall pipes and sub-aqueous utility lines (33 Code of Federal Regulations [CFR] §328.2(f)). In addition, Section 401 of the CWA requires any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into Waters of the United States to obtain a certification that the discharge will comply with the applicable effluent limitations and water quality standards.

The USACE and the U.S. Environmental Protection Agency (US EPA) are responsible for implementing the Section 404 program. Section 404(a) authorizes the Corps to issue permits, after notice and opportunity for comment, for discharges of dredged or fill material into Waters of the United States (WOTUS). Section 404(b) requires that the Corps issue permits in compliance with EPA guidelines, which are known as the Section 404(b)(1) Guidelines. Specifically, the Section 404(b) (1) guidelines require that the Corps only authorize the "least environmentally damaging practicable alternative" (LEDPA) and include all practicable measures to avoid and minimize impacts to the aquatic ecosystem. The guidelines also prohibit discharges that would cause significant degradation of the aquatic environment or violate state water quality standards.

Waters of the U.S. include both wetlands and "other waters of the U.S." Wetlands and other waters of the U.S. are described by US EPA and Corps regulations (40 CFR §230.3(s) and 33 CFR §328.3(a), respectively). US EPA and the Corps define wetlands as "…those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (US EPA regulations at 40 CFR § 230.3(t); Corps' regulations at 33 CFR §328.3(b)). Both natural and manmade wetlands and other waters (not vegetated by a dominance of rooted emergent vegetation) are subject to regulation. Waters of the U.S. include a range of wet environments such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, and wet meadows.

The geographic extent of wetlands is defined by the collective presence of a dominance of wetland vegetation, wetland hydrology conditions, and wetland soil conditions as determined

following the Corps' 1987 Wetlands Delineation Manual (1987 Manual); the Corps' 2008 Regional Supplement to Corps of Engineers Wetland Delineation Manual: Arid West, Version 2.0 (Arid West Regional Supplement); and supporting guidance documents. The geographic extent of other waters of the U.S. is defined by an ordinary high-water mark (OHWM) in non-tidal waters (33 CFR §328.3(e)) and by the High Tide Line within tidal waters (33 CFR §328.3(d)). The OHWM is defined by the Corps as "that line on shore established by the fluctuations of water and indicated by physical character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas" (33 CFR §328.3(e)). Tidal waters are also under the jurisdiction of the Corps. The landward limits of jurisdiction in tidal waters extend to the high tide line…"or, when adjacent non-tidal waters of the United States are present, to the limits of jurisdiction for such non-tidal waters" (33 CFR§328.4(b)). High tide is further defined to include the line reached by spring high tides and other high tides that occur with periodic frequency (33 CFR §328.3(d)).

SWANCC and Rapanos. In the U.S. Supreme Court decision *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers (SWANCC), No. 99-1178 (2001),* some isolated wetlands may be excluded from the Corps' Section 404 jurisdiction because they are (1) non-tidal, (2) non-navigable, (3) not hydrologically connected to navigable waters or adjacent to such waters, and (4) not subject to foreign or interstate commerce. Subsequent to SWANCC, the U.S. Supreme Court decided on *Rapanos v. United States* and *Carabell v. United States*, 126 U.S. 2208 (2006) (herein referred to as Rapanos). In 2007, guidance was given to US EPA regions and Corps districts to implement the Supreme Court's decision which addresses the jurisdiction over waters of the U.S. under the Clean Water Act. The Rapanos guidance requires the Corps to conduct detailed analysis of the functions and values of wetlands and other waters of the U.S. potentially onsite and in some cases offsite, to determine if there is a nexus to traditional navigable waters and to evaluate the significance of the nexus to the traditional navigable water. Neither the Court nor the recently-issued guidance draw a clear line with respect to the geographic reach of jurisdiction, particularly in drainages where flows are ephemeral and where wetlands are adjacent to but not directly abutting relatively permanent water.

Navigable Waters Protection Rule. In 2020, the Trump Administration obtained approval of the Navigable Waters Protection Rule (NWPR) that altered the reach of the nation's Clean Water Act. The NWPR has four categories of jurisdictional waters and twelve categories of excluded waters/features. There is no standalone interstate waters category and no case-specific significant nexus analysis. Key changes were made for defining tributary, adjacent wetland, ditches, lakes, ponds, and impoundments. New definitions for defining typical year versus normal, perennial, intermittent, ephemeral, snowpack, and ditches. No change was made to the definition of wetlands or the methodology for defining wetlands. Under the NWPR, WOTUS includes 1) territorial seas and traditional navigable waters; 2) tributaries; 3) lakes and ponds, and impoundments of jurisdictional waters; and 4) adjacent wetlands.

Navigable Waters Protection Rule Vacated. In June2021, the US EPA and the Corps announced their intent to revise the definition of “waters of the United States” that would restore regulations defining "waters of the United States" that had been in place for decades until 2015, along with updates for consistency with relevant Supreme Court decisions; a second proposed rule would build on that regulatory foundation.

Subsequently, a ruling in the U.S. District Court for the District of Arizona on August 30, 2021, in the case of *Pascua Yaqui Tribe v. U.S. Environmental Protection Agency,* may result in the Final NWPR being overturned permanently. The US EPA and the Corps are reviewing the U.S. District Court’s order vacating and remanding the NWPR , have halted implementation of the NWPR, and are currently interpreting “waters of the United States” consistent with the pre-2015 WOTUS definition and US EPA and USACE regulatory policies and guidance regime until further notice.

A key milestone in the regulatory process announced in June occurred November 18, 2021, with the signing of a proposed rule to revise the definition of “waters of the United States.” As described on the US EPA website,

> The agencies propose to put back into place the pre-2015 definition of “waters of the United States,” updated to reflect consideration of Supreme Court decisions. This familiar approach would support a stable implementation of “waters of the United States” while the agencies continue to consult with states, tribes, local governments, and a broad array of stakeholders in both the current implementation and future regulatory actions. (https://www.epa.gov/wotus/current-implementation-waters-united-states)

3.1.2 Clean Water Act-NPDES Requirements

In 1972, the Clean Water Act was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with a National Pollution Discharge Elimination System (NPDES) permit. The 1987 amendments established a framework for regulating municipal, industrial, and construction-related storm water discharges under the NPDES Program. On November 16, 1990, the US EPA published final regulations that establish stormwater permit application requirements for specified categories of industries. The regulations provide that discharges of stormwater from construction projects that encompass one or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit.

The federal NPDES permit program has been delegated to the State of California with limited federal oversight. The California State Water Resources Control Board (SWRCB)has developed a general construction stormwater permit to implement the requirements for the federal NPDES permit. The permit requires submittal of a Notice of Intent to comply, fees, and the implementation of a Storm Water Pollution Prevention Plan that specifies Best Management

Practices (BMPs) that will prevent construction pollutants from entering stormwater and keep products of erosion from migrating offsite into downstream receiving waters. The Construction General Permit includes post-construction requirements that site design provide no increase in overall site runoff or the concentration of drainage pollutants and requires implementation of Low Impact Development ("LID") design features. The Construction General Permit is implemented and enforced by California's nine Regional Water Quality Control Boards (RWQCBs).

The RWQCBs have also adopted requirements for NPDES stormwater permits for medium and large municipalities, and the SWRCB has adopted a General Permit for the discharge of storm water from small municipal storm sewer systems. This General Permit requires projects to develop and implement a post-construction Storm Water Management Plan (SWMP) to reduce the discharge of pollutants to the maximum extent practicable.

3.1.3 Federal Endangered Species Act

The United States Congress passed the Federal Endangered Species Act (FESA) in 1973 to protect those species that are endangered or threatened with extinction. The FESA is intended to operate in conjunction with the National Environmental Policy Act (NEPA) to help protect the ecosystems upon which endangered and threatened species depend. The FESA establishes an official listing process for plants and animals considered to be in danger of extinction, requires development of specific plans of action for the recovery of listed species, and restricts activities perceived to harm or kill listed species or affect critical habitat (16 USC 1532, 1536).

The FESA prohibits the "take" of endangered or threatened wildlife species. "Take" is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting wildlife species, or any attempt to engage in such conduct (16 USC 1532, 50 CFR 17.3). Taking can result in civil or criminal penalties. Federal regulation 50 CFR 17.3 further defines the term "harm" in the take definition to mean any act that actually kills or injures a federally listed species, including significant habitat modification or degradation. Therefore, the ESA is invoked when the property contains a federally listed threatened or endangered species that may be affected by a permit decision.

In the event that listed species are involved and a Corps permit is required for impacts to jurisdictional waters, the Corps must initiate consultation with US Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the ESA (16 USC §1536; 40 CFR §402). Section 7 of the FESA requires federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or adversely modify critical habitat (16 USC §1536). In the regulations found at 50 CFR §402.2, destruction or adverse modification is defined as a "direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Critical habitat is defined in FESA Section 3(5)(A) as specific areas within the geographical range occupied by a species where physical or biological features "essential to the conservation of the species" are

found and that "may require special management considerations or protection." Critical habitat may also include areas outside the current geographical area occupied by the species that are nonetheless "essential for the conservation of the species." Critical habitat designations identify, with the best available knowledge, those biological and physical features (primary constituent elements) which provide for the life history processes essential to the conservation of the species.

If formal consultation is required, USFWS or NMFS will issue a biological opinion stating whether the permit action is likely to jeopardize the continued existence of the listed species, recommending reasonable and prudent measures to ensure the continued existence of the species, establishing terms and conditions under which the project may proceed, and authorizing incidental take of the species.

For discretionary permit actions by non-federal entities, Section 10 of the ESA provides a mechanism for obtaining take authorization through submittal and approval of a Habitat Conservation Plan that details species impacts, measures to minimize or mitigate such impacts, and funding mechanisms to implement mitigation requirements.

3.1.4 Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) implements international treaties devised to protect migratory birds and any of their parts, eggs, and nests from activities such as hunting, pursuing, capturing, killing, selling, and shipping, unless expressly authorized in the regulations or by permit. The regulations governing migratory bird permits are in 50 CFR part 13 General Permit Procedures and 50 CFR part 21 Migratory Bird Permits. Most bird species within California fall under the provisions of the Act. Excluded species include nonnative species such as house sparrow, starling, and ring-necked pheasant and native game species such as quail.

On December 22, 2017, the U.S. Department of Interior's Office of the Solicitor issued Memorandum M-37050, which states an interpretation that the Migratory Bird Treaty Act does not prohibit the accidental or "incidental" taking or killing of migratory birds. In response to the Trump Administration's attempted changes to the MBTA, eight states, including California, filed suit in September 2018, arguing that the new interpretation inappropriately narrows the MBTA and should be vacated. On August 11, 2020, the Southern District of New York ruled in favor of the long-standing interpretation of the MBTA to protect migratory birds, reinstating the historical ban on incidental take. Just days before leaving office, the Trump Administration finalized its pullback of MBTA regulations, despite the ruling of the federal court, and the elimination of protections pursuant to the MBTA went into effect in January 2021. On his first day in office, new President Joe Biden placed the Trump Administration's changes to the MBTA on hold, pending further review. The Biden Administration announced the repeal of the January 2021 changes and the reinstatement of protections for migratory birds in December 2021.

3.1.5 Fish and Wildlife Coordination Act

The USFWS also has responsibility for project review under the Fish and Wildlife Coordination Act. This statute requires that all federal agencies consult with USFWS, NMFS, and the state's wildlife agency (California Department of Fish and Wildlife, CDFW) for activities that affect, control, or modify streams and other water bodies. Under the authority of the Fish and Wildlife Coordination Act, USFWS, NMFS, and CDFW review applications for permits issued under Section 404 and provide comments to the Corps about potential environmental impacts.

3.2 State Laws and Regulations

3.2.1 Section 401 of the Federal Clean Water Act/Porter Cologne Water Quality Control Act

Pursuant to section 401 of the federal Clean Water Act, projects that require a Corps permit for the discharge of dredge or fill material must obtain water quality certification that confirms a project complies with state water quality standards before the Corps permit is valid. State water quality is regulated/administered by the SWRCB and its nine RWQCBs. A water quality certification from a RWQCB must be consistent with not only the Clean Water Act, but with CEQA, the California Endangered Species Act (CESA), and the SWRCB's requirement to protect beneficial uses of waters of the State.

The State also maintains independent regulatory authority over the placement of waste, including fill, into waters of the State under the Porter-Cologne Water Quality Control Act. Waters of the State are defined more broadly than "waters of the US" to mean "any surface water or groundwater, including saline waters, within the boundaries of the state" (Water Code section 13050(e)). Examples include, but are not limited to, rivers, streams, lakes, bays, marshes, mudflats, unvegetated seasonally ponded areas, drainage swales, sloughs, wet meadows, natural ponds, vernal pools, diked baylands, seasonal wetlands, and riparian woodlands. Waters of the State include all waters within the state's boundaries, whether private or public, including waters in both natural and artificial channels. They include all "waters of the United States"; all surface waters that are not "waters of the United States, e.g., non-jurisdictional wetlands; groundwater; and the territorial seas.

The SWRCB's *State Wetland Definition and Procedures for Discharges of Dredge of Fill Material to Waters of the State* adopted April 2, 2019 (the Procedures) along with the *Implementation Guidance for the Procedures* dated April 2020 (the Implementation Guidance) defines a wetland as an area that *under normal circumstances, (1) has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation.* The Procedures, along with the Implementation Guidance, state that the permitting authority (e.g., RWQCB) shall rely on any wetland area delineation from a final aquatic resource report verified by the Corps. If the Corps does not require an aquatic resource delineation report, an applicant must submit a delineation of all waters, but these delineations will be verified by the RWQCB staff

during application review. Similarly, if the Corps does not require a delineation, but similar information is prepared for CDFW, the applicant can submit that information to the RWQCB, who will determine if it is sufficient for the Water Board's purposes. In addition, as a matter of policy, the SWQCB/RWQCBs consider wetlands and waters determined to be non-jurisdictional by the Corps/USEPA under SWANCC or Rapanos guidance or the NWPR to remain jurisdictional as waters of the State subject to SWQCB/RWQCB jurisdiction.

The Procedures along with the Interim Guidance also include procedures for the submission, review, and approval of applications for activities that could result in the discharge of dredged or fill material to any Waters of the State and include elements of the Clean Water Act Section 404(b)(1) Alternatives Analysis Guidelines, thereby bringing uniformity to SWCQB's regulation of discharges of dredged or fill material to all waters of the state. Typically, the Corps requires a Clean Water Act 404(b)(1) Alternatives Analysis for wetland impacts greater than 0.50 acres. The Procedures require an alternatives analysis to be completed in accordance with a three tier system. The level of effort required for an alternatives analysis within each of the three tiers shall be commensurate with the significance of the impacts resulting from the discharge.

The California State Water Resource Control Board has also developed a general construction storm water permit to implement the requirements of the federal National Pollution Discharge Elimination System (NPDES) permit. Projects approved by a RWQCB must, therefore, include the preconstruction requirement for a Stormwater Pollution Prevention Plan and the post-construction requirement for a Stormwater Management Plan.

3.2.2 California Endangered Species Act

The State of California enacted the California Endangered Species Act (CESA) in 1984. The CESA is similar to the FESA but pertains to state listed endangered and threatened species. CESA requires state agencies to consult with the CDFW when preparing CEQA documents. The CESA generally prohibits the taking of state listed endangered or threatened plant and wildlife species, however, for projects resulting in impacts to state listed species, CDFW may authorize take through issuance of an Incidental Take Permit (ITP) pursuant to Section 2081 of the California Fish and Game Code. Section 2081 requires preparation of mitigation plans in accordance with published guidelines that require, among other things, measures to fully mitigate impacts to State listed species. CDFW exercises authority over mitigation projects involving state listed species, including those resulting from CEQA mitigation requirements. No authorization of take under Section 2081 is permitted for species listed in state statutes as Fully Protected Species. Where Fully Protected Species are involved, projects must be designed to avoid all take of the species. CDFW cannot issue an ITP until CEQA compliance has been achieved, usually through the CEQA Lead Agency providing documentation by preparing a negative declaration or EIR.

3.2.3 Natural Communities Conservation Planning Act

The Natural Communities Conservation Planning (NCCP) program, which began in 1991 under the California Natural Communities Conservation Planning Act, is broader in its orientation and objectives than CESA and ESA; these laws are designed to identify and protect individual species that are already listed as threatened or endangered and their habitats. The primary objective of the NCCP program is to conserve natural communities at the ecosystem scale while accommodating compatible land use (CDFG 2003).

3.2.4 CDFW-Lake and Streambed Alteration Agreement

Section 1602 of the California Fish and Game Code requires any person, governmental agency, or public utility proposing any activity that will divert or obstruct the natural flow or change the bed, channel or bank of any river, stream, or lake, or proposing to use any material from a streambed, to first notify CDFW of such proposed activity. Based on the information contained in the notification form and a possible field inspection, CDFW may propose reasonable modifications in the proposed construction as would allow for the protection of fish and wildlife resources. Upon request, the parties may meet to discuss the modifications. If the parties cannot agree and execute a Lake and Streambed Alteration Agreement, then the matter may be referred to arbitration. CDFW cannot issue a Streambed Alteration Agreement until the CEQA Lead Agency has provided documentation in the form of a Notice of Determination that the project has complied with CEQA.

CDFW's regulations implementing the Fish and Game Code define the relevant rivers, streams, and lakes over which the agency has jurisdiction to constitute "all rivers, streams, lakes, and streambeds in the State of California, including all rivers, streams and streambeds which have intermittent flows of water." (Title 14 *California Code of Regulations* [CCR] § 720). The CDFW takes jurisdiction under its Lake and Streambed Alteration Agreement Program for any work undertaken in or near a river, stream, or lake that flows at least intermittently through a bed or channel. The CDFW does not have a methodology for the identification and delineation of the jurisdictional limits of streams except for the general guidance provided in *A Field Guide to Lake and Streambed Alteration Agreements, Section 1600-1607 California Fish and Game Code* (CDFG 1994). In making jurisdictional determinations, CDFW staff typically rely on field observation of physical features that provide evidence of water flow through a bed and channel such as observed flowing water, sediment deposits and drift deposits and that the stream supports fish or other aquatic life. Riparian habitat is not specifically mentioned in the Fish and Game Code provisions governing Lake and Streambed Alteration Agreement, but CDFW often asserts jurisdiction over areas within the flood plain of a body of water where the vegetation (grass, sedges, rushes, forbs, shrubs, and trees) is supported by the surface or subsurface flow.

3.2.5 CDFW-Fish and Game Code Sections 3503, 3503.5 and 3513

The State of California also incorporates the protection of nongame birds and birds of prey, including their nests, in Sections 3503, 3503.5, and 3513 of the California Fish and Game Code. Section 3503 of the Fish and Game Code makes it unlawful to take, possess, or needlessly

destroy the nests or eggs of any bird. Section 3503.5 makes it unlawful to take or possess birds of prey (hawks, eagles, vultures, owls) or destroy their nests or eggs. In December of 2018, California issued new guidance specifying that state law includes “a prohibition on incidental take of migratory birds, notwithstanding any federal reinterpretation of the Migratory Bird Treaty Act” by the Department of Interior.

3.2.6 CDFW Sensitive Plant Communities

CDFW has designated special status natural communities which are considered rare in the region, rank as threatened or very threatened, support special status species, or otherwise receive some form of regulatory protection. Sensitive plant communities are those natural plant communities identified in local or regional plans, policies, ordinances, regulations, or by the CDFW which provide special functions or values. Documentation pertaining to these communities, as well as special status species (including species of special concern), is kept by CDFW as part of the California Natural Diversity Data Base (CNDDB). All known occurrences of sensitive habitats are mapped onto 7.5-minute US Geological Survey (USGS) topographic quadrangle maps maintained by the CNDDB. Sensitive plant communities are also identified by CDFW on their List of California Natural Communities Recognized by the CNDDB. Impacts to sensitive natural communities must be considered and evaluated under CEQA.

3.2.7 CDFW Species of Special Concern

CDFW tracks species in California whose numbers, reproductive success, or habitat may be threatened. Species that may be considered for review are included on a list of “Species of Special Concern” developed by the CDFW. Even though these species may not be formally listed under FESA or CESA, such plant and wildlife species must be evaluated during the CEQA review of development projects, and mitigation should be developed to prevent significant impacts to such species.

3.2.8 CDFW Fully Protected Animal Species

The classification of Fully Protected was an effort by the California Legislature in the 1960's to identify and provide additional protection to those animals that were rare or faced possible extinction. Protection of Fully Protected species is described in four sections of the Fish & Game Code that lists fully protected species (Fish &Game Code §§ 3511, 4700, 5050, and 5515). These statutes prohibit take or possession of fully protected species at any time. CDFW is unable to authorize incidental take of Fully Protected species when activities are proposed in areas inhabited by these species, except pursuant to an approved Natural Community Conservation Plan. Most Fully Protected species have also been listed as threatened or endangered species under state endangered species laws and regulations. Permits may be issued for the take of Fully Protected bird species for necessary scientific research and relocation of the bird species for the protection of livestock (as per California Fish and Game Code Section 3511(a)(1)).

3.3 Local Requirements

3.3.1 City of San Jose

In addition to federal and state regulations, development of the property must be accomplished consistent with the land use designations and natural resource and other policies of the San Jose General Plan and Zoning Ordinance.

Of particular relevance to the proposed project is the City of San Jose policy of protecting riparian corridors. This policy is summarized in the August 23, 2016, City Council Policy *Riparian Corridor Protection and Bird-Safe Design* (Policy Number 6-34). The riparian protection policies are based on the 1999 Riparian Corridor Policy Study that established a standard of a 100-foot riparian corridor setback, with an exception for projects where no significant environmental impact will occur. The Policy states that "riparian projects should be designed and implemented to minimize intrusion into riparian corridors. Land use related operational issues that could affect riparian corridors may need to be addressed through conditions in Development Permits." The Policy establishes the guideline for setbacks from riparian corridors for new buildings in existing urban infill areas and for new residential or commercial/institutional buildings, parking facilities and roads at 100 feet. Seven criteria for a possible exception to the 100-foot setback requirement are listed in the policy.

3.3.2 Santa Clara Valley Habitat Plan

The *Santa Clara Valley Habitat Plan* (ICF International 2012) is both a habitat conservation plan (HCP) intended to fulfill the requirements of the federal Endangered Species Act and a Natural Community Conservation Plan to fulfill the requirements of the California Natural Community Conservation Planning Act (NCCP Act). The plan was prepared by ICF in a collaborative effort by the "Local Partners": County of Santa Clara (County), the Santa Clara Valley Water District, the Santa Clara Valley Transportation Authority (VTA) and the cities of Gilroy, Morgan Hill, and San Jose. The San José City Council adopted the *Habitat Plan* on January 29, 2013.

The *Santa Clara Valley Habitat Plan* (SCVHP) provides a framework for promoting the protection and recovery of natural resources, including endangered species, while streamlining the permitting process for planned development, infrastructure, and maintenance activities. The *Habitat Plan* allows the Local Partners to receive endangered-species permits for activities and projects they conduct and for those under their jurisdiction. Eighteen animal and plant species are covered by the *Habitat Plan*. The Santa Clara Valley Habitat Agency (Habitat Agency) is the agency primarily responsible for executing the requirements of the *Habitat Plan*, federal and state endangered species permits, and the Implementing Agreement (the legal document between the Wildlife Agencies and Co-Permittees to implement the Plan). The City of San Jose, among others, is responsible for *Habitat Plan* compliance with respect to private development projects within its jurisdiction and for ensuring that its own public projects are carried out in conformance with the Plan.

3.4 California Native Plant Society

The California Native Plant Society (CNPS), a nongovernmental organization, has no regulatory authority but provides information that is often used by regulatory bodies. CNPS maintains a list of plant species native to California that have low numbers, limited distribution, or are otherwise threatened with extinction. This information is published in the Inventory of Rare and Endangered Plants of California (CNPS 2014: https://www.cnps.org/cnps/rareplants/inventory/). Potential impacts to populations of CNPS-listed plants receive consideration under CEQA review, especially for those plant species including in Lists 1 and 2. The following identifies the definitions of the CNPS listings: https://www.cnps.org/cnps/rareplants/ranking.php

California Rare Plant Rank 1A:	Plants presumed extirpated in California and either rare or extinct elsewhere.
California Rare Plant Rank 1B:	Plants rare, threatened, or endangered in California and elsewhere.
California Rare Plant Rank 2A:	Plants presumed extirpated in California, but more common elsewhere.
California Rare Plant Rank 2B:	Plants rare, threatened, or endangered in California, but more numerous elsewhere.
California Rare Plant Rank 3:	Plants about which more information is needed – a review list.
California Rare Plant Rank 4:	Plants of limited distribution – a watch list.

4.0 EXISTING BIOLOGICAL SETTING

The description of the biological setting of the Project Site is based on field visits by HBG Wetland Regulatory Scientist Terry Huffman, PhD, on August 13 and November 9, 2021. Dr. Huffman visited the site for purposes of conducting observations of the composition and distribution of plant species, wildlife observations, identification of sensitive habitats, and a comparison of site characteristics for similarity to sites known to support special status species within the area.

4.1 Land Use

The site is currently undeveloped but supported a walnut orchard between the 1960s and early 1980s, as seen on the USGS topographic map (Figure 2). The Project Site is designated in the San Jose General Plan as Combined Industrial/Commercial and is zoned Industrial Park (IP). The site is surrounded by commercial office space and light industrial uses to the north, east, and south, with a City-owned vacant parcel followed by Coyote Creek Park and trail forming its western boundary (Attachment 1, Figure 3).

4.2 Topography

Topographically, the site is relatively flat relief with 0 to 2.0 percent slope. Coyote Creek and the Coyote Creek Trail are also adjacent the site in the northwestern corner of the site. Attachment 1, Figure 2 shows the location of the site on the San Jose East 7.5-minute USGS quadrangle map, and Attachment 1, Figure 3 shows an aerial photo of the Project Site.

4.3 Soils

Soil survey information for the Project Area was obtained from a site-specific Natural Resources Conservation Service Web Soil Survey report (NRCS 2021). Two soil types are mapped as occurring on the Project Site (Attachment 1, Figure 5):

- *Urban land-Elpaloalto complex, 0 to 2 percent slopes* comprises 14.6 acres of the 15.1-acre Project Site.
- *Urban land, 0 to 2 percent slopes, alluvial fans* occupies 0.5 acre of the Project Site in a strip of land along the eastern boundary of the site.

The table below summarizes the basic properties of these soils.

Summary of Pertinent Characteristics of Soils Mapped Onsite by NRCS					
Soil Name	**Landform / Parent Material**	**Typical Profile (inches)**	**Natural Drainage Class / Runoff Class**	**Depth to Water Table (inches)**	**Frequency of Flooding / Ponding**
Urban land, 0 to 2 percent slopes, alluvial fans	Disturbed and human transported material	Not documented	Not documented	Not documented	Not documented

Summary of Pertinent Characteristics of Soils Mapped Onsite by NRCS					
Soil Name	**Landform / Parent Material**	**Typical Profile (inches)**	**Natural Drainage Class / Runoff Class**	**Depth to Water Table (inches)**	**Frequency of Flooding / Ponding**
Urban land-Elpaloalto complex, 0 to 2 percent slopes	Disturbed and human transported material / Alluvium derived from metamorphic and sedimentary rock and/or alluvium derived from metavolcanics	Oi - 0 to 8 inches: slightly decomposed plant material A - 8 to 17 inches: clay loam Bw1 - 17 to 26 inches: silty clay loam Bw2 - 26 to 35 inches: silty clay loam Bw3 - 35 to 47 inches: silty clay loam Bw4 - 47 to 71 inches: silty clay loam C - 71 to 94 inches: silty clay loam	Well-drained / Low	>80	None / None

4.4 Climate

Like other portions of northern California, San Jose experiences a Mediterranean climate characterized by warm, dry summers and cool, wet winters. Based on "WETS Station San Jose, INTL AP, CA" precipitation and temperature data for the period of record (1971 – 2021), the average annual precipitation amount received in the vicinity of the property is 12.10 inches of rainfall and 0.0 inch received as snow. The wettest month, in which average monthly rainfall exceeds 2.0 inches, is January (2.45 inches) with the lowest average amount occurring in August (0.01). Record data also indicates that the annual average daily temperature is 60.7° F. Average high and low temperatures range between 71.1 and 50.3° F with the coldest months typically including December and January where temperatures are in the low 40s and the hottest months being June and September where temperatures are in the low 80s.

4.5 Hydrology

Attachment 1, Figure 6, identifies USGS National Hydrography Dataset (NHD) Hydrologic Unit Code (HUC) watersheds at and adjacent to the site. The Project site lies within the HUC NHD 8-digit watershed of the "Coyote" (18050003) (Attachment 1, Figure 6). Drainage on the site is to the northwest in the direction of Coyote Creek. The FEMA Rate Map City of San Jose indicates the Project site is within FEMA Zone D (areas in which flood hazards are undetermined, but possible).

4.6 Plant Communities

Vegetation communities are assemblages of plant species growing in an area of similar biological and environmental factors. Vegetation communities and habitats at the Project Site were identified based on the currently accepted List of Natural Communities (CDFW 2010). The list is based on A Manual of California Vegetation, Second Edition (Sawyer and Keeler-Wolf 2009), which is the National Vegetation Classification applied to California. The Project Site contains one habitat type: Non-native Grassland.

Dominant plant species found in the open field within the property were non-native grasses and herbaceous plants including wild oats (*Avena fatua),* common vetch (*Vicia sativa*), rip-gut brome (*Bromus diandrus*), perennial rye grass (*Festuca perennis*), field bindweed (*Convolvulus arvensis*), foxtail barley (*Hordeum murinum*), field mustard (*Brassica rapa*), wild radish (*Raphanus sativus*), and common mallow (*Malva neglecta*). Scattered landscaping trees line the property boundaries and street frontages. Several scattered shrub-size woody plants occur within the non-native grass-dominated property, as well as Coast live oak (*Quercus agrifolia*), blue elderberry (*Sambucus mexicana*), walnut (*Juglans* sp.), and coyote brush (*Baccharis pilularis*). Several standing dead walnut trees, stumps, and cut wood piles in the approximate center of the property provide evidence of a walnut orchard that occupied the site between the 1960s and early 1980s (See also Attachment 1, Figure 2, USGS topographic mapping).

A canopy of trees near the northwestern border of the Project Site comprises a portion of the riparian corridor of Coyote Creek. The trees include valley oak (*Quercus lobata*), Coast live oak, Fremont's cottonwood (*Populus fremontii*), walnut, arroyo willow (*Salix lasiolepis*), blue elderberry, and California sycamore (*Platanus racemosa*). Understory species in the riparian habitat include shrubs and herbaceous plants that such as California blackberry (*Rubus ursinus*), elderberry, coyote brush, sweet fennel (*Foeniculum vulgare*), and Harding grass (*Phalaris aquatica*). A remnant Oak Woodland habitat dominated by Coast live oak also occurs between the riparian corridor of Coyote Creek and the non-native-grass-dominated Project Site. Walnut and blue elderberry are also present.

4.7 Animal Populations

The Project Site provides limited habitat for wildlife species, mostly those adapted to open areas and disturbed environments. Grasses and herbaceous plants within the Project Site provide limited nesting and roosting sites for birds, and cover and foraging habitat for species of birds, mammals, reptiles, and amphibians. Trees within the Coyote Creek riparian corridor just beyond the northwestern corner of the property (including valley oak, Coast live oak, walnut, Fremont's cottonwood, box elder, and California sycamore) provide suitable substrate for nesting birds and could potentially provide roosting sites for a number of species of bat known to occur in the general area.

The riparian habitat of Coyote Creek provides shelter and cover for a variety of wildlife species such as amphibians, reptiles, birds, and mammals. Canopy riparian trees and other vegetation

provide nesting substrates for a number of bird species as well as foraging areas for both migratory and resident species. As with many riparian systems, the creek at this location provides a movement corridor for wildlife adapted to urban environments such as those found in the project area.

Bird species likely to occur on the site would include species adapted for urban environments and disturbed conditions and that would be common to abundant in the region. Expected common year-round residents could include mourning dove (*Zenaida macroura*), rock pigeon (*Columba livia)*, killdeer (*Charadrius vociferous),* Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), European starling (*Sturnus vulgaris)*, northern mockingbird (*Mimus polyglottos)*, black phoebe (*Sayornis nigricans),* savannah sparrow (*Passerculus sandwichensis*) California towhee (*Melozone crissalis),* house finch (*Haemorhous mexicanus*) and house sparrow (*Passer domesticus*). Winter residents would include white-crowned sparrow (*Zonotrichia leucophrys*) and yellow-rumped warbler (*Setophaga coronata*). Turkey vulture (*Cathartes aura*) and red-tailed hawk (*Buteo jamaicensis*) are also likely common in the project vicinity.

Amphibian species would likely include Pacific treefrog (*Pseudacris regilla*), among others. Reptiles such as western fence lizard (*Sceloperus occidentalis),* Pacific gopher snake (*Pituophis catenifer)* and common garter snake (*Thamnophis sirtalis elegans)* may also be present. Dens of Botta's pocket gopher (*Thomomys bottae*) and California vole (*Microtus californicus*) were observed on the site during the 2021 field reviews, and a nest house for a dusky-footed woodrat (*Neotoma fuscipes annectens)* was found along the edge of the Coyote Creek oak woodland habitat approximately 35 feet from the northwest corner of the site. Other expected mammals would be those adapted to disturbed, urban environments such as Virginia opossum (*Didelphis virginiana*), black-tailed jackrabbit (*Lepus californicus*), deer mouse (*Peromyscus maniculatus*), striped skunk, (*Mephitis mephitis*), and raccoon (*Procyon lotor*).

4.8 Sensitive Habitats

4.8.1 Wetlands

During the August 13 and November 9, 2021, field surveys, Terry Huffman of HBG investigated whether aquatic resources are present at the Project Site that may potentially be subject to Corps and US EPA regulation under Section 404 of the Clean Water Act (33 U.S.C. 1344) or Corps jurisdiction under Section 10 of the Rivers and Harbors Act (RHA) (33 U.S.C. 403). HBG conducted this study in accordance with Code of Federal Regulations definitions of jurisdictional waters, the *Corps' 1987 Wetlands Delineation Manual* (Corps Delineation Manual), the *Corps' 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)* (Regional Supplement) and supporting Corps and US EPA guidance documents including recent guidance. HBG's investigation included an assessment of whether aquatic resources are present that are potentially subject to state regulatory jurisdiction of the San Francisco Bay RWQCB under the Porter-Cologne Act or the regulatory jurisdiction of CDFW under California Fish and Game Code Section 1602. The review included an

investigation of existing landforms, vegetation, hydrology, and soil conditions, but consisted of a preliminary review of the area for wetland habitats.

The HBG investigation found no areas within the Project Site having a potential to support wetlands or other waters of the U.S. subject to USACE jurisdiction or that would potentially found to be subject to RWQCB jurisdiction under the Porter-Cologne Act or jurisdiction of CDFW under the California Fish and Game Code. Coyote Creek, a perennial stream located to the northwest beyond the northwest corner of the Project Site would be subject to USACE Corps jurisdiction under the CWA, SFBRWQCB jurisdiction under the Porter-Cologne Act and CDFW jurisdiction under the Fish and Game Code.

4.8.2 Riparian Corridors

4.8.2.1 SCVHP RIPARIAN CORRIDOR POLICIES

Riparian corridors are protected by policy in the *Santa Clara Valley Habitat Plan* (SCVHP). The SCVHP defines "riparian habitat" as riparian vegetation associated with river, stream, or lake banks and floodplains. Condition 11 requires stream setbacks for all covered activities occurring near streams and riparian areas to minimize effects on covered species. The point from which a stream setback is measured is, in general, the top of bank or the edge of riparian vegetation, whichever is greater. All covered activities must adhere to both the applicable existing local regulations as well as SCVHP requirements. Approved development proposals in the City of San Jose that are deemed covered projects in the SCVHP are subject to its requirements and conditions.

The SCVHP defines two types of streams:

- A Category 1 stream has sufficient flow to support covered species and riparian habitat. These streams include perennial streams and some intermittent streams. These streams are typically larger than ephemeral drainages and support movement of covered species along the length of the stream. The ability of these streams to also support healthy riparian habitats bolsters the ecological value of the stream. Inside the Urban Service Area, the SCVHP states that "… the setback for Category 1 streams is 100 feet, although for parcels with slopes greater than 30 percent the setback is increased by 50 feet, and if the site supports riparian vegetation, the setback "is equal to either the riparian edge plus a 35-foot buffer or the setback as defined above, whichever is greater."

- A Category 2 stream may not have sufficient flow to support covered species and riparian habitat. These streams include all ephemeral streams and some intermittent stream reaches. These reaches provide minimum support of water-quality functions and primary breeding habitat for covered species. Category 2 streams are not specifically mapped as part of the SCVHP. They include both identified streams (named creeks and USGS blueline creeks) that are not classified as Category 1 streams and other unmapped streams that meet certain criteria. The setback for all Category 2 streams is 35 feet regardless of location

or slope. In addition, if the site supports riparian vegetation, the setback is extended to include the riparian edge plus a 35-foot buffer.

If a watercourse is not mapped by the SCVHP it will be classified as a Category 2 stream, and covered by the SCVHP if it meets the following criteria:

1. the watercourse is hydrologically connected to a waterway above and below the site or is connected to a spring, headwaters, lake, and/or bay,
2. the watercourse is within a defined channel which includes a bed, bank, and exhibits features that indicate actual or potential sediment movement,
3. the watercourse occupies a specific topographic position.

The SCVHP provides four criteria for possible exception to stream setbacks:

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

The minimum setback reduction possible under the SCVHP is 35 feet.

4.8.2.2 CITY OF SAN JOSE RIPARIAN CORRIDOR POLICIES

According to the *City of San Jose's Council Policy 6-34,* projects adjacent to creeks require a 100-foot development setback from the edge of riparian habitat (defined as the top of bank or the outer dripline of riparian vegetation, whichever is farther from the channel). This setback from the edge of riparian habitat can be reduced if:

1. Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.
2. Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.
3. Sites adjacent to small lower order tributaries whose riparian influences do not extend to the 100-foot setback.
4. Sites with unique geometric characteristics and/or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback.

5. Pre-existing one- or two-family residential lots, or typical yard area, but only where a frontage road is infeasible to buffer Riparian Corridors from these and the Building Setbacks are consistent with all Riparian Corridor setback requirements.
6. Sites that are being redeveloped with uses that are similar to the existing uses or are more compatible with the Riparian Corridor than the existing use, and where the intensity of the new development will have significantly less environmental impacts on the Riparian Corridor than the existing development.
7. Instances where implementation of the project includes measures that can protect and enhance the riparian value more than the minimum setback.

Riparian Setback Evaluation
The SCVHP Geobrowser shows Coyote Creek to require a 150-foot setback at this location instead of the typical 100-foot setback for Category 1 Streams. The 150-foot setback is required for areas with a greater than 30 percent slope. The slope on the subject property is not greater than 30 Percent and the area between the top-of-bank and the site is relatively flat. An additional 50 feet of setback is not warranted for this site, and the recommended riparian setback from Coyote Creek would be 100 feet as measured from the top of bank or edge of riparian vegetation, whichever is greater.

Based on field surveys by HBG, the limit of the riparian corridor of Coyote Creek was established at the edge of riparian vegetation (edge of riparian forest drip line) extending beyond the top of bank (Attachment 1, Figure 7). Figure 7 shows that a 100-foot buffer zone would slightly encroach into the northwest corner of the Project Site. The closest distance from the northwest corner of the property to the edge of the riparian corridor is 97 feet. Out of the four SCVCHP criteria for a possible exception to a strict 100-foot setback, only Criterion #1 is potentially applicable to the Project Site. Several previously constructed features are present within the setback between the Project Site and the riparian corridor at the northwest corner of the site. These include a publicly-owned pump station and unpaved access road adjacent to the corner of the property and the paved Coyote Creek trail. Riparian vegetation dominated by Coast live oak was found along the top of bank of Coyote Creek adjacent to the paved Coyote Creek trail, and in some instances, the drip line of these trees extended over the trail at several locations.

Although a 100-foot setback encroaches only slightly into the northwest corner of the property, the applicant may request an exception to a 100-foot setback requirement based on factors related to Criterion #1. The *City of San Jose's Council Policy 6-34* requires a 100-foot setback from the edge of the riparian habitat of Coyote Creek (defined as the top of bank or the outer dripline of riparian vegetation, whichever is further from the channel). The seven criteria for a possible exception to the 100-foot setback requirement as established by City of San Jose policy are listed above. It does not appear as though any of these criteria are applicable to the proposed Project Site.

4.9 Special Status Species

Special status species to be evaluated in reviews pursuant to the California Environmental Quality Act (CEQA) include those species listed by the federal and state governments as endangered, threatened, or rare or candidate species for these lists. Endangered or threatened species are protected by the federal Endangered Species Act of 1973 as amended, the California Native Plant Protection Act of 1977, and the California Endangered Species Act of 1970. CEQA provides additional protection for unlisted species that meet the "rare" or "endangered" criteria defined in Title 14, California Code of Regulations Section 15380. Special status species also include those species listed by CDFW as Species of Concern (species that face extirpation in California if current population and habitat trends continue), those listed as Fully Protected by CDFW (a designation that provides additional protection to those animals that were rare or faced possible extinction), and bird species designated as Bird Species of Conservation Concern by the USFWS. These state and federal Species of Concern must be evaluated in the context of evaluation under CEQA. Special status species included in CEQA review also include bat species protected by the California Fish and Game Code and that have been designated with conservation priority by the Western Bat Working Group. CEQA also requires evaluation of impacts to plant species on California Native Plant Society (CNPS) Lists 1 and 2.

The CDFW maintains records for the distribution and known occurrences of special status species and sensitive habitats in the California Natural Diversity Database (CNDDB). The CNDDB is organized into map areas based on 7.5-minute topographic quadrangle maps produced by the USGS. All known occurrences of special status species are mapped onto quadrangle maps maintained by the CNDDB. The database gives further detailed information on each occurrence, including specific location of the individual, population, or habitat (if possible) and the presumed current state of the population or habitat. The Project Site is in the USGS San Jose East 7.5-minute quadrangle map (Attachment 1, Figure 2).

Attachment 2, Tables 1 and 2 present a list of special status plants and animals, respectively, that have been reported by the CNDDB in the project vicinity within 10 miles of the site. An evaluation of the potential for all potential sensitive species to occur at the site is included in Attachment 2, Tables 1 and 2.

4.9.1 Special Status Plant Species

A list of special status plants with potential to occur on the property was developed from the CNDDB. A complete list of special status plant species occurring in the vicinity of the property is included in Table 1. The table includes all species of flora mentioned in the CNDDB within approximately ten miles of the site.

The SCVHP requires that plant surveys be conducted in areas where occurrences of rare plants are most likely to occur. Such surveys are required in a variety of habitats occurring on serpentine soils and in areas that are within 0.25 miles of a known occurrence of a rare plant

covered under the SCVHP. Serpentine soils do not occur on the Project Site, and the CNDDB shows no known occurrences of special status plant species within 0.25 mile of the Project Site.

A number of special status plant species listed in Table 1 are known to occur in the southern San Jose area. The only special status plant species with even a remote chance of occurring on the site is Congdon's tarplant (*Centromedia parryi congdonii*). Congdon's tarplant is a California Native Plant Society (CNPS) List 1B.2 species found in alkaline soils in valley and foothills grassland. The flowering period for Congdon's tarplant is from May to October. The soils on the property are not alkaline soils, so the soils on the property are not optimally suitable for Congdon's tarplant. Nevertheless, HBG botanist Terry Huffman conducted a systematic survey for Congdon's tarplant during his survey of the property on August 13, 2021 (during the flowering period for the species) and the species was found to be absent from the site.

Although some of the rare plants noted in Table 1 are possible in the surrounding areas, all the species included in Table 1 require habitat conditions that are not found at the subject property. The Project Site is a vacant ruderal field vegetated with weedy species. The Project Site is not suitable habitat for native species and is not expected to support special status species of plant.

4.9.2 Special Status Animal Species

Animal species noted in the CNDDB as occurring within a 10-mile radius of the site, or that are known to occur in the general vicinity based on the knowledge of HBG biologists, are discussed in Table 2. The only special status species of animal covered by the SCVHP and noted in the CNDDB from near the subject property with a potential for occurrence at the site or in the immediate vicinity are burrowing owl (*Athene cunicularia*) and tricolored blackbird (*Aegelaius tricolor*). These two species are addressed in more detail below.

Two additional special status animal species that are not covered by the SCVHP occur on or near the site. These are steelhead (*Oncorhynchus mykiss)*(Central California Coast Ecologically Significant Unit (ESU) and the San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*).

- Steelhead from the Central California Coast ESU are federally listed as a threatened species. Steelhead in this ESU occur from the Russian River south to Soquel Creek and to, but not including the Pajaro River and including San Francisco and San Pablo Bays. These fish require well-oxygenated streams with riffles and loose, silt-free gravel substrate for spawning. Steelhead have been observed in Coyote Creek and are considered a resident species (ICF International 2012). It is possible that steelhead occasionally pass by the Project Site within Coyote Creek.

- San Francisco dusky-footed woodrat (one of eleven subspecies of the dusky-footed woodrat) is found in riparian, oak woodland, and scrub habitats from San Francisco Bay south through the Santa Cruz Mountains to Elkhorn Slough and inland to the Mount Diablo

area. This subspecies is a California Species of Special Concern. These woodrats construct houses out of sticks and other debris that are used for rearing young, protection from predators, resting, food storage, thermal protection, and social interaction. A dusky-footed woodrat nest was noted in the edge of the Coyote Creek oak woodland habitat approximately 35 feet from the northwest corner of the site during field reviews conducted by HBG.

None of the other animal species discussed in the table have the potential to occur on the site. This finding is made based on the habitat requirements of species listed in the table and is based on field review of habitats present at the site and the immediate vicinity and an evaluation of the suitability of on-site habitats to support these species.

4.9.2.1 BURROWING OWL

Background. Burrowing owls are small terrestrial owls commonly found in open grassland ranging from western Canada to portions of South America. Burrowing owl habitat can be found in annual and perennial grasslands, deserts, and scrublands characterized by low-growing vegetation. In California, burrowing owls most commonly use burrows of California ground squirrel, but they also may use man-made structures, such as cement culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement. Burrowing owls may use a site for breeding, wintering, foraging, and/or migration stopovers during migration. While foraging, owls will perch on raised burrow mounds or other topographic relief such as rocks, tall plants, fence posts, and debris piles to attain better visibility. Occupancy of suitable burrowing owl habitat can be verified at a site by an observation of at least one burrowing owl, or, alternatively, presence of "decoration" at or near a burrow entrance which can include molted feathers, cast pellets, prey remains, eggshell fragments, or excrement.

The burrowing owl is a USFWS bird species of conservation concern and a CDFW species of special concern (CDFW 2011). CDFW adopted survey protocol and mitigation guidelines for burrowing owls as described in a March 7, 2012, Staff Report (CDFW 2012).

The status of burrowing owl in the San Francisco Bay Area was summarized by Albion Environmental (2000) in a discussion included in the SCVHP. Nesting burrowing owls in the greater San Francisco Bay Area, and the South Bay area in particular, are a dwindling resource. In the early 1990s there were an estimated 150–170 breeding pairs in the San Francisco Bay Area, representing a 53% decline from the previous census period of 1986–1990. More recent numbers indicate that, if anything, the downward trend is increasing. In those estimates it was assumed that 75% of the San Francisco Bay Area burrowing owl population occurred in Santa Clara County and nearly all of those owls were congregated around the southern edge of the San Francisco Bay. Surveys in the early 1990s revealed that about a third (43–47 pairs) of Santa Clara County breeding pairs occurred inside what is now the Santa Clara Valley Habitat Plan study area (ICF International 2012).

SCVHP Policy. According to SCVHP Condition 15, burrowing owl habitat surveys are required within areas mapped in the SCVHP as occupied nesting habitat. Habitat surveys in occupied nesting habitat are required in both breeding and non-breeding seasons and require that a qualified biologist map areas with burrows (i.e., areas of highest likelihood of burrowing owl activity) and all burrows that may be occupied (as indicated by tracks, feathers, eggshell fragments, pellets, prey remains, or excrement) on the Project Site. This mapping is to be conducted throughout the project footprint as well as all accessible areas within a 250-foot radius from the project footprint.

Surveys are not required in sites that are mapped as potential burrowing owl nesting or mapped only as overwintering habitat. It should be noted, however, that avoidance measures, including preconstruction surveys, apply to all projects that affect any burrowing owl habitat, regardless of whether surveys are required by SCVHP Condition 15. If burrowing owls are present, the SCVHP requires a number of avoidance and minimization measures.

Potential Occurrence on the Project Site. There are no recent records of burrowing owl in the vicinity of the site, and the site is currently outside of the SCVHP fee area for breeding burrowing owls (i.e., more than 0.5 mile from a known breeding burrowing owl location, based on review of the SCVHP Geobrowser). Habitat surveys are therefore not required. Even though habitat surveys for burrowing owl are not required by Condition 15 given the mapping in the SCVHP, the site was investigated for burrowing owls and burrowing owl habitat during site reconnaissance by an HBG biologist on August 13 and November 9, 2021. No burrowing owls were observed on the Project Site by the HBG biologist during the field visits. In addition, the biologist found no California ground squirrels or ground squirrel burrows on the development site, only dens of Botta's pocket gopher and California vole which would not be occupied by burrowing owl. A lack of ground squirrel burrows suggests that the habitat does not support burrowing owl and is not suitable to support burrowing owl.

4.9.2.2 TRICOLORED BLACKBIRD

Background. Tricolored blackbird is listed as endangered under the California Endangered Species Act. Tricolored blackbird is also currently designated as a state species of special concern and is designated by the USFWS as a Bird Species of Conservation Concern. Tricolored blackbird is a highly colonial nesting species that breeds near freshwater, preferably in emergent wetlands with tall, dense growth of cattails or tules. Even when the preferred nesting substrates are available, other vegetation may be used for nesting including sedges, nettles, willows, thistles, mustard, blackberry, wild rose, foxtail grass or barley. Since the 1970s with declines in populations, nesting in cereal crops and dairy silage has been documented. Tricolored blackbird foraging areas include rangeland, fields of alfalfa or cut hay, or irrigated pastures with an abundance of insects.

SCVHP Policy. The SCVHP Condition 17 requires surveys related to tricolored blackbird if the project-specific verified land cover map as mapped in Section 6.8.3 shows that the project area

is within 250 feet of any riparian, coastal and valley freshwater marsh (perennial wetlands), or pond land cover types. If a project meets this criterion, a qualified biologist will conduct a field investigation to identify and map potential nesting substrate. Nesting substrate generally includes flooded, thorny, or spiny vegetation (e.g., cattails, bulrushes, willows, blackberries, thistles, or nettles). If potential nesting substrate is found, the project proponent may revise the proposed project to avoid all areas within a 250-foot buffer around the potential nesting habitat and surveys will be concluded. If nesting tricolored blackbirds are present, the SCVHP requires avoidance and minimization measures.

Potential Occurrence on the Project Site. According to mapping within the SCVHP, the Project Site is within 250 feet of a riparian corridor (Coyote Creek) and thus SCVHP Condition 17 requires a field investigation to map potential nesting sites for tricolored blackbird. Therefore, as a portion of the Project Site is within 250 feet of potentially suitable habitat for a tricolored blackbird nesting colony, this requires that at a qualified biologist conduct a field investigation to identify and map potential nesting substrate for tricolored blackbird. HBG conducted an evaluation of the habitat conditions within Coyote Creek adjacent to the site to determine if nesting substrate for a tricolored blackbird nesting colony is present in the project area that could be subject to indirect impacts as a result of the project. Willow trees, which can serve as nesting substrate for a colony of tricolored blackbirds, are present in the Coyote Creek channel. Although nesting by this species is not likely in this primarily urban setting and no evidence of nesting tricolored blackbirds were noted during the field visit conducted on August 13 (which is at the tail-end of the nesting season), the presence of nesting tricolored blackbird cannot be ruled out.

5.0 BIOLOGICAL IMPACTS AND MITIGATION MEASURES

5.1 Standards of Significance

According to Appendix G of the CEQA Guidelines, the project would be considered to have a significant impact on biological resources if it would:

1. *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 Wildlife and Game or U.S. Fish and Wildlife Service.*
2. *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or US Fish and Wildlife Service.*
3. *Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.*
4. *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.*
5. *Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.*
6. *Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.*

5.2 Impacts and Mitigation Measures

The following provides an evaluation of project impacts on biological resources based the above CEQA standards of significance. Mitigation measures are provided where significant impacts are identified.

Significance Standard 1. *Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?*

Special Status Plants. The proposed project would not result in any significant adverse impacts on special status plant species. The Project Site is a weedy field that is not suitable habitat for native species and would not be expected to support special status species of plant. All the species included in Table 1 require habitat conditions that are not found at the subject property. Although the site may support marginally suitable habitat for Congdon's tarplant, a systematic survey of the property for Congdon's tarplant on August 13, 2021 (during the flowering period of the species) showed that this species is not present. No special status plant species occur on the subject property, therefore no impacts to special status plants would result from implementation of the proposed project. The proposed project would not

substantially reduce the number or restrict the range of a rare, endangered, or threatened plant species.

Special Status Animals

Burrowing Owl. Field surveys conducted by HBG found no burrowing owls or ground squirrel burrows that could be occupied by burrowing owl on the Project Site. Surveys for burrowing owl or burrowing owl habitat are not required for the Project Site according to criteria of the SCVHP, and field surveys that were conducted by HBG found no evidence of occupation by burrowing owls on the Project Site or in the project vicinity and no evidence of suitable habitat in the form of ground squirrel burrows on the property. Burrowing owls do not occur onsite or in the project vicinity, therefore, no impact to burrowing owl is expected during construction of the project.

Tricolored Blackbird. No habitat for tricolored blackbird occurs on the Project Site, therefore, no direct impact to a tricolored blackbird nesting colony would occur as a result of the proposed project. Although HBG found no tricolored blackbirds either on the site or within the Coyote Creek riparian corridor during a nesting season survey of the site on August 13, 2021, Coyote Creek is mapped in the SCVHP as habitat potentially suitable to support tricolored blackbird, and minimally suitable habitat for a nesting colony in the form of willow trees was observed within Coyote Creek during field studies.

If a nesting colony of tricolored blackbird was found adjacent to the site within Coyote Creek, indirect impacts would be possible if construction were to occur within 250-feet of the nesting colony. Although nesting by this species is not likely in this primarily urban setting and no evidence of nesting tricolored blackbirds were noted during the field visit conducted on August 13 (which is at the tail-end of the nesting season), the presence of nesting tricolored blackbird cannot be ruled out. Therefore, a preconstruction survey for nesting tricolored blackbird should be conducted if project construction is scheduled to commence during the bird nesting season (between February 1 and August 31). If a nesting colony of tricolored blackbirds is found, a 250-foot buffer zone of no construction would need to be established around the colony that would be maintained until the young have fledged.

> **Impact #1:** Construction during the nesting season (February 1 to August 31) could indirectly impact nesting tricolored blackbird if a nesting colony was found within Coyote Creek within 250 feet of construction activities.
>
> **Mitigation Measure #1:** A preconstruction survey for tricolored blackbird should be conducted within the portion of Coyote Creek adjacent to the site to determine if nesting by tricolored blackbird occurs in close proximity to project construction. If a tricolored blackbird nesting colony is found in the vicinity of project construction, a 250-foot setback should be established from the colony as required by the SCVHP. The project applicant should implement the buffer zone of no construction activity within

portions of the Project Site, as necessary, to ensure protection of the nesting colony within the established buffer distance.

Other Special Status Species. Steelhead likely occasionally pass by the site within Coyote Creek. Without proper mitigation, erosion and consequent siltation of creeks can result in impacts to steelhead by covering of spawning gravels, a decreased respiratory function in fish, increasing turbidity levels and diminishing light penetration to submergent vegetation, and raising of water temperature. None of these impacts to steelhead would result from development of the project as the Project Site plan will be revised to provide a 100-foot setback from the edge of the Coyote Creek riparian corridor and Best Management Practices will applied to construction activities to prevent erosion and stream sedimentation (See response to Item #4).

A nest of San Francisco dusky-footed woodrat was noted in the edge of the Coyote Creek oak woodland habitat approximately 35 feet from the northwest corner of the site during field reviews conducted by HBG. No construction would take place within the riparian corridor of Coyote Creek or adjacent areas that include the oak small oak woodland where the woodrat nest was found, as these areas will be protected within the development setback from the Coyote Creek riparian area. No impacts to nest houses of San Francisco dusky-footed woodrat would occur as a result of the proposed project.

Significance Standard 2. *Would the project 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 California Department of Fish and Wildlife or US Fish and Wildlife Service?*

Coyote Creek would be protected by either a 100-foot setback as recommended by the SCVHP and as mapped in the field by HBG and shown in Attachment 1, Figure 7, or a reduced setback if an exception to the 100-foot buffer zone is granted. Preliminary development plans for the project would slightly encroach within a 100-foot riparian setback for Coyote Creek in the northwest corner of the site (see Attachment 1, Figure 4). As explained in Section 4.8.2, the applicant may request an exception to a 100-foot setback requirement based on factors related to Criterion #1. Several previously constructed features are present within the setback between the Project Site and the riparian corridor including a publicly-owned pump station, unpaved access road, and the paved Coyote Creek trail. Given these ongoing disturbances within the riparian setback at this location and the fact that the portion of the project proposed within this small area at the northwest corner of the Project Site is planned for landscaping and stormwater treatment rather that parking, truck stalls, or other impervious surfaces, it is not expected that development of project uses within this portion of the site would result in significant indirect biological impacts to the riparian habitat. If no exception to the recommended 100-foot riparian setback is granted in this case, changes to the site plan would be necessary to achieve compliance with the requirements of the SCVHP and City of San Jose regarding riparian corridor buffer zones.

Impact #2- Preliminary development plans for the project would slightly encroach within a recommended 100-foot riparian setback for Coyote Creek in the northwest corner of the site. The applicant may request an exception to a 100-foot setback requirement based on factors related to SCVHP exception Criterion #1. If no exception to the recommended 100-foot riparian setback is granted in this case, changes to the site plan to eliminate landscaping and stormwater treatment in the northwest corner of the site would be necessary to achieve compliance with the requirements of the SCVHP and City of San Jose regarding riparian corridor buffer zones.

Mitigation Measure #2: The applicant should apply for an exception to the 100-foot riparian buffer zone requirement of the SCVHP based on factors related to exception Criterion #1, or, if no exception is granted, modify the proposed site plan to include a 100-foot buffer zone of no development from the edge of the riparian vegetation of Coyote Creek as mapped in Figure 7.

Significance Standard 3. *Would the project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?*

Development of the property as proposed would not result in filling (direct impacts) to any area that would be subject to the Clean Water Act jurisdiction of the U.S. Army Corps of Engineers, the state CWA 401 and Porter-Cologne Act jurisdictions of the SFBRWQCB, or Section 1602 Fish and Game Code jurisdiction of CDFW. No permits from the USACE, SFBRWQCB, or CDFW would be required. The potential for indirect impacts to the riparian habitat of Coyote Creek is discussed in response to Item #2.

Significance Standard 4. *Would the project 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?*

The Project Site is an open field vegetated with weedy species in an urban setting. Although some bird species adapted for open fields and disturbed areas were observed on the site, and other wildlife adapted to urban environments are expected, the Project Site itself provides little habitat for wildlife. Nevertheless, nesting by various bird species adapted to the onsite conditions is possible within the onsite habitat. The adjacent riparian corridor of Coyote Creek and oak trees in the vicinity of the riparian habitat may provide substrate for nesting birds or cavities that could support nesting birds or roosting bats. A 100-foot buffer zone along the edge of riparian habitat of Coyote Creek (or slightly reduced with an approved exception) would ensure that indirect impacts to nesting birds, roosting bats, or other wildlife species do not occur. The buffer zone from Coyote Creek would ensure that construction of the proposed project would not result in substantial change in animal populations at the site.

Nesting Birds. Nesting bird species protected by the federal Migratory Bird Treaty Act or California Fish and Game Code could be impacted during project construction. Work related to construction involving the removal of vegetation during the February 1 to August 31 breeding season of birds could result in mortality of nesting avian species if they are present. Many species of raptors (birds of prey) are sensitive to human incursion and construction activities, and it is necessary to ensure that nesting raptor species are not present in the vicinity of construction sites.

Removal of vegetation from within the project footprint during the February 1 to August 31 bird nesting season could disturb nesting sites. If active nests were present within the vegetation comprising the riparian corridor of Coyote Creek during construction activities at the site, indirect impacts could occur to nesting bird species protected by the Migratory Bird Treaty Act or the California Fish and Game Code as a result of construction activity on portions of the project adjacent to these areas.

> **Impact #3:** The removal of vegetation during the February 1 to August 31 breeding season could result in mortality of nesting avian species if they are present.
>
> **Mitigation Measure #3:** If construction is to be conducted during the bird nesting season (February 1 to August 31), a qualified biologist should conduct a pre-construction breeding bird survey in areas of suitable habitat within 15 days prior to the onset of construction activity. Nesting bird surveys should cover the project footprint and adjacent riparian areas within Coyote Creek. If bird nests are found, appropriate buffer zones should be established around all active nests to protect nesting adults and their young from direct or indirect impacts related to project construction disturbance. Size of buffer zones should be determined per recommendations of the qualified biologist based on site conditions and species involved. Buffer zones should be maintained until it can be documented that either the nest has failed or the young have fledged.

Water Quality. Construction activities will occur in areas in the vicinity of Coyote Creek, but water quality impacts to aquatic wildlife in Coyote Creek would not be significant for several reasons. Impacts of soil migration during construction from the Project Site to the sensitive habitat along Coyote Creek is not expected to be significant as the riparian corridor of Coyote Creek will be protected by a 100-foot (or slightly reduced) buffer zone of no construction as required by policies of the SCVHP and the City of San Jose. Moreover, Coyote Creek will be protected as the applicant intends to employ Best Management Practices (BMPs) to control erosion and migration of soil offsite.

The requirement for the implementation of a Stormwater Pollution Prevention Plan (SWPPP), with identification of proper construction techniques and Best Management Practices (BMPs) will be required and will provide additional assurance that water quality of Coyote Creek and other nearby waterways are not affected by onsite construction activities. In particular, silt fence and straw wattles will be installed along portions of the Project Site to maintain levels of

water pollutants migrating offsite. In addition, vegetation will only be cleared from the permitted construction footprint. Areas cleared of vegetation, pavement, or other substrates should be stabilized as quickly as possible to prevent erosion and runoff.

Grading, excavation, placement of fill material and other ground-disturbing activities associated with construction activities within the Project Site will not promote erosion that would allow elevated levels of sediment to wash into Coyote Creek and into aquatic areas downstream, resulting in potential impacts to fish and wildlife resources. Indirect impacts to resident animal populations within Coyote Creek would not result from the proposed project due to elevated turbidity levels from increased sedimentation or increases in other contaminants in stormwater runoff.

Significance Standard 5*. Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?*

The project would not conflict with any local policies related to protection of natural resources. No living trees onsite are "ordinance-size trees" under San Jose's Tree Ordinance (Municipal Code Chapter 13.32), which defines an native or nonnative trees as having a circumference of 38 inches at 54 inches above the natural grade of slope; a permit to remove any trees covered by the ordinance is required. The several small oak and blue elderberry shrubs present onsite that do not meet this definition of a tree. Several standing dead walnut trees in the center of the property are remnants of a former walnut orchard. All work would take place consistent with requirements of the SCVHP and the General Plan and Zoning Ordinance of the City of San Jose.

Significance Standard 6. *Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?*

A check with the Santa Clara Valley Habitat Agency Geobrowser tool shows that the Project Site is within the Agency's Habitat Plan Permit Area. The applicant will submit necessary applications to the City of San Jose and Santa Clara Valley Planning Agency for the project, including the Santa Clara Valley Habitat Plan Application for Private Projects and the Santa Clara Valley Habitat Plan Coverage Screening Form.

6.0 REFERENCES

Albion Environmental, Inc. 2000. City of San Jose, burrowing owl habitat conservation strategy and implementation plan. Draft Final Report. April 2000.

Baldwin, B.G., D.H. Goldman, D.J. Keil, R. Patterson, and T.J. Rosatti, editors. 2012. *The Jepson Manual. Vascular Plants of California, Second Edition, Thoroughly Revised and Expanded*. University of California Press, Berkeley, California.

California Department of Fish and Game. 2003. Atlas of the biodiversity of California. Sacramento, CA. This publication may be ordered online (but not downloaded) from URL: http://atlas.dfg.ca.gov/.

California Department of Fish and Wildlife. 2010. List of Vegetation Alliances and Associations. Vegetation Classification and Mapping Program. September. http://www.dfg.ca.gov/biogeodata/vegcamp/natural_comm_list.asp.

California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. March 7.

California Department of Fish and Wildlife. 2021. California Natural Diversity Database (CNDDB). September 2020. State and Federally Listed Endangered, Threatened, and Rare Plants of California. Sacramento, CA. http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEPlants.pdf.

California Department of Fish and Wildlife. 2021. Special Animals List for State of California produced by Biogeographic Data Branch, California Natural Diversity Database, California Department of Fish and Wildlife. List dated October 2021. Current as of October 2020.

California Department of Fish and Wildlife. 2021. Natural Heritage Division, Natural Diversity Data Base for the East San Jose 7.5 Minute USGS Quadrangle Map and surrounding areas. December.

California Native Plant Society, Rare Plant Program. 2021. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website http://www.rareplants.cnps.org

City of San Jose, California. 2021. EnvisionSanJose2040 General Plan. Adopted November 1, 2011, as amended September 30, 2021.

ICF International. 2012. *Final Santa Clara Valley Habitat Plan*. August. http://scv-habitatagency.org/178/Final-Habitat-Plan. Prepared for: City of Gilroy, City of Morgan Hill, City of San Jose, County of Santa Clara, Santa Clara Valley Transportation Authority, and Santa Clara Valley Water District.

Live Oak Associates. 2021. *Due Diligence report for the 5977 and 6001 Silver Creek Valley*

Road Project Site in the City of San Jose, Santa Clara County, California.

Mayer, E. Kenneth and William F. Laudenslayer, Jr., (Eds.) 1988. *A Guide to Wildlife Habitats of California.*

National Geographic Society. 2017. *Field Guide to the Birds of North America.* Seventh edition. National Geographic Society. Washington, D.C.

Reid, Fiona A. 2006. *Mammals of North America*. Peterson Field Guides. Fourth Edition. Houghton Mifflin Co., Boston.

Sawyer, J. O., and T. Keeler-Wolf. 2009. *A Manual of California Vegetation*. Second Edition. In cooperation with The Nature Conservancy and the California Department of Fish and Game. California Native Plant Society. Sacramento, California.

Sibley, David A. 2014. *The Sibley Guide to Birds*. Second Edition. National Audubon Society. Chanticleer Press, Inc. New York, N.Y. 624 pp.

Stebbins, R.C. 2003. *Western Reptiles and Amphibians.* Peterson Field Guides. Houghton Mifflin Co., Boston. Third edition.

U.S. Army Corps of Engineers. 1987. *Corps of Engineers Wetland Delineation Manual,* Technical Report Y-87-1. Prepared by the Environmental Laboratory, Department of the Army, Waterways Experiment Station, Vicksburg, Miss.

U.S. Army Corps of Engineers. 2008. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0),* ed. J. S. Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). 2021. *Custom Soil Resource Report for Santa Clara Area, California, Western Part.* A product of the National Cooperative Soil Survey. December 27.

U.S. Fish and Wildlife Service. 2015. Listings and occurrences for California. Federally listed threatened and endangered plant and animal species in California. http://ecos.fws.gov/tess_public/pub/stateListingAndOccurrenceIndividual.jsp?state=CA

Zeiner, D.C., W.F. Laudenslayer, Jr., K.E. Mayer, and M. White. 1990. *California's Wildlife, Volume II: Birds.* State of California, the Resources Agency, Department of Fish and Game, Sacramento, California.

ATTACHMENT 1

Figures

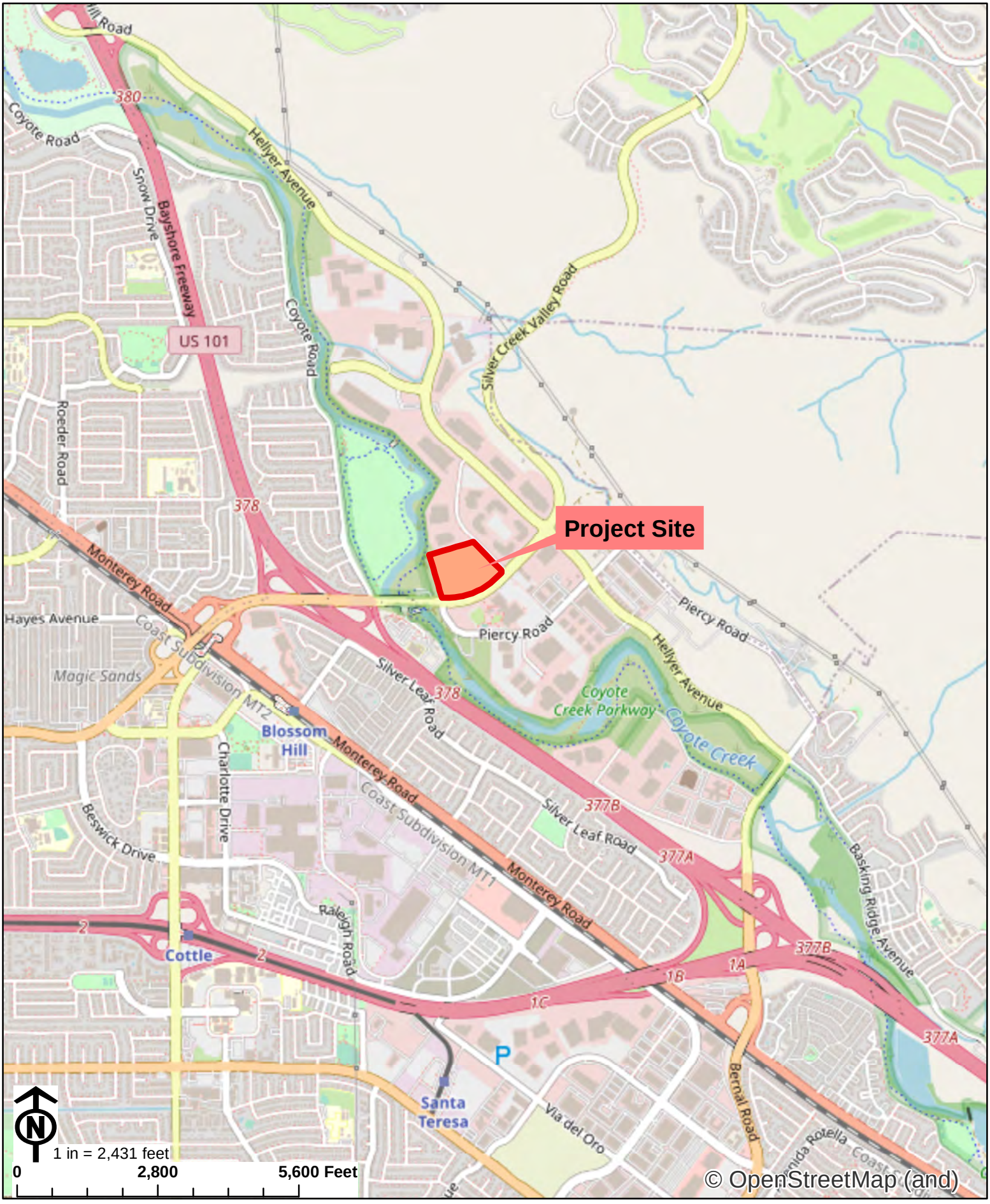

Figure 1. Project Site Location Map
5977 and 6001 Silver Creek Valley Road
San Jose, County of Santa Clara, CA

Huffman-Broadway Group, Inc.
ENVIRONMENTAL REGULATORY CONSULTANTS

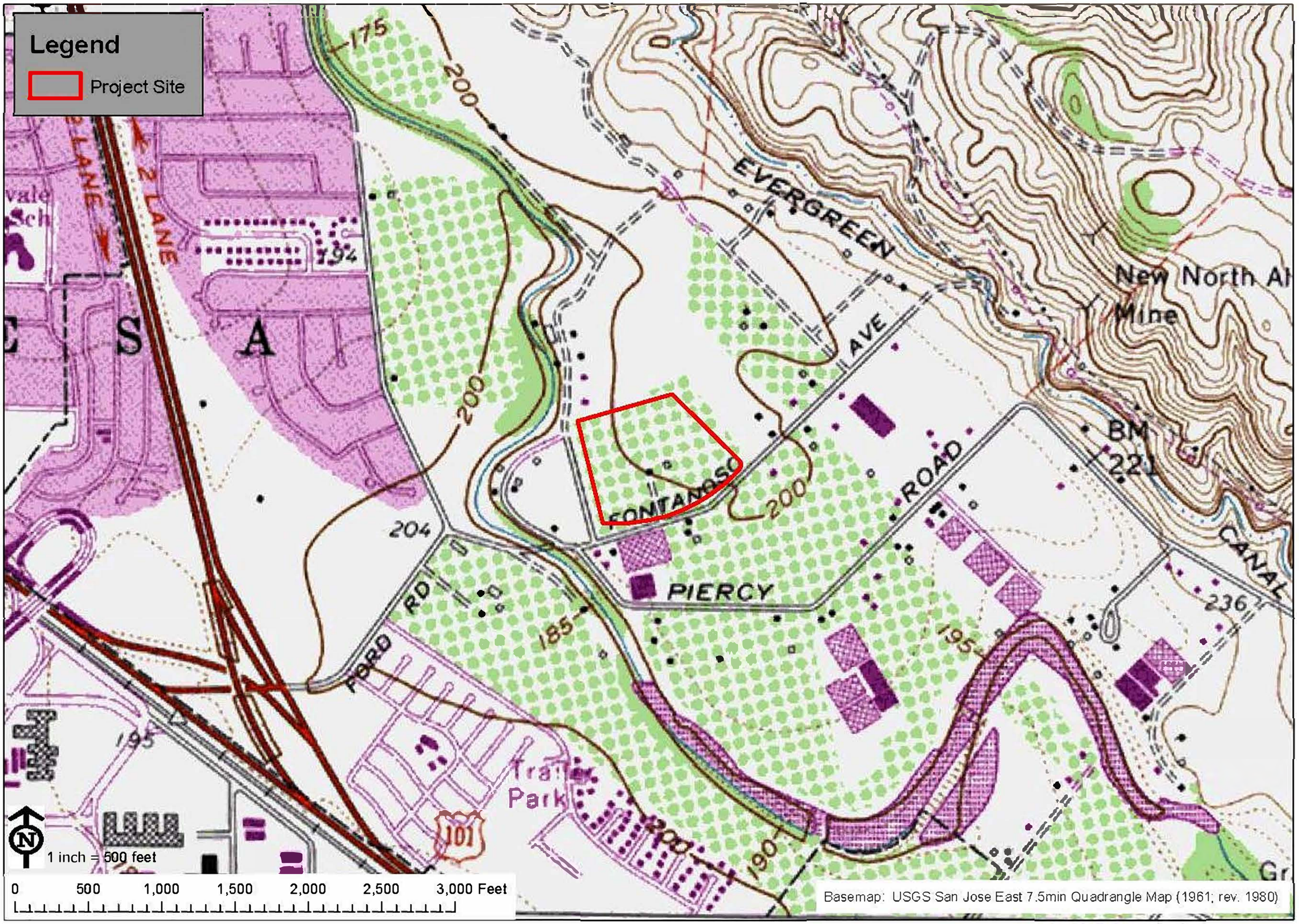

Figure 2. USGS Topographic Map of the Project Site
5977 and 6001 Silver Creek Valley Road
San Jose, County of Santa Clara, CA

Huffman-Broadway Group, Inc.
ENVIRONMENTAL REGULATORY CONSULTANTS

Figure 3. Aerial Photo of the Project Site

5977 and 6001 Silver Creek Valley Road
City of San Jose, County of Santa Clara, CA

Huffman-Broadway Group, Inc.
ENVIRONMENTAL REGULATORY CONSULTANTS

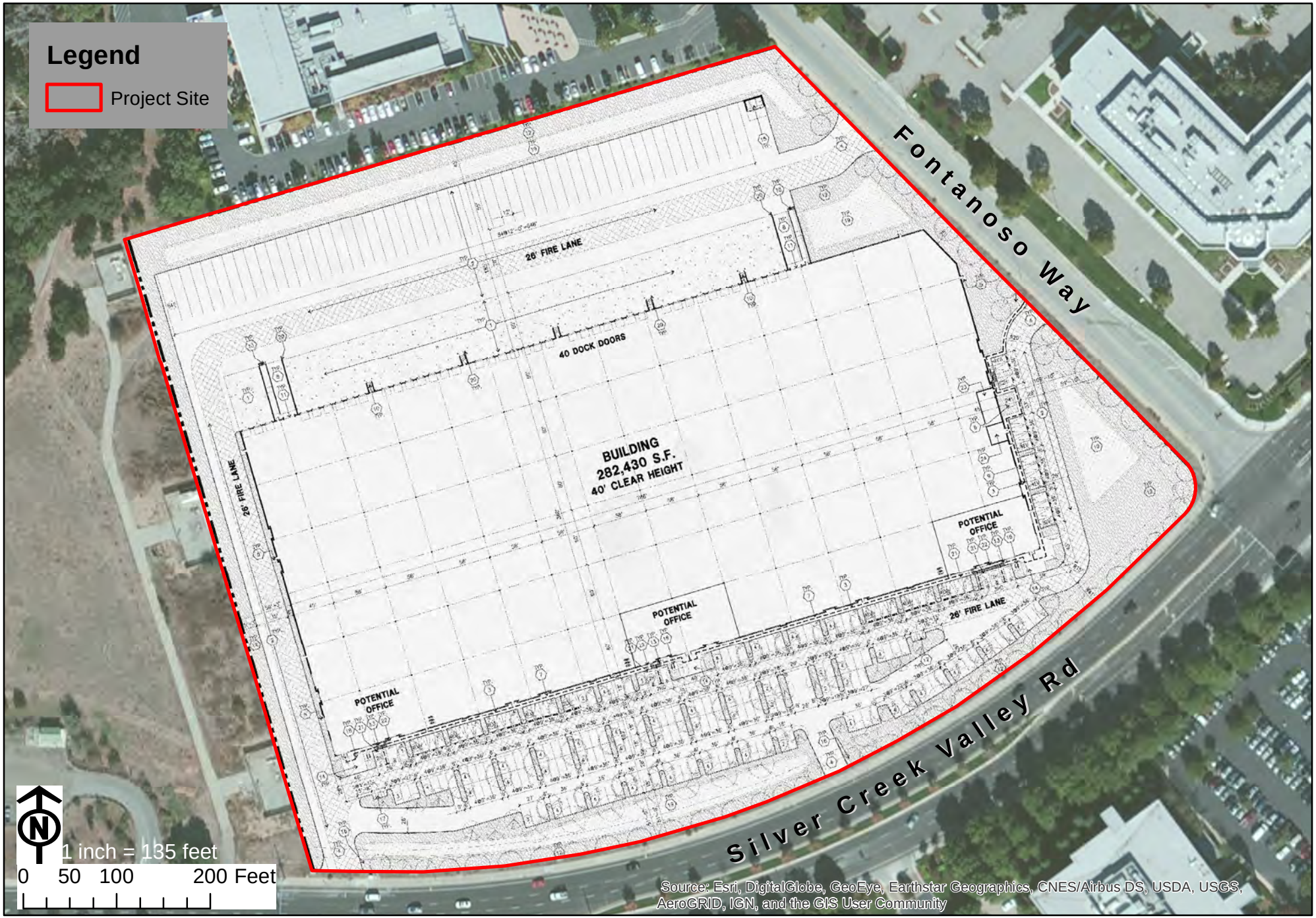

Figure 4. Project Site Plan
5977 and 6001 Silver Creek Valley Road
San Jose, County of Santa Clara, CA

Huffman-Broadway Group, Inc.
ENVIRONMENTAL REGULATORY CONSULTANTS

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
102	Urban land, 0 to 2 percent slopes, alluvial fans	0.5	3.5%
131	Urban land-Elpaloalto complex, 0 to 2 percent slopes	14.6	96.5%
Totals for Area of Interest		**15.1**	**100.0%**

Source of Map: Natural Resources Conservation ServiceWeb Soil Survey URL: Coordinate System: Web Mercator (EPSG:3857)

Figure 5. Soil Map of the Project Site
5977 and 6001 Silver Creek Valley Road
San Jose, County of Santa Clara, CA

Huffman-Broadway Group, Inc.
ENVIRONMENTAL REGULATORY CONSULTANTS

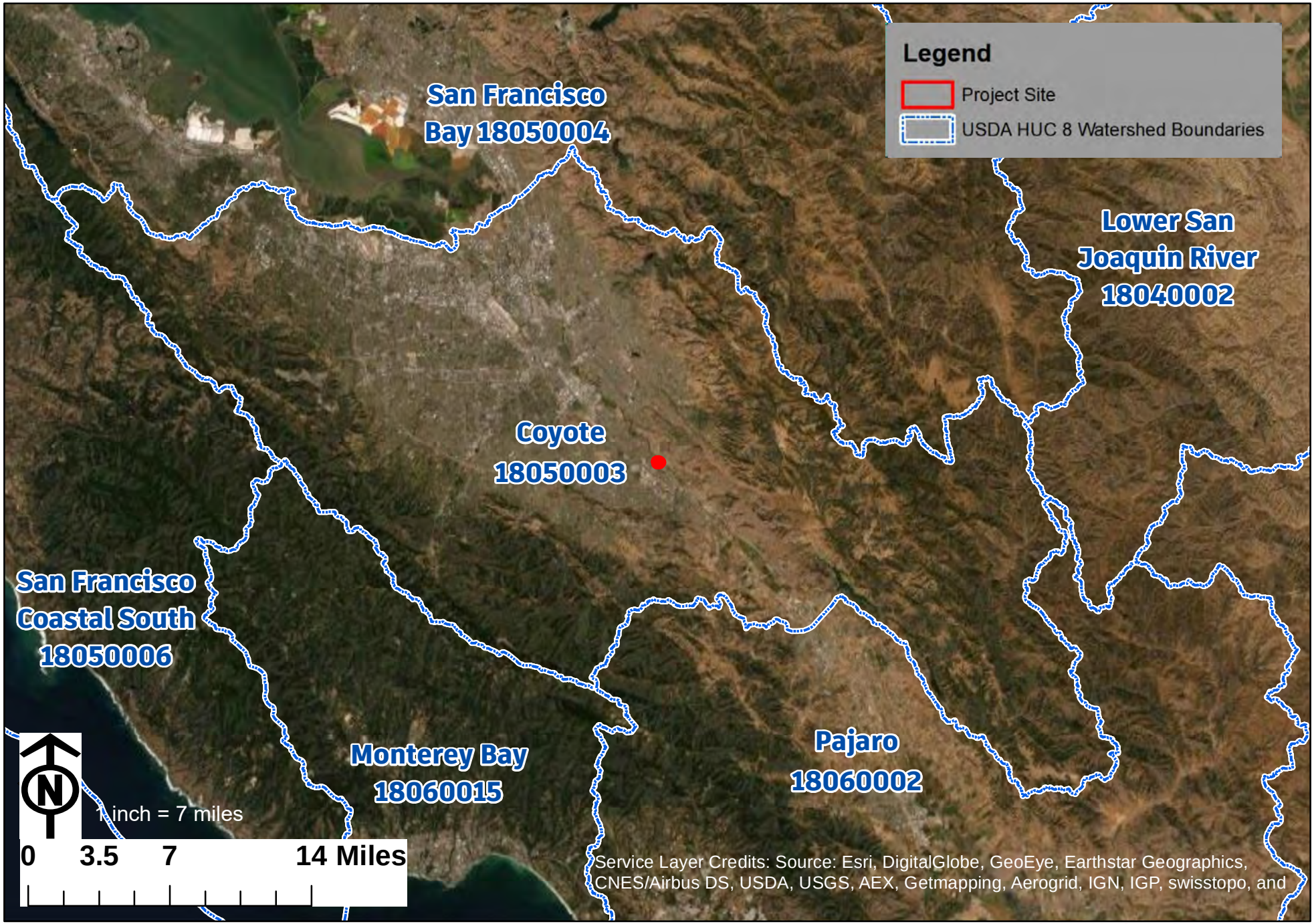

Figure 6. USGS HUC 8 Hydrologic Units
5977 and 6001 Silver Creek Valley Road
San Jose, County of Santa Clara, CA

Huffman-Broadway Group, Inc.
ENVIRONMENTAL REGULATORY CONSULTANTS

Figure 7. Riparian Setback from Coyote Creek
5977 and 6001 Silver Creek Valley Road
City of San Jose, County of Santa Clara, CA

Huffman-Broadway Group, Inc.
ENVIRONMENTAL REGULATORY CONSULTANTS

ATTACHMENT 2

TABLES

Table 1. Special Status Plants Known to Occur in the Vicinity of the Project Area, Santa Clara County, California

SCIENTIFIC NAME	STATUS[2] FED/STATE/CNPS	HABITAT/RANGE	OCCURRENCE
Bent-flowered fiddleneck (*Amsinckia lunaris*)	--/--/1B.2	Cismontane woodland, valley and foothill grassland. 5-500m	Not present. Suitable habitat is not found on site.
Anderson's manzanita (*Arctostaphylos andersonii*)	-/-/1B.2	Broadleaved upland forest, chaparral, North Coast coniferous forest, open sites, redwood forest. 180-800m.	Not present. Suitable habitat is not found on site.
Alkali Milk-vetch (*Astragalus tener* var. *tener*)	--/--/1B.2	Inhabits low ground, alkali flats and flooded land in valley and foothill grasslands or in playas or vernal pools. 1-170m.	Not present. Suitable habitat is not found on site.
Brittlescale (*Atriplex depressa*)	FSC/-- CNPS 1B	Inhabits alkali scrub, clay soils in mesic grasslands in the Delta, Central Valley basin.	Not present. Suitable habitat is not found on site.
Lesser saltscale (*Atriplex muniscula*)	--/--/1B.1	Chenopod scrub, playas, valley and foothill grassland. In alkali sink and grassland in sandy, alkaline soils. 0-225m.	Not present. Suitable habitat is not found on site.
Big-scale (California) balsamroot (*Balsamorhiza macrolepis var. macrolepis*)	--/--/1B.2	Chaparral, cismontane woodland, valley and foothill grassland, sometimes on serpentinite. 90-1555m.	Not present. Suitable habitat is not found on site.
Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*)	FE/ST/1B.2	Rocky serpentine sites within valley and foothill grassland. 75-400m.	Not present. Suitable habitat is not found on site.
Chaparral harebell *(Campanula exigua)*	--/--/1B.2	Rocky sites, usually on serpentine in Chaparral. 90-1375 m.	Not present. Suitable habitat is not found on site.

Table 1. Special Status Plants Known to Occur in the Vicinity of the Project Area, Santa Clara County, California

SCIENTIFIC NAME	STATUS[2] FED/STATE/CNPS	HABITAT/RANGE	OCCURRENCE
Congdon's tarplant (*Centromedia parryi congdonii*)	--/--/1B.2	Alkaline soils in valley and foothills grassland. 0-230m.	Not present. Suitable habitat is not found on site. Also not observed during an August13, 2021, survey during the flowering season.
Pink creamsacs *(Castilleja rubicundula var. rubicundula)*	--/--/1B.2	Chaparral, cismontane woodland, meadows and seeps, valley and foothill grassland. Found in openings in chaparral or grasslands on serpentine soils. 20-915 m.	Not present. Suitable habitat is not found on site.
Dwarf soaproot (*Chlorogalum pomeridianum* var. *minus*)	--/--/1B.2	Serpentine in chaparral. 120-1220 m.	Not present. Suitable habitat is not found on site.
Point Reyes bird's salty beak (*Chloropyron maritimum palustre*)	-/-/1B.2	Usually in coastal salt marsh with *Salicornia, Distichlis, Jaumea, Spartina,* etc.	Not present. Suitable habitat is not found on site.
Robust spineflower *(Chorizanthe robusta var. robusta)*	FE/--/1B.1	Occurs on sandy terraces and bluffs or in loose sand within cismontane woodland, coastal dunes, coastal scrub and chaparral. 9-245m.	Not present. Suitable habitat is not found on site.
Mt. Hamilton thistle *(Cirsium fontinale var. campylon)*	--/--/1B.2	In seasonal and perennial drainages in serpentine within cismontane woodland, chaparral, and valley and foothill grassland. 75-890m.	Not present. Suitable habitat is not found on site.
Santa Clara red ribbons (*Clarkia concinna* ssp. *automixa*)	--/--/4.3	Found on slopes and near drainages in cismontane woodland and chaparral. 90-1500m.	Not present. Suitable habitat is not found on site.

Table 1. Special Status Plants Known to Occur in the Vicinity of the Project Area, Santa Clara County, California

SCIENTIFIC NAME	STATUS[2] FED/STATE/CNPS	HABITAT/RANGE	OCCURRENCE
San Francisco collinsia (*Collinsia multicolor*)	FE/CE/1B.1	Found in closed-cone coniferous forest and coastal scrub. Usually on decomposed mudstone shale mixed with humus. 30-250m.	Not present. Suitable habitat is not found on site.
Hospital Canyon larkspur (*Delphinium californicum ssp. Interius)*	--/--1B.2	Found in cismontane woodland, chaparral and coastal scrub. Wet, boggy meadows and openings in chaparral and in canyons. 195-1095 m.	Not present. Suitable habitat is not found on site.
Western leatherwood (*Dirca occidentalis)*	-/-/1B.2	Occurs on brushy slopes and mesic sties in in broadleafed upland forest, chaparral, closed-cone coniferous forest and a variety of other forested habitats. 30-550m.	Not present. Suitable habitat is not found on site.
Santa Clara Valley dudleya *(Dudleya abramsii ssp. setchellii)*	FE/--/1B.1	Valley and foothill grassland and cismontane woodland. Found on rocky serpentine outcrops and on rocks within grassland or woodland. 60-455m.	Not present. Suitable habitat is not found on site.
Tracy's eriastrum (*Eriastrum tracyi*)	--/Rare/3.2	Found in chaparral, cismontane woodland, and valley and foothill grassland. Gravelly shale or clay. Often in open areas. 315-2400m.	Not present. Suitable habitat is not found on site.
Hoover's button-celery *(Eryngium aristulatum var. hooveri)*	--/--/1B.1	Alkaline depressions, vernal pools, roadside ditches and other wet places near the coast. 3-45m.	Not present. Suitable habitat is not found on site.
San Joaquin spearscale (*Etriplex joaquiniana*)	--/--/1B.2	Chenopod scrub, meadows, playas, valley and foothill grassland and vernal pools. Usually in seasonal alkali wetlands or alkali sink scrub with *Distichlis*, *Frankenia*, etc. 1-835m.	Not present. Suitable habitat is not found on site.

Table 1. Special Status Plants Known to Occur in the Vicinity of the Project Area, Santa Clara County, California

SCIENTIFIC NAME	STATUS[2] FED/STATE/CNPS	HABITAT/RANGE	OCCURRENCE
Fragrant fritillary *(Fritillaria liliacea)*	--/--/1B.1	Coastal scrub, valley and foothill grassland, coastal prairie, often on ultramafic soils. 3-410m.	Not present. Suitable habitat is not found on site.
Loma Prieta hoita *(Hoita strobilina)*	--/--/1B.1	Found in mesic sites and in serpentine within chaparral, cismontane woodland, and riparian woodland.60-975m.	Not present. Suitable habitat is not found on site.
Contra Costa Goldfields (*Lasthenia conjugens*)	FE/--/1B.1	Vernal pools, swales, low depressions, in open grassy areas. 1-445m. Extirpated from most of its range. Most remaining occurrences restricted to the Fairfield region.	Not present. Suitable habitat is not found on site.
Smooth lessingia *(Lessingia micradenia var. glabrata)*	-/-/1B.2	Found in serpentine and often on roadsides within chaparral and cismontane woodland.120-420m.	Not present. Suitable habitat is not found on site.
Arcuate bush mallow (*Malacothamnus arcuatus*)	--/--/1B.2	Found in gravelly alluvium in chaparral. 80-355m.	Not present. Suitable habitat is not found on site.
Hall's bush mallow (*Malacothamnus hallii*)	-/-/1B.2	Found in chaparral, sometimes in serpentine. 10-550m.	Not present. Suitable habitat is not found on site.
Oregon meconella *(Meconella oregana)*	--/--/1B.1	Open moist places within Coastal Prairie and Coastal Scrub. 60-640 M.	Not present. Suitable habitat is not found on site.
Woodland woollythreads (*Monolopiagracilens*)	--/--/1B.2	Chaparral, valley and foothill grasslands (serpentine), cismontane woodland, broadleaved upland forests, North Coast coniferous forest. Found in grassy sites in openings in sandy to rocky soils. May have a weak affinity to serpentine. 100-1200m.	Not present. Suitable habitat is not found on site.

Table 1. Special Status Plants Known to Occur in the Vicinity of the Project Area, Santa Clara County, California

SCIENTIFIC NAME	STATUS[2] FED/STATE/CNPS	HABITAT/RANGE	OCCURRENCE
Prostrate vernal pool navarretia (*Navarretia prostrata)*	--/--/1B	Found in mesic and alkaline sites within Coastal scrub, valley and foothill grassland with vernal pools. 15-700m.	Not present. Suitable habitat is not found on site.
Hairless popcornflower *(Plagiobothrys glaber)*	--/--/1A	Found in meadows and seeps, marshes and swamps. Coastal salt marshes and alkaline meadows. 5-125m.	Not present. Suitable habitat is not found on site.
California alkali grass *(Puccinellia simplex)*	--/--/1B.2	Found in meadows and seeps, chenopod scrub, and vernal pools in foothill grasslands. Found in alkaline, vernally mesic sinks, flats, and lake margins. 1-915 M.	Not present. Suitable habitat is not found on site.
Chaparral ragwort *(Senecio aphanactis)*	--/--/1B.2	Known from foothill woodland and chaparral habitats.	Not present. Suitable habitat is not found on site.
Maple-leaved checkerbloom (*Sidalcea malachroides*)	--/--/4.2	Broadleafed upland forest, coastal prairie, coastal scrub, North Coast coniferous forest, and riparian forest. Found in woodlands and clearing near the coast; often in disturbed area. 4-765m.	Not present. Suitable habitat is not found on site.
Metcalf Canyon jewelflower *(Streptanthus albidus ssp. albidus)*	FE/--/1B.1	Valley and foothill grassland. Found in relatively open areas in dry grassy meadows on serpentine soils and serpentine balds. 50-275m.	Not present. Suitable habitat is not found on site.
Most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*)	--/--/1B.2	Found on serpentine outcrops and ridges and slopes within chaparral, valley and foothill grassland, and cismontane woodland. 95-1000m.	Not present. Suitable habitat is not found on site.
California seablite (*Sueda californica*)	FE/--/1B.1	Margins of coastal salt marshes. 0-5m.	Not present. Suitable habitat is not found on site.

Table 1. Special Status Plants Known to Occur in the Vicinity of the Project Area, Santa Clara County, California

SCIENTIFIC NAME	STATUS[2] FED/STATE/CNPS	HABITAT/RANGE	OCCURRENCE
Saline clover (*Trifolium depauperatum* var. *hydrophilum*)	--/--/1B.2	Found in mesic alkaline sites in marshes and swamps, valley and foothill grassland and vernal pools. 0-300m.	Not present. Suitable habitat is not found on site.

1. Source: California Natural Diversity Data Base, Natural Heritage Division, California Department of Fish and Wildlife for the San Jose East 7.5-minute Quadrangle Map and surrounding areas, information December 2021

2. Status Codes:

FE	Federal-listed Endangered	CE	California State-listed Endangered
FT	Federal-listed Threatened	CT	California State-listed Threatened
FPE	Federal Proposed Endangered	CR	California Rare
FPT	Federal Proposed Threatened	FP	California Fully Protected
		CSC	California Species of Special Concern

California Rare Plant Rank 1A: Plants presumed extirpated in California and either rare or extinct elsewhere.
California Rare Plant Rank 1B: Plants rare, threatened, or endangered in California and elsewhere.
California Rare Plant Rank 2A: Plants presumed extirpated in California, but more common elsewhere.
California Rare Plant Rank 2B: Plants rare, threatened, or endangered in California, but more numerous elsewhere.
California Rare Plant Rank 3: Plants about which more information is needed – a review list.
California Rare Plant Rank 4: Plants of limited distribution – a watch list.
CNPS Threat Ranks
0.1-Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)
0.2-Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)
0.3-Not very threatened in California (<20% of occurrences threatened / low degree and immediacy of threat or no current threats known)

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
INVERTEBRATES			
Obscure bumble bee *(Bombus caliginosus)*	--/--	Found in Coastal areas from Santa Barbara County north to Washington State. Food plant genera include *Baccharis, Cirsium, Lupinus, Lotus, Grindelia* and *Phacelia*.	This uncommon species could occur almost anywhere in the general area of the site and is included in the CNDDB due to a general decline in bee populations in recent years.
Western bumble bee *(Bombus occidentalis)*	--/--	This species was once common and widespread, but the species has declined precipitously from Central California to Southern British Columbia, perhaps from disease.	This widespread and once common species could occur almost anywhere in the general area of the site and is included in the CNDDB due to a general decline in bee populations in recent years.
Crotch bumble bee (*Bombus crotchii*)	--/--	Found in coastal California east to the Sierra-Cascade Crest and south into Mexico. Food plant genera include *Antirrhinum, Phacelia, Clarkia, Dendromecon, Eschscholzia* and *Eriogonum*.	Not present. Suitable habitat is not found at the site.
Bay checkerspot butterfly (*Euphydryas editha bayensis)*	FT/-	Restricted to native grasslands on outcrops of serpentine soil in the vicinity of San Francisco Bay. *Plantago erecta* is the primary host plant; *Orthocorpus densiflorus* and *O. purpurscens* are the secondary host plants.	Not present. Suitable habitat is not found at the site.

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
FISH			
Steelhead – South-Central CA Coast ESU *Oncorhynchus mykiss)*	FT/--	Well-oxygenated streams with riffles; loose, silt-free gravel substrate. This ESU includes coastal basins from the Pajaro River south to, but not including the Santa Maria River.	Possible. Steelhead are known to occur in Coyote Creek. Required creek setbacks and implementation of BMPs will ensure there are no impacts to this species.
AMPHIBIANS			
California giant salamander (*Dicamptodon ensatus*)	--/CSC	Known from wet coastal forests near streams and seeps. Aquatic larvae found in cold, clear streams, occasionally in lakes and ponds. Adults are found in wet forests under rocks and logs near streams and lakes.	Not present. Suitable habitat is not found at the site.
California tiger salamander (*Ambystoma californiense*)	FT/CT,CSC	Found in annual grasslands and grassy understory of valley-foothill hardwood habitats in central and northern California. Needs underground refuges, especially ground squirrel burrows and vernal pools or other seasonal water source for breeding.	Not present. Suitable habitat is not found at the site.
Santa Cruz black salamander *(Aneides niger)*	--/CSC	Mixed deciduous and coniferous woodlands and coastal grasslands in San Mateo, Santa Cruz and Santa Clara Counties. Adults are found under rocks, talus, and damp woody debris.	Not present. Suitable habitat is not found at the site.

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
California red-legged frog (*Rana draytonii)*	FT/CSC	Mostly in lowlands and foothills in/near permanent sources of deep water but will disperse far during and after rain. Prefers shorelines with extensive vegetation.	Not present. Suitable habitat is not found at the site.
Foothill yellow-legged frog (*Rana boylii*)	--/CSC	Partly-shaded, shallow streams and riffles with a rocky substrate in a variety of habitats. Needs at least some cobble-sized substrate for egg-laying.	Not present. Suitable habitat is not found at the site.
REPTILES			
Western pond turtle (*Emmys marmorata*)	--/CSC	Associated with permanent or nearly permanent water in a wide variety of habitats. Requires basking sites. Nests found up to 0.5 miles from water.	Not present. Suitable habitat is not found at the site.
Coast horned lizard (*Phrynosoma blainvillii*)	--/CSC	Found in a wide variety of habitats. Most common in lowlands along sandy washes with scattered low bushes. Uses open areas for sunning, bushes for cover, patches of loose soil for burial. Needs an abundant supply of ants and other insects.	Not present. Suitable habitat is not found at the site.
BIRDS			
Great blue heron (*Ardea herodius*) [Nesting]	--/--	Colonial nester in tall trees, cliffsides, and sequestered spots on marshes. Rookery sites are in close proximity to foraging areas such as marshes, lake margins, tide-flats, rivers and streams, wet meadows.	Rookery not present. Suitable habitat for a rookery is not found on the site.

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
Northern Harrier (*Circus cyaneus*) [nesting]	--/CSC	Coastal salt marsh and freshwater marsh; nests and forages in grasslands; nests on ground in shrubby vegetation, usually at marsh edge.	Not present. Suitable habitat is not found at the site.
Swainson's hawk (nesting) *(Buteo swainsoni)*	--/CT	Nests in trees and riparian stands; summer migrant to Central Valley. Suitable foraging areas include grasslands, pastures, alfalfa and other hay crops, and certain grain and row croplands.	Not present. Suitable habitat is not found at the site.
White-tailed kite (*Elanus caeruleus*) [nesting]	--/FP	Open grassland and agricultural areas throughout Central California.	Not present. Suitable habitat is not found at the site.
Sharp-shinned hawk (*Accipiter striatus*) [nesting]	--/WL	Breeds in ponderosa pine, black oak, riparian deciduous, mixed conifer, and Jeffrey pine habitats. Prefers, but not restricted to, riparian habitats. North facing slopes, with plucking perches are critical requirements. All habitats except alpine, open prairie, and bare desert used in winter.	Not present as a nesting species. Suitable nesting habitat is not found at the site. May forage at the site.
Cooper's hawk (*Accipiter cooperii*) [nesting]	--/WL	Nests primarily in deciduous riparian forests; forages in open woodlands.	Not present as a nesting species. Suitable nesting habitat is not found at the site. May forage at the site.
Golden eagle (*Aquila chrysaetos*) [nesting and wintering]	BCC/FP,WL	Typically frequents rolling foothills, mountain areas, sage-juniper flats and desert.	Not present. Suitable habitat is not found at the site.

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
American peregrine falcon (*Falco peregrinus anatum*)	Delisted,BCC/Delisted, FP	Nests in woodland, forest and coastal habitats, on cliffs or banks, and usually near wetlands, lakes, rivers, sometimes on human-made structure. In non-breeding seasons found in riparian areas and coastal and inland wetlands.	Not present. Suitable habitat is not found at the site.
Merlin (*Falco columbarius*) [wintering]	--/WL	Breeds in Canada, winters in a variety of California habitats, including grasslands, savannahs, wetlands, etc.	Not present. Suitable wintering habitat is not found at the site.
Long-billed curlew (*Numenius americanus*) [nesting]	BCC/WL	Breeds in wet meadows in northeastern California. Winters on the coast and in the Central Valley in coastal estuaries, upland herbaceous areas and croplands.	Not present. Suitable nesting habitat is not found at the site.
Burrowing owl (*Athene cunicularia*)	BCC/CSC	Found in open dry annual or perennial grasslands, deserts and scrublands characterized by low growing vegetation. This species is a subterranean nester, dependent upon burrowing mammals, most notably the California ground squirrel.	Not present. No burrowing owls, evidence of occupation by burrowing owls, or suitable burrows were found on the site or in the vicinity during field surveys.
Short-eared owl (*Asio flammeus)* [Nesting]	--/CSC	Found in marshes, both freshwater and salt; lowland meadows; irrigated alfalfa fields. Tule patches/full grass needed for nesting and daytime seclusion. Nests on dry ground in a depression concealed in vegetation.	Not present. Suitable nesting habitat is not found on site.

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)	FC,BCC/CE	Nests in riparian forests along the broad, lower flood-bottoms of larger river systems. Requires willows, cottonwoods with lower story of blackberry, nettles or wild grape.	Not present. Suitable habitat is not found at the site.
Least Bell's vireo (Vireo belli pusillus)	FE/CE	Summer Resident of mainly Southern California in low riparian in the vicinity of water or in dry river bottoms below 2000 ft. Nests placed along margins of bushes or on twigs projecting into pathways, usually willow, *Baccharis*, or mesquite.	Not present. Suitable habitat is not found at the site.
Bank Swallow *(Riparia riparia)* (nesting)	--/CT	A migrant found primarily in riparian and other lowland habitats in California west of the deserts. In summer, restricted to riparian areas with vertical cliffs and banks with fine-textured or sandy soil, into which it digs its nesting holes.	Not present. Suitable habitat is not found at the site.
Loggerhead shrike (*Lanius ludovicianus*)	BCC/CSC	Habitat includes open areas such as desert, grasslands and savannah. Nests in thickly foliaged trees or tall shrubs. Forages in open habitats, which contain trees, fence posts, utility poles, and other perches.	Not present. Suitable habitat is not found at the site. Species could pass through the site.
Yellow warbler (*Setophaga petechia*) [nesting]	BCC/CSC	Breeds in deciduous riparian woodlands, widespread during fall mitigation.	Not present. Suitable nesting habitat is not found at the site. May occur as a fall migrant along Coyote Creek.
Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*)	BCC/CSC	Requires thick continuous cover down to water surface for foraging; tall grasses, tule patches, willows for nesting.	Not present. Suitable habitat is not found at the site.

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
Grasshopper Sparrow (*Ammodramus savannarum*)	--/CSC	Found in dense grasslands, especially those with a variety of grasses and tall forbs and scattered shrubs for singing perches.	Not present. Suitable habitat is not found at the site.
Tri-colored blackbird (*Agelaius tricolor*) [nesting colony]	BCC/CCE,CSC	Breeds near freshwater, usually in tall emergent vegetation. Requires open water with protected nesting substrate. Colonies prefer heavy growth of cattails and tules. Uses grasslands and agricultural lands for foraging.	Possible. Marginally suitable habitat for a nesting colony found within Coyote Creek. Preconstruction surveys are recommended to ensure no indirect impacts to a nesting colony occurs.
MAMMALS			
Townsend's big-eared bat *(Corynorhinus townsendii)*	--/CCT,CSC	Found in desert scrub and coniferous forests. Roost in caves or abandoned mines and occasionally are found to roost in buildings.	Not present. Suitable habitat is not found at the site.
Pallid bat *(Antrozous pallidus)*	--/CSC	Found in deserts, grasslands, shrub lands, woodlands and forests. Most common in open, dry habitats with rocky areas for roosting. Roosts in rocky areas primarily in oak woodland and ponderosa pine habitats; forages in open areas.	Not present. Suitable habitat is not found at the site.
Hoary bat (*Lasuirus cinereus*)	--/--	Prefers open habitats with access to trees for cover and open areas or habitat edges for feeding. Roosts in dense foliage of medium to large trees.	Not present. Suitable habitat is not found at the site.

Table 2. Special Status Animal Species that have been Reported in the Vicinity of the Project Area, Santa Clara County, California

SPECIES	STATUS FED/STATE	HABITAT	OCCURRENCE ON THE PROJECT SITE
San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*)	-/CSC	Found in forested habitats of moderate canopy and moderate to dense understory.	Present. A nest house for this species was found within the Coast live oaks between the site and the Coyote Creek riparian area. Required setback will ensure no impacts to this species occurs.
San Joaquin kit fox *(Vulpes macrotis mutica*)	FE/CT	Found in annual grasslands or grassy open stages with scattered shrubby vegetation. Needs loose-textured sandy soils for burrowing and a suitable prey base.	Not present. Suitable habitat is not found at the site.
American badger (*Taxidea taxus*)	--/CSC	Drier open stages of most shrub, forest, and herbaceous habitats; needs sufficient food, friable soils and open, uncultivated ground.	Not present. Suitable habitat is not found at the site.

1. Source: California Natural Diversity Data Base, Natural Heritage Division, California Department of Fish and Wildlife for the San Jose East 7.5-Minute Quadrangle Map and surrounding areas, information dated December 2021
2. Status Codes:

FE Federal-listed Endangered
FT Federal-listed Threatened
FPE Federally Proposed Endangered
FPT Federally Proposed Threatened
FC Federal Candidate
BCC USFWS Bird Species of Conservation Concern

CE California State-listed Endangered
CCE Candidate for CA State-listed Endangered
CT California State-listed Threatened
CR California Rare
FP California Fully Protected
CSC CDFW Species of Special Concern
WL CDFW Watch List Species