

Appendix C
Biological Resources Technical Memorandum



January 6, 2023

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

SUBJECT: Responses to comments on the Qume and Commerce Project Draft EIR (File No H21-040, T21-040 and ER21-154) July 2022, San Jose, California.

Dear Ms. Hall:

This Technical Memo (TM) is intended to provide master responses to several comments raised on the Qume and Commerce Project Draft EIR (File No H21-040, T21-040 and ER21-154) July 2022, San Jose, California.

I write as co-owner and Senior Conservation Biologist at Live Oak Associates, Inc. (LOA), an ecological consulting firm based in California. I am a broadly trained ecologist with significant experience the last 45 years with numerous special status wildlife species, mammalian carnivores, conservation biology; population ecology, spatial ecology, wildlife linkages and human/predator conflicts. I received a Ph.D. in Wildlands Resource Ecology from University of California, Berkeley, and an M.A. in Biology at San Jose State University. My graduate research involved a 12-year study on the spatial ecology and population dynamics of the cougar in the Diablo Range.

As we understand it, the 32.2-acre site is mostly developed with buildings, parking lots, associated mature landscaping, and a cement pond with fountains. Topographically, the site is relatively flat. Surrounding land uses include industrial and commercial development, and major and minor roads. There are no sensitive or protected habitats (e.g., aquatic, or riparian habitats) on or adjacent to the site.

The project involves the redevelopment of an existing developed site. There are approximately 702 trees both on- and off-site, of which 31 trees are native. Therefore, planted landscape trees make up approximately 95.6% of tree resources on- and off-site, and approximately 4.4% of existing trees are native. The project will be removing 577 trees and planting 281 trees,

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therefore, the Project site will include 406 trees after redevelopment. Of the 31 native trees, 18 will be removed and 13 will be retained. Additionally, as noted in the Tree Inventory and Assessment Table provided in Appendix E of the DEIR, nine of the native trees proposed for removal are either dead or are in fair health with poor to fair structural condition. In total, approximately 3% of the trees to be removed are native.

This TM addresses the potential loss of habitat for special plant and animal species, potential loss of habitat for native wildlife, potential impacts to nesting birds, and potential interference with any known or potential movement pathways for regional wildlife. Specifically, this TM will address four questions related to biological resources that we consider relevant for responding to the comments:

1. Will the project result in a significant adverse impact to special status plant or animal species;
2. Will the project result in a significant adverse impact to native wildlife;
3. Will the project result in harm to individuals in conflict to federal or state law. This usually refers to adverse effects on nesting birds; and
4. Will the project interfere with the movement of regional wildlife.

Loss of Habitat for Special Status Plant or Animal Species

The site's developed and landscaped nature does not support habitat suitable for any special status plants that might occur regionally. Therefore, any regionally occurring (e.g., in natural or semi-natural habitats) special status plants species are considered absent from the site, and thus, the proposed project would not adversely impact special status plants species.

The existing developed and landscaped site does not provide significant habitat for regionally occurring special status animal species. As noted in the DEIR, the majority of the City of San Jose (approximately 70 mi²) is characterized as developed urban/suburban and the project site is therefore common and typical. As noted above, these urban/suburban habitats are generally unsuitable for the vast majority of regionally occurring special status animal species. Demolition and construction of the site would result in a negligible decrease in foraging or breeding in urban/suburban habitat available for these species regionally.

Therefore, impacts to loss of habitat for special status animal species would be less-than-significant and no mitigations is warranted. See the section below "Potential Impacts to Nesting Birds including Raptors".

Loss of Habitat of Native Wildlife

The Project site is an urban developed property within an urban developed/suburban region of the City of San Jose. Urban developed sites are used by relatively common native wildlife that are abundant regionally and common within the developed landscapes of San Jose and the surrounding cities. The appropriate scale for ascertaining if redevelopment of the Project site results in a significant impact to foraging or nesting habitat (e.g., nesting birds) for native



wildlife is considering whether the loss of mature trees can cause a regional decline of a species that currently uses the site. This requires consideration of the proportional loss of mature trees from the Project site against the backdrop of the relevant ecological scale – the region. The Project site supports primarily non-native landscape trees and shrubs common throughout all urban habitats of San Jose. Therefore, the very small reduction of foraging and nesting habitat from redevelopment of the Project site does not represent a significant loss of foraging or nesting habitat available regionally for native wildlife. Therefore, impacts to foraging and nesting habitat would be less than significant.

Potential Impact to Nesting Birds including Raptor

As noted above, the redevelopment of the project would result in a less than significant impact on the loss of foraging and nesting habitat for special status wildlife species and regionally occurring native wildlife. While impacts to habitat (including nesting) are considered less than significant, the project during construction could result in adverse impacts to individual nesting raptors or birds.

As noted in the DEIR, trees, shrubs, and buildings occurring on and adjacent to the site could be used by nesting raptors and other migratory birds for breeding. All nesting raptors, including the fully protected white-tailed kite, and migratory birds are protected by state and federal laws. Therefore, construction activities that adversely affect the nesting success of any raptors and/or migratory birds (i.e., activities that lead to the abandonment of active nests) or result in mortality of individual birds constitute a violation of state and federal laws. The DEIR provides for mitigation that if implemented would reduce impacts to nesting birds to a less than significant impact by avoiding the impact all together.

The language of the DEIR has been revised to clarify that all construction related activities (including building demolition, tree removal, or ground disturbance activities) occurring during the breeding season (February 1 through August 31) should be preceded by a pre-construction nesting bird surveys no more than 14 days prior to commencement of such activities.

The mitigation measure notes that if an active nest should be found, a construction-free buffer of suitable dimensions – to be determined by the biologist – must be established around active nests (typically up to 100 feet for passerines and up to 250 feet for raptors, depending on the location and species) for the duration of the project or until it has been determined that the chicks have fledged and are independent of their parents.

This mitigation is designed to explicitly avoid any harm, injury, or death to nesting birds, their eggs or young. In doing so, it will also comply with all applicable provisions of state and federal law.

Interference with the Movement of Native Wildlife

Movement corridors (also referred to as landscape linkages) are defined as areas that allow for the movement of species from one area of suitable habitat to another. A linkage can vary from a narrow strip of habitat that only functions as a conduit for movement (i.e., a corridor) or a large area of intact habitat that is used for movement, dispersal, and other life functions such



as foraging and breeding. Many wildlife linkages are made up of habitats that allow for regional movement of wildlife across wide swaths of land connecting two or more core areas or habitat patches for multiple regional species. Others can be relatively narrow pathways (i.e., corridors) such as a riparian system within an urban environment.

Habitat corridors are vital to terrestrial animals for connectivity between core habitat areas (i.e., larger intact habitat areas where species make their living). Connections between two or more core habitat areas help ensure that genetic diversity is maintained, thereby diminishing the probability of inbreeding depression and geographic extinctions.

The quality of habitat within the corridors is important. In general, “better” habitat has less human interference (e.g., roads, homes, etc.) and is more desirable to more species than areas with sparse vegetation and high-density roads. Movement corridors in California are typically associated with valleys, rivers and creeks supporting riparian vegetation, and ridgelines. With increasing encroachment of humans on wildlife habitats, it has become important to establish and maintain linkages, or movement corridors, for animals to be able to access locations containing different biotic resources that are essential to maintaining their life cycles.

The existing development on the site does not support or facilitate the regional movement of wildlife as it is a developed site surrounded by other developed sites. Thus, the Project site does not provide a conduit to suitable non-developed habitat. Any terrestrial wildlife species using the site or moving through it would continue to move through the area after project development. Therefore, redeveloping this site will have a less-than-significant impact on regional wildlife movements.

CONCLUSIONS

The purpose of this TM is to provide an analysis as to whether redeveloping this developed site would constitute a significant impact on the loss of habitat for special status plant and wildlife species, loss of foraging and nesting habitat for native wildlife, construction related impacts to nesting birds, or interfere with a regional movement corridor.

No special status plant species would occur on the existing developed site, nor does the site support suitable habitat for any regionally occurring special status wildlife species. The site also results in a very small loss of foraging and/or nesting habitat for regionally occurring native wildlife. Redeveloping the site would also not interfere with the regional movement of wildlife, as it is a developed site surrounded by development on all four sides. As the aforementioned impacts are less than significant, no mitigation is warranted.

The project could result in the harm, injury or death of nesting birds, their eggs or young prior to fledging. The DEIR (including as revised and clarified in the FEIR) provides a suitable mitigation that avoids the impact altogether.



If you have any additional questions or concerns regarding our responses, please contact me at (408) 391-9433 or via email at rhopkins@loainc.com.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line and a small dot.

Rick Hopkins, PhD
President
Senior Conservation Biologist