APPENDIX C
Biological Resources Report

Milligan Parking Lot Project

H. T. HARVEY & ASSOCIATES

Ecological Consultants

50 years of field notes, exploration, and excellence

Milligan Parking Lot Project
Biological Resources Report

Project #4407-01

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March 7, 2023

List of Abbreviated Terms

BMPs	best management practices
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CNDDB	California Natural Diversity Database
CNPS	California Native Plant Society
CRPR	California Rare Plant Rank
CWA	Clean Water Act
EFH	Essential Fish Habitat
FESA	Federal Endangered Species Act
FMP	Fisheries Management Plan
LSAA	Lake and Streambed Alteration Agreement
MBTA	Migratory Bird Treaty Act
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
OHWM	ordinary high water mark
Policy Study	City of San José's Riparian Policy Study
Porter-Cologne	Porter-Cologne Water Quality Control Act
RWQCB	Regional Water Quality Control Board
SCVHA	Santa Clara Valley Habitat Agency
SWRCB	State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
Valley Water	Santa Clara Valley Water District
VHP	Santa Clara Valley Habitat Plan

Table of Contents

Figures

Tables

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Section 1. Introduction

This report describes the biological resources present in the area of the proposed Milligan Parking Lot Project, as well as the potential biological impacts of the project and measures necessary to reduce these impacts to less-than-significant levels under the California Environmental Quality Act (CEQA). This assessment is based upon the project plans and description provided to H. T. Harvey & Associates by David J. Powers & Associates and the City of San José through February 2023.

1.1 Project Description and Location

The approximately 2.5-acre project site consists of five parcels (Table 1) and is located in Downtown San José (Figure 1). The site is occupied by an automobile repair shop with an attached warehouse, a vacant commercial building and additions, and a vacant single-family residential structure and garage. The project site currently contains 118 surface parking spaces used for SAP Center events. The project site is zoned Downtown Primary Commercial and has a General Plan designation of Commercial Downtown.

Table 1. Parcels Included in the Project

APN Number	Address	Size (in acres)	Owner
259-29-032	447 West St. John Street*	0.41	City of San José
259-29-033	130 N. Autumn Street	0.11	City of San José
259-29-071	407 W. St. John Street*	0.11	City of San José
259-29-072	405 W. St. John Street*	0.21	City of San José
259-29-102	150 N. Autumn Street*	1.7	City of San José
Total		**2.54**	

* Structures are currently located on these parcels. The parcel at 407 W. St. John Street has a residence and garage.

The site is bordered by North Autumn Street to the west, West St. John Street to the south, the Guadalupe River to the east, and existing residential development to the north (Figure 2). The SAP Center at San José is located approximately 300 feet southwest of the project site, and the Guadalupe Freeway (California State Route 87) is located approximately 650 feet east of the site.

The Arena Green Park spans both banks of the Guadalupe River immediately upstream of the project site, across West St. John Street. The confluence of Los Gatos Creek and the Guadalupe River is located within the park. The project site and a residential area northwest of the project site represent a gap in the Los Gatos Creek Trail. The Trail ends at the project site and begins again downstream of the project site and the residential area, where it is called the Guadalupe River Trail.

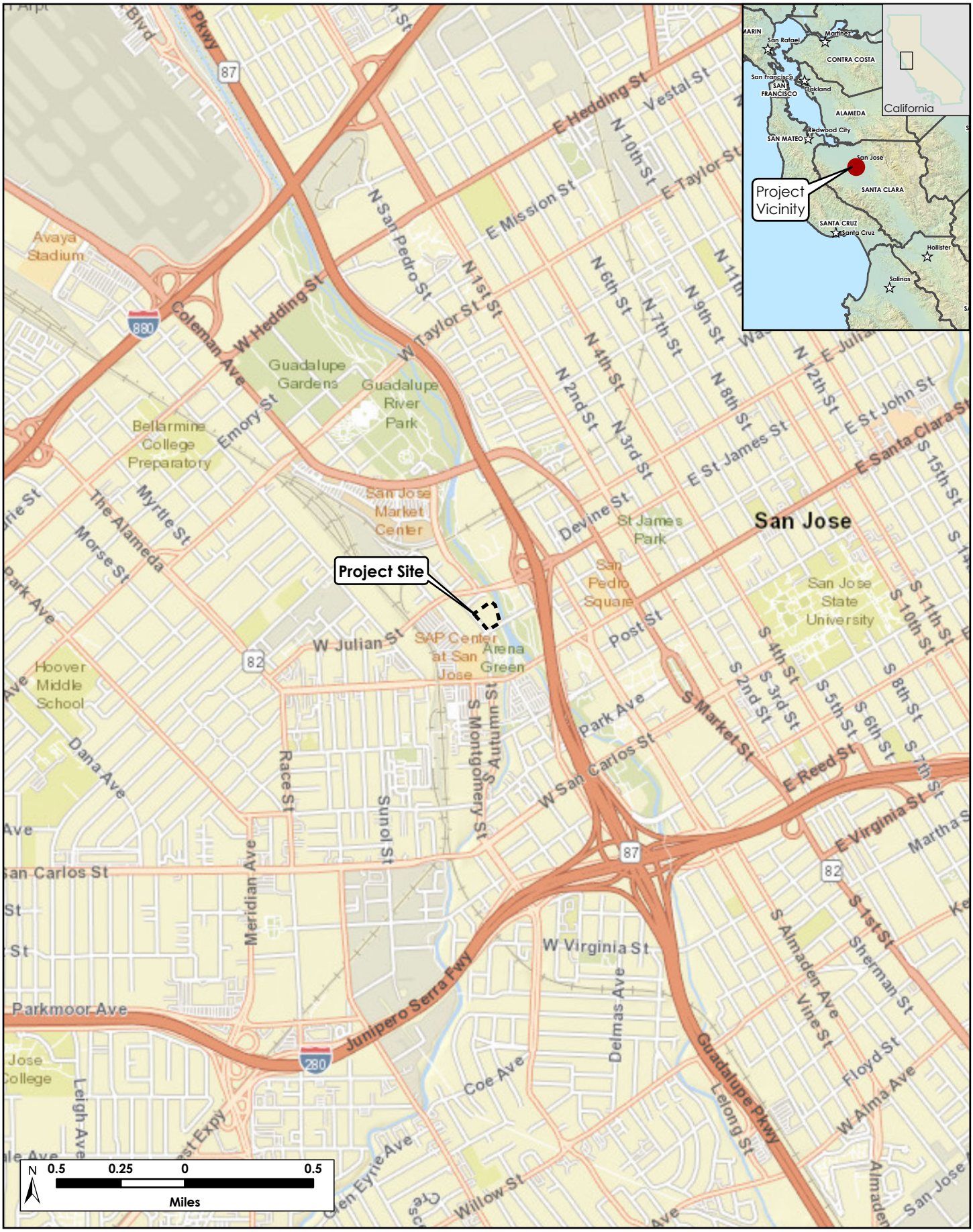

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Figure 1. Vicinity Map
Milligan Parking Lot Project Biological Resources Report (4407-02)
March 2023

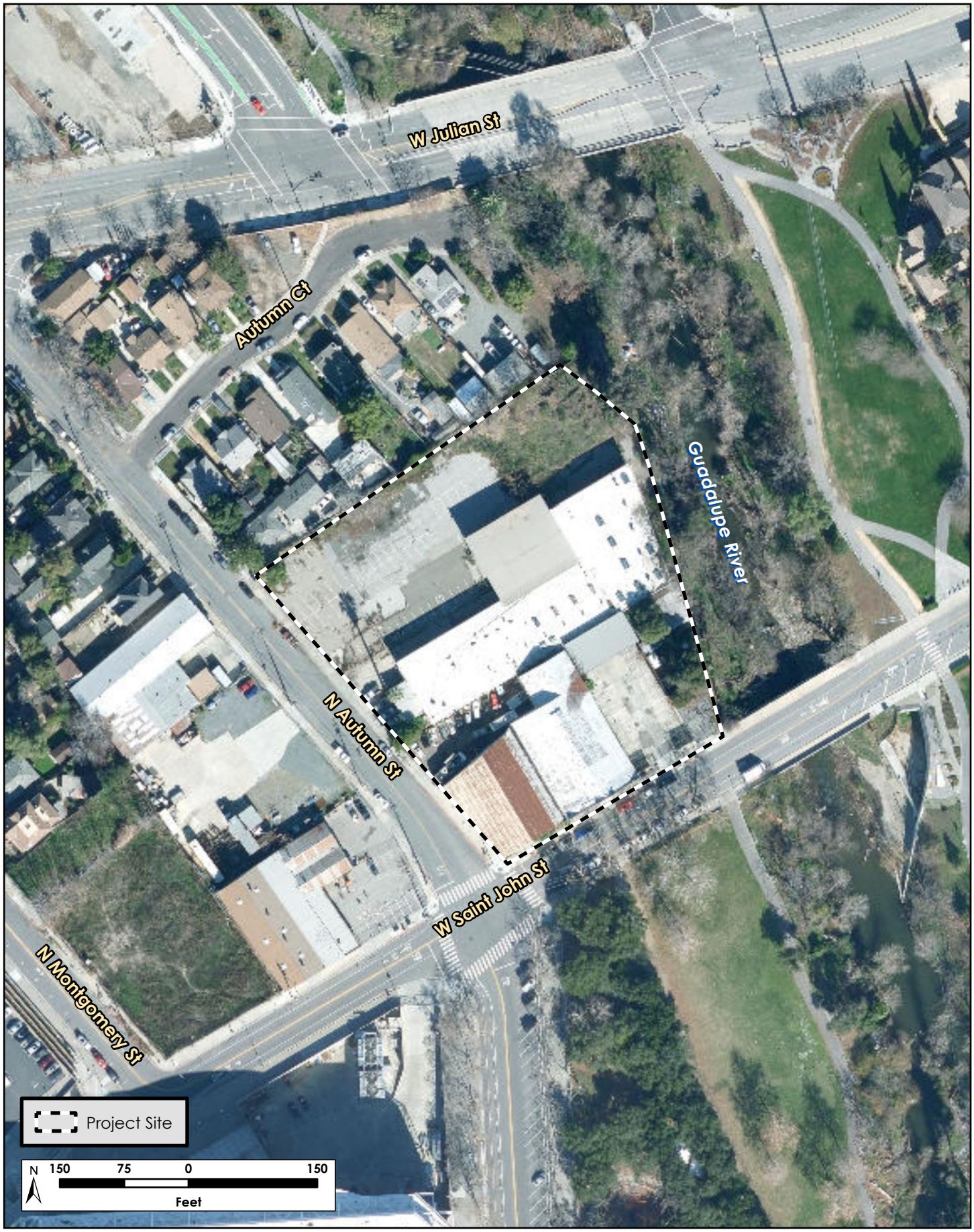

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Figure 2. Project Site
Milligan Parking Lot Project Biological Resources Report (4407-02)
March 2023

1.1.1 Parking Lot Improvements

The City of San José, as the owner of the subject property, proposes to remove all of the existing buildings on the site and construct an approximately 305-space surface parking lot. The proposed parking lot is intended to replace existing parking serving events at the nearby SAP Center that would be lost due to future planned development within Downtown San José (e.g., within the Diridon Station area). The parking lot is intended to be temporary.

Vehicles would access the site via two new 26-foot wide full-access driveways. One driveway would be located on West St. John Street (160 feet east of North Autumn Street) and the second driveway would be located on North Autumn Street (approximately 240 north of West St. John Street).

The project would construct a 6-foot tall masonry screen wall along the northern property line, between the residences to the north and the project site. The project would include lighting throughout the parking lot. Although demolition of existing improvements will occur within all portions of the site, up to the edge of the Guadalupe River riparian corridor, all proposed new improvements will be set back a minimum of 35 feet from the riparian corridor. The project will remove 28 trees, including 20 ordinance-sized trees, and will plant replacement trees. The project will utilize permeable pavements for on-site stormwater treatment.

Construction of the project would have a duration of approximately 10 months.

1.1.2 Trail

A future Class I paved bicycle and pedestrian trail will be constructed within the 35-foot setback located in between the temporary parking lot and the Guadalupe River. The trail will be approximately 12 feet wide, with 2-foot wide shoulders. The trail is intended to be permanent, and will connect similar trail sections located along the Guadalupe River immediately north and south of the project site. Landscape vegetation may be planted along the trail, but no structures or lighting are planned within this area. Riparian trees may need to be trimmed to support installation of the trail, but no removal of riparian trees will occur.

1.1.3 Santa Clara Valley Habitat Plan

The project site is located within the Santa Clara Valley Habitat Plan (VHP) permit area, and the proposed project is a "covered project" under the VHP (ICF International 2012). As a result, the project is required by the City to pay VHP fees for land impacts in accordance with the types and acreage of habitat impacted, and to implement conservation measures specified by VHP conditions. Thus, all applicable VHP conditions, including payment of applicable fees, are considered part of the project description. Refer to Section 6.1 for more details on VHP conditions.

Section 2. Methods

Prior to conducting field work, H. T. Harvey & Associates ecologists reviewed the project materials provided by David J. Powers & Associates and relevant background information concerning biological resources in the Project area, including:

- the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (City of San José 2016)
- aerial photos (Google LLC. 2023)
- the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDB) (2023)
- VHP information on special-status species and sensitive habitats (ICF International 2012).

We reviewed the CNDDB for all plant and wildlife species within a 5-mile radius surrounding the project site. In addition, for plants, we reviewed all species on current California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1A, 1B, 2A, and 2B lists occurring in the project region, which is defined as the *San Jose West*, California USGS 7.5-minute quadrangle and surrounding eight quadrangles (*San Jose East*, *Mountain View*, *Milpitas*, *Calaveras Reservoir*, *Cupertino*, *Castle Rock Ridge*, *Los Gatos*, and *Santa Teresa Hills*). The Jepson Flora Project (Jepson Flora Project 2023) was the primary taxonomic reference used to identify plant species encountered onsite. We queried the CNDDB (2023) for natural communities of special concern that occur in the vicinity of the project site. Lastly, we perused records of birds reported in nearby areas, such as along the Guadalupe River, on eBird (Cornell Lab of Ornithology 2023) and on the South-Bay-Birds List Serve (2023).

Reconnaissance-level field surveys of the project site were conducted by H. T. Harvey & Associates plant ecologist Jill Pastick, M.S. on February 25, 2020, and wildlife ecologist Matthew Louder, Ph.D. on February 23, 2021. The purpose of these surveys was to provide a project-specific impact assessment for the development of the site as described above. Specifically, the surveys were conducted to (1) assess existing biotic habitats and plant and animal communities on the project site, (2) assess the site for its potential to support special-status species and their habitats, and (3) identify potential jurisdictional and sensitive habitats (such as waters of the U.S./state), although a formal wetland delineation was not conducted. Jill Pastick assessed the quality of the riparian habitat within and adjacent to the project site. She mapped the extent of the Guadalupe River riparian corridor as it overlaps with the Project area by collecting GPS data along the landward extent of riparian vegetation. Dr. Louder conducted a focused survey for (1) suitable burrowing owl (*Athene cunicularia*) roosting and nesting habitat (i.e., burrows of California ground squirrels [*Otospermophilus beecheyi*]) on and within 250 feet of the project site, (2) evidence of previous raptor nesting activity (i.e., large stick nests), (3) potential bat roosting habitat, and (4) nests of the San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*).

Because the proposed project is a "covered project" under the approved VHP (ICF International 2012), land cover types were mapped based on VHP mapping with modifications based upon site conditions observed during the field survey.

Section 3. Regulatory Setting

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

3.1 Federal Regulations

3.1.1 Clean Water Act

Areas meeting the regulatory definition of waters of the U.S. are subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE) under provisions of Section 404 of the 1972 Clean Water Act (CWA). Waters of the U.S. include other waters, such as intrastate lakes, rivers, streams, mudflats, sandflats, playa lakes, natural ponds, territorial seas, and wetlands (33 CFR, Part 328). Wetlands are generally identified using the *Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987) using an approach that relies on identification of three parameters: hydrophytic vegetation, hydric soils, and wetland hydrology indicators.

Wetlands established solely due to the presence of irrigation water, irrigated fields, or irrigation ditches do not qualify as Section 404 wetlands; however, the USACE has issued specific guidance stating that "where sufficient information is not available to determine the hydrological contribution of irrigation waters to a particular wetlands (i.e., whether the wetland existed at the location prior to the presence of irrigation activities), such wetlands are not removed from consideration as wetlands or waters of the U.S." (USACE 2008).

Drainage ditches may also be considered waters of the U.S. if they meet the definition of a tributary having a bed and banks and Ordinary High Water Mark (OHWM), and contributing flow directly or indirectly through a traditional navigable water. These include "ditches with perennial flow"; "ditches with intermittent flow that are a relocated tributary, or are excavated in a tributary, or drain wetlands"; and "ditches, regardless of flow, that are excavated in or relocate a tributary" (U.S. Army Corps of Engineers and U.S. Environmental Protection Agency 2015). A *tributary* is defined under Section 404 as "natural, undisturbed waters and those that have been man-altered or constructed, but which science shows function as a tributary."

On June 23, 2020, the Navigable Waters Protection Rule (NWPR) went into effect. This Rule clarifies that federal waters do not include ephemeral streams or features adjacent to such features. Ephemeral streams have no connection to groundwater and only convey flows during and shortly after precipitation events. They do not include intermittent streams with a seasonal connection to groundwater and seasonal flows that persist for several days or more following rain events or persist between winter storms. On August 30, 2021, the U.S. District Court of Arizona vacated the NWPR and ephemeral streams may now again be considered Waters of the U.S., depending on continuing court decisions.

Construction activities in regulated ditches and jurisdictional wetlands require a Section 404 permit from the USACE. *Construction* as defined under Section 404 includes work that results in an extension or expansion of an existing structure and includes, but is not limited to, activities such as ditch relocation, conversion of a ditch into a pipe, lining ditches with placing impervious materials (e.g., concrete), and the placement of new control structures (USACE 2008).

Project Applicability: The aquatic habitat (extending up to the OHWM) and in-channel wetlands in Guadalupe River are considered wetlands and other waters of the U.S. under the CWA. No project activities are proposed within the bed and banks of the Guadalupe River, thus, direct impacts on wetlands or waters subject to the CWA will be avoided.

3.1.2 Federal Endangered Species Act

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

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) have jurisdiction over federally listed, threatened, and endangered species under FESA. The USFWS also maintains lists of proposed and candidate species. Species on these lists are not legally protected under FESA, but may become listed in the near future and are often included in their review of a project.

Project Applicability: No federally listed or candidate plant species occurs on the project site or in adjacent areas that could be substantially impacted by proposed activities under the project. The federally threatened Central California Coast steelhead (*Oncorhynchus mykiss*) is known to occur in the Guadalupe River adjacent to the project site and could potentially be indirectly affected by project activities (in the absence of avoidance and minimization measures). In addition, the monarch butterfly (*Danaus plexippus*), a candidate for listing under FESA, may occur on the project site as an occasional nonbreeding visitor, in low numbers. The western pond turtle (*Actinemys pallida*), also a candidate for listing under FESA, may occur along the Guadalupe River adjacent to the site, and individuals can potentially nest in grassland habitat on the project site (though the likelihood of nesting is low due to the very limited extent of potential nesting habitat and the low densities of turtles present in this urban reach of the river).

3.1.3 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act governs all fishery management activities that occur in federal waters within the United States' 200-nautical-mile limit. The Act establishes eight Regional Fishery Management Councils responsible for the preparation of fishery management plans (FMPs) to achieve

the optimum yield from U.S. fisheries in their regions. These councils, with assistance from the NMFS, establish Essential Fish Habitat (EFH) in FMPs for all managed species. Federal agencies that fund, permit, or implement activities that may adversely affect EFH are required to consult with the NMFS regarding potential adverse effects of their actions on EFH, and respond in writing to recommendations by the NMFS.

Project Applicability: The Pacific Fisheries Management Council has designated EFH for the Pacific Coast Salmon FMP within the Guadalupe River along the project site due to the presence of the Chinook salmon (*Oncorhynchus tshawytscha*).

3.1.4 Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA), 16 U.S.C. Section703, prohibits killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. The MBTA protects whole birds, parts of birds, and bird eggs and nests; and prohibits the possession of all nests of protected bird species whether they are active or inactive. An active nest is defined as having eggs or young, as described by the Department of the Interior in its April 16, 2003 Migratory Bird Permit Memorandum. Nest starts (nests that are under construction and do not yet contain eggs) are not protected from destruction.

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

3.2 State Regulations

3.2.1 Porter-Cologne Water Quality Control Act

The State Water Resources Control Board (SWRCB) works in coordination with the nine Regional Water Quality Control Boards (RWQCBs) to preserve, protect, enhance, and restore water quality. Each RWQCB makes decisions related to water quality for its region, and may approve, with or without conditions, or deny projects that could affect waters of the state. Their authority to regulate activities that could result in a discharge of dredged or fill material comes from the CWA and the Porter-Cologne Water Quality Control Act (Porter-Cologne).

Porter-Cologne broadly defines waters of the state as "any surface water or groundwater, including saline waters, within the boundaries of the state." Because Porter-Cologne applies to any water, whereas the CWA applies only to certain waters, California's jurisdictional reach overlaps and may exceed the boundaries of waters of the U.S. For example, Water Quality Order No. 2004-0004-DWQ states that "shallow" waters of the state include headwaters, wetlands, and riparian areas. Moreover, the San Francisco Bay Region RWQCB's Assistant Executive Director has stated that, in practice, the RWQCBs claim jurisdiction over riparian areas. Where riparian habitat is not present, such as may be the case at headwaters and urbanized areas, jurisdiction is taken to the top of bank.

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

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

Project Applicability: Waters of the state on or near the project site include all potential waters of the U.S. associated with the Guadalupe River. The RWQCB will also consider the riparian vegetation rooted within and areas of the riparian banks above OHWMs and below top of bank to be important buffers to waters of the state associated with the river. No project activities will occur below the top of bank, and therefore impacts related to the project will only temporarily impact riparian habitat (i.e., tree trimming) within RWQCB jurisdiction. Indirect project impacts on riparian habitat within RWQCB jurisdiction are discussed in Section 6 below.

3.2.2 California Endangered Species Act

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

Project Applicability: No California state-listed or candidate plant species occur on the project site or in adjacent areas that could be substantially impacted by proposed activities under the project. The tricolored blackbird (*Agelaius tricolor*), a state threatened species, could occasionally occur on the site as a nonbreeding forager.

3.2.3 California Environmental Quality Act

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

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

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

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

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

- .1—seriously endangered in California;

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

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

Compliance with CEQA Guidelines Section 15065(a) requires consideration of natural communities of special concern, in addition to plant and wildlife species. Vegetation types of "special concern" are tracked in Rarefind (CNDDB 2023). Further, the CDFW ranks sensitive vegetation alliances based on their global (G) and state (S) rankings analogous to those provided in the CNDDB. Global rankings (G1–G5) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas S rankings are a reflection of the condition of a habitat within California. If an alliance is marked as a G1–G3, all of the associations within it would also be of high priority. The CDFW provides the Vegetation Classification and Mapping Program's (VegCAMP) currently accepted list of vegetation alliances and associations (CDFW 2022).

Project Applicability: All potential impacts on biological resources will be considered during CEQA review of the project in the context of this Biological Resources Report. Project impacts are discussed in Section 6 below.

3.2.4 California Fish and Game Code

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

Pursuant to California Fish and Game Code Section 1603, CDFW regulates any project proposed by any person that will "substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of

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

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

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

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

Project Applicability: CDFW jurisdiction under Section 1602 of the California Fish and Game Code would extend out to the outer edge of canopy associated with riparian trees growing along the Guadalupe River. In areas where riparian tree canopies extend above the top of bank, the landward canopy edge will demarcate the lateral limit of CDFW jurisdiction. Impacts on these areas would require a LSAA. Project impacts on riparian habitat subject to CDFW jurisdiction are discussed in Section 6.

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

3.2.5 State Water Resources Control Board Stormwater Regulation

Construction Phase. Construction projects in California causing land disturbances that are equal to 1 ac or greater must comply with State requirements to control the discharge of stormwater pollutants under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance

Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of Best Management Practices (BMPs) to protect water quality until the site is stabilized.

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

Post Construction Phase. In many Bay Area counties, including Santa Clara County, projects must also comply with the California RWQCB, San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit (Water Board Order No. R2-2009-0074, as amended). This permit requires that all projects implement Best Management Practices and incorporate Low Impact Development practices into the design that prevents stormwater runoff pollution, promotes infiltration, and holds/slows down the volume of water coming from a site. In order to meet these permit and policy requirements, projects must incorporate the use of green roofs, impervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors.

Project Applicability. The project will comply with the requirements of the Construction General NPDES permit; thus, construction phase activities would not result in detrimental water quality effects upon biological/regulated resources in the Guadalupe River. Additionally, the project must comply with the Municipal Regional Stormwater NPDES Permit for design of appropriate stormwater treatment facilities and incorporate feasible Low Impact Development practices.

3.3 Local Regulations

3.3.1 Santa Clara Valley Habitat Conservation Plan

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

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

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

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

Project Applicability. The project is a covered project under the VHP and would need to comply with VHP conditions (ICF International 2012).

3.3.2 City of San José Tree Ordinance

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

Removal of trees on private property, commercial, and industrial properties are also subject to tree removal permitting by the City of San José. A permit is required to remove a tree of "any size" from a commercial and industrial property. A separate "permit adjustment application" is required to be filed for non-ordinance-sized

trees that will be removed from commercial and industrial property. As part of the permit application it is required to contact the City's planning division with regard to the replacement of trees on private, commercial and industrial properties.

Project Applicability: Ordinance-sized trees are present on the project site. A permit from the City of San José would be required for the proposed removal of trees from the project site. The project will comply with the City of San José's tree replacement guidelines and policies for any trees that need to be removed.

3.3.3 City of San José Riparian Policy

Measures to protect riparian corridors are provided in the City's Riparian Corridor Policy Study (Policy Study) (City of San José 1999), which was incorporated into the City's Envision San Jose 2040 General Plan (City of San José 2021); the Zoning Code (Title 20 of the San Jose Municipal Code); and the City Council-adopted VHP, specifically Condition 11. The term "riparian corridor" as defined by the City means any defined stream channel, including the area up to the bank full-flow line, as well as all characteristic streamside vegetation in contiguous adjacent uplands.

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

Project Applicability: A riparian corridor associated with the Guadalupe River is located along the northeastern boundary of the project site. The riparian edge of this corridor was mapped as part of the field surveys described in Section 2.2. The edges of the riparian corridor are shown on Figure 3 and correspond to the outer edge of the riparian canopy, which overlaps the project site. A portion of the project site falls within the riparian corridor (i.e., beneath the dripline of riparian trees along the Guadalupe River).

Council Policy 6-34 specifies that new parking facilities should be set back a minimum distance of 100 feet from the adjacent riparian corridor. Coordination with the City of San José (both for City Riparian Corridor Policy compliance and VHP compliance) is likely to be needed to determine if the project qualifies for an exception to riparian setback requirements. Based on discussion at the Planning Commission hearing for another recent project along the Guadalupe River (Almaden Office Project), we understand that the City may not require a setback in areas where impact areas are already developed; however, this would need to be determined by the City.

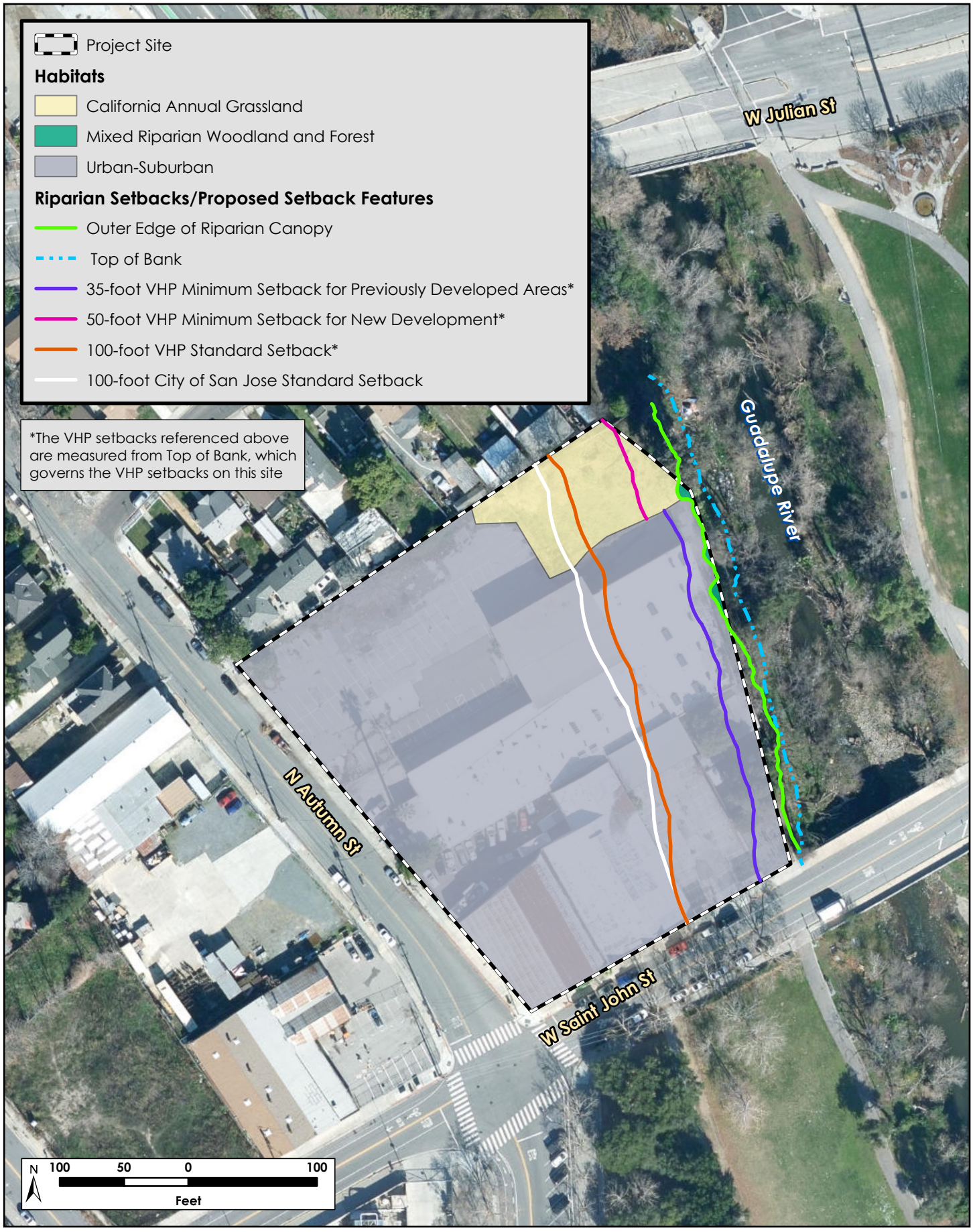

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Figure 3. Land Cover Map and Riparian Setbacks
Milligan Parking Lot Project Biological Resources Report (4407-02)
March 2023

Section 4. Environmental Setting

4.1 General Project Area Description

Based on a review of historical aerial photos (Google LLC. 2023), the existing developed portion of the project site has been used as a parking area in recent decades. The project site is located in the City of San José in Santa Clara County, California (Figure 1). The climate in the project vicinity is coastal Mediterranean, with most rain falling in the winter and spring. Mild cool temperatures are common in the winter. Hot to mild temperatures are common in the summer. Climate conditions in the vicinity include a 30-year average of approximately 20 inches of annual precipitation with a monthly average temperature range from 49.3ºF to 70.3ºF (PRISM Climate Group 2023). The Natural Resource Conservation Service (NRCS) has mapped six soil units along the project alignment: Urbanland-Campbell complex, 0 to 2 percent slopes and Elder fine sandy loam, 0 to 2 percent slopes (NRCS 2023). The Urbanland-Campbell complex comprises most of the site and is composed of disturbed and human transported material (Urbanland soil series), and very deep, well drained soils that formed in alluvium from mixed rock sources. The Elder fine sandy loam comprises the Guadalupe River banks and bottom and is comprised of alluvium from metamorphic sedimentary rock that rarely floods. Neither of these soils are considered "hydric" soils (NRCS 2023).

Upland portions of the project site are nearly level at approximately 80 feet in elevation (Google LLC. 2023). The banks of the Guadalupe River are fairly steep, with a slope of approximately 25–30%, and elevation drops to approximately 65 feet at the channel bottom (Google LLC. 2023). The Guadalupe River is a naturally occurring stream that drains nearly 170 square miles of Santa Clara County and flows approximately 13 miles to empty into the San Francisco Bay. Los Gatos Creek meets the Guadalupe River about 400 feet upstream (southeast) of the project site. The riparian habitat of both creeks in the vicinity of the project site is of moderate to low quality due to debris, disturbance, and litter associated with the urban setting, and the presence of homeless encampments. The habitat quality is further reduced due to the predominance of non-native trees and understory species.

4.2 Land Cover

As described above, biotic habitats on the project site were classified according to the land cover classification system described in the VHP (ICF International 2012), The reconnaissance-level field survey identified three general land cover types on the 2.5-acre project site, as defined by the VHP: urban-suburban, California annual grassland, and mixed riparian forest and woodland. These land cover types are described in detail below and shown on Figure 3.

4.2.1 Urban-Suburban

Vegetation. The urban-suburban land cover type supports little vegetation and is composed of paved parking lots, sidewalks, existing buildings/businesses, and maintained landscaping along the boundary of the study area. (Photo 1). Included in the asphalt areas, comprising the majority of this land cover type, are parking lots surrounded by fencing, which were used as temporary parking for the SAP Center at the time of the survey, as well as a few vacant buildings and businesses. This land cover type also includes a single-family home.

Photo 1. Developed/landscaped habitat on the site.

A small number of landscaped areas within the project site support shrubs and a few mature trees, such as non-native eucalyptus blue gum (*Eucalyptus globulus*) and native coast live oak (*Quercus agrifolia*). This area supports patches of unmaintained landscaping, including non-native English ivy (*Hedera helix*), American trumpet vine (*Campsis radicans*), and Canary Island date palm (*Phoenix canariensis*). Cracks in the pavement support ruderal species such as fumitory (*Fumaria* sp.), prickly lettuce (*Lactuca serriola*), and smilo grass (*Stipa miliacea*).

Wildlife. Due to the scarcity of vegetation, the urban-suburban portion of the project site provides relatively low-quality habitat for wildlife species. The wildlife most often associated with urban-suburban areas are those that are tolerant of periodic human disturbances, including introduced species such as the European starling (*Sturnus vulgaris*), rock pigeon (*Columba livia*), house mouse (*Mus musculus*), and Norway rat (*Rattus norvegicus*). Several common native species are also able to use this habitat, including the American crow (*Corvus brachyrhynchos*), which was observed during the reconnaissance survey, as well as the black phoebe (*Sayornis nigricans*), northern mockingbird (*Mimus polyglottos*), house finch (*Haemorhous mexicanus*), California towhee (*Melozone crissalis*), and raccoon (*Procyon lotor*). Few birds are likely to nest on the site due to the sparseness of trees, but species such as the native mourning dove (*Zenaida macroura*) and Anna's hummingbird (*Calypte anna*) may nest in the few trees present. In addition, the eaves of the buildings on the project site may be attractive to other nesting and/or roosting birds such as the barn swallow (*Hirundo rustica*) and nonnative European starling. A focused survey detected no evidence (i.e., old nests) of raptors having previously nested in the few trees on the project site.

In addition, a focused survey of the exterior of the buildings and the trees in the urban-suburban area detected no large cavities that might provide suitable bat roosting habitat and detected no evidence of bat activity (i.e., guano or urine staining).

4.2.2 California Annual Grassland

Vegetation. A fence surrounds a small portion of the northern corner of the project site and contains California annual grassland habitat (Photo 2). This land cover type is dominated by ruderal grass species including ripgut brome (*Bromus diandrus*) and wild oats (*Avena* sp.), as well as non-native forb species such as black mustard (*Brassica nigra*), wild radish (*Raphanus sativus*), Crane's bill geranium (*Geranium molle*) and fennel (*Foeniculum vulgare*). There are bare patches of soil throughout that are likely the result of rocky, low-quality fill soil in the plot. This area appears to be regularly mowed.

Photo 2. Representative photo of California annual grassland observed onsite.

Wildlife. The California annual grassland habitat on the site provides low-quality habitat for wildlife due to frequent human disturbance (e.g., mowing), the limited extent of the grassland area, and the isolation of this habitat remnant from more extensive grasslands. As a result, some of the wildlife species associated with extensive grasslands in the South Bay, such as the grasshopper sparrow (*Ammodramus savannarum*), are absent from the patch of grassland on the project site. Although some animals that nest or den in the adjacent riparian habitat may occasionally forage in this grassland, the grassland is not expected to be used heavily by, or relied upon by, large numbers of riparian-associated animals. Many of the species that occur in the small grassland area on the project site occur primarily in adjacent urban areas and use this grassland for foraging. Such species include the house finch, bushtit (*Psaltriparus minimus*), and lesser goldfinch (*Spinus psaltria*), which forage on seeds in ruderal areas, and the black phoebe, barn swallow, and Mexican free-tailed bat (*Tadarida brasiliensis*), which forage aerially over ruderal habitats for insects.

California ground squirrels were not observed on the project site during the survey. Other rodent species that can potentially occur in the ruderal grassland habitat on the site include the California vole (*Microtus californicus*), Botta's pocket gopher (*Thomomys bottae*), and deer mouse (*Peromyscus maniculatus*). Diurnal raptors such as red-tailed hawks (*Buteo jamaicensis*) and Cooper's hawks (*Accipiter cooperii*) forage for these small mammals over grasslands during the day, and at night nocturnal raptors, such as barn owls (*Tyto alba*), will forage for nocturnal rodents, such as deer mice.

Mammals such as the native striped skunk (*Mephitis mephitis*) and raccoon as well as the nonnative Virginia opossum (*Didelphis virginiana*) and feral cat (*Felis catus*) utilize the grassland habitat on the site for foraging. Reptiles such as native western fence lizards (*Sceloporus occidentalis*) and western terrestrial garter snakes (*Thamnophis elegans*) frequent grassland habitats, and may occur in the grassland on the site or in adjacent urban-suburban areas.

4.2.3 Mixed Riparian Woodland and Forest

Vegetation. This habitat occurs along the banks of the Guadalupe River adjacent to the Project Site (Photo 3), with a small area of riparian canopy (0.01 acre) overhanging the site. A fence line along a private residence and a vacant parking lot currently utilized by the SAP Center appears to mark the top of bank of the Guadalupe River. The riparian edge extended past the top of bank and fence line for less than half of the length of the fence line (Figure 3).

Photo 3. Representative photo of Mixed Riparian Woodland and Forest

Dominant tree species include coast live oak (*Quercus agrifolia*) and valley oak (*Quercus lobata*). Additional ornamental tree species were observed on private property outside of the top of bank, but were contiguous with riparian trees, and thus included within the mixed riparian woodland and forest land cover type and included southern magnolia (*Magnolia grandiflora*) and southern blue gum (*Eucalyptus globulus*).

The understory of the riparian woodland habitat was dominated by Bermuda buttercup (*Oxalis pes-caprae*), ruderal grasses such as those observed in the California annual grassland land cover type, and Italian thistle (*Carduus pycnocephalus*). Closer to the water, Himalayan blackberry (*Rubus armeniacus*) was observed.

A homeless encampment was observed below the West St. John Street Bridge immediately south of the project site. Only a few individuals were present at the time of the survey; however, debris was scattered throughout the area, extending into the waterway, as well as surrounding riparian habitat on the project site.

Wildlife. Riparian habitats in California generally support exceptionally rich bird communities and contribute disproportionately to landscape-level species diversity. The presence of year-round water and abundant invertebrate fauna provides foraging opportunities, and the diverse habitat structure provides cover and nesting opportunities. Many bird species that are attracted to wetland and aquatic habitats along the Guadalupe River are expected to move through the site when flying along the Guadalupe River. The numbers of these birds moving through the site will vary by time of year and by species. Many birds, such as waterfowl, often tend to move in large groups, while other species, such as migrating landbirds, will move through individually. Local bird numbers also vary by time of year, as many birds form small to large flocks during winter and migration, and occur in more widely spaced pairs during the breeding season.

We consider the riparian habitat along this reach of the Guadalupe River to be of moderate quality for birds. The large numbers of mature trees and native trees, presence of dense understory vegetation in some areas,

relatively large width of the riparian corridor (approximately 145–175 feet adjacent to the project site), and presence of the Guadalupe River Park to the east and south contribute positively to the value of this habitat for birds. However, the large numbers of nonnative trees, predominantly nonnative understory, and trampling/disturbance of this habitat from homeless camps negatively affect the quality of this habitat for birds. This riparian habitat is also highly fragmented due to the surrounding high-density urban development and the presence of bridges, road crossings, and channelization along nearby portions of the river, and therefore lacks connectivity to higher-quality riparian habitats in the region. As a result, it is our opinion this reach of the Guadalupe River provides moderate-quality habitat for birds overall.

Although some songbirds that migrate along the Pacific Flyway and travel through the site vicinity are expected to be attracted to this reach of the Guadalupe River, this habitat is not likely to be heavily used by migrating birds. The project site is located approximately 8 miles upstream from the Bay and is isolated from Bay habitats by dense urban development. Further, the riparian habitat along the project site is highly fragmented due to the surrounding high-density urban development and the presence of bridges, road crossings, and channelization along nearby portions of the river, and therefore lacks connectivity to higher-quality riparian habitats in the region. Thus, based on the moderate quality of the habitat and the isolation of this habitat from the edge of the Bay and from higher-quality habitats in the region, only moderate numbers of birds migrating along the Pacific Flyway are expected to be attracted to this reach of the Guadalupe River during migration. Nevertheless, some songbirds that migrate along the Pacific Flyway and travel through the site vicinity will be attracted to this reach of the Guadalupe River and disperse and forage adjacent to the site. Further, this reach of the Guadalupe River is used regularly by resident birds that are present in the vicinity year-round and are attracted to the riparian habitat for foraging and nesting opportunities.

Reptiles such as the gopher snake (*Pituophis catenifer*), western fence lizard, and southern alligator lizard (*Elgaria multicarinata*) also are present in the riparian habitat along the Guadalupe River. Amphibians such as the arboreal salamander (*Aneides lugubris*) occur in the leaf litter in this habitat and the native Pacific tree frog (*Hyliola regilla*) is also known to be present. Urban-adapted mammals, such as the native raccoon and striped skunk, as well as the non-native Virginia opossum, Norway rat, black rat (*Rattus rattus*), feral cat, and eastern gray squirrel (*Sciurus carolinensis*), reside in riparian habitat on and adjacent to the project site.

4.3 Wildlife Movement

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

many mammal species disperse from their natal home ranges, sometimes moving over relatively long distances in search of new areas in which to establish.

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

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

The Guadalupe River, which eventually drains to the open waters of the San Francisco Bay, and its associated riparian corridor serve as a movement corridor for several common and special-status species of birds, fish, mammals, reptiles, and amphibians in the project vicinity. In addition, a number of birds, mammals, reptiles, and amphibians utilize the riparian corridor of the Guadalupe River for movement purposes, as it provides sufficient vegetative cover preferred by these species when navigating across the landscape. Specifically, migratory passerines, rabbits, striped skunks, raccoons, Pacific treefrogs, and alligator lizards, amongst other species, are expected to move along this corridor.

In summary, the majority of the project site is not a particularly important for movement by non-flying wildlife, and it does not contain any high-quality corridors allowing dispersal of such animals through the City. However, the Guadalupe River along the northeastern boundary of the site provides a corridor for wildlife species to disperse north and south through San Jose.

Section 5. Special-Status Species

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

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

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

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

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

Information concerning threatened, endangered, and other special-status species that potentially occur on the project site was collected from several sources and reviewed by H. T. Harvey & Associates biologists as described in Section 2 above. Figure 4 depicts CNDDB records of special-status plant species in the general vicinity of the project site and Figure 5 depicts CNDDB records of special-status animal species. These generalized maps show areas where special-status species are known to occur or have occurred historically.

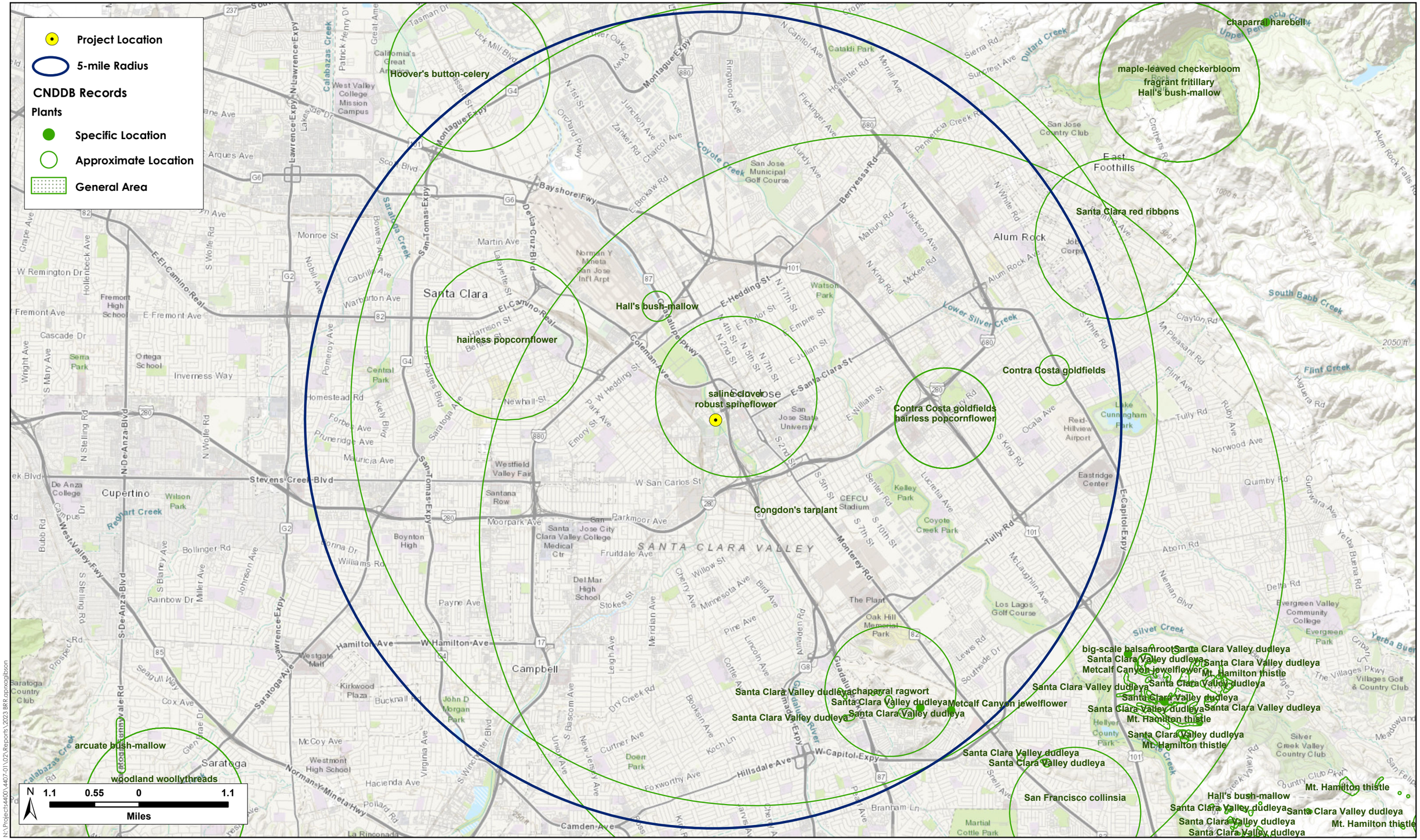

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Figure 4. CNDDB-Mapped Records of Special-Status Plants
Milligan Parking Lot Project Biological Resources Report (4407-02)
March 2023

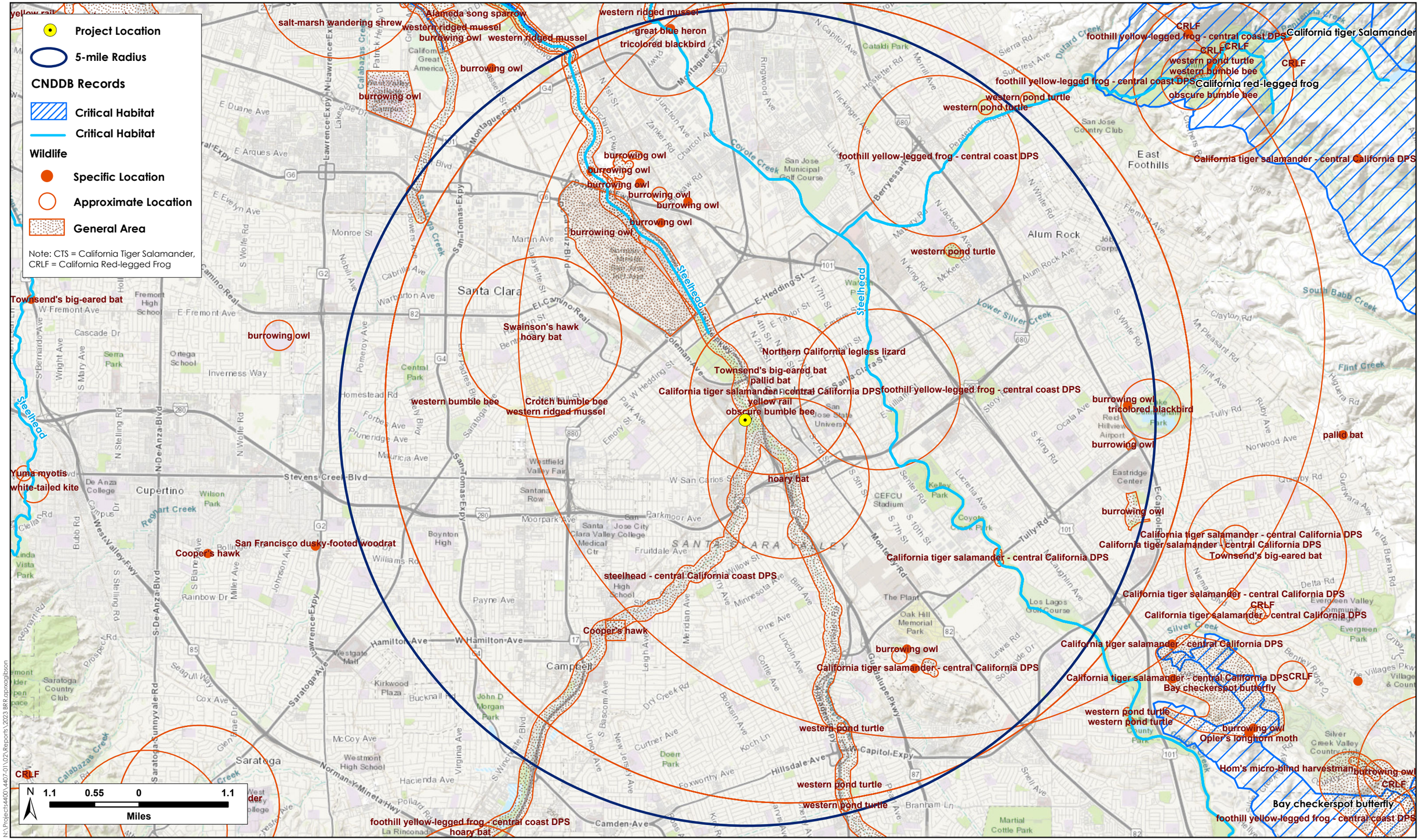

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Figure 5. CNDDB-Mapped Records of Special-Status Animals

Milligan Parking Lot Project Biological Resources Report (4407-02)
March 2023

5.1 Special-Status Plant Species

A list of 66 plant species thought to have some potential for occurrence in the project vicinity was compiled using both CNDDB records (CNDDB 2023) (Figure 4) and the CNPS Rare Plant Inventory as described in *Methods* above. Analysis of the documented habitat requirements and occurrence records associated with these species allowed us to reject all 66 species as not having a reasonable potential to occur on the project site for at least one of the following reasons: (1) lack of suitable habitat types; (2) absence of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range on the site; (4) the site is too disturbed and urbanized to be expected to support the species, and/or (5) the species is presumed extirpated from the project vicinity. In addition, the VHP does not indicate that any covered plant species potentially occur on the project site and does not require special-status plant surveys for the site (Santa Clara Valley Habitat Agency [SCVHA] 2021a). Therefore, no special-status plant species are expected to occur on the project site, and no focused rare plant surveys are needed.

5.2 Special-Status Animal Species

The legal status and likelihood of occurrence on the project site of special-status animal species known to occur, or potentially occurring, in the surrounding region are presented in Table 2. Most of the special-status species listed in Table 2 are not expected to occur on the project site because it lacks suitable habitat, is outside the known range of the species, and/or is isolated from the nearest known extant populations by development or otherwise unsuitable habitat.

The following special-status species that are present in less urbanized settings in the South Bay, or in specialized habitats in the South Bay, are absent from the project site due to a lack of suitable habitat and/or isolation of the site from populations by urbanization: the Bay checkerspot butterfly (*Euphydryas editha bayensis*), riffle sculpin (*Cottus gulosus*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), foothill yellow-legged frog (*Rana boylii*), bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*), peregrine falcon (*Falco peregrinus anatum*), white-tailed kite (*Elanus leucurus*), burrowing owl, loggerhead shrike (*Lanius ludovicianus*), grasshopper sparrow, Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), least Bell's vireo (*Vireo bellii pusillus*), American badger (*Taxidea taxus*), San Joaquin kit fox (*Vulpes macrotis mutica*), mountain lion (*Puma concolor*), pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynorhinus townsendi*). While bald eagles may fly over the project site at times, none are expected to nest in, or make regular/heavy use of, any resources on the project site. No nests of San Francisco dusky-footed woodrats were observed on the site during the focused survey on February 23, 2021, and this species is also determined to be absent.

No aquatic habitat to support special-status fish species is present on the project site; however, the site is located immediately adjacent to the Guadalupe River, which provides habitat for the Central California Coast steelhead, Central Valley fall-run Chinook salmon, Pacific lamprey (*Entosphenus tridentatus*), Sacramento hitch (*Lavinia exilicauda exilicauda*), and Central California roach (*Lavinia symmetricus symmetricus*). There is some potential for

project activities to indirectly affect these species due to the close proximity of the site to aquatic habitat in the Guadalupe River.

The tricolored blackbird and San Francisco common yellowthroat (*Geothlypis trichas sinuosa*) can occasionally occur on or adjacent to the project site as nonbreeding foragers (i.e., they do not nest on or adjacent to the site). These species are not expected to nest, roost, or breed on or immediately adjacent to the project site due to a lack of suitable nesting, roosting, or breeding habitat, and will be affected very little, if at all, by the proposed project.

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

The yellow warbler (*Setophaga petechia*) can potentially nest in riparian habitat along the Guadalupe River adjacent to the project site. There is some potential for project activities to result in indirect effects on nesting yellow warblers in adjacent areas due to their close proximity to the project site. Individuals of this species will also occasionally occur in the small areas of riparian canopy that overhang the project site as nonbreeding foragers.

The western pond turtle is addressed in greater detail in Table 2 below because this species can potentially breed or occur on or immediately adjacent to the project site and/or may be impacted by project construction (see Section 6 *Impacts and Mitigation Measures* below).

Table 2. Special-Status Animal Species, Their Status, and Potential for Occurrence on the Project Site

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Federal or State Endangered, Threatened, or Candidate Species			
Bay checkerspot butterfly (*Euphydryas editha bayensis*)	FT, VHP	Native grasslands on serpentine soils. Larval host plants are *Plantago erecta* and/or *Castilleja exserta* or *C. densiflora*.	**Absent.** No suitable native grasslands, serpentine soils, or larval host plants to support this species were identified on the project site during the reconnaissance-level survey, and the VHP does not map suitable habitat on the project site (ICF International 2012). Determined to be absent.
Monarch butterfly (*Danaus plexippus*)	FC	Requires milkweeds (*Asclepias* spp.) for egg-laying and larval development, but adults obtain nectar from a wide variety of flowering plants in many habitats. Individuals congregate in winter roosts, primarily in Mexico and in widely scattered locations on the central and southern California coast.	**Absent as Breeder.** The monarch butterfly occurs on the project site as a migrant, and small numbers of individuals may forage on the site, especially during spring and fall migration. No current or historical overwintering sites are known in Santa Clara County.
Central California Coast steelhead (*Oncorhynchus mykiss*)	FT	Cool streams with suitable spawning habitat and conditions allowing migration between spawning and marine habitats.	**Present in Adjacent Waters.** No aquatic habitats are present on the project site to provide suitable habitat for steelhead, and this species is absent from the project site. However, steelhead are known to occur in the Guadalupe River immediately adjacent to the project site (Smith 2013). This reach of the Guadalupe River functions as a migration corridor for individuals traveling between the San Francisco Bay and spawning and rearing habitat farther upstream.
California tiger salamander (*Ambystoma californiense*)	FT, ST, VHP	Vernal or temporary pools in annual grasslands or open woodlands.	**Absent.** Populations located on the Santa Clara Valley floor have been extirpated due to habitat loss, and the species is now considered absent from the majority of the Valley floor, including the project site (H. T. Harvey & Associates 1999a, 2012, Valley Water 2011). No recent records of California tiger salamanders are located anywhere in the project vicinity (CNDDB 2023). Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
California red-legged frog (*Rana draytonii*)	FT, CSSC, VHP	Streams, freshwater pools, and ponds with emergent or overhanging vegetation.	**Absent.** No aquatic habitat to support this species occurs on the project site. The VHP maps aquatic habitat within the Guadalupe River adjacent to the site as breeding habitat for California red-legged frogs (ICF International 2012). However, this species has been extirpated from the majority of the project region, including the entire urbanized Santa Clara Valley floor, due to development, the alteration of hydrology of its aquatic habitats, and the introduction of nonnative predators such as nonnative fishes and bullfrogs (H. T. Harvey & Associates 1997, Valley Water 2011). Determined to be absent.
Foothill yellow-legged frog (*Rana boylii*)	SC, VHP	Partially shaded shallow streams and riffles with a rocky substrate. Occurs in a variety of habitats in coast ranges.	**Absent.** No aquatic habitat to support this species occurs on the project site. The VHP maps aquatic habitat within the Guadalupe River on and adjacent to the site as secondary habitat for foothill yellow-legged frogs (ICF International 2012). However, this species has been extirpated from valley floor areas of Santa Clara County, and is no longer known to occur along the County's streams below major reservoirs, including Calero and Almaden Reservoirs which are located upstream of the project (H. T. Harvey & Associates 1999b). Determined to be absent.
Western pond turtle (*Actinemys pallida*)	FC, CSSC, VHP	Permanent or nearly permanent water in a variety of habitats.	**May be Present.** No suitable aquatic habitat is present on the project site, and breeding populations of western pond turtles have been extirpated from most urbanized areas in the region. However, individuals of this long-lived species still occur in urban streams and ponds in the Santa Clara Valley, including the Guadalupe River, where one was observed in 1997 (CNDDB 2023), although none were observed during the 2021 site visits. Potentially suitable nesting habitat for western pond turtles is present in grassland and riparian areas on the project site. However, the likelihood that turtles nest on the project site is low due to the very limited extent of potential nesting habitat and the low densities of turtles present in this urban reach of the river.
Bald eagle (*Haliaeetus leucocephalus*)	SE, SP	Occurs mainly along seacoasts, rivers, and lakes; nests in tall trees or in cliffs, occasionally on electrical towers. Feeds mostly on fish.	**Absent.** Nests and forages in the region primarily at inland reservoirs. No suitable nesting or foraging habitat is present on the project site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Least Bell's vireo (*Vireo bellii pusillus*)	FE, SE, VHP	Nests in heterogeneous riparian habitat, often dominated by cottonwoods and willows.	**Absent.** This species has not been recorded nesting along the Guadalupe River, which does not provide high-quality nesting habitat, or anywhere in the project vicinity. The only breeding records in Santa Clara County are from Llagas Creek southeast of Gilroy in 1997 and the Pajaro River south of Gilroy in 1932 (Rottenborn 2007a). Otherwise, records in the County of potential least Bell's vireos include 1–2 singing males along lower Llagas Creek in May 2001 (CNDDB 2023), a singing male in June 2006 along Coyote Creek near the Coyote Creek Golf Club (H. T. Harvey & Associates 2007; not seen, so subspecies not confirmed), and a singing male on May 23, 2016 in Alviso (Jeffers, pers. comm. 2016). The VHP does not map suitable habitat for this species as occurring on or adjacent to the project site (ICF International 2012). Although the abundance and distribution of this species may increase as core populations increase, it is unlikely to be more than a rare and very locally occurring breeder along southern Santa Clara County streams (south of the project site). Determined to be absent.
Tricolored blackbird (*Agelaius tricolor*)	ST, VHP	Nests near fresh water in dense emergent vegetation.	**Absent as Breeder.** In Santa Clara County, has bred in only a few scattered locations, and is absent from, or occurs only as a nonbreeder in, most of the County (Rottenborn 2007b). Typically nests in extensive stands of tall emergent herbaceous vegetation in non-tidal freshwater marshes and ponds. No suitable nesting habitat is present on the project site or along the Guadalupe River on and adjacent to the site; this species (whose colonies are loud and conspicuous) has never been recorded nesting on or adjacent to the project site, and high levels of adjacent disturbance likely preclude nesting by this species. Thus, this species is expected to occur only in low numbers, and only occasionally, as a nonbreeding forager.
San Joaquin kit fox (*Vulpes macrotis mutica*)	FE, ST, VHP	Annual grassland or mixed shrub and grassland habitats throughout low, rolling hills and in valleys.	**Absent.** This species has not been recorded, and is not expected to occur, on the project site. The closest area of potential occurrence (based on VHP mapping) is approximately 32.4 miles southeast of the project site in the vicinity of Pacheco Creek and the uppermost reaches of the Pajaro River, where it may occur infrequently and in low numbers during dispersal (ICF International 2012). Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Mountain lion (*Puma concolor*) Southern California/Central Coast ESU	SC	Has a large home range size and occurs in a variety of habitats. Natal dens are typically located in remote, rugged terrain far from human activity. May occasionally occur in areas near human development, especially during dispersal.	**Absent.** In the project region, mountain lions occur primarily in the Santa Cruz Mountains and the Diablo Range. This species is not expected to occur on the project site owing to high levels of human activity and the project's location in urbanized San José. Determined to be absent.
California Species of Special Concern			
Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*)	CSSC	Cool rivers and large streams that reach the ocean and that have shallow, partly shaded pools, riffles, and runs.	**Present in Adjacent Waters.** No aquatic habitats are present on the project site to provide suitable habitat for Chinook salmon, and this species is absent from the project site. This species did not spawn historically in South Bay streams; however, small numbers have been detected in the Guadalupe River (Leidy 2007). Aquatic habitat within the reach of the Guadalupe River adjacent to the project site typically functions as a migration corridor for individuals traveling between the San Francisco Bay and higher-quality spawning habitat farther upstream. However, Chinook salmon may attempt spawning in this reach if they are unable to access higher-quality habitat upstream due to seasonally low flows.
Pacific lamprey (*Entosphenus tridentatus*)	CSSC	Medium- and large-sized, low-gradient cold rivers and streams, with a wide range of habitats (e.g., gravel, low-gradient riffles).	**Present in Adjacent Waters.** No aquatic habitats are present on the project site to provide suitable habitat for Pacific lamprey, and this species is absent from the project site. This species is known to be present in aquatic habitat in the Guadalupe River adjacent to the project site (Leidy 2007). Spawning is expected to occur primarily in cooler water; ammocoetes may be present in warmer areas farther downstream.
Central California roach (*Lavinia symmetricus symmetricus*)	CSSC	Generally found in small streams, they are well adapted to intermittent watercourses (e.g., tolerant of high temperatures and low oxygen levels).	**Present in Adjacent Waters.** No aquatic habitats are present on the project site to provide suitable habitat for Central California roach, and this species is absent from the project site. This species is known to be present in aquatic habitats within the Guadalupe River (Leidy 2007). It occurs widely, often in unshaded pools with warm temperatures, and is expected to occur within the Guadalupe River adjacent to the project site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Sacramento hitch (*Lavinia exilicauda exilicauda*)	CSSC	Warm, lowland, waters including clear streams, turbid sloughs, lakes, and reservoirs. Has a high tolerance for varying stream conditions and water temperature.	**Present in Adjacent Waters.** No aquatic habitats are present on the project site to provide suitable habitat for Sacramento hitch, and this species is absent from the project site. This species is known to be present in the Guadalupe River (Leidy 2007). It has a high tolerance of stream conditions and water temperatures it is expected to occur in aquatic habitat adjacent to the project site.
Riffle sculpin (Cottus gulosus)	CSSC	Permanent, cool, headwater streams with an abundance of riffles and rocky substrates.	**Absent from Adjacent Waters.** Riffle sculpin are widespread and locally abundant in the region, typically within cooler reaches near stream headwaters, and have historically been detected in the Guadalupe River (Leidy 2007). Warmer conditions along the reach of aquatic habitat within the Guadalupe River adjacent to the site likely preclude the presence of this species.
Burrowing owl (*Athene cunicularia*)	CSSC, VHP	Nests and roosts in open grasslands and ruderal habitats with suitable burrows, usually those made by California ground squirrels.	**Absent.** No suitable nesting or roosting habitat (i.e., open grasslands with burrows) was observed on the project site during the reconnaissance-level survey. In addition, no burrowing owls or signs of recent burrowing owl use of the site (e.g., pellets, fecal material or feathers) were observed. Further, the project site is not mapped as potential burrowing owl habitat (nesting or wintering) by the VHP, nor is it located adjacent to mapped burrowing owl habitat (SCVHA 2021b), and there are no current or historical burrowing owl records from the site (CNDDB 2023). Thus, burrowing owls are determined to be absent from the project site.
Loggerhead shrike (*Lanius ludovicianus*)	CSSC (nesting)	Nests in tall shrubs and dense trees; forages in grasslands, marshes, and ruderal habitats.	**Absent.** Nests (or at least formerly nested) in a number of locations around the South Bay where open grassland, ruderal, or agricultural habitat with scattered brush, chaparral, or trees provides perches and nesting sites (Bousman 2007a), though populations have declined in recent years as suitable habitat has been increasingly developed. No suitable nesting or foraging habitat for loggerhead shrikes is present on the site due to the limited extent of the grassland area as well as high levels of human disturbance.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Yellow warbler (*Setophaga petechia*)	CSSC (nesting)	Nests in riparian woodlands.	**May be Present.** Yellow warblers are not expected to nest within the small areas of riparian canopy that overhang the project site, as these areas are too exposed to conceal a nest from predators. However, up to one pair of this species may nest in riparian vegetation adjacent to the site along the Guadalupe River. Yellow warblers forage along the Guadalupe River in large numbers during migration.
San Francisco common yellowthroat (*Geothlypis trichas sinuosa*)	CSSC	Nests in herbaceous vegetation, usually in wetlands or moist floodplains.	**Absent as Breeder.** No suitable nesting habitat for common yellowthroats is present on or adjacent to the project site. Suitable foraging habitat for common yellowthroats is present in the herbaceous vegetation and floodplain riparian habitat along the Guadalupe River adjacent to the site. Individuals may forage in the riparian habitat on and adjacent to the project site during the nonbreeding season (e.g., fall into early spring).
Grasshopper sparrow (*Ammodramus savannarum*)	CSSC (nesting)	Nests and forages in grasslands, meadows, fallow fields, and pastures.	**Absent.** Known to occur in the region primarily in grasslands and less frequently disturbed agricultural habitats, mostly in the foothills. This species does not breed on grassland on the Santa Clara Valley floor. No suitable nesting or foraging habitat for this species is present on the project site due to the limited extent of the grassland area and high levels of human disturbance.
Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*)	CSSC	Nests in pickleweed dominant salt marsh and adjacent ruderal habitat.	**Absent.** In the South San Francisco Bay, nests primarily in short pickleweed-dominated portions of diked/muted tidal salt marsh habitat and in adjacent ruderal habitats (Rottenborn 2007c). No suitable nesting habitat occurs on the project site. No suitable nesting or foraging habitat for this species is present on the project site due to the limited extent of the habitat present and high levels of human disturbance.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Pallid bat (*Antrozous pallidus*)	CSSC	Forages over many habitats; roosts in caves, rock outcrops, buildings, and hollow trees.	**Absent.** Historically, pallid bats were likely present in a number of locations throughout the project region, but their populations have declined in recent decades. This species has been extirpated as a breeder from urban areas close to the Bay, as is the case in the project footprint. No suitable roosting habitat is present on the project site, and no known maternity colonies of this species are present on or adjacent to the project site. There is a low probability that the species occurs in the site vicinity at all due to urbanization; however, individuals from more remote colonies are not expected to forage on the project site due to the limited extent of the habitat present and high levels of human disturbance. Determined to be absent.
Townsend's big-eared bat (*Corynorhinus townsendii*)	CSSC	Roosts in caves and mine tunnels, and occasionally in deep crevices in trees such as redwoods or in abandoned buildings, in a variety of habitats.	**Absent.** No known extant populations of the Townsend's big-eared bat occur on the Santa Clara Valley floor. Suitable breeding habitat is not present in the project footprint, and no colonies are known from the site vicinity. Determined to be absent.
San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*)	CSSC	Nests in a variety of habitats including riparian areas, oak woodlands, and scrub.	**Absent.** Suitable habitat for this species is present along the Guadalupe River on and adjacent to the project site. However, no woodrat nests were observed during the reconnaissance-level survey, and with the exception of records along Coyote Creek and along the edges of the Valley, San Francisco dusky-footed woodrats are not known to occur in the more urbanized portions of Santa Clara County (H. T. Harvey & Associates 2010). Determined to be absent.
American badger (*Taxidea taxus*)	CSSC	Burrows in grasslands and occasionally in infrequently disked agricultural areas.	**Absent.** Known to occur in the project region primarily in extensive grasslands and agricultural habitats, mostly in the foothills. Suitably extensive grasslands or agricultural habitats are not present on or near the project site, and the grasslands on the project site are isolated from more extensive grasslands in the foothills to the east and the mountains to the northwest by high-density urban development. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
State Fully Protected Species			
American peregrine falcon (*Falco peregrinus anatum*)	SP	Forages in many habitats; nests on cliffs and tall bridges and buildings.	**Absent.** Peregrine falcons are known to nest on City Hall in downtown San José, but are not known or expected to nest on the project site due to a lack of suitable habitat. Individuals are not expected to forage on the site due to the limited extent of the habitat present and high levels of human disturbance. Determined to be absent.
Golden eagle (*Aquila chrysaetos*)	SP	Breeds on cliffs or in large trees (rarely on electrical towers); forages in open areas.	**Absent.** No suitable nesting habitat for golden eagles is present on the project site. Individuals are not expected to forage on the site due to the limited extent of the habitat present and high levels of human disturbance. Determined to be absent.
White-tailed kite (*Elanus leucurus*)	SP	Nests in tall shrubs and trees; forages in grasslands, marshes, and ruderal habitats.	**Absent.** White-tailed kites are not known to nest on the site or in surrounding areas in San Jose (Cornell Lab of Ornithology 2023), and the limited patch of grassland on the site is not expected to support foraging kites. The species is expected to nest farther to the north along the Guadalupe River, where more extensive foraging habitat is present to support a nesting pair (e.g., at the Airport and along the San Francisco Bay).

Key to Abbreviations:

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

5.3 Sensitive Natural Communities, Vegetation Alliances, and Habitats

Natural communities have been considered part of the Natural Heritage Conservation triad, along with plants and animals of conservation significance, since the state inception of the Natural Heritage Program in 1979. The CDFW determines the level of rarity and imperilment of vegetation types, and tracks sensitive communities in its Rarefind database (CNDDB 2023). Global rankings (G) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas state (S) rankings are a reflection of the condition of a habitat within California. Natural communities are defined using NatureServe's standard heritage program methodology as follows (Faber-Langendoen et al. 2012):

G1/S1: Critically imperiled

G2/S2: Imperiled

G3/S3: Vulnerable.

G4/S4: Apparently secure

G5/S4: Secure

In addition to tracking sensitive natural communities, the CDFW also ranks vegetation alliances, defined by repeating patterns of plants across a landscape that reflect climate, soil, water, disturbance, and other environmental factors (Sawyer et al. 2009). If an alliance is marked G1-G3, all of the vegetation associations within it will also be of high priority (CDFW 2022). The CDFW's Vegetation Classification and Mapping Program provides a currently accepted list of vegetation alliances and associations (CDFW 2022).

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

5.3.1 Sensitive Natural Communities

A query of sensitive habitats in the CNDDB (2023) identified no communities of special concern as occurring within a two-mile radius of the project vicinity (Figure 4). Urban-suburban land uses, such as that present on the project site, have relatively little vegetation, do not conform to a defined, native-dominated CDFW alliance or association, nor do they have an associated rarity rank.

As described in Section 3.3.3, riparian corridors associated with the Guadalupe River overlap with the edge of the project site. Measures to protect riparian corridors are provided in the City's Policy Study (City of San José

1999), which was incorporated into the City's Envision San Jose 2040 General Plan (City of San José 2021); the Zoning Code (Title 20 of the San Jose Municipal Code); and the City Council-adopted VHP, specifically Condition 11.

5.3.2 Sensitive Vegetation Alliances

Coast live oak is co-dominant with valley oak at greater than 50%. This qualifies as coast live oak woodland and forest as described in the Manual of California Vegetation, 2nd Edition (Sawyer et. al. 2009). This vegetation alliance has a global rarity rank of G5 and a state rarity rank of S4. These are categorized as "secure" and not sensitive. The area within the California annual grassland community is a non-native grassland and is not considered a sensitive alliance. Therefore, no sensitive vegetation alliances occur on the project site.

5.3.3 CDFW Riparian Habitat

The mixed riparian forest on the project site is under the jurisdiction of the CDFW. Impacts on riparian habitats along stream and drainage corridors are typically regulated by CDFW because these habitats offer valuable resources for wildlife. Section 1602 of the Fish and Game Code establishes jurisdiction over the bed, channel, or bank of any river, stream, or lake. CDFW riparian jurisdiction ends at the outer extent of riparian tree or shrub canopy, which overlaps with the edge of the project site.

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

The aquatic habitat (extending up to the OHWMs of the perennial streams) and in-channel wetlands in Guadalupe River are considered wetlands and waters of the U.S. under the CWA. These are adjacent to the project site and do not overlap with its boundaries. The riparian habitat (extending to the outer edge of the riparian canopy) associated with Guadalupe River is considered waters of the State under the Porter-Cologne Water Quality Control Act. This overlaps with the edge of the project site.

5.3.5 Nonnative and Invasive Species

Several non-native, invasive plant species occur in the project area in either in the riparian habitat or in cracks and gaps in hardscape. The following have a rating of "limited" invasiveness (considered invasive but their ecological impacts are minor on a statewide level and their reproductive biology and other attributes result in low to moderate rates of invasiveness) according to the California Invasive Plant Council (Cal-IPC) (2023): blue gum, Canary Island date palm (*Phoenix canariensis*), wild radish, and smilo grass (*Stipa miliacea*). The following species have a "moderate" rating, indicating that they have substantial and apparent-but generally not severe-ecological impacts on physical processes, plant and animal communities, and vegetation structure, and that their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment would be generally dependent upon ecological disturbance: tree of heaven (*Ailanthus altissimus*), wild oats, ripgut brome, black mustard, Italian thistle (*Carduus pycnocephalus*), fennel, foxtail barley (*Hordeum murinum*), Bermuda buttercup (*Oxalis pes-caprae*), and greater periwinkle (*Vinca major*). Species with a "high" invasive rating by the Cal-IPC have the potential to cause severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are

conducive to moderate to high rates of dispersal and establishment, and most are widely distributed ecologically (Cal-IPC 2023). No species with a "high" rating were observed within the project area. Within the project area the only species with a "high" rating observed was English ivy. English ivy is patchy in old, landscaped areas within the urban-suburban area.

Section 6. Biological Impacts and Mitigation Measures

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

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

A. "have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service"

B. "have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service"

C. "have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means"

D. "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites"

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

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

Potential impacts on biological resources as a result of the proposed project were systematically evaluated at the project level. These impacts were first evaluated to qualitatively describe how proposed project activities could impact biological resources, and whether impacts would be temporary (i.e., occurring only during project construction and the period immediately following) or permanent. Impacts were then evaluated with the application of any applicable VHP conditions (see below) with which the proposed project must comply to determine whether the impacts were significant (and thus required mitigation) even with VHP compliance.

6.1 Santa Clara Valley Habitat Plan

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

The VHP defines measures to avoid, minimize, and mitigate impacts on covered species and their habitats while allowing for the implementation of certain covered projects. Chapter 6 of the VHP includes detailed and comprehensive conditions to avoid and minimize impacts on the 18 "covered species" (nine animal species and nine plant species) included in the plan area, which is comprised of 519,506 ac, or approximately 62% of Santa Clara County. These conditions are designed to achieve the following objectives:

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

In conformance with the VHP, project proponents are required to pay impact fees in accordance with the types and acreage of habitat or "land cover" impacted, and to implement conservation measures specified by the VHP. Land cover impacts are used because it is the best predictor of potential species habitat, and is applicable to all of the covered species (with the exception of the burrowing owl). The SCVHA has mapped four land cover fee zones in the VHP area: (1) ranchland and natural lands, (2) agricultural and valley floor lands, (3) small vacant sites, and (4) urban areas (no land cover fee) (SCVHA 2021a). The following areas are exempt from land cover fees:

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

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

The project site is located within the VHP Urban Service Area for the City of San José (Figure 6). In regard to the VHP's land cover fee zones, the majority of the site falls within Urban Areas (No Land Cover Fee) except for the riparian corridor along the Guadalupe River, which falls within Fee Zone B (SCVHA 2021a) (Figure 6). There is no serpentine habitat fee zone or burrowing owl habitat fee zone mapped on the project site, and no serpentine fee zone or burrowing owl fee zone applies. The will generate new vehicle trips per month due to the construction of a new parking lot, and may therefore be required to pay fees for nitrogen emissions. Even where no land cover fee is required due to being mapped as Urban Areas (No Land Cover Fee), specialty riparian fees would still be required for direct impacts to the riparian habitat that overhangs the site.

This impact assessment summarizes the applicable fees and conservation measures that are required by the VHP for the proposed project. VHP conditions that apply to the proposed project are provided below.

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

Several wildlife species that occur in the project vicinity are protected under state and federal laws. All native bird species and their nests are protected under the MBTA and California Fish and Game Code. Actions conducted under the VHP must comply with the provisions of the MBTA and California Fish and Game Code.

Condition 3. Maintain Hydrologic Conditions and Protect Water Quality

Condition 3 applies to all projects and identifies a set of programmatic BMPs, performance standards, and control measures to minimize increases of peak discharge of stormwater and to reduce runoff of pollutants to protect water quality, including during project construction. These requirements include preconstruction, construction site, and post-construction actions. Preconstruction conditions are site design planning approaches that protect water quality by preventing and reducing the adverse impacts of stormwater pollutants and increases in peak runoff rate and volume. They include hydrologic source control measures that focus on

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Figure 6. VHP Urban Service Area, Development Areas, and Fee Zones
Milligan Parking Lot Project Biological Resources Report (4407-02)
March 2023

the protection of natural resources. Construction site conditions include source and treatment control measure to prevent pollutants from leaving the construction site and minimizing site erosion and local stream sedimentation during construction. Post-construction conditions include measures for stormwater treatment and flow control.

Condition 11. Stream and Riparian Setbacks

Condition 11 applies to covered projects that may affect streams and associated riparian vegetation within the VHP plan area. This condition requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors. The project site is located inside of VHP-designated urban service areas (Figure 6). The standard required setback for new development for the reach of the Guadalupe River (a Category 1 stream) adjacent to the project site is 100 feet from the top of bank because the slope of the project site is less than 30%, no areas 35 feet from the edge of riparian vegetation extend past the 100-foot buffer, and the project site is located inside of VHP-designated urban service areas. However, some exemptions or exceptions (which allow a minimum setback of 35 feet from top of bank for developed areas and 50 feet from top of bank for undeveloped areas) may be applicable depending on the nature of the channel and the proposed improvements within the setback area.

As described in Section 3.3.3, City Council Policy 6-34 provides guidance on the implementation of riparian corridor protection consistent with all City policies and requirements that may provide for riparian protection, including those contained in the Council-adopted VHP, and calls for a setback of 100 feet from the edge of riparian canopy or the top of bank, whichever is greater. Thus, the setback required under the VHP (i.e., 100 feet measured from top of bank) may be smaller than that required for compliance with the City's riparian policy except where both setbacks are dictated by a 100-foot buffer from the top of bank.

6.2 Impacts on Special-Status Species: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS (Less than Significant with Mitigation)

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

Proposed project activities would result in 0.23 acre of permanent impacts on California annual grassland habitat on the project site. The project would remove all grassland vegetation within the impact area and result in a reduction in abundance of some of the common plant and wildlife species that occur on the site. However, the area of California annual grassland to be impacted occurs in a location in San José that has been subject to disturbance and fragmentation in the past and is embedded within a highly developed urban area, such that these areas do not provide regionally rare or especially high-value habitat for native vegetation or wildlife, or special-status species. This patch of grassland habitat is of low value as foraging habitat for animals due to

frequent human disturbance (e.g., mowing), the limited extent of this habitat, and this habitat patch's isolation from other grassland in the region. In addition, California annual grassland is abundant and widespread regionally and is not particularly sensitive, and the habitat on the project site is not especially valuable (from the perspective of providing important plant or wildlife habitat or an exemplary occurrence of this habitat type. Therefore, impacts on this habitat are considered less than significant. Further, because the number of individuals of any common plant or animal species within this habitat, and the proportion of these species' regional populations that could be disturbed, is very small, the project's impacts would not substantially reduce regional populations of these species. Thus, these impacts do not meet the CEQA standard of having a *substantial* adverse effect and would not be considered significant under CEQA.

6.2.2 Impacts on Water Quality and Special-Status Fish (Less than Significant)

No direct impacts are proposed within the bed and banks of the Guadalupe River, which runs adjacent to the project site. Indirect impacts on water quality in the river could potentially occur as a result of project activities, as the project site is located immediately adjacent to the Guadalupe River above the top of bank. Indirect impacts on water quality from construction of the project would be avoided and minimized by implementing erosion and sediment control measures, as well as BMPs for work near aquatic environments. Additionally, the project shall comply with all VHP conditions, including Condition 3, which requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during construction.

Construction projects in California causing land disturbances that are equal to 1 acre or greater must comply with state requirements to control the discharge of stormwater pollutants under the NPDES *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the State Water Board describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of BMPs to protect water quality until the site is stabilized. Standard permit conditions under the Construction General Permit require that the applicant utilize various measures including: on-site sediment control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors.

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

In the absence of avoidance and minimization measures, project activities could similarly result in impacts on the Central California Coast steelhead, Central Valley fall-run Chinook salmon, Pacific lamprey, Central California roach, and Sacramento hitch in the Guadalupe River due to a temporary increase in erosion, sedimentation, and turbidity in aquatic habitats located downstream of the work area. Additionally, minor spills of petrochemicals, hydraulic fluids, and solvents may occur during vehicle and equipment refueling. Such leaks/spills could adversely affect water quality downstream of construction activities. However, compliance with permit conditions to protect water quality, as described above, will minimize the potential for impacts to water quality due to increases in erosion, sedimentation, and turbidity as well as releases of pollutants into the creek water. These measures will also minimize the release or pollutants to waters in the Guadalupe River, thereby protecting water quality in the river. Therefore, project activities are not expected to result in substantial adverse indirect effects on special-status fish species in the Guadalupe River.

Thus, with compliance with permit conditions, potential project impacts on water quality and special-status fish species would be less than significant under CEQA.

6.2.3 Impacts on the Monarch Butterfly, Tricolored Blackbird, and San Francisco Common Yellowthroat (Less than Significant)

The monarch butterfly, tricolored blackbird, and San Francisco common yellowthroat may occur on or adjacent to the project site as nonbreeding migrants, transients, or foragers, but they are not known or expected to breed or occur in large numbers within or near the project impact area.

The monarch butterfly (a federal candidate) may forage in the site vicinity, especially during spring and fall migration, but is not expected to breed or overwinter on the project site due to a lack of suitable habitat. The tricolored blackbird (a state threatened species and covered under the VHP) is not expected to occur on or close to the project site as a breeder due to the absence of suitable habitat, but individuals may occur occasionally as foragers during the nonbreeding season. The San Francisco common yellowthroat (a California species of special concern) may forage within adjacent riparian habitat along the Guadalupe River, especially during the nonbreeding season, but is not expected to nest on or adjacent to the project site due to a lack of suitable habitat.

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

6.2.4 Impacts on the Yellow Warbler (Less than Significant)

The yellow warbler (a California species of special concern) could potentially nest immediately adjacent to the project site in riparian trees along the Guadalupe River. Based on site observations, the areal extent of suitable habitats within and adjacent to the project site, and known nesting densities of these species, it is likely that no more than one pair of yellow warblers could potentially nest immediately adjacent to the project site. The project would not result in the loss of suitable nesting or foraging habitat for the yellow warbler, as no activities are proposed within the bed and banks of the Guadalupe River. However, activities that occur during the nesting season and cause a substantial increase in noise or human activity near active nests may result in the abandonment of active nests (i.e., nests with eggs or young). Heavy ground disturbance, noise, and vibrations caused by project activities could potentially disturb nesting and foraging individuals and cause them to move away from work areas.

The project is expected to increase the number of human users of the project site, potentially subjecting nesting special-status birds nesting on or adjacent to the site to increased human disturbance. However, the site is already heavily used by building occupants, and use of the riparian habitat along the river by homeless already introduces human disturbance within the riparian habitat. The increase in users of the site as a result of this project is not expected to contribute substantially to human disturbance of yellow warblers that might nest on and adjacent to the site.

Because the number of nesting pairs of yellow warblers that could be disturbed is very small (i.e., one pair), the impacts of project activities would represent a very small fraction of the regional population of this species. Therefore, neither the potential loss of individual yellow warblers nor the disturbance of nesting and foraging habitat, would rise to the CEQA standard of having a *substantial* adverse effect, and these impacts would thus not constitute a significant impact on this species or its habitat under CEQA. All native bird species, including yellow warblers, are protected from direct take by federal and state statutes, and the project shall comply with VHP Condition 1 either by restricting work to the non-nesting season (September 1 through January 31) or by conducting preconstruction surveys prior to project activities and maintaining appropriate buffers around active nests of protected birds.

6.2.5 Impacts on the Western Pond Turtle (Less than Significant)

Western pond turtles occur in the Guadalupe River and are expected to occur in the reach adjacent to the project site. This species' abundance in urban areas is low, and individuals are expected to restrict their activities primarily to the river (off-site) except when nesting. In the unlikely event that a turtle occurs on the site itself, it is possible that individuals could nest in the small area of grasslands on the project site. If that were to occur, project activities may disturb upland habitat used for nesting, and individual turtles or their eggs that are present in the work areas may be harmed or killed due to crushing by construction personnel or equipment, or as a result of desiccation or burying (e.g., during grading). Although pond turtles are widespread in the project region, the species is not particularly abundant, and the loss of individuals could reduce the viability of a population to the extent that it would be extirpated.

The VHP does not provide species-level avoidance and minimization measures for the western pond turtle. Nevertheless, the project would adhere to the general conditions of the VHP described in Section 6.1 above, which will help to reduce proposed project impacts on the western pond turtle and its habitats. Applicable VHP Conditions that will minimize potential project impacts on the western pond turtle are Conditions 3 and 11. Because the project will comply with all relevant VHP conditions, impacts on the western pond turtle will be less than significant under CEQA.

6.2.6 Impacts on Wildlife due to Increased Lighting (Less than Significant with Mitigation)

Many animals are sensitive to light cues, which influence their physiology and shape their behaviors, particularly during the breeding season (Ringer 1972, de Molenaar et al. 2006). Artificial light has been used as a means of manipulating breeding behavior and productivity in captive birds for decades (de Molenaar et al. 2006), and has been shown to influence the territorial singing behavior of wild birds (Longcore and Rich 2004, Miller 2006, de Molenaar et al. 2006). While it is difficult to extrapolate results of experiments on captive birds to wild populations, it is known that photoperiod (the relative amount of light and dark in a 24-hour period) is an essential cue triggering physiological processes as diverse as growth, metabolism, development, breeding behavior, and molting (de Molenaar et al. 2006). This holds true for birds, mammals (Beier 2006), and other taxa as well, suggesting that increases in ambient light may interfere with these processes across a wide range of species, resulting in impacts on wildlife populations.

Artificial lighting may indirectly impact mammals and birds by increasing the nocturnal activity of predators like owls, hawks, and mammalian predators (Negro et al. 2000, Longcore and Rich 2004, DeCandido and Allen 2006, Beier 2006). The presence of artificial light may also influence habitat use by rodents (Beier 2006) and by breeding birds (Rogers et al. 2006, de Molenaar et al. 2006), by causing avoidance of well-lit areas, resulting in a net loss of habitat availability and quality.

Artificial lighting may also indirectly affect fish species that are present in the Guadalupe River, in a variety of ways. For example, an increase in illuminance at night can alter the nighttime activities of predators and prey, such as disturbing the seasonal and diel light cycles of freshwater invertebrates that fish feed on in riverine systems, by disrupting their nocturnal drift periods, which is timed with lower predation risk periods (Flecker 1992, Miyasaka and Nakano 2001, Hernandez and Peckarsky 2014). This can reduce the nocturnal drift activity by freshwater invertebrates and potentially reduce the availability of prey for foraging fish species in the river. In addition, an increase in nighttime illuminance can disrupt the temporal and spatial movement patterns of young (fry) fish that typically disperse and migrate at night to decrease their risk of predation (Scheuerell and Schindler 2003, Stich et al. 2015, Zapata et al 2019). Numerous studies have shown that an increase in nighttime illuminance on bodies of water can inhibit foraging activity, increase predation risk on fish, as well as significantly change the composition of fish communities that occur across a day-night period (Riley et al. 2013, Zapata et al. 2014).

Although the literature has shown how an increase in artificial lighting may indirectly affect birds, mammals, fish, and nesting sea turtles, little is known about potential effects of artificial lighting on many species of

amphibians and reptiles, including freshwater turtles (Perry et al. 2008). Western pond turtles most likely exhibit physiological and behavioral responses in the presence of novel artificial light sources. However, few studies have revealed any conclusive data on what the impacts may be from artificial lighting in urban environments on adjacent habitats where freshwater turtles may occur (Perry et al 2008). To our knowledge, no specific studies have been conducted that have attempted to elucidate pond turtle responses to an increase in artificial lighting conditions in their natural aquatic habitats. Western pond turtles are primarily active during the day, spending the majority of their time basking on haul-out structures, such as patches of floating vegetation and logs near the edges or in the middle of their aquatic habitats, where they can quickly escape if threatened (Jennings and Hayes 1994). Some crepuscular and nocturnal movements have been observed by the species, but pond turtles typically take refuge at the bottom of aquatic habitats, burying themselves in muddy bottoms or dense vegetation during the night, and thus, in our opinion, would not be significantly affected by an increase in artificial light conditions.

The project will construct a parking lot that will increase the amount of lighting within and around the project site. No lighting would be constructed as part of the new trail. Lighting from the project would be the result of street-lamps illuminating the new parking area. Based on the project's lighting plans, this lighting will spill into the adjacent Guadalupe River corridor, thereby resulting in an increase in lighting compared to existing conditions. Areas to the northwest, southwest, and southeast are primarily developed urban habitats that do not support sensitive species that might be significantly impacted by illuminance from the project. However, the riparian and wetland habitats along the Guadalupe River to the northeast provide suitable habitat for a variety of wildlife species, including sensitive species such as the yellow warbler, and are close enough to the project site to be affected by an increase in lighting.

The species inhabiting the sensitive habitats along the Guadalupe River are already habituated to the existing artificial illuminance from a variety of urban and natural light sources that are found on the site and nearby. However, due to the ecological importance of the riparian and aquatic habitats of the Guadalupe River and the fish and wildlife communities they support, substantial increases in illuminance of the Guadalupe River and its associated riparian and aquatic habitats could result in a potentially significant impact under CEQA by disrupting the natural behaviors of the species using these habitats. Although there is agreement throughout the literature that increases in illuminance can affect wildlife behavior, as described above, there is no quantitative level of illuminance increase (above ambient light) that is agreed upon as a threshold for significant impacts to animals. In our professional opinion, Mitigation Measures BIO-1, BIO-2, and BIO-3 below, which focus on shielding and minimizing spillover of lighting into the Guadalupe River as part of the project, would reduce this impact to a less-than-significant level under CEQA.

Mitigation Measure BIO-1. All lighting shall be fully shielded to block illumination from shining upward, or outward towards the Guadalupe River to the northeast. All fixtures on the site shall have a BUG rating of U0, and any fixtures located along the site's northeast property line shall have a BUG rating of B0, as follows:

- U0: 0 lumens (90–180 degrees).
- B0: 110 lumens high (60–80 degrees), 220 lumens mid (30–60 degrees), and 110 lumens low (0–30 degrees)

Mitigation Measure BIO-2. Except as indicated in Mitigation Measure BIO-1 above, fixtures shall comply with lighting zone LZ-2, *Moderate Ambient*, as recommended by the International Dark-Sky Association (2011) for light commercial business districts and high-density or mixed-use residential districts. The allowed total initial luminaire lumens for the project site is 2.5 lumens per square foot of hardscape, and the BUG rating for individual fixtures shall not exceed B3 or G2, as follows:

- B3: 2,500 lumens high (60–80 degrees), 5,000 lumens mid (30–60 degrees), 2,500 lumens low (0–30 degrees)
- G2: 225 lumens (forward/back light 80–90 degrees), 5,000 lumens (forward 60–80 degrees), 1,000 lumens (back light 60–80 degrees asymmetrical fixtures), 5,000 lumens (back light 60–80 degrees quadrilateral symmetrical fixtures)

Mitigation Measure BIO-3. Exterior lighting shall be minimized (i.e., total outdoor lighting lumens shall be reduced by at least 30% or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 p.m. until sunrise, except as needed for safety and City code compliance.

6.2.7 Nitrogen Deposition Impacts (Less than Significant)

Several special-status plant and animal species that are absent from the project site and its vicinity occur on serpentine substrates in hills on either side of the Santa Clara Valley. These species include the Bay checkerspot butterfly and a number of rare plants, including the VHP-covered Tiburon Indian paintbrush (*Castilleja affinis* var. *neglecta*), coyote ceanothus (*Ceanothus ferrisiae*), Mount Hamilton thistle (*Cirsium fontinale* var. *campylon*), Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), and most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*).

The USFWS has identified critical habitat for the federally threatened Bay checkerspot butterfly (73 FR 50406) south of U.S. Route 101 and Yerba Buena Road in San José, approximately 5.9 miles southeast of the project site (Unit 6 at Communications Hill) (USFWS 2008). The conservation of critical habitat is considered essential for the conservation of the Bay checkerspot butterfly, and this serpentine habitat also supports serpentine-associated rare plant species (including the VHP-covered species listed above). Nonnative grasses have been reported to increase in these habitats, crowding out native rare plants as well the native larval host plants needed by the Bay checkerspot butterfly, due to increased nitrogen deposition from human sources throughout San José and the greater Bay Area.

Nitrogen deposition contribution estimates in Santa Clara County were made as a part of the development of the VHP (ICF International 2012). About 46% of nitrogen deposition on habitat areas of concern for the base years (2005–2007) was estimated to come from existing development and traffic generated locally within the

VHP study area, which includes all of the City of San José. The remainder of Santa Clara County was estimated to contribute a substantially smaller amount (17% of the nitrogen deposition) while the other eight Bay Area counties account for about 11%. Nitrogen deposition modeling completed for future years (2035 and 2060) as a part of the VHP process assumed that urban and rural development in the County and broader San Francisco Bay Area is expected to increase air pollutant emissions due to an increase in passenger and commercial vehicle trips and other new industrial and nonindustrial sources.

The project's traffic study determined that no new vehicle trips would be generated as part of the project. Thus, no increase in NOx emissions will occur as a result of the project to contribute to the effects of nitrogen deposition on the serpentine grassland ecosystem. As a result, this impact is less than significant.

6.3 Impacts on Sensitive Communities: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service (Less than Significant with Mitigation)

6.3.1 Impacts on Riparian Habitat or Other Sensitive Natural Communities (Less than Significant with Mitigation)

The CDFW defines sensitive natural communities and vegetation alliances using NatureServe's standard heritage program methodology (CDFW 2022), as described above in Section 5.3. Aquatic, wetland, and riparian habitats are also protected under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the USACE, RWQCB, CDFW, and/or the USFWS (see Section 6.4 below). Project impacts on sensitive natural communities, vegetation alliances/associations, or any such community identified in local or regional plans, policies, and regulations, were considered and evaluated.

The Guadalupe River riparian corridor overhangs the project site in some areas. Implementation of the proposed project could result in temporary impacts to the adjacent mixed riparian woodland and forest habitat (i.e., trimming of riparian trees) as a result of construction of a landscaping strip along the riparian canopy edge (Figure 3). These overhanging riparian trees (0.01 acre) may need to be trimmed for construction or have their roots impacted by construction to the point that they may need to be removed, they may die, or their health may be impaired. Construction could cause tree damage or even death to adjacent trees through indirect impacts. Activities that compact soil, trench through roots, or pile soil up around the base of trees may adversely affect the health of these trees. Most tree species develop problems from root collar burial, including early decline and increased susceptibility to attack by pests (Smiley 1999). Soil added above a tree's root collar creates low oxygen conditions, which can reduce root growth and increase disease severity. Excess topsoil also intercepts rainfall, which can reduce soil water content in the root zone. Oaks, particularly coast live oaks and valley oaks (*Quercus lobata*), are at least five times more likely to experience structural failure as a result of grade change within a tree's drip line than are trees with undisturbed soil (Edberg and Berry 1999, Day et al. 2009).

No mitigation is proposed for 0.01 acre of temporary impacts because the applicant will be required to pay VHP specialty fees.

Within existing California annual grassland, riparian trees' roots may be impacted during grading and from long-term impacts of new hardscape impeding the roots, as described above. Where urban-suburban areas overlap with the riparian tree canopy, the existing hardscape would be removed and replaced with landscape vegetation following construction. This would be unlikely to significantly impact the health of riparian trees and would enhance the adjacent riparian habitat by providing a moderately sized buffer from the urban-suburban area.

The proposed project would need to comply with the requirements of VHP Conditions 3 and 4. Impacts on riparian habitat would be minimized through implementation of these conditions, which require implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of storm drain water and to reduce runoff of pollutants to protect water quality, including during construction. The required construction period BMPs and post-construction stormwater requirements will apply to the project as discussed above in Section 6.2.2, and these requirements would further avoid and reduce these impacts.

In particular, the project would need to comply with the following applicable impact avoidance conditions and design criteria:

- Removal of riparian vegetation and trees will be limited to the minimum extent required to construct the project.
- Seed mixtures, and if needed, shrubs and trees used for revegetation of the impacted riparian habitat will not contain invasive non-native species but will be composed of native or sterile non-native species. If sterile non-native mixtures must be used for temporary erosion control, native seed mixtures will be used in subsequent treatments to provide long-term erosion control and prevent colonization by invasive non-native species.
- The minimum amount of impermeable surface will be used for the construction as is practicable.
- The project will prepare and implement sediment erosion control plans to prevent erosion or other disturbance-related impacts within the riparian corridor.
- All construction within the riparian habitat will take place during the dry season from June 15 to October 31.
- Immediately after completion of project components located in the riparian habitat, and before close of seasonal work window, stabilize all exposed soil with mulch, seeding, and/or placement of erosion control blankets.

To inhibit the spread of non-native, invasive plant species in areas of ground disturbance, VHP Condition 3 includes a measure requiring the revegetation of all disturbed soils with native plants and/or grasses suitable for the altered soil conditions upon completion of construction. Local watershed native plants will be used if available. Also, the project will pay VHP impact fees for impacts of the project on natural habitats, including any riparian specialty fees that may be required for canopy trimming to allow construction. Those fees will contribute to the VHP's conservation program, which includes restoration, enhancement, and management of riparian habitats, thus compensating for impacts of VHP-covered projects on riparian habitats. The SCVHA uses these fees to fund the acquisition and restoration of similar riparian habitats within the Plan area, thus compensating for the small loss of riparian habitat.

If the project were to damage riparian trees to the extent the trees died, this would reduce the existing extent of the riparian corridor along this reach, which would be a significant impact. Therefore, Mitigation Measure BIO-4 and 5 will be implemented, coupled with compliance with relevant VHP conditions, to avoid the loss of sensitive riparian habitat, reducing impacts on mixed riparian woodland and forest to less-than-significant levels.

Mitigation Measure BIO-4. Avoid Impacts to Riparian Trees and Habitat. Riparian trees and sensitive riparian habitat along the Guadalupe River to be avoided by the project will be clearly marked on plans as such. Riparian trees to remain will be protected with ESA fencing erected at their driplines to provide a Tree Protection Zone (TPZ). Should any grading, staging, trenching, or other activity need to take place within a designated TPZ for a tree intended to be retained, an ISA Certified arborist will monitor the work, recommend any applicable measures to lessen impact on the tree, and following completion of the work, determine whether the tree has been injured to the degree that it may die from the impacts and therefore be considered removed. During the construction phase, the project is required to stabilize soils adjacent to riparian trees, minimize ground-disturbing impacts, and avoid planting species identified by Cal-IPC as invasive (Cal-IPC 2023). All temporarily disturbed soils are required to be revegetated with native plants or sterile, nonnative species, and temporarily disturbed areas such as staging areas will be returned to pre-project or ecologically improved conditions within 1 year of the completion of construction.

Mitigation Measure BIO-5. Prevent Spread of Invasive Plant Species. Within the proposed planting areas in the 100-foot setback, no nonnative invasive species, as ranked by the California Invasive Plant Council and/or identified in Valley Water's *Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County* (Valley Water 2006) and the City of San José's Riparian Corridor Policy Study (City of San José 1999), shall be planted. The project proponent will employ the following BMPs for weed control to avoid and minimize the spread of invasive plant species.

- Prior to grading or soil disturbance, infestations of non-native vegetation within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be disposed of off-site.

- All ground disturbing equipment used adjacent to the riparian corridors will be washed (including tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site.
- All applicable construction materials used on site, such as straw wattles, mulch, and fill material, will be certified weed free.
- The project will follow a Stormwater Pollution Prevention Plan as per the NPDES *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit; Water Board Order No. 2009-0009-DWQ).
- All disturbed soils will be stabilized and planted with a native seed mix from a local source following construction.
- If excavating, soil and vegetation removed from weed-infested areas will not be used in general soil stockpiles and will not be redistributed as topsoil cover for the newly filled areas. All weed-infested soil will be disposed of off-site at a landfill or buried at least 2.5 feet below final grade.

6.3.2 Impacts due to Encroachment into the Riparian Setback (Less than Significant with Mitigation)

This section focuses on the biological impacts of encroachment into the riparian setback along the Guadalupe River; impacts due to conflicts with City and VHP setback requirements are considered separately in Sections 6.5.2 and 6.6 below, respectively.

To protect the ecological functions and values of a stream, buffers are often prescribed between new development and the stream (or its banks or associated riparian habitat). These buffers provide habitat for plants and animals associated with the stream, provide habitat connectivity (i.e., areas used for wildlife movement, including flight paths for birds), reduce indirect effects of adjacent development (e.g., noise, lighting, human activity, or invasive species) on the natural stream and riparian habitats, allow for the possible future expansion of natural habitat, help to maintain site hydrology, and in some areas allow for runoff to be treated (e.g., by flowing through vegetated areas) before it enters the stream. In addition, along streams such as the Guadalupe River, vegetative communities within stream buffers may provide important refugia for animals associated with wetland and riparian habitats along the river during flood events, when little to no such refugia may be present within the banks of the river itself. In general, larger buffers protect more of the ecological functions and values of the stream than smaller buffers.

Under CEQA, owing to the importance of maintaining setbacks (and maintaining habitat quality within those setbacks) between new development and riparian habitat, impacts of encroachment into the riparian buffer would be significant for the project (due to the ecological impacts of closer development to sensitive riparian communities) if (a) new development is located any closer to the creek than existing conditions, or (b) changes in existing development or landscaping would result in substantial adverse effects on the ecological functions and values of the creek/riparian corridor. In our opinion, based on the moderate quality of the riparian habitat

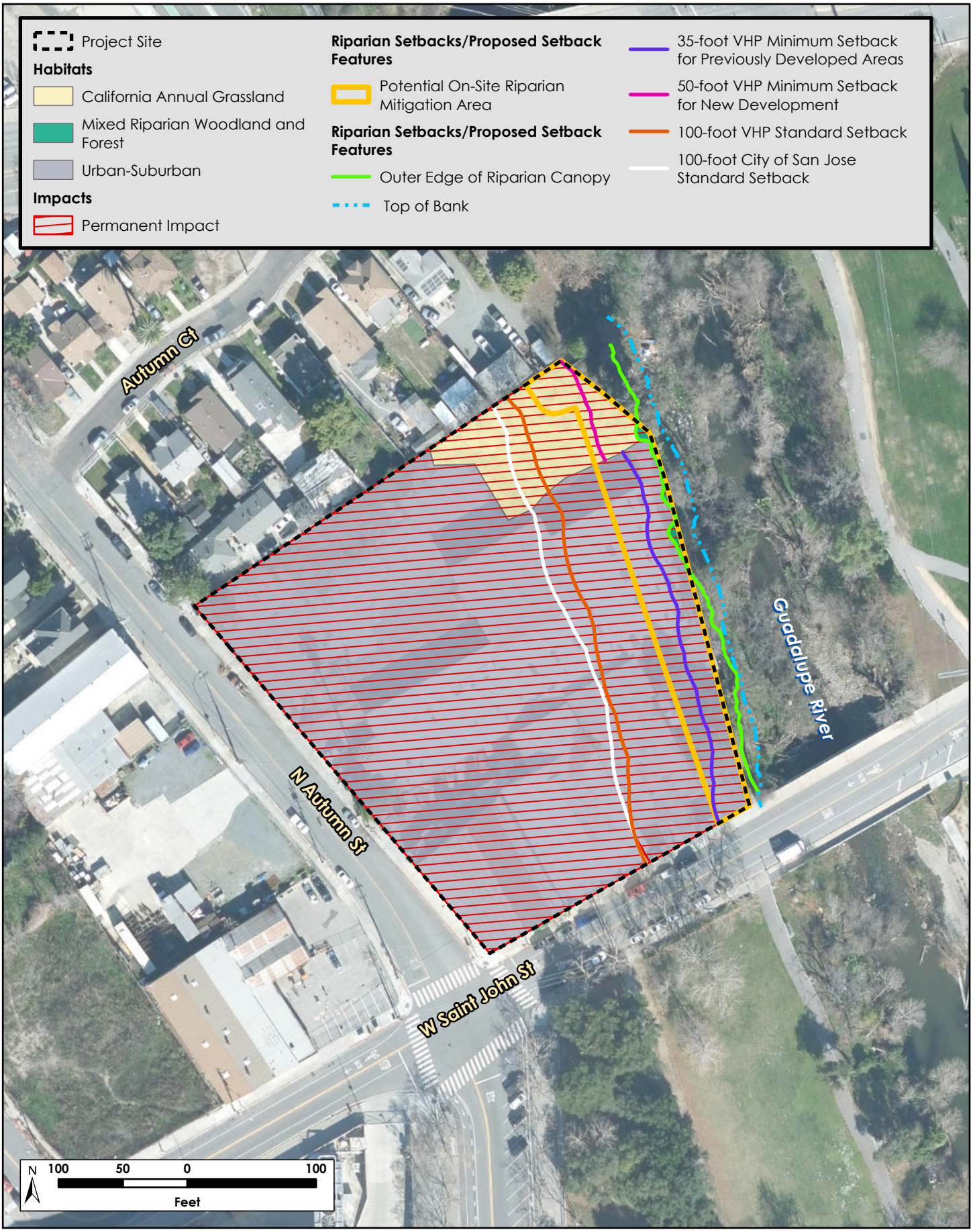
present and the native bird community present at this location, coupled with the ecological value of the Guadalupe River on the scale of the Santa Clara Valley, a 100-foot standard setback is appropriate between new construction and the Guadalupe River (either the outer edge of the riparian canopy or top of bank, whichever extends further landward) on the project site to maintain suitable riparian functions and values. On Figure 7, this 100-foot setback is the same as the "100-foot City of San Jose Standard Setback".

The proposed parking area and landscape vegetation on the site (i.e., the extent of project impacts) will be set back a distance of 35 feet from top of bank along the length of the site. Encroachment into the riparian buffer along the Guadalupe River, including development or planting of landscape vegetation within the buffer, would be considered an adverse impact because of the high ecological value of the Guadalupe River as a whole (even taking into account the moderate quality of this particular reach of riparian habitat for birds) and the degradation to that value that would occur due to encroachment. Encroachment of the project within the 100-foot standard riparian setback would result in the following impacts on the adjacent riparian communities along the Guadalupe River:

- The removal of buildings within the 100-foot setback is expected to provide at least a minor improvement in conditions within the setback. Although the paved parking lot that will replace the existing buildings does not provide habitat for riparian animals, removal of the buildings will reduce shading of riparian vegetation to some extent, and may provide animals in the riparian corridor with less of a sense that they are "hemmed in" by adjacent buildings.
- The construction of paved parking areas and nonnative landscaping within areas that currently consist of paved parking areas, buildings, and nonnative landscaping would not encroach closer to the creek than baseline conditions or substantially degrade the ecological functions and values of the creek/riparian corridor, although more vehicular traffic will occur closer to the riparian corridor than under existing conditions.
- Construction of a parking area and landscape vegetation in areas that are currently unpaved (i.e., California annual grassland) may result in indirect adverse effects on a portion of the Guadalupe River corridor by removing habitat that could be used by riparian-associated species and introducing vehicular traffic closer to the riparian corridor than currently exists within this area.
- Riparian trees may be trimmed where they overhang the project site, resulting in a reduction in the extent of riparian habitat on the site. This impact could temporarily reduce the extent of habitat for riparian-associated species.

In summary, 0.83 acre of the project site, including 0.17 acre of undeveloped California annual grassland habitat, 0.66 acre of existing development (i.e., buildings and pavement), and 0.01 acre of mixed riparian woodland and forest (canopy overhanging the site), fall within the 100-foot setback[1]. All of these areas will be modified in

[1] The City of San Jose setback is the larger of the two 100-foot setbacks on the site, because it is measured from the outer edge of the riparian canopy or the top of bank, whichever is greater. For the purpose of this report, the acreages



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H. T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 7. Project Impacts
Milligan Parking Lot Project Biological Resources Report (4407-02)
March 2023

some way as part of the project. The removal of buildings and repaving of existing developed areas within the setback are not considered encroachment impacts because these activities will not result in additional impacts on the riparian corridor or the 100-foot setback compared to baseline conditions. The trimming of 0.01 acre of riparian trees will be offset by the payment of VHP specialty fees as discussed in Section 6.3.1 above.

Collectively, project impacts within 0.17 acre of California annual grassland habitat within the 100-foot setback would reduce the quality of the riparian habitat and reduce bird use of the riparian habitat and this patch of grassland to some extent. Because the existing riparian habitat adjacent to the project site is of only moderate quality (as opposed to high quality habitat found along reaches with broader riparian woodland and forest in areas with greater setbacks from existing development) and is not expected to attract large numbers of animals, and because the use of this patch of grassland by riparian animals is expected to be limited for reasons discussed previously, these impacts are not expected to affect regional populations of any animal species that use the site, nor would these impacts result in substantial degradation of riparian animal communities in the segment of the Guadalupe River adjacent to the project site. Hence, in our opinion, the impacts on riparian animals of encroachment of new pavement into 0.17 acre of grassland within the riparian setback would not rise to a level of significance under CEQA on a project-specific basis. Cumulative impacts due to encroachment within California annual grassland habitat within the 100-foot riparian setback are considered separately in Section 6.7.1 below.

6.3.3 Impacts on Jurisdictional Waters: 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 (Less that Significant)

During multiple site reconnaissance visits, it was determined that there are no wetlands occur on the asphalt hardscape and in the small square of California annual grassland. Wetlands could potentially occur within the banks of the Guadalupe River channel; however, no work is proposed below the top of the banks. All indirect impacts to waters within the Guadalupe River will be minimized to a less than significant level through implementation of the required provisions in the Construction General permit and MRP.

6.4 Impacts on Wildlife Movement: Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites (Less than Significant)

6.4.1 Impacts on Wildlife Movement (Less than Significant)

For many species, the landscape is a mosaic of suitable and unsuitable habitat types. Environmental corridors are segments of land that provide a link between these different habitats while also providing cover. Development that fragments natural habitats (i.e., breaks them into smaller, disjunct pieces) can have a twofold impact on wildlife: first, as habitat patches become smaller they are unable to support as many individuals (patch

size); and second, the area between habitat patches may be unsuitable for wildlife species to traverse (connectivity).

The Guadalupe River and the associated riparian corridor provide an important movement pathway for both aquatic and terrestrial wildlife species, connecting the associated wetlands to the San Francisco Bay. Songbirds that migrate along the Pacific Flyway disperse and forage along the Guadalupe River in relatively large numbers. Common, urban-adapted species such as raccoons and striped skunks may use the vegetation along the river to move north and south through the San José area. Small mammals, such as mice and shrews, will also use this vegetation to move between habitats. Common species of reptiles and amphibians, such as Pacific treefrogs and alligator lizards, amongst other species, are also expected to move along this corridor adjacent to the project site. Proposed project development along the river will not result in any loss of aquatic, wetland, or riparian habitat along the Guadalupe River or in any substantial reduction in the value of the Guadalupe River corridor for wildlife movement. Thus, aquatic and terrestrial species would continue to be able to move north to south along the Guadalupe River following project development. Therefore, the project would not 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, and this impact is determined to be less than significant.

6.5 Impacts due to Conflicts with Local Policies: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance (Less than Significant)

6.5.1 Impacts due to the Removal of City of San José Ordinance-Sized Trees (Less than Significant)

Implementation of the proposed project would remove at least one non-native ordinance-sized tree (i.e., blue gum tree) that occurs in the urban-suburban land cover type. The project proponent shall be required to submit permit applications for tree removal once it determines exactly which, and how many trees will be removed as part of the project. In accordance with the provisions of the San José Municipal Code, the Standard Permit Conditions listed below would be implemented by the project.

Standard Permit Conditions

Trees impacted by the project will be replaced in accordance with all applicable laws, policies or guidelines, including Chapter 13 of the San José Municipal Code, General Plan policies MS-21.4, MS-21.5, MS-21.6, and CD-1.24, and City tree replacement ratios outlined in Table 3 below. Following the removal of trees on the site, a greater number of trees will be planted within the project footprint following construction.

Table 3. City of San José Standard Tree Replacement Ratios

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

[1] x:x = tree replacement to tree loss ratio; Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

Where applicable, the project proponent will implement a Tree Protection Plan and include measures to implement during project construction to minimize impacts to trees to remain. The measures include marking trees to remain in place in project plans and have tree protection zones established around the canopy drip line zone to avoid serious injury or loss.

Table 3 shows tree replacement ratios required by the project proponent. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures would be implemented during the final design phase of the project, to the satisfaction of the City Arborist and the Director of Planning, Building and Code Enforcement:

- During the final design phase, the size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted within the project footprint.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

With the incorporation of the above measures to ensure compliance with the City of San José tree ordinance, any potential impacts related to conflict with local policies or ordinances protecting trees would be less than significant.

6.5.2 Impacts due to Encroachment within the City of San Jose Riparian Setback (Less than Significant with Mitigation)

This section discusses project impacts due to conflicts with City of San Jose riparian setback requirements. Impacts due to conflicts with VHP riparian setback requirements are discussed separately in Section 6.6 below, and the biological impacts of encroachment are discussed in Section 6.3.2 above.

The City of San José's riparian buffer policy is administered through use of the City's Policy Study document that describes suggested buffer widths (City of San José 1999). The Policy Study, which was incorporated into the City's Envision San José 2040 General Plan (City of San José 2021) and further clarified by the Riparian Corridor Protection and Bird Safe Design Council Policy (City of San José 2016), states that riparian setbacks should be measured 100 feet from the outside edges of riparian habitat or the top of bank, whichever is greater. Goal E2.2 of the City's General Plan also requires a 100-foot setback in all but a limited number of instances, and only where no significant environmental impacts would occur (City of San José 2021). For the purposes of this project, the City's standard 100-foot setback is measured landward from the outer edge of the riparian habitat along the Guadalupe River, which was demarcated in the field using methods developed and approved by resource and regulatory agencies with jurisdiction within such channels (i.e., the CDFW, USACE, and RWQCB) (Figure 7). At no point does the top of bank extend landward farther than the riparian canopy; therefore, the setback is defined by measuring 100 feet from the edge of the riparian canopy along the entire length of the site.

According to the City's Policy, the required setback distance for new parking facilities is 100 feet from riparian corridors, the required setback for new multi-use trails is 10 feet, and there is no required setback for new pedestrian trails. However, the Policy Study states that setback distances for individual sites may vary if consultation with the City and a qualified biologist, or other appropriate means, indicates that a smaller or larger setback is more appropriate for consistency with riparian preservation objectives (City of San José 1999). Based on discussion at the Planning Commission hearing for another recent project along the Guadalupe River (Almaden Office Project), we understand that the City may not require a setback in areas where impact areas are already developed; however, this would need to be determined by the City.

Under the proposed project, all areas within the City-defined 100-foot riparian setback on the project site would be modified in some way (Figure 7). Currently, these areas consist of urban-suburban land uses and California annual grassland habitat that is disturbed by regular mowing. The majority of undeveloped areas within the setback would be converted to hardscape, and the remaining areas would be planted with landscape vegetation of unknown composition.

Converting California annual grassland areas to urban-suburban areas (including parking areas, planting wells, and landscape vegetation) on the site would require a setback exception from the City. Modifying existing improvements (e.g., demolition, re-grading, and re-paving) within the setback could also require a setback exception from the City. If a multi-use trail is constructed within 10 feet of the riparian corridor, it would require an exception from the City, but if a pedestrian trail is constructed along the riparian corridor it would not require an exception (the City's required setback for pedestrian trails is 0 feet from the riparian corridor).

If the City determines that a setback is appropriate on the project site, per Council Policy 6-34, the City will consider a reduction in the required riparian setback requirement under specific circumstances, including the following that apply to the project site:

- 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.
- The existence of legal uses within the minimum setback.

In considering whether to grant a setback reduction, the City considers whether a project meets some or all of the following conditions. In the following list, text in italics indicates the conditions, and non-italicized text indicates how the project can meet these conditions:

- *There is no reasonable alternative for the proposed riparian project that avoids or reduces the encroachment into the setback area* – This would be determined by the City based on the overall project design and project objectives. For example, the City would consider whether relocation of the parking area, trail, and landscape vegetation farther from the edge of the riparian corridor is feasible while maintaining appropriate circulation, land massing/land uses, and other factors affecting the feasibility of the rest of the project.
- *The reduced setback will not significantly reduce or adversely impact the riparian corridor* – Along the project's Guadalupe River frontage, the setback will be reduced (relative to baseline conditions) as a result of construction of hardscape and installation of landscape vegetation in areas that are currently unpaved (i.e., California annual grassland). This encroachment of hardscape and landscaping may result in indirect adverse effects on a portion of the Guadalupe River corridor by removing habitat that could be used by riparian-associated species and introducing vehicular traffic closer to the riparian corridor than currently exists within that limited encroachment area. The encroachment by the hardscape areas and landscaping in areas with existing hardscape will not result in any direct loss of riparian habitat, so the riparian habitat itself will not be reduced by the proposed activities for which a setback reduction is necessary. Furthermore, if the landscape vegetation includes nonnatives and such vegetation would not produce habitat with value to animal communities that is as high as native vegetation, nonnative vegetation may still have some minimal benefit to riparian animals (e.g., many bird species will still forage, nest, and/or roost in nonnative vegetation) as long as invasive species are not used. No structures are proposed within the riparian setback (Figure 7).
- *The proposed uses are not fundamentally incompatible with riparian habitats* – Under baseline conditions, animals using the riparian habitat adjacent to the project site make some use of the California annual grassland along the Guadalupe River frontage, where the proposed hardscape and landscaping will encroach into the riparian setback. For example, some of the animal species that breed in the riparian corridor may forage in the California annual grassland areas that will be subject to encroachment, and vice versa. However, the value of plant and animal communities of the California annual grassland where encroachment will occur is low due to the paucity of trees and shrubs, dominance of nonnative herbaceous vegetation, and disturbance from mowing (see Section 4.2.2). Although planting of landscape vegetation, which may include nonnatives, would not produce habitat with value to animal communities that is as high as native vegetation, nonnative vegetation may still have some benefit to riparian animals (e.g., many bird species will still forage, nest, and/or roost in nonnative vegetation). Therefore, planting of nonnative vegetation

within portions of the setback that are currently occupied by grassland will not be incompatible with riparian habitats as long as invasive species are not used. No buildings are proposed within the riparian setback (Figure 7).

- *There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the setback area* – During project surveys, we observed no evidence of substantial stream bank erosion on or immediately downstream from the project site. All stormwater from the project will be treated and metered as per the requirements of the MRP, and so runoff from the parking lot is not expected to contribute to bank erosion near the site or at the location of site stormwater outfall into the river. Encroachment into the riparian corridor is not expected to cause or exacerbate any erosion, as the encroachment along the Guadalupe River would occur on the far side of a levee from the stream banks. Therefore, no adverse impacts of the features that would encroach within the setback area on stream bank erosion or previous attempts to stability the stream banks are anticipated.

- *The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties* – Granting a riparian setback exception will not be detrimental or injurious to adjacent and/or downstream properties. Although the project would reduce the setback along the Guadalupe River frontage, this setback reduction would not affect adjacent properties closest to the area of setback reduction along the Guadalupe River (i.e., properties immediately upstream). When reduced, the setback within the project footprint would be smaller than that immediately upstream and downstream from the project footprint, where recreational play fields are present up to the edge of the levee (to the northwest), and non-native grassland habitat is present (to the southeast).

  Granting a riparian setback exception would also not be detrimental or injurious to adjacent properties across the Guadalupe River from the site. The physical separation of the setback encroachment area from those properties by the creek and its riparian corridor prevents any direct or indirect adverse effect of the riparian setback exception on properties across the creek.

  Similarly, the riparian setback exception would not adversely affect downstream properties. The project footprint is separated from the Guadalupe River by a levee, and hence project development would have no effects on water quality in the river (as discussed in Section 6.2.2 above).

Because the project would result in encroachment within the City's required setback, and it is unknown whether the City will grant an exception for the proposed project design, this encroachment would potentially result in a conflict with the provisions of the City's Policy Study, Riparian Corridor Protection and Bird Safe Design Council Policy, and Goal E2.2 of the General Plan. Implementation of Mitigation Measures BIO-6 and 7 would reduce this impact to a less-than-significant level.

Mitigation Measure BIO-6. Obtain a Reduction in the City's Required Setback and a Riparian Setback Exception under the VHP. Prior to issuance of a Planned Development permit for the construction of any non-exempt uses (i.e., the roadway, hardscaped planting wells, and any planting areas with nonnative vegetation) within the City's 100-foot setback (which, on this particular site, is measured from the edge of the riparian

canopy) and the VHP's 100-foot setback (which, on this particular site, is measured from top of bank), the applicant shall request and obtain a riparian setback exception in accordance with City Council Policy 6-34 and the outlined factors of the VHP. As part of the exception review process and prior to a determination on the setback exception request, the Director of Planning, Building and Code Enforcement or Director's designee shall provide the exception request and proposed decision to both the Implementing Entity and the Wildlife Agencies for review and comment.

Mitigation Measure BIO-7. Project Redesign. If the project proponent is unable to obtain a reduction in the required riparian setback from the City or under the VHP process as described in Mitigation Measure BIO-6 above, the project will be redesigned to avoid any impacts on the required riparian setback that prevent approval by the City and/or the VHP. Similarly, if the project proponent is unable to mitigate for impacts within the riparian setback as described in Mitigation Measure BIO-10 below, the project will be redesigned to reduce the mitigation requirement so that the required mitigation is feasible.

6.6 Impact due to Conflicts with an Adopted Habitat Conservation Plan: Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan (Less than Significant with Mitigation)

The City of San José is a signatory to the VHP, which is a Habitat Conservation Plan and Natural Community Conservation Plan. As described in Section 6.1, the project is considered a "covered project" under the VHP. All VHP-covered species that may be affected by the proposed project are discussed in this report, including the western pond turtle (Section 6.2.5 above). Similarly, impacts on sensitive habitats, such as riparian habitat for which the VHP requires specific impact fees, are discussed in this report. The project will apply for VHP coverage and will adhere to all applicable VHP Conditions during project implementation, including obtaining a riparian setback exception for any development within the Category 1 stream setback. Conditions applicable to the proposed project include Conditions 1 (avoid direct impacts to legally protected plant and wildlife species), 3 (maintain hydrologic conditions and protect water quality), and 11 (stream and riparian setbacks). Therefore, the proposed project would not be in conflict with the VHP.

The proposed project would not be in conflict with any other adopted habitat conservation plans or natural community conservation plans, or with any other approved local, regional, or state habitat conservation plans or natural community conservation plans. Thus, impacts associated with conflicts between the proposed project and any adopted habitat conservation plan or natural community conservation plan are less than significant.

Assessment of Conflicts due to Encroachment within the Riparian Setback

This section discusses project impacts due to conflicts with VHP setback requirements. Impacts due to conflicts with City riparian setback requirements in are discussed separately in Section 6.5.2 above, and biological impacts of encroachment are discussed in Section 6.3.2 above.

The City Council-adopted VHP, specifically Condition 11, includes an analysis of relevant literature and studies informing the applicant of appropriate setbacks based on stream hydrology and function that are adequate to provide protection of habitat functions and values (ICF International 2012). Based on this analysis, VHP Condition 11 requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors. The VHP-defined standard setback for the Guadalupe River, which is defined as a Category 1 stream, is 100 feet landward measured from the top of bank or 35 feet measured landward from the outer edge of the riparian canopy, whichever is greater. Because the 35-foot setback is well within the 100-foot setback from top of bank on this particular site, it is therefore not discussed further. The VHP provides for exceptions to standard stream setbacks, including an exception to prevent denying an owner economically viable use of their land or adversely affecting recognized real property interests (ICF International 2012), which the SCVHA may grant in the case of the project. However, regardless of project location, the VHP does not allow a stream setback to be reduced to a distance less than 50 feet from top of bank for new development (i.e., within areas of existing California annual grassland or mixed riparian woodland and forest on the project site) or 35 feet from top of bank for existing development (i.e., within all other areas of the project site).

Under the proposed project, all areas within the VHP-defined 100-foot riparian setback on the project site would be modified in some way (Figure 7). Currently, these areas consist of urban-suburban land uses and California annual grassland habitat that is disturbed by regular mowing. The majority of undeveloped areas within the 100-foot setback would be converted to hardscape, and the remaining areas would be planted with landscape vegetation of unknown composition.

Converting California annual grassland areas to urban-suburban areas (including parking areas, planting wells, and landscape vegetation) on the site would require a setback exception under the VHP. Modifying existing improvements (e.g., demolition, re-grading, and re-paving) within the setback could also require a setback exception under the VHP. Construction of the new trail within the setback would likely qualify for an exemption under the VHP (i.e., Condition 11 would not apply) because trails are considered compatible uses within the setback.

An exception to VHP Condition 11 setback requirements may be granted to allow encroachment of the project to 50 feet from top of bank for new development and 35 feet from top of bank within existing developed areas, as shown on Figure 7. All proposed parking lot improvements are located at least 35 feet from top of bank, which is outside this minimum setback area for portions of the site that are currently developed. However, a portion of the new parking lot is proposed within 50 feet of top of bank where existing grassland vegetation is present (i.e., in the portion of the site that is not yet developed), and thus encroaches into the VHP's 50-foot minimum setback area (Figure 7). The Habitat Agency will review the project's plans and make a recommendation regarding whether or not the project should be approved as designed; because the proposed design encroaches into the 50-foot minimum setback, it is possible that the Habitat Agency may recommend against approval of this encroachment. However, this recommendation is provided to the City of San Jose as

the lead agency, and the decision regarding whether or not to approve the project ultimately lies with the City. The proposed trail, which will be located within the 35-foot minimum setback, will likely qualify for an exemption to the VHP's setback requirement.

Because the project would result in encroachment within the standard VHP stream setback and minimum setback, and it is unknown whether the City will grant an exception for the proposed project design, this encroachment would potentially result in a conflict with the provisions of Condition 11 of the VHP. However, implementation of Mitigation Measures BIO-6 and 7 would reduce this impact to a less-than-significant level.

Assessment of Conflicts due to Impacts on Nesting Birds

Construction disturbance, building demolition, and tree removal during the avian breeding season (February 1 through August 31 inclusive, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests. Because such an impact would conflict with Condition 1 of the VHP, it would be considered a significant impact under CEQA. Mitigation Measures BIO-8 and BIO-9 would be implemented to reduce impacts due to conflicts with Condition 1 of the VHP to a less-than-significant level.

Mitigation Measure BIO-8. Nesting-Season Avoidance. To the extent feasible, construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code would be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31, inclusive.

Mitigation Measure BIO-9. Preconstruction/Pre-disturbance Surveys and Buffers. If it is not possible to schedule construction activities and/or tree removal between September 1 and January 31, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. These surveys shall be conducted no more than seven days prior to the initiation of demolition or construction activities, including tree removal and pruning. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code shall be disturbed during project implementation.

6.7 Cumulative Impacts

Cumulative impacts arise due to the linking of impacts from past, current, and reasonably foreseeable future projects in the region. Future development activities in the City of San José and development activities covered

by the VHP will result in impacts on the same habitat types and species that would be affected by the proposed project. The project, in combination with other projects in the area and other activities that impact the species that are affected by this project, could contribute to cumulative effects on special-status species. Other projects in the area include both development and maintenance projects that could adversely affect these species and restoration projects that will benefit these species.

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

However, the San Jose General Plan contains conservation measures that would benefit biological resources, as well as measures to avoid, minimize, and mitigate impacts on these resources and the VHP includes numerous conservation measures to offset adverse effects on covered activities. Many projects in the region that impact resources similar to those impacted by the proposed project will be covered activities under the VHP and will mitigate impacts on sensitive habitats and many special-status species, through that program, which will require payment of fees for habitat restoration.

Further, the proposed project would implement a number of BMPs and mitigation measures to reduce impacts on sensitive habitats and both common and special-status species, as described above. Thus, provided that this project successfully incorporates the mitigation measures described in this biological resources report, the project will not have a cumulatively considerable contribution to substantial cumulative effects on biological resources discussed in this report, with one possible exception, as discussed in Section 6.7.1.

6.7.1 Cumulative Impacts on Riparian Bird Communities (Less than Significant with Mitigation, or Significant and Unavoidable)

Along the entire Guadalupe River, the encroachment of development toward the riparian corridor has resulted in a cumulative impact on riparian bird communities over time due to the degradation of the riparian habitat, increase in human activity in and along the riparian corridor, and loss/degradation of open areas adjacent to the riparian corridor that birds can use for foraging or as flight paths in and out of the riparian corridor. Given the importance of riparian habitat and riparian bird communities along the Guadalupe River to regional bird diversity and abundance (e.g., on the scale of the South Bay), we consider this cumulative impact on riparian bird communities to be significant under CEQA.

Maintenance of appropriate setbacks between new development and riparian habitat along the Guadalupe River would avoid projects' contributions to this significant cumulative impact. As described in Section 6.3.2, we

considered the biological impacts of encroachment into the riparian setback by the Milligan Parking Lot project to be less than significant on a project-specific basis. However, we also assessed the potential for this encroachment to contribute to the significant cumulative impact on riparian functions and values along the Guadalupe River as a whole. Future development activities along the Guadalupe River in the City of San José may result in impacts on the same habitat types and species that will be affected by the proposed project. Whether or not individual projects, including the Milligan Parking Lot project and other future projects, make a considerable contribution to the significant cumulative impact on riparian bird communities along the Guadalupe River depends on the nature and extent of direct and indirect impacts of those projects. Impact avoidance and minimization efforts prescribed by planning documents, CEQA mitigation measures, and permit requirements for each project, including whether projects maintain appropriate setbacks (to be determined on a project-specific basis) from riparian corridors, as well as compensatory mitigation measures are all taken into account when determining whether a project makes a considerable contribution to significant cumulative impacts.

The purpose of the standard setbacks provided by City of San José Council Policy 6-34 and the VHP is to preserve riparian functions and values on a site-by-site basis in order to avoid a significant cumulative impact on these important resources. While exceptions to these setbacks may be granted on some occasions, it is our opinion that encroachment of the project within 0.17 acre of undeveloped California annual grassland habitat within the standard 100-foot riparian setback on the site would result in a considerable contribution to significant cumulative impacts on the functions and values of remaining areas of riparian habitat in San José, in the absence of mitigation measures. If encroachment is generally permitted along streams within the City of San José and/or VHP Habitat Plan Permit Area because the adjacent riparian habitat is determined to be moderate or low in quality, the encroaching developments will contribute to a significant cumulative impact by further reducing habitat quality throughout a large area.

Under CEQA, it is appropriate to analyze the effects of future development on the project site relative to existing conditions, and currently, the California annual grassland habitat on the site is undeveloped. The project proposes to convert this habitat into paved parking areas and landscaping (which may include nonnative vegetation) within the 100-foot setback. Thus, the contribution to cumulative impacts due to encroachment into the riparian buffer would be considerable for the removal of grassland habitat, as it represents a new type of development that will have a greater impact on the adjacent riparian corridor (due to the removal of existing undeveloped habitat, as discussed above) compared to existing conditions.

In our opinion, encroachment within the 100-foot setback would represent a cumulatively considerable contribution to significant cumulative impacts on riparian bird communities along the Guadalupe River. Mitigation for encroachment into the setback would be needed to reduce encroachment impacts. Because most of this site is already developed with a paved parking lot and is surrounded by development, and the quality of the California annual grassland habitat on the site is very low, project impacts due to encroachment into the 100-foot setback can be reduced to less-than-significant levels under CEQA, with implementation of Mitigation Measure BIO-10 (along with BIO-7 above, if necessary), in our opinion. Note that an exception for

encroachment within 100 feet of the riparian corridor would need to be granted by the City of San José, and this agency may not be willing to grant an exception for a setback lower than 50 feet in the existing grassland.

Mitigation Measure BIO-10. Compensate for New Urban Development within the Setback. To compensate for the degradation of setback functions in the 100-foot setback within existing California annual grassland (0.17 acre) due to the construction of a new parking lot and landscape areas, the project shall restore native riparian tree and shrub habitat at a 1:1 (restored area : impacted area) ratio, on an acreage basis, on-site or off-site. The 1:1 mitigation ratio is not higher because (1) no substantial indirect effects on the riparian corridor (e.g., due to shading or building construction) are anticipated; (2) the project will remove existing buildings within the setback, which will have at least a minor benefit to riparian bird communities; and (3) the project will pay VHP fees for impacts on riparian trees, as discussed in Section 6.3.1 above.

On-Site Mitigation. If restoration is performed on-site, native riparian vegetation shall be planted in planting areas that are contiguous with the riparian corridor (i.e., not located in isolated planting wells) and located within the 100-foot setback. Because the design for the future on-site trail is unknown, the available planting area within the setback is uncertain; however, a total of 0.33 acre is present within an on-site planting area and along the creek that meets these criteria (Figure 7), which is 0.16 acre greater than the required mitigation. If the available planting area is smaller than the project's impact area, then in order to achieve the required mitigation on-site (without considering off-site options), the project would need to (1) reduce the impact area within the California annual grassland land cover type, or (2) expand any landscape areas that are contiguous with the riparian corridor, to achieve a ratio of restored area to impacted area of 1:1.

Locally native trees and shrubs appropriate to the area as identified in Valley Water's guidance (Valley Water 2006) and/or the City's Policy Study (City of San José 1999) shall be planted and maintained on-site to provide additional wildlife habitat adjacent to the Guadalupe River. The on-site planting areas shall include locally native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (including "compatible" nonnatives that may be recommended for planting along streams by local jurisdictions) will be planted within the restoration areas. Example overstory species include coast live oak, valley oak, and example understory species include holly-leaf redberry (*Rhamnus ilicifolia*) and holly-leaf cherry (*Prunus ilicifolia*). A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan, which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions):

1. Goal of the restoration to achieve no net loss of habitat functions and values.
2. Restoration design:
    - Planting plan
    - Soil amendments and other site preparation elements as appropriate
    - Maintenance plan
    - Remedial measures/adaptive management

3. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum, success criteria shall include elimination of nonnative woody species from within the enhancement area and establishment of a native tree and shrub canopy providing at least 50% canopy coverage of the mitigation area within 10 years of mitigation implementation.
4. Contingency plan for mitigation elements that do not meet performance or final success criteria.

The Riparian Setback Enhancement and Monitoring Plan must be approved by the City prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

Off-Site Mitigation. If adequate riparian habitat mitigation cannot be restored on-site, riparian habitat will be enhanced or restored to native habitat along the immediately adjacent riparian corridor[2], and/or elsewhere along the Guadalupe River and within the City of San José[3]. If off-site mitigation is necessary and it is not possible to find a suitable mitigation site along the Guadalupe River, the mitigation shall be provided elsewhere on the Santa Clara Valley floor and within the City of San Jose. However, if mitigation cannot be provided along the Guadalupe River, cumulative impacts due to project encroachment along the Guadalupe River would be considered significant and unavoidable.

As described in Section 4.2.3 above, the riparian corridor immediately adjacent to the site is degraded with some nonnative trees, a predominantly nonnative understory, and trampling/disturbance from homeless camps. Thus, this area provides an opportunity for restoration and enhancement to improve this habitat for birds. Restoration/enhancement that is provided along the immediately adjacent riparian corridor would consist of the removal of nonnative trees, shrubs, and vines and the planting of native riparian vegetation. The off-site planting areas shall be restored/enhanced to incorporate native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (even including "compatible" nonnatives that may be recommended for planting along streams by local jurisdictions) will be planted within the restoration areas. Acreage will be credited based on the areal extent of nonnative vegetation removal and native riparian vegetation planting.

Restoration/enhancement that is provided off-site, including in the immediately adjacent riparian corridor, must restore or augment high-quality riparian habitat for birds in the opinion of a qualified biologist. Therefore, such restoration would need to occur in an area with sufficient setbacks and appropriate soils and hydrology to support high-quality riparian vegetation.

[2] Permission will need to be obtained from the City of San José and/or Valley Water to perform restoration/enhancement along the riparian corridor immediately adjacent to the project site. Valley Water may not grant permission for this work, as they often look for such opportunities as mitigation for their own projects.

[3] The proposed off-site mitigation may not be feasible if a suitable location cannot be found within the City of San José. Properties owned by the City where the restoration/enhancement may be possible include the Guadalupe River Park.

Any off-site restoration/enhancement would need to be performed according to a Riparian Habitat Mitigation and Monitoring Plan, as described above for on-site mitigation.

If compensatory mitigation for the project's encroachment into the riparian setback via disturbance of existing grassland habitat is provided on-site or elsewhere along the Guadalupe River, then the project's contribution to the significant cumulative impact on Guadalupe River riparian bird communities would be reduced to a less-than-significant level under CEQA. If compensatory mitigation cannot be provided along the Guadalupe River (i.e., if it is provided elsewhere on the Santa Clara Valley floor), cumulative impacts due to project encroachment along the Guadalupe River would be considered significant and unavoidable.

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