County of Santa Clara
Department of Planning and Development
County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110

www.sccplandev.org

Notice of Intent to Adopt a Mitigated Negative Declaration

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21,000, et sec.) that the following project will not have a significant effect on the environment.

File Number	TAZ	APN(s)	Date
PLN18-12010	695	701-37-004	6/30/2021

Project Name	Project Type	
Zheng Residences	Building Site Approval, Grading Approval	
Person or Agency Carrying Out Project	**Address**	**Phone Number**
Project Planner – Colleen Tsuchimoto of Santa Clara County Planning Dept.	70 W. Hedding St., E. Wing, 7th Floor San Jose	(408) 299-5797
Name of Applicant	**Address**	**Phone Number**
Oscar Osuna	117 Bernal Road Suite 70-336 San Jose	(408) 721-2100

Project Location

21551 Shillingsburg Avenue, San Jose. See **Attachment A** – *Project Vicinity Map.*

Project Description

This application is for a Building Site Approval and Grading Approval to build a new 4,567 sq. ft. residence including attached garage and 1,200 sq. ft. accessory dwelling unit including attached garage off Tyr Lane with on-site improvements (driveway, septic system, detention pond and landscaping) and maintenance of existing private well. The project also includes demolition of the existing residence (2,360 sq. ft.) on-site and broken storage shed (sq. ft. unknown), and maintenance of existing private horse barn (1,400 sq. ft.) horse stables (2,000 sq. ft. and 1,600 sq. ft.), horse stables with chicken coop (2,200 sq. ft.), and detached storage sheds (2,000 sq. ft., and 1,080 sq. ft.). Grading quantities are approximately 1,458 cubic yards of cut and 2,342 cubic yards of fill with a maximum depth of 3 ft. Of the proposed grading, 1,111 cubic yards of fill are outside the scope of the Grading Approval associated with the building pads for the residence and accessory dwelling unit. See **Attachment B** -*Plan Set*.

Purpose of Notice

The purpose of this notice is to inform you that the County Planning Staff has recommended that a Mitigated Negative Declaration be approved for this project. County of Santa Clara Planning Staff has reviewed the Initial Study for the project, and based upon substantial evidence in the record, **finds that although the proposed project could initially have a significant effect on the environment, changes or alterations have been incorporated into the project to avoid or reduce impacts to a point where clearly no significant effects will occur.** The project site is not on a list of hazardous material sites as described by Government Code 65962.5 (Cortese List).

Final action on the project is tentatively scheduled on August 2, 2021 It should be noted that the approval of a Mitigated Negative Declaration does not constitute approval of the project under consideration. The decision to approve or deny the project will be made separately.

Public Review Period: 30 days	**Begins:** 7/1/21	**Ends:** 7/30/21

Public Comments regarding the correctness, completeness, or adequacy of this negative declaration are invited and must be received on or before the above date. Such comments should be based on specific environmental concerns. Written comments should be addressed to the attention of Colleen Tsuchimoto at the **County of Santa Clara Planning Office, County Government Center, 70 W. Hedding Street, San Jose, CA 95110, Tel: (408) 299-5797 .** For additional information regarding this project and the Negative Declaration, please contact Colleen Tsuchimoto at (408) 299-5797 or Colleen.Tsuchimoto@pln.sccgov.org

The Mitigated Negative Declaration and Initial Study may be viewed at the following locations:

(1) Santa Clara County Planning Office, 70 West Hedding Street, East Wing, 7th Floor, San Jose, CA 95110
(2) Planning & Development website www.sccgov.org/sites/dpd (under "Development Projects" > "Current Projects")

Responsible Agencies sent a copy of this document

CA Dept. of Fish and Wildlife Service, U.S Fish and Wildlife Service, Habitat Plan Agency

Mitigation Measures included in the project to reduce potentially significant impacts to a less than significant level:

(Bio-Mit No. 1 – Burrowing Owls) –
All Habitat Plan conditions for Burrowing Owl are incorporated into the mitigation measures as follows: See Habitat Plan Condition 15. Western Burrowing Owl

1a) Pre-construction surveys for burrowing owls conducted by a qualified biologist are required with submittal of the Habitat Plan Application to confirm presence and suitability of habitat for the species within the proposed development area and within a 250 ft. radius of the development area. Note: Suitable habitat is considered fully avoided if the project footprint does not impinge on a 250-foot buffer around the suitable burrow.

To maximize the likelihood of detecting owls, the preconstruction survey will last a minimum of 3 hours. The survey will begin 1 hour before sunrise and continue until 2 hours after sunrise (for 3 hrs. total). A minimum of two surveys will be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed will be counted and their locations will be mapped.

1b) If active nests are found onsite, a 250-foot non-disturbance buffer will be established around all nest sites as determined by a qualified biologist.

1c). If presence/suitability are determined follow up pre-construction surveys are required as follows (to be submitted to the Planning Dept. prior to final inspection):

- 14 days prior to initial construction activities – preliminary survey
- 2 days prior to initial construction activities (2 days of surveying plus up to 2 days between surveys and construction).

1d) If evidence of western burrowing owls is found during the breeding season (February 1 to August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or your (occupation includes individuals or family groups foraging on or near the site following fledging). Avoidance will include establishment of the 250 foot non disturbance buffer zone.

1e) Construction may occur inside of the 250 foot non disturbance buffer during the breeding season if

- The nest is not disturbed, and
- The project proponent develops an avoidance, minimization and monitoring plan that will be reviewed by the Habitat Agency and the Wildlife Agencies with submittal of the Habitat Plan application based on the following criteria:

- The Habitat Agency and the Wildlife Agencies approve of the avoidance and minimization plan provided by the project proponent.
- A qualified biologist monitoring the owls for at least 3 days prior to construction to determine baseline nesting and foraging behavior (i.e. behavior without construction)
- The same qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities.
- If there is a change in owl nesting and foraging behavior as a result of construction activities, these activities will cease within the 250 foot buffer. Construction cannot resume within the 250 foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.
- If monitoring indicates that the nest is abandoned prior to the end of nesting season and the burrow is no long er in use by owls, the non-disturbance buffer zone may be removed. The biologist will excavate the burrow to prevent reoccupation after receiving approval from the Wildlife Agencies.
- The Habitat Agency and the Wildlife Agencies have 21 calendar days to respond to a request from the project proponent to review the proposed avoidance, minimization, and monitoring plan. If these parties do not respond within 21 calendar days, it will be presumed that they concur with the proposal and work can commence.

1f) Construction may occur inside of the 250 foot non disturbance buffer during the non breeding season (September 1 to January 31) if

- A qualified biologist monitoring the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e. behavior without construction)
- The same biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
- If there is any change in owl foraging behavior as a result of construction activities, these activities will cease within the 250 foot buffer.
- If the owls are gone for at least 1 week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls form reoccupying the site. After all usable burrows are excavated, the buffer zone will be removed and construction may continue.
- Monitoring must continue as described above for the non-breeding season as long as the burrow remains active.

1g) Construction Monitoring: Based on the avoidance, minimization and monitoring plan developed the following measures are required:

- During construction, the non-disturbance buffer zones will be established and maintained as applicable.
- A qualified biologist will monitor the site consistent with the plan to ensure that buffers are enforced and owls are not disturbed.
- The biological monitor will conduct training of construction personnel on avoidance procedures, buffer zones, and protocols in the event that a burrowing owl enters an active construction zone.
- Construction monitoring report to be submitted to Planning Dept. and Habitat Agency prior to final inspection.

1h) Exceptions to Passive Relocation Prohibition: Passive relocation is currently not allowed under the Habitat Plan until the positive growth trend is achieved. If burrowing owls continually persist on a site where avoidance is not feasible, the project proponent may apply for an exception based on the following process: Note: For this condition the term exception means an allowance to conduct passive relocation of burrowing owls during the non-breeding season only when this activity is not otherwise allowed. Apply for exception through the Habitat Plan Application.

Submit a passive relocation plan with the request for the exception. The plan must document the following information:

- Owls have occupied the site for a full year without relocating voluntarily. Surveys documenting presence must be completed by a qualified biologist and results must be provide din a written report. The report should confirm that one or more individuals (i.e. unique owls) were monitored for a year and that the owls had used the site for a full year).
- The proposed process for relocation, including schedule for the proposed passive relocation and name of the qualified biologist.

Note: The Habitat Plan Agency, Wildlife Agencies and Planning Dept. will meet to discuss the proposed passive relocation plans. Exceptions will be considered based on, but not limited to the following factors:

- The parcel is equal to or less than 3 acres and is more than 1,000 feet from other suitable nesting or foraging habitat such that it is unlikely the site can sustain burrowing owls into the future.
- If the site has historically been used for nesting (within the last 3 yrs).
- If the site is a target for burrowing owl temporary or permanent management agreement.

(Bio-Mit No. 2 – Tri-Colored Blackbird)

All Habitat Plan conditions for Tri-Colored Blackbird are incorporated into the mitigation measures as follows: See Habitat Plan Condition 17. Tri-Colored Blackbird

2a) Pre-construction surveys for Tri-Colored Blackbird conducted by a qualified biologist are required with submittal of the Habitat Plan Application to confirm presence and suitability of habitat for the species within the proposed development area and within a 250 ft. radius of the development area. Note: If the qualified biologist verifies that the project area is within 250 feet of landcovers (riparian, marsh, ponds), the qualified biologist will conduct a field investigation to identify and map potential nesting substrate. If potential nesting substate is found, the project proponent may revise the proposed project to avoid all areas within a 250-foot buffer around the potential nesting habitat, and surveys will be concluded.

2b) If active nests are found onsite, a 250-foot non-disturbance buffer will be established around all nest sites as determined by a qualified biologist.

2c). If presence/suitability are determined and applicant chooses not to avoid the potential nesting habitat and

250-foot buffer – follow up pre-construction surveys are required up to 14 days prior to grading/construction

activities (submitted to Planning Dept. prior to final inspection). As part to the surveys, a qualified biologist

will

- Make effort to determine if there has been nesting at the site in the past 5 years. This includes checking the CA Natural Diversity Database, contacting local experts, and looking for evidence of historical nesting (i.e. old nests).
- If no nesting in the past 5 years is evident, conduct a preconstruction survey in areas identified in the habitat survey as supporting potential tricolored blackbird nesting habitat Surveys will be made at the appropriate times of year when nesting use is expected to occur. The surveys will document the presence or absence of nesting colonies of tricolored blackbird. Surveys will conclude no more than 2 calendar days prior to construction.

- If a tri-colored blackbird nesting colony is present, a 250-foot buffer will be applied from the outer edge of all hydric vegetation associated with the site and the site and the sit plus buffer will be avoided.
- The qualified biologist will notify the Planning Dept. and the Habitat Agency immediately of nest locations. The Habitat Agency will notify the Wildlife Agencies.

2d) Covered activities must avoid tricolored blackbird nesting habitat that is currently occupied or has been used in the past 5 years. If tricolored blackbird colonies are identified during the breeding season, covered activities will be prohibited within a 250-foot no activity buffer zone around the outer edge of all hydric vegetation associated with the colony.

- This buffer may be reduced in areas with dense forest, building, or other habitat features between the construction activities and the active nest colony, or where there is sufficient topographic relief to protect the colony from excessive noise or visual disturbance.
- Depending on the site characteristics, the sensitivity of the colony, and surrounding land uses, the buffer zone may be increased. Land uses potentially affecting a colony will be observed by a qualified biologist to verify that the activity is not disturbing the colony. If it is, the buffer will be increased. Habitat Agency technical staff will coordinate with the Wildlife Agency and evaluate exception to the minimum no-activity buffer distance on a case-by-case basis.

2e) Construction Monitoring: If construction takes place during the breeding season when an active colony is present, a qualified biologist will monitor construction.

- A qualified biologist will monitor the site to ensure that the 250-foot buffer zone is enforced.
- If monitoring indicates that construction outside of the buffer is affecting a breeding colony, the buffer will be increased if space allows (e.g. staging area moved farther away). If space does not allow increased buffer, construction will cease until the colony abandons the site or until the end of the breeding season, whichever occurs first.
- The biological monitor will conduct training of construction personnel on avoidance procedures, buffer zones, and protocols in the event that a tricolored blackbird enters an active construction zone.
- Construction monitoring report to be submitted to Planning Dept. and Habitat Agency prior to final inspection.

(Bio-Mit. No. 3) – Foothill Yellow Legged Frog, California Red Legged Frog, Western Pond Turtles
All Habitat Plan conditions for these species are incorporated into the mitigation measures as follows: See Habitat Plan Condition 1. Avoid direct Impacts on Legally Protected Plant and Wildlife Species.

3a) Pre-construction surveys for Foothill Yellow Legged Frog, California Red Legged Frog, and Western Pond Turtles conducted by a qualified biologist are required with submittal of the Habitat Plan Application to confirm presence and suitability of habitat for the species to travel within the proposed development area. The biologist shall survey Arroyo Calero Creek on the subject site for presence of all these species. Note: If the qualified biologist verifies that the project area has impacts to the species, the qualified biologist will conduct a field investigation to identify and map location of such species.

3b) If species are found, final grading and building plans shall include a standard silt fence erected around perimeter of the grading and construction work. The fence material should be at least 2 feet in height and buried into the ground at least 5 to 6 inches. The silt fence shall be erected prior to ground disturbing work.

3c). If presence/suitability are determined – follow up pre-construction surveys are required up to 14 days prior to grading/construction activities (submitted to Planning Dept. prior to final inspection)

3d) Construction Monitoring: A qualified biologist will monitor construction.

- A qualified biologist will monitor the site to ensure that the silt fence remain erected properly.
- The biological monitor will conduct training of construction personnel on avoidance procedures, and protocol in the event that species enters an active construction zone.
- Construction monitoring report to be submitted to Planning Dept. and Habitat Agency prior to final inspection.

(Bio-Mit. No. 4) – San Francisco Dusky-Footed Woodrat
All conditions for these species are incorporated into the mitigation measures as follows. Please note that the San Francisco Dusky-Footed Woodrat is not a covered Habitat Plan species. Take requires a separate federal permit from U.S Fish and Wildlife Service and CA Dept. of Fish and Wildlife Service.

4a) Pre-construction surveys for San Francisco Dusky-Footed Woodrat conducted by a qualified biologist are required with submittal of the Habitat Plan Application to confirm presence and suitability of habitat within the proposed development area and surrounding area of 50 feet and riparian land cover. The biologist shall survey Arroyo Calero Creek on the subject site, and development area with 50 ft buffer for presence. Note: If the qualified biologist verifies that the project area has impacts to the species, the qualified biologist will conduct a field investigation to identify and map location of San Francisco Dusky-Footed Woodrat. If it is determined that young may be present during the preconstruction survey, a buffer shall be established around the nest until the young are independent enough to successfully be moved from the deconstructed nest.

4b). If presence/suitability are determined follow up pre-construction surveys are required up to 14 days prior to grading/construction activities (submitted to Planning Dept. prior to final inspection)

4c) If active nests are found onsite, identified nests should be avoided. If avoidance is not possible, the nests should be manually deconstructed when the young are not present, during the non-breeding season (October through January). A qualified biologist shall deconstruct the nests. Deconstruction nest report to be submitted to Planning Dept. and Habitat Agency prior to final inspection.

(Bio-Mit. No. 5) – American Badger
All conditions for these species are incorporated into the mitigation measures as follows. Please note that the American Badger is not a covered Habitat Plan species. Take requires a separate federal permit from U.S Fish and Wildlife Service and CA Dept. of Fish and Wildlife Service.

5a) Pre-construction surveys for American Badger conducted by a qualified biologist are required with submittal of the Habitat Plan Application to confirm presence and suitability of habitat within the proposed development area and surrounding area of 300 feet. . Note: If the qualified biologist verifies that the project area has impacts to the species, the qualified biologist will conduct a field investigation to identify and map location of San Francisco Dusky-Footed Woodrat.

5b). If presence/suitability are determined follow up pre-construction surveys are required up to 14 days prior to grading/construction activities (submitted to Planning Dept. prior to final inspection)

5c). If an active badger den is identified during pre-construction surveys a buffer area of 300 feet shall be established around the den and avoided. If avoidance is not possible, after the biologist has determined that badger has vacated the borrow, the burrow can be collapsed or excavated. A qualified biologist shall deconstruct the burrow. Deconstruction nest report to be submitted to Planning Dept. and Habitat Agency prior to final inspection.

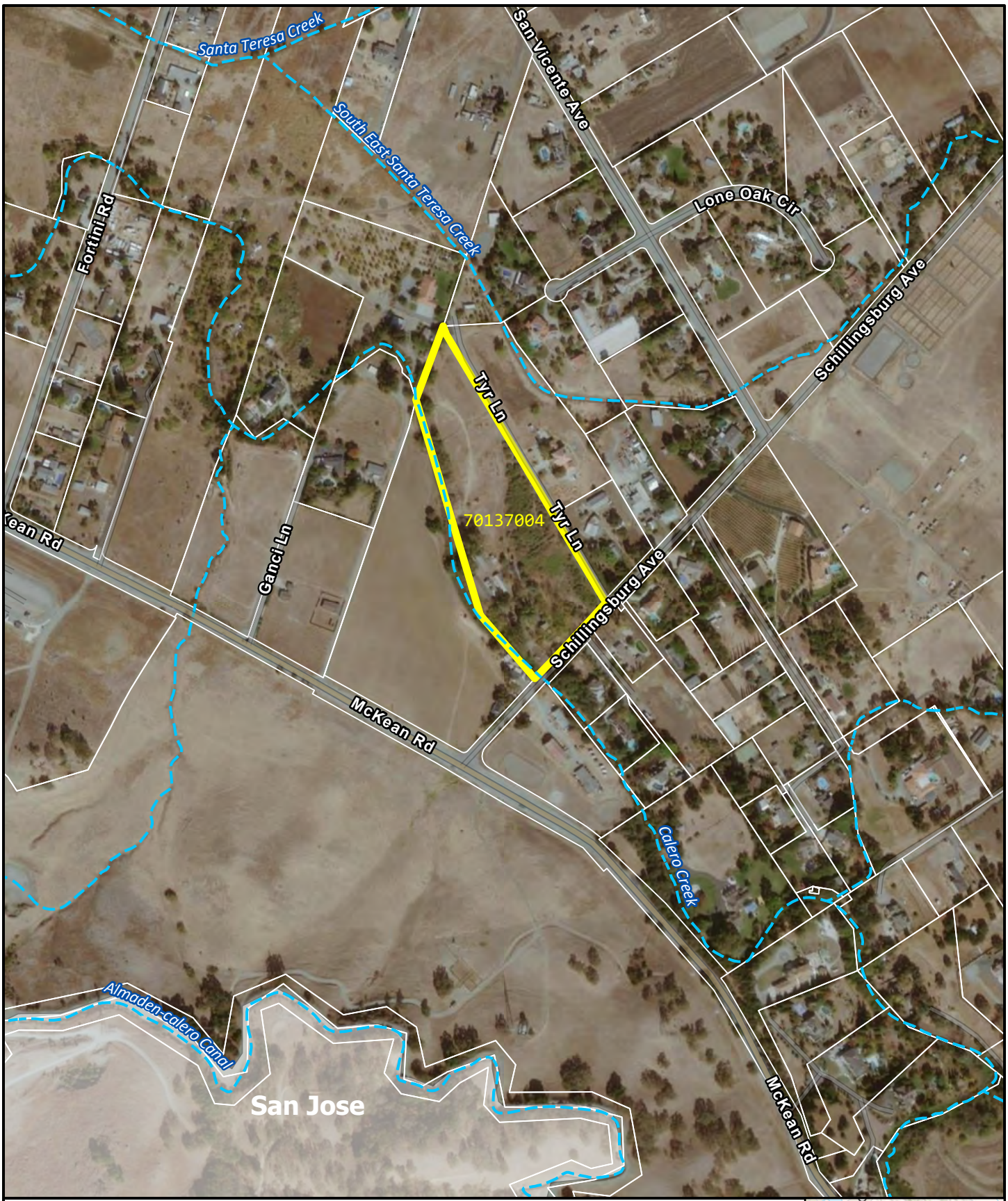
5d). If the burrow is determined to be natal or reproductive den and because badgers are known to use multiple burrowing in a breeding burrow complex, construction monitoring is required if this scenario is applicable.

- The biologist shall ensure the buffer is adequate to avoid direct impacts to individuals or natal/reproductive den abandonment.
- The biologist shall determine that American badgers would not be harmed by construction activities.
- The biological monitor will conduct training of construction personnel on avoidance procedures, and protocol in the event that species enters an active construction zone.
- Construction monitoring report to be submitted to Planning Dept. and Habitat Agency prior to final inspection.

A reporting or monitoring program must be adopted for measures to mitigate significant impacts at the time the Negative Declaration is approved, in accord with the requirements of section 21081.6 of the Public Resources Code.

Prepared by:
Colleen Tsuchimoto Colleen A. Tsuchimoto 7/1/21
Senior Planner **Signature** **Date**

Attachment A – Project Vicinity Map



Vicinity Map

File: PLN18-12010
APN: 701-37-004

Attachment A - Project Vicinity Map

N

500
Feet

Path: Y:\PLN18-12010.aprx

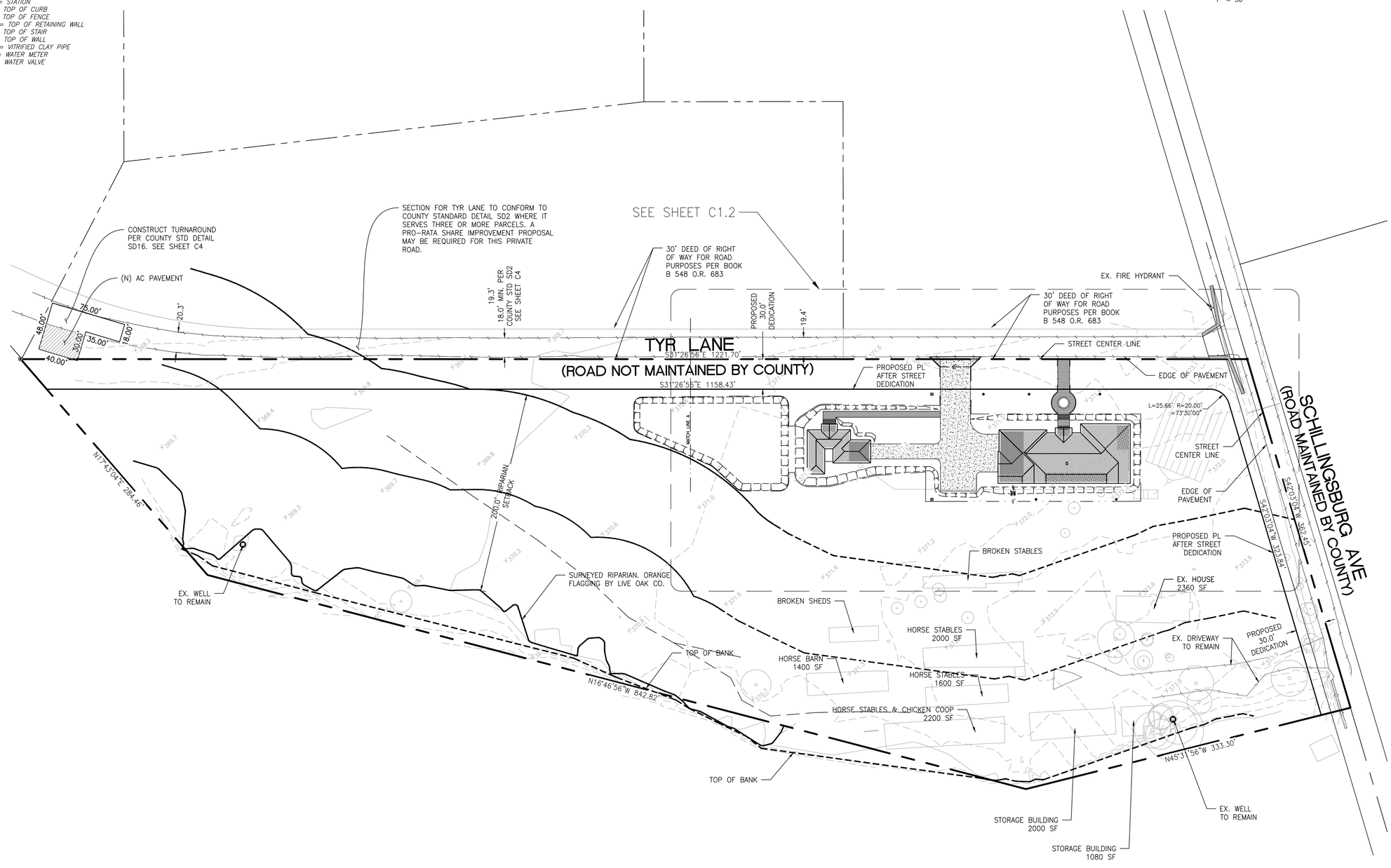
ATTACHMENT B - Plans

ABBREVATIONS

AC = ASPHALT CONCRETE
AD = AREA DRAIN
BC = BEGIN CURVE
BS = BOTTOM OF STAIR
BU = BUBBLE UP
BVC = BEGIN VERTICAL CURVE
BRW = BOTTOM OF RETAINING WALL
CB = CATCH BASIN
CL = CENTERLINE
CO = CLEANOUT
DS = DOWNSPOUT WITH SPLASH BOX
EC = END CURVE
ELEV. = ELEVATION
EVC = END VERTICAL CURVE
EX. = EXISTING
F/C = FACE OF CURB
FF = FINISHED FLOOR ELEVATION
FH = FIRE HYDRANT
FL = FLOW LINE
GB = GRADE BREAK
GFF = GARAGE FINISH FLOOR
HP = HIGH POINT
HC = HANDICAP UNIT
INV = INVERT
LP = LOW POINT
PAD = PAD ELEVATION
PCC = PORTLAND CEMENT CONCRETE
PL = PROPERTY LINE
PV = PAVEMENT GRADE
PVC = POLYVINYL CHLORIDE PIPE
PVI = POINT OF VERTICAL INTERSECTION
RCP = REINFORCED CONCRETE PIPE
ROW = RIGHT OF WAY
S=.004> SLOPE
SD = STORM DRAIN
SDMH = STORM DRAIN MANHOLE
SG = SUBGRADE ELEVATION
SS = SANITARY SEWER
SSMH = SANITARY SEWER MANHOLE
STA = STATION
TC = TOP OF CURB
TF = TOP OF FENCE
TRW = TOP OF RETAINING WALL
TS = TOP OF STAIR
TW = TOP OF WALL
VCP = VITRIFIED CLAY PIPE
WM = WATER METER
WV = WATER VALVE

LEGEND

DESCRIPTION	SYMBOL
BOUNDARY LINE	
LOT LINE	
EASEMENT LINE	
SIDEWALK	
WOOD FENCE	x — x
CHAIN LINK FENCE	
RETAINING WALL	
DRIVEWAY DRAIN INLET	
AREA DRAIN	
DROP INLET	
MONUMENT	
FIRE HYDRANT	
ELECTROLIER	
WATER METER	
AC UNIT	
SANITARY SEWER LATERAL	
STORM DRAIN	SD
SANITARY SEWER	SS
STREET LIGHT CONDUITS	SL
WATER	W
JOINT TRENCH	JT
HOUSE SERVICE	SVC
SLOPE ARROW	
EXISTING CONTOUR	100
PROPOSED CONTOUR	100
OVERLAND RELEASE	
DIRECTION OF SURFACE DRAINAGE	
5% SLOPE AWAY FROM BUILDING	>>



10 30 50
0 20 40 100
GRAPHIC SCALE
1" = 50'

CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS; AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE OWNER OR THE ENGINEER.

REVISIONS	BY	CITY	DATE

REGISTERED PROFESSIONAL ENGINEER
PORFIRIO OSCAR OSUNA
No. 70829
Exp. 6-30-21
CIVIL
STATE OF CALIFORNIA

P. Oscar Osuna
PORFIRIO OSCAR OSUNA
RCE 70829 EXP. 6-30-21

OSUNA ENGINEERING INC.
Planning|Surveying|Civil Engineering
CONSULTING CIVIL ENGINEERS & LAND SURVEYORS
117 BERNAL RD. STE. 70-336
SAN JOSE, CA 95119
TEL. (408) 772-4381
Info@osunaengineering.com

GRADING & DRAINAGE PLAN

21551 SCHILLINGSBURG AVE
SAN JOSE, CALIFORNIA

Project No.: 1463 | Designed: JO | Checked: OO | Date: 12/11/20

SHEET
C1.1
OF 12 SHEETS

ATTACHMENT C – Biological Report

LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

21551 SCHILLINGSBURG AVENUE
TECHNICAL BIOLOGICAL REPORT
SANTA CLARA COUNTY, CALIFORNIA

Prepared by

LIVE OAK ASSOCIATES, INC.

Rick Hopkins, Ph.D., Principal/Senior Wildlife Ecologist
Katrina Krakow, M.S., Project Manager/Staff Ecologist

Prepared for

Junping Zheng
16141 Alum Rock Avenue
San Jose, CA 95127

January 16, 2020 PN 2360-01

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TABLE OF CONTENTS

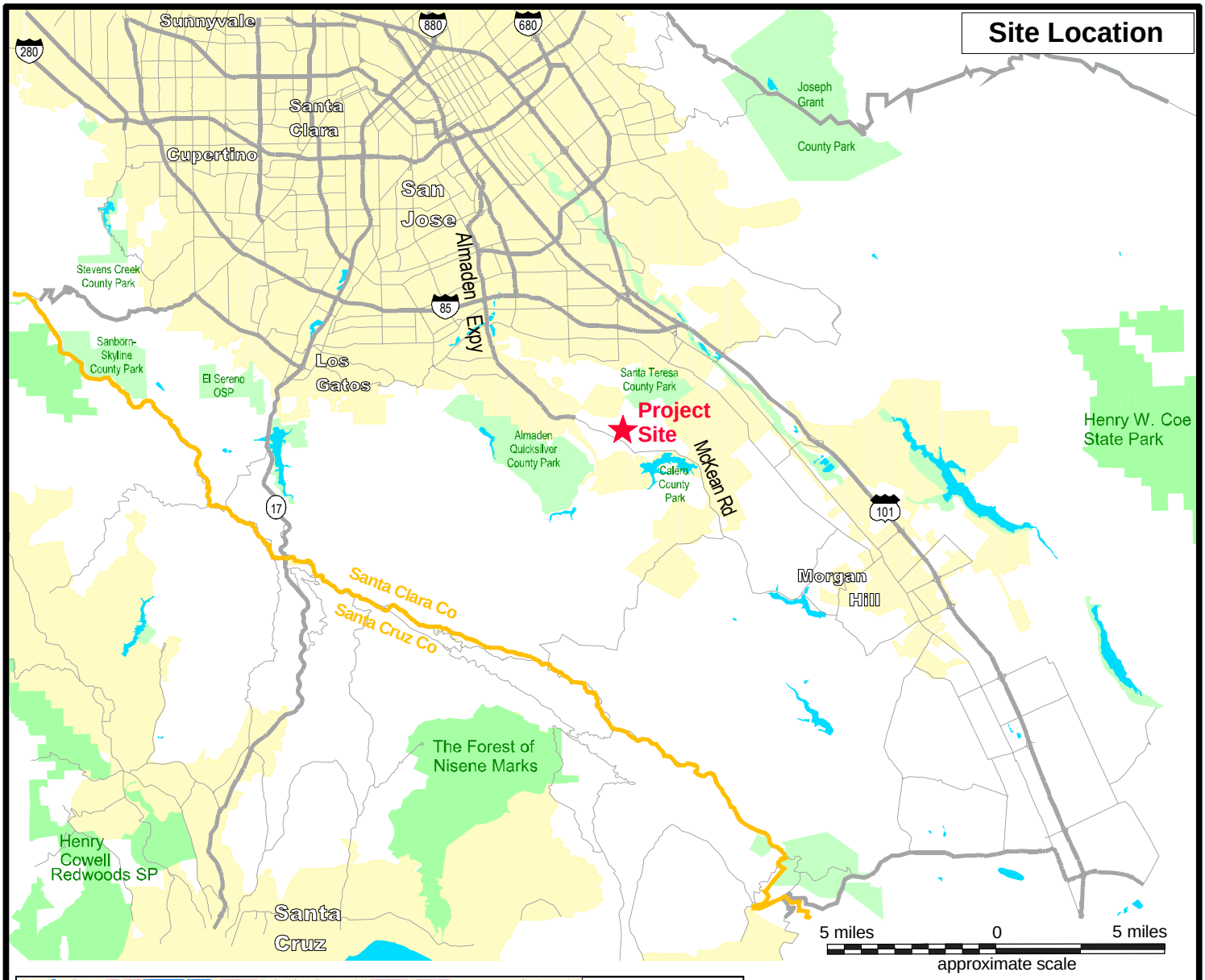
1 INTRODUCTION

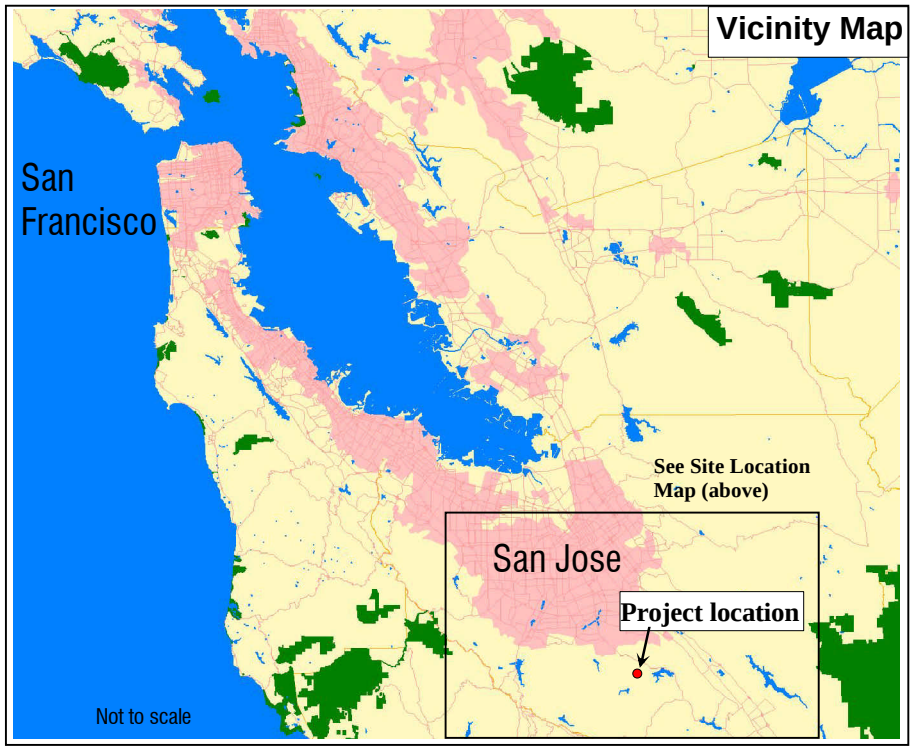
This site was evaluated by Live Oak Associates, Inc. (LOA) to ascertain whether or not build-out of the proposed project would have a significant impact (as defined by CEQA) on the biological resources of the site and region. This report describes the biotic resources of the Property (hereafter referred to as the "study area" or "site"), located at 21551 Schillingsburg Avenue in Santa Clara County, California and evaluates possible impacts to these resources resulting from the proposed land use changes upon these resources. The site is bordered by Tyr Lane to the east, Schillingsburg Avenue to the south, Calero Arroyo and an open field to the west, and a residence to the north. The surrounding land use is rural residential with pastureland. The site is located in Santa Clara County, California (Figure 1). The site can be found on the Santa Teresa Hills U.S.G.S. 7.5' quadrangle in Section 31 of Township 8 South, Range 2 East. Structures onsite are in the southwestern corner of the site and include a residence, stables, barn, outbuildings. The remainder of the site includes California annual grassland, coyote brush scrub, ornamental woodland, and Calero Arroyo bounds the western side of the property.

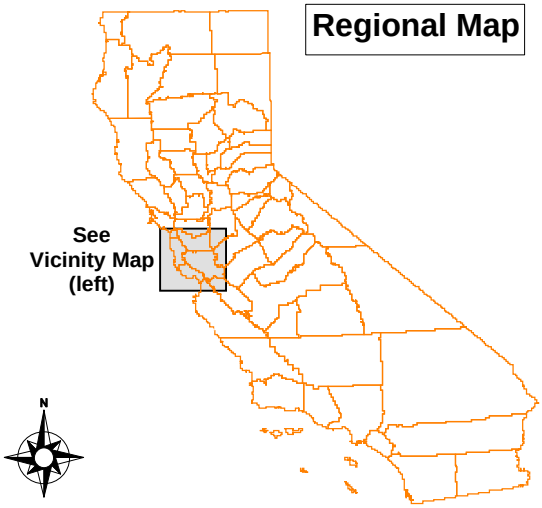
In general, the development of parcels can damage or modify biotic habitats used by sensitive plant and wildlife species. In such cases, site development may be regulated by state or federal agencies, subject to provisions of the California Environmental Quality Act (CEQA), and/or covered by policies and ordinances of Santa Clara County. Therefore, this report addresses issues related to: 1) sensitive biotic resources occurring in the study area; 2) the federal, state, and local laws regulating such resources, 3) evaluate whether or not the project results in any significant impacts to these resources; and if so, 4) includes mitigation measures to reduce these impacts to less-than-significant (as defined by CEQA).

The analysis of impacts, as discussed in Section 3.0 of this report, was based on the known and potential biotic resources of the study area discussed in Section 2.0. Sources of information used in the preparation of this analysis included: 1) the *California Natural Diversity Data Base* (RareFind5, 2020); 2) the *California Rare Plant Rank* (CNPS 2020); 3) manuals and references related to plants and animals of the Santa Clara Valley region; 4) Santa Clara County policies and ordinances; and 5) the Santa Clara Valley Habitat Plan (SCVHP; 2012).

A field survey of the study area was conducted on May 20, 2019 by LOA ecologist Katrina Krakow.







Live Oak Associates, Inc.

21551 Schillingsburg Ave BE
Site / Vicinity Map

Date	Project #	Figure #
6/11/2019	2360-01	1

1.1 PROJECT DESCRIPTION

The project, as proposed, would develop a single-family residence on the northern portion of the site and is not expected to require the removal of any trees onsite. The current plan is to build the residence in the northernmost corner of the site, however, as this is a tentative location, and the location may be moved southwards some, this report evaluates the entirety of the site outside of the developed area, as structures will not be removed as a part of this project.

2 EXISTING CONDITIONS

The project site is located 21551 Schillingsburg Avenue in Santa Clara County, California. The site is bordered by Tyr Lane to the east, Schillingsburg Avenue to the south, Calero Arroyo and an open field to the west, and a residence to the north. The surrounding land use is rural residential with pastureland. The site has a relatively flat topography with the elevation increasing as the site progresses to the south and is approximately 370-375 feet (112-115 meters) National Geodetic Vertical Datum (NGVD).

Annual precipitation in the general vicinity of the study area is about 15-20 inches, almost 85% of which falls between the months of October and March. Virtually all precipitation falls in the form of rain.

Two soil map units occur onsite: Stevenscreek sandy clay loam, 0 to 2 percent slopes (very deep, well drained soils with low runoff and moderately slow permeability); and Montavista-Togasara complex, 2 to 9 percent slopes (very deep, well drained soils with moderately slow to slow permeability). Neither of the soils onsite are considered to be hydric.

2.1 BIOTIC HABITATS

Seven land cover types are present on the project site and these have been named consistent with nomenclature for land cover types contained in the Santa Clara Valley Habitat Plan (SCVHP). These seven land cover types include California Annual Grassland; Coyote Brush Scrub, Mixed Riparian Woodland and Forest; Category 1 Stream (Calero Arroyo), Rural Residential; and Ornamental Woodland. These land cover types are described in greater detail below.

2.1.1 California Annual Grassland

This is the most prevalent land cover type present on the property. This land cover type is comprised of California annual grassland habitat dominated by non-native species. Constituent grass species observed in this habitat included grasses including wild oat (*Avena* sp.), and ripgut brome (*Bromus diandrus*), farmer's foxtail (*Hordeum murinum*), soft chess (*Bromus hordeaceus*), wild rye (*Elymus sp.*), annual bluegrass (*Poa annua*), and canary grass (*Phalaris sp.*). In addition to the grasses, several forb species were also observed including fiddleneck (*Amsinckia sp.*), coyote brush (*Baccharis pilularis*), common mustard (*Brassica rapa*), Italian thistle (*Carduus pycnocephalus*), poison hemlock (*Conium maculatum*), bindweed (*Convolvulus arvensis*), stinkwort (*Dittrichia graveolens*), California poppy (*Eschscholzia californica*), whitetop (*Lepidium draba*), mallow (*Malva sp.*), burclover (*Medicago polymorpha*), white poplar (*Populus alba*), wild radish (*Raphanus raphanistrum*), curly dock (*Rumex crispus*), milk thistle (*Silybum marianum*), and stinging nettle (*Urtica dioica*).

Wildlife observed within or flying over the grasslands of the site during the May 2019 survey included the mallard (*Anas platyrhynchos*), Canada goose (*Branta canadensis*), peafowl (*Pavo cristatus*), acorn woodpecker (*Melanerpes formicivorus*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), American crow (*Corvus brachyrhynchos*), black phoebe (*Sayornis nigricans*), tree swallow (*Tachycineta bicolor*), northern mockingbird (*Mimus polyglottos*), California towhee (*Melozone crissalis*), and house finch (*Haemorhous mexicanus*). Additionally, Botta's pocket gopher (*Thomomys bottae*) sign and California ground squirrel (*Otospermophilus beecheyi*) burrows were observed onsite. A few debris and slash piles occur within this habitat as well.

2.1.2 Coyote Brush Scrub

The next most prevalent land cover type on the parcel is coyote brush scrub, which is almost entirely made up of dense coyote brush which reaches heights of 10 or more feet. Understory was largely bare, but did include some species also present within the California annual grassland habitat, and also includes scarlet pimpernel (*Anagallis arvensis*), wild cucumber (*Cucumis anguria*), coast live oak (*Quercus agrifolia*) sapling, and blue elderberry (*Sambucus nigra ssp. caerulea*). The project, as currently planned is not expected to impact this habitat, however, as current location of the residence is tentative, this habitat may be impacted should the building site move southward.

Wildlife observed in this habitat was limited to the California scrub jay (*Aphelocoma californica*). Species occurring in adjacent habitats are likely to occur within this habitat as well.

2.1.3 Mixed Riparian Woodland and Forest

Sparse mixed riparian woodland occurs along the banks of Calero Arroyo on the western edge of the project site. Trees within this habitat include walnut (*Juglans sp.*), coast live oak, sycamore (*Platanus racemosa*), willow (*Salix sp.*), and blue elderberry. Understory plants include century plant (*Agave americana*), wild oats, coyote brush, mustard, ripgut brome (*Bromus diandrus*), Italian thistle (*Carduus pycnocephalus*), poison hemlock (*Conium maculatum*), wild rye, California poppy (*Eschscholzia californica*), prickly lettuce (*Lactuca serriola*), whitetop, horehound (*Marrubium vulgare*), rabbitsfoot grass (*Polypogon monspeliensis*), wild radish (*Raphanus raphanistrum*), Himalayan blackberry (*Rubus armeniacus*), curly dock (*Rumex crispus*), grape (*Vitis sp.*), and stinging nettle (*Urtica dioica*). The project is not expected to impact this habitat.

Wildlife observed within this habitat was limited to the peafowl, red-shouldered hawk (*Buteo lineatus*), California quail (*Callipepla californica*), and ground squirrel burrows. Species occurring in adjacent habitats are likely to occur within this habitat as well.

2.1.4 Category 1 Stream (Calero Arroyo)

Calero Arroyo runs along the western boundary of the property. Stream width is approximately 8-10 feet wide at the ordinary-high-water mark. Calero Arroyo is considered to be a "Category 1 Stream" under the SCVHP. Plants occurring on the banks of this habitat are included within the mixed riparian woodland and forest description above. In addition, watercress (*Nasturtium officinale*) and cattail (*Typha sp.*) occur within the channel.

Wildlife occurring in adjacent habitats are likely to occur within this habitat as well.

2.1.5 Potential Seasonal Wetland

A potential seasonal wetland appears to drain into Calero Arroyo in the northern portion of the site.

2.1.6 Rural Residential

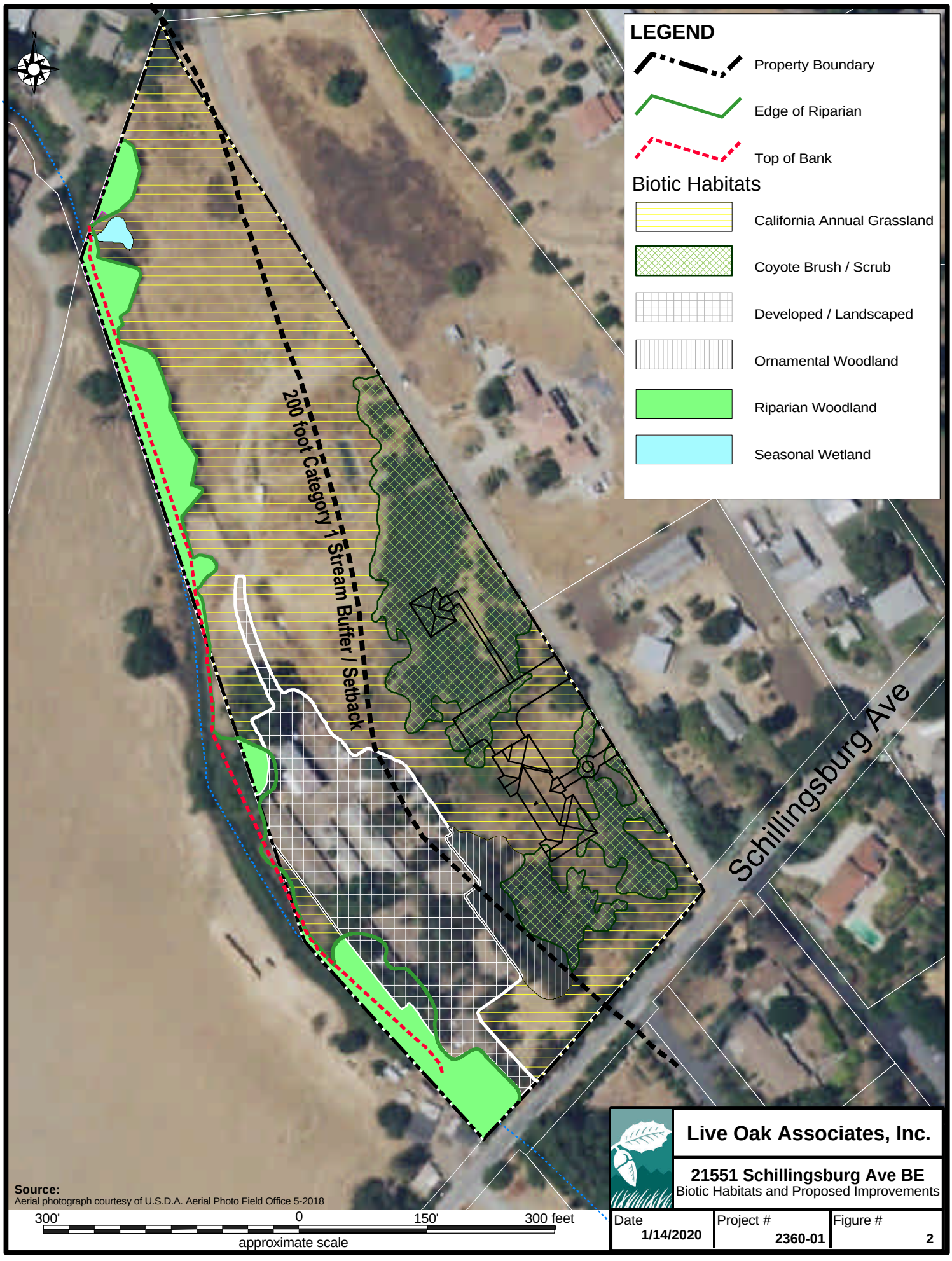
The southwest corner of the site supports a residence, horse stables, barn, and outbuildings. Some of these structures support potential roosting habitat for bats. Plant species within this habitat includes silver wattle (*Acacia dealbata*), century plant, tree-of-heaven (*Ailanthus altissima*), aloe (*Aloe vera*), coyote brush, wild cucumber, fennel (*Foeniculum vulgare*), English ivy (*Hedera helix*), walnut, mallow (*Malva sp.*), olive (*Olea sp.*), prickly pear cactus (*Opuntia sp.*), date palm (*Phoenix sp.*), pomegranate (*Punica granatum*), apricot (*Prunus armeniaca*), and blue elderberry.

Wildlife observed within this habitat included the peafowl, mourning dove (*Zenaida macroura*),black phoebe (*Sayornis nigricans*), California towhee (*Melozone crissalis*), and house finch (*Haemorhous mexicanus*). Species occurring in adjacent habitats are likely to occur within this habitat as well.

2.1.7 Ornamental Woodland

A section of ornamental woodland occurs adjacent to the residence and is comprised almost entirely of tree-of-heaven, with a smattering of some other trees mentioned in the rural residential habitat above.

Wildlife observed within this habitat was limited to the peafowl and California towhee. Species occurring in adjacent habitats are likely to occur within this habitat as well.


LEGEND
Property Boundary
Edge of Riparian
Top of Bank
Biotic Habitats
California Annual Grassland
Coyote Brush / Scrub
Developed / Landscaped
Ornamental Woodland
Riparian Woodland
Seasonal Wetland
200 foot Category 1 Stream Buffer / Setback
Schillingsburg Ave
Source:
Aerial photograph courtesy of U.S.D.A. Aerial Photo Field Office 5-2018
300' 0 150' 300 feet
approximate scale
Live Oak Associates, Inc.
21551 Schillingsburg Ave BE
Biotic Habitats and Proposed Improvements
Date 1/14/2020
Project # 2360-01
Figure # 2

2.2 MOVEMENT CORRIDORS

Ecologists and conservation biologists have expended a great deal of energy since the early 1980's advocating the protection and restoration of landscape linkages among suitable habitat patches. Movement corridors or landscape linkages are usually linear habitats that connect two or more habitat patches (Harris and Gallager 1989), providing assumed benefits to the species by reducing inbreeding depression, and increasing the potential for recolonization of habitat patches. Some researchers have even demonstrated that poor quality corridors can still provide some benefit to the species that use them (Beier 1996).

Beier and Noss (1998) evaluated the claims of the efficacy of wildlife corridors of 32 scientific papers. In general, these authors believed that the utility of corridors was demonstrated in fewer than half of the reviewed papers, and they believed that study design played a role in whether or not given corridors were successful. Examples of well-designed studies supported the value of corridors. They believed, however, that connectivity questions make sense only in terms "of a particular focal species and landscape." For example, volant (flying) species are less affected by barriers then small, slow moving species such as frogs or snakes (Beier and Noss 1998). In addition, large mammals such as carnivores that can move long distances in a single night (e.g., cougars) are more capable of making use of poor quality or inhospitable terrain than species that move more slowly and can easily fall prey to various predators or that are less able to avoid traffic or other anthropogenic effects (Beier 1996). Therefore, it is reasonable to conclude that landscape linkages, even poor ones, can be and are useful, especially for terrestrial species.

Therefore, while the importance of landscape linkages is well demonstrated in the scientific literature, the cautionary note of Beier and Noss (1998) that consideration of context and ecological scale are also of critical importance in evaluating linkages.

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

The quality of habitat within the corridors is important: "better" habitat consists of an area with a minimum of human interference (e.g., roads, homes, etc.) and is more desirable to more species

than areas with sparse vegetation and high-density roads. Movement corridors in California are typically associated with valleys, rivers and creeks supporting riparian vegetation, and ridgelines. With increasing encroachment of humans on wildlife habitats, it has become important to establish and maintain linkages, or movement corridors, for animals to be able to access locations containing different biotic resources that are essential to maintaining their life cycles.

Healthy riparian areas (supporting structural diversity, i.e., understory species to saplings to mature riparian trees) have a high biological value as they not only support a rich and diverse wildlife community but have also been shown to facilitate regional wildlife movement. Riparian areas can vary from tributaries winding through scrubland to densely vegetated riparian forests.

A riparian zone can be defined as an area that has a source of fresh water (e.g., rill, stream, river), a defined bank, and upland areas consisting of moist soils (e.g., wetter than would be expected simply due to seasonal precipitation). These areas support a characteristic suite of vegetative species, many of which are woody, that are adapted to moister soils. Such vegetation in hills surrounding San Jose include California buckeye (*Aesculus californica*), dogwood (*Cornus* sp.), California hazelnut (*Corylus cornuta* var. *californica*), elderberry (*Sambucus* sp.), Oregon ash (*Fraxinus latifolia*), walnut (*Juglans* sp.), California laurel (*Umbellularia californica*), toyon (*Heteromeles arbutifolia*), oaks (*Quercus* sp.), and willow (*Salix* sp.).

Beier and Loe (1992) noted five functions of corridors (rather than physical traits) that are relevant when conducting an analysis regarding the value of linkages. The following five functions should be used to evaluate the suitability of a given tract of land for use as a habitat corridor:

1. Wide ranging mammals can migrate and find mates;
2. Plants can propagate within the corridor and beyond;
3. Genetic integrity can be maintained;
4. Animals can use the corridor in response to environmental changes or a catastrophic event;
5. Individuals can recolonize areas where local extinctions have occurred.

A corridor is "wide enough" when it meets these functions for the suite of animals in the area. It is important to note that landscape linkages are used differently by different species. For instance, medium to large mammals (or some bird species) may traverse a corridor in a matter of minutes or hours, while smaller mammals or other species may take a longer period of time to move through the same corridor (e.g., measured in days, weeks and even years). For example, an individual

cougar may traverse the entire length of a long narrow corridor in an hour while travel of smaller species (such as rodent or rabbit species) may best be measured as gene flow within regional populations. These examples demonstrate that landscape linkages are not simply highways that animals use to move back and forth. While linkages may serve this purpose, they also allow for slower or more infrequent movement. Width and length must be considered in evaluating the value of a landscape linkage. A long narrow corridor would most likely only be useful to wide ranging animals such as cougars and coyotes when moving between core habitat areas.

To the extent practicable, conservation of linkages should address the needs of "passage species" (those species that typically use a corridor for the express purpose of moving from one intact area to another) *and* "corridor dwellers" (slow moving species such as plants and some amphibians and reptiles that require days or generations to move through the corridor).

Although the reach of Calero Arroyo onsite may support local wildlife movement, the project site does not fall within any regional corridor defined by the SCVHP. Movements on and across the site consists of normal movements associated with an individual animal's home range or territory, or animals dispersing from their natal range.

2.3 SPECIAL STATUS PLANTS AND ANIMALS

Several species of plants and animals within the state of California have low populations, limited distributions, or both. Such species may be considered "rare" and are vulnerable to extirpation as the state's human population grows and the habitats these species occupy are converted to agricultural and urban uses. As described more fully in Section 3.2, state and federal laws have provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting the diversity of plant and animal species native to the state. A sizable number of native plants and animals have been formally designated as threatened or endangered under state and federal endangered species legislation. Others have been designated as "candidates" for such listing. Still others have been designated as "species of special concern" by the CDFW. The California Native Plant Society (CNPS) has developed its own set of lists of native plants considered rare, threatened, or endangered (CNPS 2001). Collectively, these plants and animals are referred to as "special status species."

A number of special status plants and animals occur in the vicinity of the study area. These species, and their potential to occur in the study area, are listed in Table 1. Sources of information for this table included *California Natural Diversity Data Base* (CDFW 2020), *Listed Plants* and *Listed Animals* (USFWS 2019), *State and Federally Listed Endangered and Threatened Animals of California* (CDFW 2019), *The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California* (CNPS 2020), *California Bird Species of Special Concern* (Shuford and Gardall 2008), and *California Amphibian and Reptile Species of Special Concern* (Thompson et al. 2016). This information was used to evaluate the potential for special status plant and animal species that occur on the site. Figures 3a and 3b depict the location of special status species found by the California Natural Diversity Data Base (CNDDB).

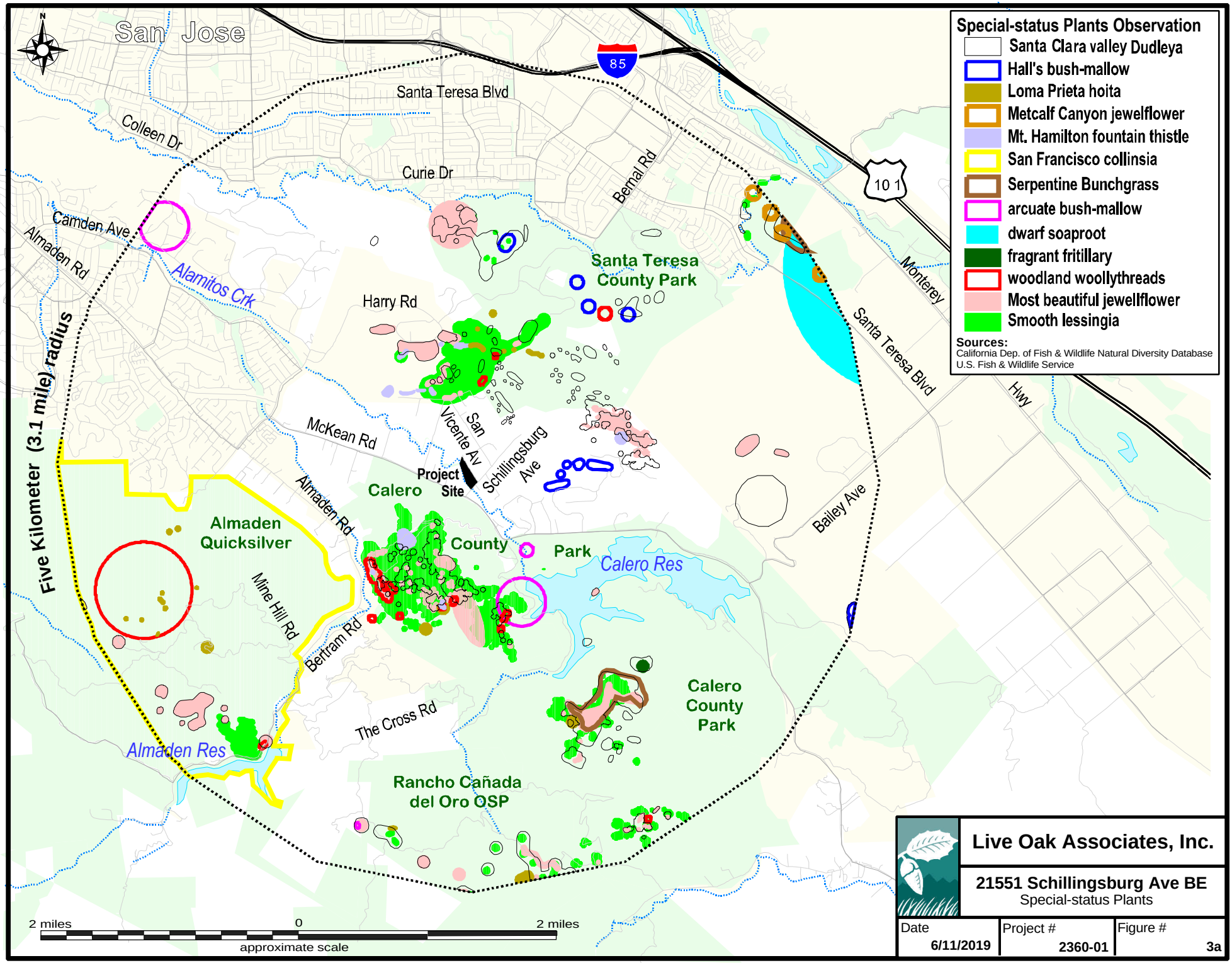
A search of published accounts for all of the relevant special status plant and animal species was conducted for the Santa Teresa Hills USGS 7.5 minute quadrangle in which the project site occurs, and for the eight surrounding quadrangles (San Jose West, San Jose East, Lick Observatory, Los Gatos, Morgan Hill, Laurel, Loma Prieta, and Mt. Madonna) using the California Natural Diversity Data Base (CNDDB) Rarefind5. All species listed as occurring in these quadrangles on CNPS Lists 1A, 1B, 2, or 4 were also reviewed (See Figures 3a and 3b).

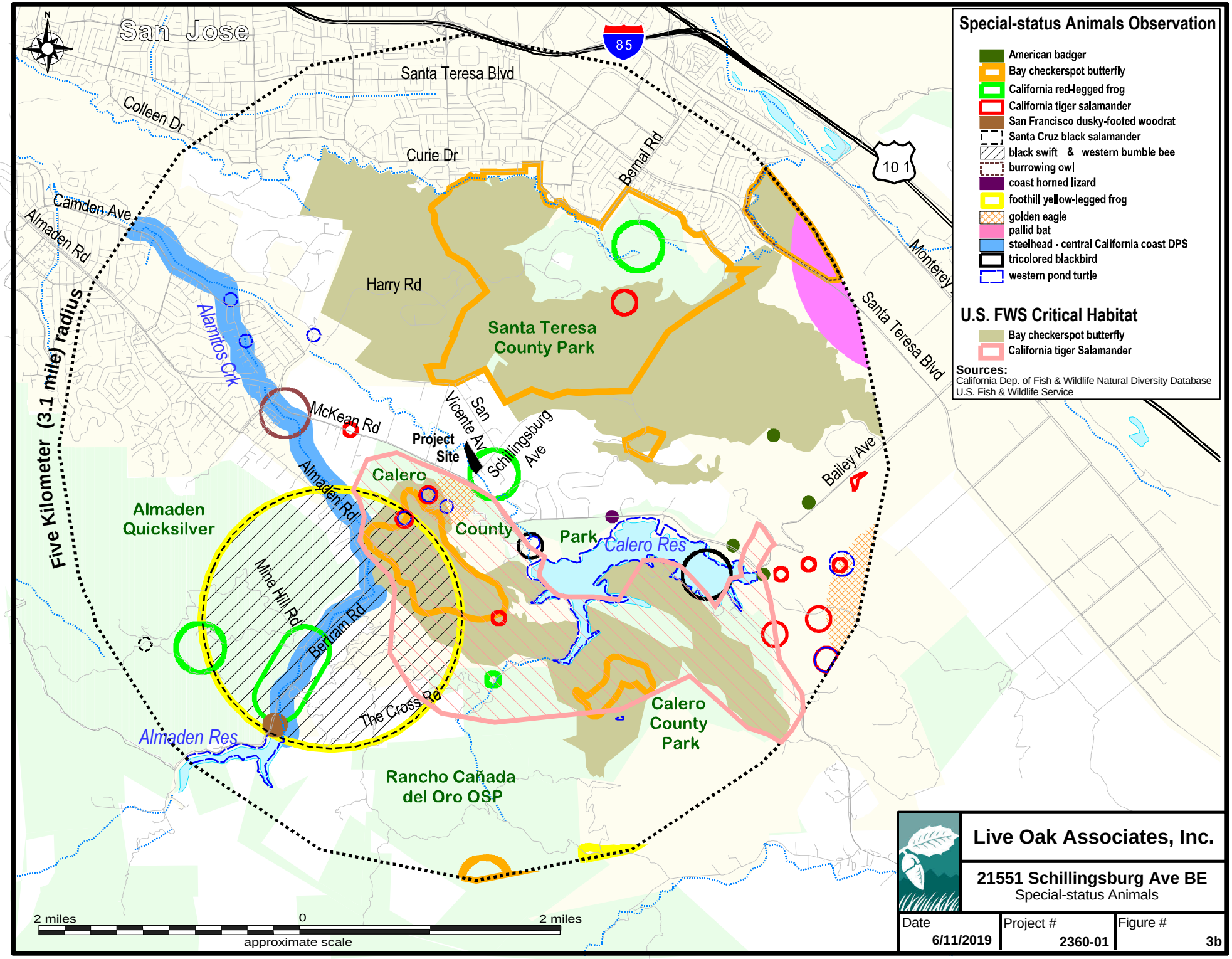
Serpentine soils are absent from the site; as such, those species that are uniquely adapted to serpentine conditions in the project's vicinity are considered absent from the site. These species include the Bay checkerspot butterfly (*Euphydryas editha bayensis*), Smith's blue butterfly (*Euphilotes enoptes smithi*), big-scale balsamroot (*Balsamorhiza macrolepis* var. *macrolepis*), chaparral harebell (*Campanula exigua*), Tiburon Indian paintbrush (*Castilleja affinis* ssp. *neglecta*), pink creamsacs (*Castilleja rubicundula ssp. rubicundula*), coyote ceanothus (*Ceanothus ferrisae*), dwarf soaproot (*Chlorogalum pomeridianum var. minus*), Mt. Hamilton fountain thistle (*Cirsium fontinale* var. *campylon*), San Francisco collinsia (*Collinsia multicolor*), Santa Clara Valley dudleya (*Dudleya abramsii ssp. setchellii*), smooth lessingia (*Lessingia micradenia* ssp. *glabrata*), woodland woollythreads (*Monolopia gracilens*), white-rayed pentachaeta (*Pentachaeta bellidiflora*), Metcalf Canyon jewel-flower (*Streptanthus albidus ssp. albidus*), and most beautiful jewel-flower (*Streptanthus albidus* ssp. *peramoenus*).

Several other special status plant species have been ruled out on the site as they occur in habitats not present in the study area (e.g., vernal pool, chaparral, broadleafed forest, coastal prairie, coastal

scrub, etc.) or at elevations significantly below or above elevations of the site (approximately 112-115 meters NGVD) and, therefore, are also considered absent from the site. These species include the Anderson's manzanita (*Arctostaphylos andersonii*), Bonny Doon manzanita (*Arctostaphylos andersonii*), Santa Cruz Mountains pussypaws (*Calyptridium parryi var. hesseae*), bristly sedge (*Carex comosa*), Monterey spineflower (*Chorizanthe pungens var. pungens*), Ben Lomond spineflower (*Chorizanthe pungens var. hartwegiana*), Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*), robust spineflower (*Chorizanthe robusta* var. *robusta*), Santa Clara red ribbons (*Clarkia concinna ssp. automixa*), Ben Lomond buckwheat (*Eriogonum nudum var. decurrens*), Hoover's button-celery (*Eryngium aristulatum var. hooveri*), Santa Cruz wallflower (*Erysimum teretifolium*), minute pocket moss (*Fissidens pauperculus*), Kellogg's horkelia (*Horkelia cuneata* var. *sericea*), Mt. Hamilton coreopsis (*Leptosyne hamiltonii*), Mt. Hamilton lomatium (*Lomatium observatorium*), arcuate bush-mallow (*Malacothamnus arcuatus*), Hall's bush-mallow (*Malacothamnus hallii*), northern curly-leaved monardella (*Monardella sinuata* ssp. *nigrescens*), Santa Cruz Mountains beardtongue (*Penstemon rattanii* var. *kleei*), Mt. Diablo phacelia (*Phacelia phacelioides*), Choris' popcorn-flower (*Plagiobothrys chorisianus var. chorisianus*), Scotts Valley polygonum (*Polygonum hickmanii*), chaparral ragwort (*Senecio aphanactis*), Santa Cruz clover (*Trifolium buckwestiorum*), and Pacific Grove clover (*Trifolium polyodon*).

Other species having potential to occur on the project site or immediate vicinity because suitable habitats are present are discussed further below.


San Jose
85
Santa Teresa Blvd
Colleen Dr
Curie Dr
Bernal Rd
101
Camden Ave
Almaden Rd
Alamitos Crk
Harry Rd
Santa Teresa County Park
Monterey
Santa Teresa Blvd
Hwy
McKean Rd
San Vicente Av
Schillingsburg Ave
Project Site
Calero
Almaden Rd
Almaden Quicksilver
County Park
Calero Res
Bailey Ave
Five Kilometer (3.1 mile) radius
Mine Hill Rd
Bertram Rd
The Cross Rd
Calero County Park
Almaden Res
Rancho Cañada del Oro OSP
2 miles
0
2 miles
approximate scale
Special-status Plants Observation
Santa Clara valley Dudleya
Hall's bush-mallow
Loma Prieta hoita
Metcalf Canyon jewelflower
Mt. Hamilton fountain thistle
San Francisco collinsia
Serpentine Bunchgrass
arcuate bush-mallow
dwarf soaproot
fragrant fritillary
woodland woollythreads
Most beautiful jewellflower
Smooth lessingia
Sources:
California Dep. of Fish & Wildlife Natural Diversity Database
U.S. Fish & Wildlife Service
Live Oak Associates, Inc.
21551 Schillingsburg Ave BE
Special-status Plants
Date 6/11/2019
Project # 2360-01
Figure # 3a



Live Oak Associates, Inc.

21551 Schillingsburg Ave BE
Special-status Animals

Date	Project #	Figure #
6/11/2019	2360-01	3b

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

PLANTS (adapted from CDFW 2020 and CNPS 2020)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	Occurrence in the Study Area
Santa Cruz tarplant (*Holocarpha macradenia*)	FT, CE, CNPS 1B	Habitat: Coastal prairie, coastal scrub, and valley and foothill grasslands. Often occurs in clay, sandy soils. Elevation: 10-220 meters. Blooms: June–October. Life form: Annual herb.	**Absent.** Grassland habitat on the site appears to have been frequently disturbed and constitutes marginal to poor habitat for this species. Occurrences of this species are localized to the Santa Cruz area more than twelve miles southwest of the site.
Contra Costa Goldfields (*Lasthenia conjugens*)	FE	Habitat: Cismontane woodlands, alkaline playas, valley and foothill grasslands, and vernal pools. Occurs in mesic soils. Elevation: 0-470 meters. Blooms: March–June. Life form: Annual herb.	**Absent.** Alkaline soils and mesic habitats are absent from the site. The nearest documented occurrences of this species are more than seven miles north of the site (CDFW 2020).
San Francisco popcornflower (*Plagiobothrys diffusus*)	CE, CNPS 1B	Habitat: Occurs in coastal prairie and valley and foothill grassland. Elevation: 60-360 meters. Blooms: March-June. Life form: Annual herb.	**Absent.** Grassland habitat on the site appears to have been frequently disturbed and constitutes marginal to poor habitat for this species. There are no documented occurrences of this species in Santa Clara Valley (CDFW 2020).

PLANTS (adapted from CDFW 2020 and CNPS 2020)
Other special status plants listed by CNPS

Species	Status	Habitat	Occurrence in the Study Area
Bent-flowered fiddleneck (*Amsinckia lunaris*)	CNPS 1B	Habitat: Coastal bluff scrub, cismontane woodland, and valley and foothill grasslands. Elevation: 3-795 meters. Blooms: March–June. Life form: Annual herb.	**Unlikely.** Grassland habitat on the site appears to have been frequently disturbed and constitutes marginal to poor habitat for this species. There are no known occurrences of this species within a three-mile radius of the site (CDFW 2020).
Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*)	CNPS 1B	Habitat: Valley and foothill grassland on alkaline soils. Elevation: 0-230 meters. Blooms: May–October. Life form: Annual herb.	**Absent.** Alkaline soils are absent from the site. There are no known occurrences of this species within a three-mile radius of the site (CDFW 2020).
Fragrant fritillary (*Fritillaria liliacea*)	CNPS 1B	Habitat: Cismontane woodland, coastal prairie, coastal scrub, and valley and foothill grasslands. Often occurs on serpentinite. Elevation: 3-410 meters. Blooms: February–April. Life form: Perennial bulbiferous herb.	**Absent.** Grassland habitats of the site appears to have been frequently disturbed and provide poor habitat for this species. The site does not support serpentine soils.

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

PLANTS (Continued adapted from CDFW 2020 and CNPS 2020)
Other special status plants listed by CNPS

Species	Status	Habitat	Occurrence in the Study Area
Loma Prieta hoita (*Hoita strobilina*)	CNPS 1B	Habitat: Occurs in chaparral, cismontane woodland, coastal prairie, and valley and foothill grassland, usually on serpentinite and mesic soils. Elevation: 30-860 meters. Blooms: May-July. Life form: Perennial herb.	**Absent.** This species is typically found on serpentine soils, which are absent from the site. The grasslands of the site appears to have been disturbed and dominated by annual grasses, and therefore do not provide suitable habitat for this species. The nearest documented occurrences of this species are approximately one mile from the site on serpentine soils (CDFW 2020).
Hairless Popcorn Flower (*Plagiobothrys glaber*)	CNPS 1A	Habitat: Occurs in heavy clay soils of alkaline meadows and in coastal salt marshes and swamps. Last confirmed observance of species was in 1954; all old records are from the Hollister area. Elevation: 15-180 meters. Blooms: March-May. Life form: Annual herb.	**Absent**. Suitable habitat and alkaline soils are absent from the site.
Rock sanicle (*Sanicula saxatilis*)	CR, CNPS 1B	Habitat: Bedrock outcrops and talus slopes in chaparral, oak woodlands, and valley and foothill grasslands. Elevation: 620-1175 meters. Blooms: April–May. Life form: Perennial herb.	**Absent.** The site occurs at an elevation well below the known range for this species, and the site lacks suitable habitat (i.e., rock outcrops and talus slopes) for this species. Additionally, there are no known occurrences within a three-mile radius of the site (CDFW 2020).
Saline clover (*Trifolium hydrophilum*)	CNPS 1B	Habitat: Marshes and swamps, mesic and alkaline areas of valley and foothill grasslands, and vernal pools. Elevation: 0-300 meters. Blooms: April-June. Life form: Annual herb.	**Absent.** Alkaline soils are absent from the site.

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

ANIMALS (adapted from CDFW 2020 and USFWS 2020)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	Occurrence in the Study Area
Crotch bumble bee (*Bombus crotchii*)	CCE	In California, inhabits open grassland and scrub habitats of the southern 2/3 of California. Historically in, but largely extirpated from the Central Valley. Flight period for queens is late February to late October peaking in April and July; flight period for males and workers is March through September peaking in early July. Constructs nests underground in animal burrows. Overwintering sites are likely in soft soils or in debris or leaf litter.	**Unlikely.** Suitable nesting sites for this species occurs onsite in the form of ground squirrel burrows, and the site supports non-native California annual grassland, which may provide flowering plants on which this species can forage, however, this portion of the site appears to have been disturbed over time, likely reducing the amount of suitable forage, therefore, although this species cannot be completely discounted, it is unlikely to occur onsite.
Western bumble bee (*Bombus occidentalis*)	CCE	In California, mainly occurring within the coastal and Sierra Nevada ranges within meadows and grasslands and some natural areas within urban environments. Indication of recent population potentially being restricted to high elevation and coastal areas. Historically occurred from the Channel Islands to the northern California border. Flight period is February to late November, peaking in late June and late September. Tends to construct nest underground in animal burrows on west and south-west facing slopes. Overwintering sites are likely in friable soils or in debris or leaf litter.	**Unlikely.** Suitable nesting sites for this species occurs onsite in the form of ground squirrel burrows, and the site supports non-native California annual grassland, which may provide flowering plants on which this species can forage, however, this portion of the site appears to have been disturbed over time, likely reducing the amount of suitable forage, therefore, although this species cannot be completely discounted, it is unlikely to occur onsite. An occurrence of the western bumble bee was generally mapped with the accuracy polygon centered on Alamitos Creek; the project site is located approximately 0.75 miles from the accuracy polygon associated with this occurrence (CDFW 2020).
Steelhead - Central California Coast ESU / South-Central Calif Coast ESU (*Oncorhynchus mykiss irideus*)	FT/ FT, CSC	Spawn in freshwater rivers or streams in the spring and spend the remainder of their life in the ocean.	**Possible.** Steelhead are known from Alamitos Creek (CDFW 2020), therefore, as Calero Arroyo is a branch which flows into Alamitos Creek, this species could swim upstream during seasonal high flows.
Coho salmon- Central California Coast ESU / So. Oregon, No. Calif ESU (*Oncorhynchus kisutch*)	FE, CE / FT, CT, CSC	Spawn in freshwater streams, adults live in ocean, usually within 30 km of their natal stream. Occupied California streams are located in central to northern California.	**Possible.** Coho salmon are known from the Alamitos Creek watershed (UCANS 2020), therefore, as Calero Arroyo is a branch which flows into Alamitos Creek, this species could swim upstream during seasonal high flows.

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

ANIMALS (Continued adapted from CDFW 2020 and USFWS 2020)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	Occurrence in the Study Area
California Tiger Salamander (*Ambystoma californiense*)	FT, CT	Breeds in vernal pools and stock ponds of central California; adults aestivate in grassland habitats adjacent to the breeding sites.	**Unlikley.** Suitable breeding habitat for this species in the form of stagnant pools with continuous inundation for a minimum of three months is absent from the site. This species is known from more than a half-mile from the site (CDFW 2020) on the west side of Calero Arroyo. Therefore, although this species may move onto the site from time to time, it is unlikely to do so due to lack of breeding habitat.
Foothill yellow-legged frog (*Rana boylii*)	CSC CCT	Occurs in swiftly flowing streams and rivers with rocky substrate with open, sunny banks in forest, chaparral, and woodland habitats, and can sometimes be found in isolated pools.	**Possible.** An occurrence of the foothill yellow-legged frog was generally mapped with the accuracy polygon centered on Alamitos Creek; the project site is located approximately 0.75 miles from the accuracy polygon associated with this occurrence (CDFW 2020) and Calero Arroyo flows into Alamitos Creek, therefore, this species may be expected to occur within Calero Arroyo and the upland habitat directly around Calero Arroyo. This species, although sometimes travels overland, mainly occurs within the stream and riparian vegetation, and is unlikely to move further outside of the riparian habitat, therefore, we would expect this species to occur only in close proximity to Calero Arroyo along the western edge of the project site.
California Red-legged Frog (*Rana aurora draytonii*)	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and Bay Area, preferring pools with overhanging vegetation.	**Likely.** An occurrence of the California red-legged was generally mapped with the accuracy polygon centered on Calero Arroyo; the project site is located partially within the accuracy polygon associated with this occurrence (CDFW 2020). As this species is known to exist in upland areas within burrows and under leaf litter and debris, this species may occur throughout the site both in proximity to and away from Calero Arroyo.
Tricolored Blackbird (*Agelaius tricolor*)	CSC, CCE	Breeds near fresh water in dense emergent vegetation.	**Possible.** Suitable nesting habitat is present in portions of Calero Arroyo. Additionally, the SCVHP identifies the northern portion of the project site as a survey area for tricolored blackbirds. The nearest documented observation of this species is less than a mile upstream from the site in Calero Arroyo (CDFW 2020).

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

ANIMALS (Continued adapted from CDFW 2020 and USFWS 2020)
Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	Occurrence in the Study Area
Swainson's hawk (nesting) (*Buteo swainsoni*)	CT	Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah. Requires adjacent suitable foraging areas such as grasslands or alfalfa fields supporting rodent populations.	**Possible.** The SWHA is only known in the region from one pair which breeds each year in Coyote Valley. Therefore, Swainson's hawks are not expected to nest onsite, but may be expected to forage over the site from time to time (CDFW 2020).

ANIMALS (adapted from CDFG 2020 and USFWS 2020)
State Species of Special Concern and Protected Species

Species	Status	Habitat	Occurrence in the Study Area
Monterey roach (*Lavinia symmetricus subditus*)	CSC	Occurs in the Pajaro, Salinas, and San Lorenzo River and their tributaries.	**Absent.** The Monterey roach is not known in the Alamitos Creek Watershed (UCANS 2020), and therefore, Calero Arroyo would not be expected to support this species.
Santa Cruz black salamander (*Aneides niger*)	CSC	Occurs in deciduous woodland, coniferous forests, and coastal grasslands around the Santa Cruz Mountains and foothills. This species is also known to occur on the developed flats in pockets within older developments. They can be found under rocks near streams, in talus, under damp logs, rotting wood, and other objects.	**Absent.** Suitable habitat for the Santa Cruz black salamander is absent from the project site. An occurrence of the Santa Cruz black salamander was generally mapped with the accuracy polygon centered on Alamitos Creek; the project site is located approximately 0.75 miles from the accuracy polygon associated with this occurrence (CDFW 2020).
Northern California legless lizard (*Anniella pulchra*)	CSC	The NCLL (previously called black legless lizard) occurs mostly underground in warm moist areas with loose soil and substrate. The NCLL occurs in habitats including sparsely vegetated areas of beach dunes, chaparral, pine-oak woodlands, desert scrub, sandy washes, and stream terraces with sycamores, cottonwoods, or oaks.	**Unlikely.** Habitats required by northern California legless lizards are moderately suitable, as the site lacks sandy soils. Additionally, the nearest documented observation of this species is more than three miles from the site (CDFW 2020).
Coast horned lizard (*Phrynosoma blainvillii*)	CSC	Occur in grasslands, scrublands, oak woodlands, etc. of central California. Common in sandy washes with scattered shrubs.	**Unlikely.** Habitats required by coast horned lizards are moderately suitable, as the site lacks sandy soils. The nearest documented observation of this species is approximately a mile from the site near Calero Reservoir (CDFW 2020).

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

ANIMALS (Continued adapted from CDFG 2020 and USFWS 2020)
State Species of Special Concern and Protected Species

Species	Status	Habitat	Occurrence in the Study Area
Western pond turtle (WPT) (*Actinemys marmorata*)	CSC	Intermittent and permanent waterways including streams, marshes, rivers, ponds and lakes. Open slow-moving water of rivers and creeks of central California with rocks and logs for basking.	**Possible.** WPT are known to occur in Calero Reservoir and Calero Arroyo just over a half-mile from the site (CDFW 2020).
Northern harrier (nesting) (*Circus cyaneus*)	CSC	Frequents meadows, grasslands, open rangelands, freshwater emergent wetlands; uncommon in wooded habitats.	**Possible.** Although the nearest documented observation of this species is more than 3 miles from the site (CDFW 2020), the site provides suitable foraging habitat for this species.
American peregrine falcon (*Falco peregrines anatum*)	CP	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	**Unlikely.** The peregrine falcon is known to nest on buildings in the City of San Jose and is not known to occur within the vicinity of the site. Additionally, the nearest documented observation of this species is more than 3 miles from the site (CDFW 2020).
White-tailed Kite (nesting) (*Elanus leucurus*)	CP	Open grasslands and agricultural areas throughout central California.	**Possible.** Although the nearest documented observation of this species is more than 3 miles from the site (CDFW 2020), suitable breeding habitat exists onsite for this species and the site supports foraging habitat onsite and in the vicinity of the site.
Golden Eagle (nesting & nonbreeding/wintering) (*Aquila chrysaetos*)	CP	Typically frequents rolling foothills, mountain areas, sage-juniper flats and desert.	**Possible.** Although suitable breeding habitat for the golden eagle is absent from the site, foraging habitat exists onsite. The nearest documented occurrence of the GE is within a fourth mile to the southwest of the site (CDFW 2020).
Burrowing Owl (*Athene cunicularia*)	CSC	Found in open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. This species is often associated with California ground squirrels.	**Possible.** Suitable overwintering habitat is present onsite. The nearest documented occurrence of BUOW is less than nearly three miles to the southeast of the site (CDFW 2020).
Loggerhead Shrike (nesting) (*Lanius ludovicianus*)	CSC	Frequents open habitats with sparse shrubs and trees, other suitable perches, bare ground, and low herbaceous cover. Nests in tall shrubs and dense trees. Forages in grasslands, marshes, and ruderal habitats. Can often be found in cropland.	**Possible.** Suitable breeding and foraging habitat exist onsite and they are known to occur in the area.

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

ANIMALS (Continued adapted from CDFW 2020 and USFWS 2020)
State Species of Special Concern and Protected Species

Species	Status	Habitat	Occurrence in the Study Area
Black swift (*Cypseloides niger*)	CSC	Migrants found in many habitats of state; in Sierra nests are often associated with waterfalls.	**Unlikely.** The site does not provide suitable breeding or foraging habitat for this species; however, this species can be expected to move over the site during migration. The nearest recorded observation of this species was generally mapped with the accuracy polygon centered on Alamitos Creek; the project site is located approximately 0.75 miles from the accuracy polygon associated with this occurrence (CDFW 2020).
Purple martin (*Progne subis*)	CSC	Cavity nester, nests widely in man-made birdhouses.	**Unlikely.** The trees of the site may provide potential nesting habitat; however, these birds are known to nest near open water, which is not present onsite or in the vicinity of the site. The purple martin may be expected to fly over or forage on the site from time to time.
Yellow-breasted chat (*Icteria virens*)	CSC	Frequently breeds in dense shrubs and blackberry thickets and uses areas of dense vegetation during migration.	**Unlikely.** Potential nesting habitat of dense vegetation is generally absent from the site. The YBC may be expected to fly over or forage on the site from time to time.
Grasshopper sparrow (*Ammodramus savannarum*)	CSC	Occurs in California during spring and summer in open grasslands with scattered shrubs.	**Possible.** Suitable breeding habitat exists onsite. The nearest documented occurrence is more than 3 miles from the site (CDFW 2020).
Townsend's Big-eared bat (*Corynorhinus townsendii*)	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats.	**Possible.** Although suitable roosting habitat occurs within the structures of the site, removal of structure is not a part of this project. This species may forage over the remainder of the site. The nearest documented occurrence is more than 3 miles from the site (CDFW 2020).
Pallid Bat (*Antrozous pallidus*)	CSC	Grasslands, chaparral, woodlands, and forests; most common in dry rocky open areas providing roosting opportunities.	**Possible.** Although suitable roosting habitat occurs within the structures of the site, removal of structure is not a part of this project. This species may forage over the remainder of the site. The nearest documented occurrence is nearly 3 miles from the site (CDFW 2020).
San Francisco Dusky-Footed Woodrat (*Neotoma fuscipes annectens*)	CSC	Found in hardwood forests, oak riparian and shrub habitats.	**Possible.** Suitable habitat is present in the coyote brush habitat onsite. The nearest documented occurrence is approximately 2.5 miles from the site (CDFW 2020).
American Badger (*Taxidea taxus*)	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils, specifically grassland environments. Natal dens occur on slopes.	**Possible.** Suitable habitat is present onsite. The nearest documented occurrence is approximately 2 miles to the east of the site (CDFW 2020).

***Explanation of Occurrence Designations and Status Codes**
Present: Species observed on the sites at time of field surveys or during recent past.
Likely: Species not observed on the site, but it may reasonably be expected to occur there on a regular basis.
Possible: Species not observed on the sites, but it could occur there from time to time.
Unlikely: Species not observed on the sites, and would not be expected to occur there except, perhaps, as a transient.
Absent: Species not observed on the sites, and precluded from occurring there because habitat requirements not met.

STATUS CODES

FE	Federally Endangered
FT	Federally Threatened
FPE	Federally Endangered (Proposed)
FC	Federal Candidate
CSC	California Species of Special Concern
CNPS	California Native Plant Society Listing
1A	Plants Presumed Extinct in California
1B	Plants Rare, Threatened, or Endangered in California and elsewhere
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere
CE	California Endangered
CT	California Threatened
CR	California Rare
CP	California Protected
CCE	California Candidate Endangered
3	Plants about which we need more information – a review list
4	Plants of limited distribution – a watch list

2.4 JURISDICTIONAL WATERS

Jurisdictional waters include rivers, creeks, and drainages that have a defined bed and bank and which, at the very least, carry ephemeral flows. Jurisdictional waters also include lakes, ponds, reservoirs, and wetlands. Such waters may be subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Wildlife (CDFW), and the California Regional Water Quality Control Board (RWQCB). See Section 3.2.14 of this report for additional information. Calero Arroyo onsite is considered to be a jurisdictional water. A seasonal wetland may also be claimed by the CDFW and/or the RWQCB.

3 IMPACTS AND MITIGATIONS

3.1 SIGNIFICANCE CRITERIA

General plans, area plans, and specific projects are subject to the provisions of the California Environmental Quality Act (CEQA). The purpose of CEQA is to assess the impacts of proposed projects on the environment before they are constructed. For example, site development may require the removal of some or all of its existing vegetation. Animals associated with this vegetation could be destroyed or displaced. Animals adapted to humans, roads, buildings, pets, etc., may replace those species formerly occurring on a site. Plants and animals that are state and/or federally listed as threatened or endangered may be destroyed or displaced. Sensitive habitats such as wetlands and riparian woodlands may be altered or destroyed. These impacts may be considered significant. According to *Guide to the California Environmental Quality Act* (Remy et al. 1996), "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest. Specific project impacts to biological resources may be considered "significant" if they will:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- 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;
- 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.

- Reduce substantially the habitat of a fish or wildlife species, including causing a fish or wildlife population to drop below self-sustaining levels or threaten to eliminate an animal community.
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

For the purposes of this report, it is assumed that impacts will be buildout of the entire property outside of the proposed riparian setbacks.

3.2 RELEVANT GOALS, POLICIES, AND LAWS

3.2.1 Threatened and Endangered Species

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

3.2.2 Migratory Birds

State and federal laws also protect most bird species. The Federal Migratory Bird Treaty Act (FMBTA: 16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory

birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

3.2.3 Birds of Prey

Birds of prey are protected in California under provisions of the State Fish and Game Code, Section 3503.5, which 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". Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the CDFW.

Additionally, the Bald and Golden Eagle Protection Act (16 U.S.C., scc. 668-668c) prohibits anyone from taking bald or golden eagles, including their parts, nests, or eggs, unless authorized under a federal permit. The act prohibits any disturbance that directly affects an eagle or an active eagle nest as well as any disturbance caused by humans around a previously used nest site during a time when eagles are not present such that it agitates or bothers an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.

3.2.4 Bats

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

3.2.5 Wetlands and Other "Jurisdictional Waters"

The USACE regulates the filling or grading of Waters of the U.S. under the authority of Section 404 of the Clean Water Act. Natural drainage channels and adjacent wetlands may be considered "Waters of the United States" or "jurisdictional waters" subject to the jurisdiction of the USACE.

The extent of jurisdiction has been defined in the Code of Federal Regulations and clarified in federal courts.

On June 29, 2015, the Environmental Protection Agency and USACE jointly issued the Clean Water Rule as a synthesis of statute, science, and U.S. Supreme Court decisions. The Clean Water Rule defines Waters of the U.S. to include the following:

1. All waters used in interstate or foreign commerce (also known as traditional navigable waters), including all waters subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. The territorial seas;
4. All impoundments of Waters of the U.S.;
5. All tributaries of waters defined in Nos. 1 through 4 above, where "tributary" refers to a water (natural or constructed) that contributes flow to another water and is characterized by the physical indicators of a bed and bank and an ordinary high water (OHW) mark;
6. Adjacent waters, defined as either (a) located in whole or in part within 100 feet of the OHW mark of waters defined in Nos. 1 through 5 above, or (b) located in whole or in part within the 100-year floodplain and within 1,500 feet of the OHW mark of waters defined in Nos. 1 through 5 above;
7. Western vernal pools, prairie potholes, Carolina bays and Delmarva bays, pocosins, and Texas coastal prairie wetlands, if determined on a case-specific basis to have a significant nexus to waters defined in Nos. 1 through 3 above;
8. Waters that do not meet the definition of adjacency, but are determined on a case-specific basis to have a significant nexus to waters defined in Nos. 1 through 3 above, and are either (a) located in whole or in part within the 100-year floodplain of waters defined in Nos. 1 through 3 above, or (b) located within 4,000 feet of the OHW mark of waters defined in Nos. 1 through 5 above.

The 2015 rule also redefines exclusions from jurisdiction, which include:

1. Waste treatment systems;
2. Prior converted cropland;

3. Artificially irrigated areas that would revert to dry land should application of irrigation water to the area cease;
4. Groundwater;
5. Stormwater control features constructed to convey treat or store stormwater created in dry land; and
6. Three types of ditches: (a) ditches with ephemeral flow that are not a relocated or excavated tributary, (b) ditches with intermittent flow that are not a relocated or excavated tributary or that do not drain wetlands, and (c) ditches that do not flow, either directly or through another water, to a traditional navigable water.

A ditch may be a water of the U.S. only it if meets the definition of "tributary" and is not otherwise excluded under the provision.

All activities that involve the discharge of dredge or fill material into Waters of the U.S. are subject to the permit requirements of the USACE. Such permits are typically issued on the condition that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values. No permit can be issued until the RWQCB issues a Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards.

Under the Porter-Cologne Water Quality Control Act of 1969, the State Water Resources Control Board has regulatory authority to protect the water quality of all surface water and groundwater in the State of California ("Waters of the State"). Nine RWQCBs oversee water quality at the local and regional level. The RWQCB for a given region regulates discharges of fill or pollutants into Waters of the State through the issuance of various permits and orders. Discharges into Waters of the State that are also Waters of the U.S. require a Section 401 Water Quality Certification from the RWQCB as a prerequisite to obtaining certain federal permits, such as a Section 404 Clean Water Act permit. Discharges into all Waters of the State, even those that are not also Waters of the U.S., require Waste Discharge Requirements (WDRs), or waivers of WDRs, from the RWQCB.

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

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

CDFW has jurisdiction over the bed and bank of natural drainages and lakes according to provisions of Section 1601 and 1602 of the California Fish and Game Code. Activities that may substantially modify such waters through the diversion or obstruction of their natural flow, change or use of any material from their bed or bank, or the deposition of debris require a Notification of Lake or Streambed Alteration. If CDFW determines that the activity may adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement will be prepared. Such an agreement typically stipulates that certain measures will be implemented to protect the habitat values of the lake or drainage in question.

3.2.6 Local Ordinances, Policies

Tree ordinance. The County of Santa Clara has an ordinance for the preservation and removal of trees (Division C16 of the Santa Clara County Code). This ordinance requires that a permit first be obtained prior to the removal of any tree on public or private property in designated areas of the County, including trees having a main trunk or stem measuring at least 37.7 inches in circumference (12 in. in diameter) at a height of 4.5 ft. above ground level or exceeds 20 ft. in height on property owned or leased by the County, or any tree regardless of size within road rights-of-way and easements of the County. Certain exceptions may apply.

3.2.7 Santa Clara Valley Habitat Plan

Six local partners (i.e., County of Santa Clara, Santa Clara Valley Transportation Authority; Santa Clara Valley Water District; and the Cities of San Jose, Gilroy, and Morgan Hill) and two wildlife agencies (the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service) prepared and adopted this multi-species habitat conservation plan, which primarily covers southern Santa Clara County, as well as the City of San Jose with the exception of the bayland areas. The SCVHP addresses listed species and species that are likely to become listed during the plan's 50-year permit term. The eighteen covered species include nine plants and nine animals. The animal species covered include, but are not limited to, the California tiger salamander, California red-legged frog, western pond turtle, and western burrowing owl. The SCVHP requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives

that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value. Funding sources for the SCVHP include development fees based on land cover types (natural, agricultural or small vacant sites surrounded by urban development). Additional fees are charged based on the occurrence of certain sensitive habitat types such as serpentine and wetlands.

The project is considered a covered project under the SCVHP. As a result, the project would be subject to conditions and fees of the SCVHP.

3.2.7.1 SCVHP Fees

Chapter 9 of the SCVHP identifies fees that would be required by this project. The following describes fees that are based on the 2018-2019 fee schedule; however, fees are calculated at the time the project submits the SCVHP application, which corresponds to application timing of grading and/or building permits. Thus, the following numbers are provided for a sense of magnitude and should be considered approximate.

The site is within Fee Zone B "Mostly Cultivated Agricultural Lands". The 2018-2019 SCVHP fees for development of Zone B lands are $14,725 per acre. In addition, a Nitrogen Deposition Fee would also be required at $48.33 per new single-family residence. Temporary impact fees, such as for utility trenching, are assessed at a fraction of these fees.

3.2.7.2 Conditions on Covered Activities

The SCVHP provides several conditions for covered activities under the SCVHP. These conditions can be found in Chapter 6 of the SCVHP and are summarized below.

- **Condition 1 (page 6-7). Avoid Direct Impacts on Legally Protected Plant and Wildlife Species-** Condition 1 instructs developers to avoid direct impacts on legally protected plant and wildlife species, including federally endangered Contra Costa goldfields and fully protected wildlife species including the golden eagle, bald eagle, American peregrine falcon, southern bald eagle, white-tailed kite, California condor, and ring-tailed cat. Several of these species are likely to occur on or forage over the site (golden eagle, bald eagle, white-tailed kite, and ringtail). Condition 1 also protects bird species and their nests that are protected under the Migratory Bird Treaty Act (MBTA); additionally, golden eagles and bald eagles are protected under the Bald and Golden Eagle Protection Act. Additionally,

page 6-94 and Table 6-8 identify required surveys for breeding habitat of select covered wildlife species.

- **Condition 2 (page 6-9). Incorporate Urban-Reserve System Interface Design Requirements-** Condition 2 provides design requirements for the urban-reserve system interface. Some of the design requirements included in Condition 2 are installing non-permeable fences between urban and reserve areas, fencing public roads that run adjacent to reserve areas, minimizing the length of shared boundaries between urban and reserve areas, outdoor lighting limitations, and landscaping requirements.
- **Condition 3 (page 6-12). Maintain Hydrologic Conditions and Protect Water Quality-(Condition applies to project)-** Condition 3 is for all projects due to the fact that implementation of projects could result in impacts on watershed health, including impacts to aquatic habitat for species, through changes in hydrology and water quality. This condition incorporates all of the most important measures for water quality protection of the National Pollutant Discharge Elimination System (NPDES) Program of the Clean Water Act. Required measures of Condition 3 are located in Table 6-2 of the SCVHP; these measures relate to water quality and habitat protection during and after project construction. They include measures typically included in a Storm Water Pollution Prevention Plan (SWPPP) but may include measures that are in addition to such plans.
- **Condition 4 (page 6-14). Avoidance and Minimization for In-Stream Projects-** Condition 4 minimizes impacts on riparian and aquatic habitat through appropriate design requirements and construction practices and provides avoidance and minimization measures for in-stream projects that may impact stream morphology, aquatic and riparian habitat, flow conditions, covered species, natural communities, and wildlife movement.
- **Condition 5 (page 6-18). Avoidance and Minimization Measures for In-Stream Operations and Maintenance-** Condition 5 provides avoidance and minimization measures for in-stream operations and maintenance activities, which includes, but is not limited to trail, bridge, road, and culvert maintenance, bank stabilization, removal of debris, and vegetation management.
- **Condition 6 (Page 6-21). Design and Construction Requirements for Covered Transportation Projects-** Condition 6 provides requirements for rural development design, construction, and post-construction. Types of projects that Condition 6 includes highway

projects, mass transit projects, roadway projects and interchange upgrades, road safety and operational improvements, and dirt road construction.

- **Condition 7 (page 6-28). Rural Development Design and Construction Requirements-** Condition 7 provides requirements for development design and construction of new development outside of the urban service area including requirements relating to site hydrology, vineyards, private rural roads, vegetation management, soils, and lighting.
- **Condition 8 (page 6-35). Implement Avoidance and Minimization Measures for Rural Road Maintenance-** Condition 8 provides requirements for rural roads, road median, and barrier maintenance including requirements regarding riparian setbacks, erosion measures, herbicide and pesticide use, seasonal restrictions, mower cleaning, revegetation, ground-disturbing road maintenance, and flow lines.
- **Condition 9 (page 6-37). Prepare and Implement a Recreation Plan-** Condition 9 requires providing public access to all reserve lands owned by a public entity; each reserve land must provide a recreation plan.
- **Condition 10 (page 6-42). Fuel Buffer-** Condition 10 provides requirements for fuel buffers between 30 and 100 feet of structures. Requirements include measures relating to fuel buffers near structures and on reserve lands; the most notable measure is the requirement for nesting bird surveys prior to any fuel buffer maintenance during the nesting season.
- **Condition 11 (page 6-44). Stream and Riparian Setbacks-** Condition 11 provides requirements for stream and riparian setbacks; as the development area is outside the Urban Service Area, stream setbacks measured from the top of the stream bank should be 35 to 200 feet depending on the category rating of the stream and the slope class. Setbacks for Category 1 streams with 0-30% slopes should be at least 150 feet, and with >30% slopes should be at least 200 feet. The setback would be more if the edge-of-riparian line plus 35 feet is greater than the stream setback. Category 2 streams should have a setback of 35 feet.
- **Condition 12 (page 6-56). Wetland and Pond Avoidance and Minimization-** Condition 12 provides measures to protect wetlands and ponds, including planning actions, design, and construction actions.
- **Condition 13 (page 6-58). Serpentine and Associated Covered Species Avoidance and Minimization-** Condition 13 requires surveys for special status plants and the Bay

checkerspot butterfly as well as its larval host plant in areas that support serpentine bunchgrass grassland, serpentine rock outcrops, serpentine seeps, and serpentine chaparral. Fees apply for impacts to serpentine habitat.

- **Condition 14 (page 6-60). Valley Oak and Blue Oak Woodland Avoidance and Minimization-** Condition 14 provides requirements for project planning and project construction, including avoidance of large oaks, guidance on irrigation near oak trees, and a buffer around the root protection zone, roads and pathways within 25 feet of the dripline of an oak tree, trenching, and pruning activities.
- **Condition 15 (page 6-62). Western Burrowing Owl-** Condition 15 requires preconstruction surveys for burrowing owls in appropriate habitat prior to construction activities, provides avoidance measures for owls and nests in the breeding season and owls in the non-breeding season, and requirements for construction monitoring.
- **Condition 16 (page 6-68) Least Bell's Vireo-** Condition 16 requires preconstruction surveys in appropriate habitat for the least Bell's vireo prior to construction activities, and provides avoidance and construction monitoring measures.
- **Condition 17 (page 6-69) Tricolored Blackbird-** Condition 17 requires preconstruction surveys in appropriate habitat for the tricolored blackbird prior to construction activities, and provides avoidance and construction monitoring measures.
- **Condition 18 (page 6-71) San Joaquin Kit Fox-** Condition 18 requires preconstruction surveys in appropriate habitat for the San Joaquin kit fox prior to construction activities, and provides avoidance and construction monitoring measures.
- **Condition 19 (page 6-74). Plant Salvage when Impacts are Unavoidable-** Condition 19 provides salvage guidance and requirements for covered plants.
- **Condition 20 (page 6-76). Avoid and Minimize Impacts to Covered Plant Occurrences-** Condition 20 provides requirements for preconstruction surveys for appropriate covered plants (per habitat).

3.3 IMPACTS SPECIFIC TO THE PROJECT

The project, as proposed, would build a single-family residence in the northern portion of the site and would not remove any trees or buildings onsite. As discussed above, activities resulting in

impacts to biotic resources may be regulated by local, state, and federal laws. The natural resource issues specific to this project are discussed in detail below.

3.3.1 Loss of Habitat for Special Status Plants

Potential Impact. Of the 10 special status plant species that occur, or that once occurred, regionally, habitat in the form of serpentine and/or alkaline soils, woodlands, vernal pools, etc., are absent from the site and therefore most of these plant species that occur on those soils or in those habitat types are considered absent from the site. Additionally, special status plant species that occur in grassland habitats are considered absent due to the disturbed nature of the grasslands on the site and their overwhelming dominance by non-native annual grasses.

Mitigation. None warranted.

3.3.2 Loss of Habitat for Special Status Animals

Potential Impact. Twenty-eight (28) special status animal species occur, or once occurred, regionally. Of these, 11 species would be absent or unlikely to occur on the site due to a lack of suitable habitat for these species. The species that would be absent or unlikely to occur include the crotch bumble bee, western bumble bee, Monterey roach, California tiger salamander, Santa Cruz black salamander, northern California legless lizard, Coast horned lizard, American peregrine falcon, black swift, purple martin, and yellow-breasted chat.

The remaining 17 special status animal species from Table 1 potentially occur more frequently as potential foragers, transients, may be resident to the site, or they may occur within areas adjacent to the site. These include steelhead, coho salmon, Foothill yellow-legged frog, California red-legged frog, western pond turtle, Swainson's hawk, northern harrier, white-tailed kite, golden eagle, burrowing owl, loggerhead shrike, grasshopper sparrow, tricolored blackbird, Townsend's big-eared bat, pallid bat, San Francisco dusky-footed woodrat, and American badger.

As the project does not plan to impact Calero Arroyo, the project is not expected to impact fish (steelhead and coho salmon) or their habitat.

Although bats may roost in buildings onsite, bats are not expected to roost in other areas onsite. As buildings are not planned for removal, the project is not expected to impact roosting bats. However, individual Townsend's big-eared bats and pallid bats may forage within the site from time to time.

Swainson's hawks and golden eagles are only expected to forage over the site, so the loss of this small amount of foraging habitat is not significant.

Potential impacts to individuals of Foothill yellow-legged frog, California red-legged frog, western pond turtle, nesting birds and raptors, burrowing owl, tricolored blackbird, San Francisco dusky-footed woodrat, and American badger are discussed further below (Sections 3.3.5-3.3.12).

Mitigation. No mitigation warranted.

3.3.3 Loss of Habitat for Native Wildlife

Potential Impact. The habitats of the site comprise only a small portion of the regionally available habitat for plant and animal species that are expected to use the habitat. The proposed project would result in the loss of California annual grassland habitat and potentially coyote brush scrub habitat. This is not expected to result in a significant effect on local wildlife. Therefore, impacts due to the loss of habitats for native wildlife resulting from the proposed project are considered less-than-significant.

Mitigation. No mitigation would be warranted for the loss of habitat for native wildlife.

3.3.4 Interference with the Movement of Native Wildlife

Potential Impact. Building of the single-family residence onsite would not constrain native wildlife movement, as any wildlife using the site as a local movement corridor would continue to use it in the same manner after development. Additionally, any wildlife using the Calero Arroyo as a local movement corridor would continue to use it in the same manner after site development. The site does not support a major wildlife movement corridor or landscape linkage.

Mitigation. No mitigation would be warranted for interference with the movement of native wildlife.

3.3.5 Impacts to Nesting Migratory Birds Including Nesting Raptors and other Protected Birds

Potential Impacts. Trees, shrubs, and grasslands areas onsite may support nesting birds and raptors. Buildout of the project during the nesting period for migratory birds (i.e., typically between February 1 to August 31), including initial site grading, soil excavation, and/or tree and vegetation removal, poses a risk of nest abandonment and death of any live eggs or young that may be present

within the nest within or near the site. Such an effect would be considered a significant impact. To ensure that any active nests will not be disturbed and individual birds will not be harmed by construction activities, the following measures should be followed.

Mitigation. The following measures will ensure that active migratory bird and raptor nests will not be disturbed and individual birds will not be harmed by construction activities, especially including tree removal. Completion of the following measures will reduce the potential impacts to nesting migratory birds to a less-than-significant level.

Mitigation Measure 3.3.5a. If initial site disturbance activities, including tree, shrub, or vegetation removal, are to occur during the breeding season (typically February 1 to August 31), a qualified biologist would conduct pre-construction surveys for nesting migratory birds onsite and within 250 feet (for raptors) of the site, where accessible. The survey should occur within 14-days prior to the onset of ground disturbance. If a nesting migratory bird were to be detected, an appropriate construction-free buffer would be established. Actual size of buffer, which would be determined by the project biologist, would depend on species, topography, and type of activity that would occur in the vicinity of the nest. The project buffer would be monitored periodically by the project biologist to ensure compliance. After the nesting is completed, as determined by the biologist, the buffer would no longer be required.

3.3.6 Impacts to Western Burrowing Owls

Potential Impacts. The site outside of the burrowing owl fee area for the SCVHP, however, the site provides overwintering habitat for burrowing owls in the form of California ground squirrel burrows, slash piles, and foraging land. As burrowing owls are protected under Condition 1 of the SCVHP, following measures within Condition 15 of the SCVHP is required, and the project shall conduct pre-construction surveys in accordance with the Condition 15 of the SCVHP. Measures to ensure compliance with this condition are included below as Mitigation Measure 3.3.6.

Should site grading occur during the nesting season for this species (February 1 through August 31), nests and nestlings that may be present would likely be destroyed. Overwintering burrowing owls may also be buried in their roost burrows outside of the nesting season (September 1 through January 31). Any actions related to site development that result in the mortality of burrowing owls would constitute a violation of the federal Migratory Bird Treaty Act and provisions of the

California Fish and Game Code. Therefore, the mortality of burrowing owls would constitute a significant impact under CEQA.

Mitigation. The following measures will ensure that burrowing owls will not be harmed by construction activities. Completion of the following measures will reduce the potential impacts to burrowing owls to a less-than-significant level.

Mitigation Measure 3.3.6a: Preconstruction surveys are required to ascertain whether or not burrowing owls occupy burrows on the site prior to construction. These surveys consist of a minimum of two surveys, with the first survey no more than 14 days prior to initial construction activities (i.e. vegetation removal, grading, excavation, etc.) and the second survey conducted no more than 2 days prior to initial construction activities. If no burrowing owls or fresh sign of burrowing owls are observed during pre-construction surveys, construction may continue; however, if a burrowing owl is observed during these surveys, occupied burrows will be identified by the monitoring biologist and a buffer, as described in Mitigation Measure 3.3.6b, will be established.

- If an active nest is found onsite, a 250-foot non-disturbance buffer will be established around all nest sites as identified and defined by a qualified biologist. If the biologist determines that the nest is vacant, the non-disturbance buffer zone may be removed. The SCVHP specifies that a vacation from the site for a week or more by a burrowing owl, as determined by a qualified biologist, would constitute a voluntary relocation by the owl, and the qualified biologist could then take measures to collapse suitable burrows of the site to discourage reoccupation. The biologist will supervise hand excavation of the burrow to prevent reoccupation only after receiving approval from the wildlife agencies (SCVHP, Chapter 6, Condition 15)

  For permission to encroach within 250 feet of such burrows during the nesting season (February 1 through August 31), an Avoidance, Minimization, and Monitoring Plan would need to be prepared and approved by the Implementing Entity and the Wildlife Agencies prior to such encroachment (review Chapter 6, pp. 6-64 & 6-65, of the SCVHP for further detail).

- Should a burrowing owl be located onsite in the non-breeding season (September through January), construction activities would not be allowed within this 250-foot buffer of the

active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to:

- A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
- The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
- If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities will cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the Implementing Entity that a qualified biologist excavates usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone will be removed and construction may continue;

Mitigation Measure 3.3.6b: The SCVHP stipulates that passive relocation or exclusion of burrowing owls would not be allowed until a positive regional growth trend is achieved as defined in Section 5.4.6 of the SCVHP; however, a project may qualify for an exception to this prohibition. In the event that voluntary relocation of site burrowing owls does not occur (defined as owls of the site having vacated the site for 10 or more consecutive days), permission to engage in passive relocation during the non-breeding season would need to be requested through the standard application process (Section 6.8 of the SCVHP). Application for an exception would need additional information including a relocation plan/schedule and documentation by a qualified biologist that owls have occupied the site for the full year without vacating the site for 10 or more consecutive days. The application would need to be submitted to the Implementing Entity, and the Wildlife Agencies would then evaluate the application and make a determination for granting the exception. If passive relocation is granted, additional measures may be required by the Implementing Entity.

However, if the owls voluntarily vacate the site for 10 or more consecutive days, as documented by a qualified biologist, the applicant could seek permission to have the qualified biologist take measures to collapse vacated and other suitable burrows to ensure that owls do not recolonize the site.

3.3.7 Impacts to Tricolored Blackbirds

Potential Impacts. Riparian habitat associated with Calero Arroyo occurs in the northern corner of the site and off-site along the western edge of the site. Potentially suitable nesting habitat occurs

within a portion of Calero Arroyo. Calero Arroyo and a portion of the site are identified as areas to survey for tricolored blackbird; therefore, the project must follow measures in Condition 17 of the SCVHP (2012) below.

Mitigation. The following measures will ensure that tricolored blackbirds will not be harmed by construction activities. Implementation of the following measures will reduce the project's potential impacts to tricolored blackbirds to a less-than-significant level under CEQA and will ensure compliance with the SCVHP and state and federal laws.

Mitigation Measure 3.3.7a: If possible, the site will avoid the area identified in the SCVHP as potential nesting habitat and 250-foot buffer from that habitat.

Mitigation Measure 3.3.7b: If the project proponent chooses not to avoid the potential nesting habitat and the 250-foot buffer, additional nesting surveys are required. Prior to any ground disturbance related to covered activities, a qualified biologist will make his/her best effort to determine if there has been nesting at the site in the past five years. This includes checking the CNDDB, contacting local experts, and looking for evidence of historical nesting (i.e., old nests).

If no nesting in the past five years is evident, the qualified biologist will conduct a preconstruction survey in areas identified in the habitat survey as supporting potential tricolored blackbird nesting habitat. Surveys will be made at the appropriate times of year when nesting use is expected to occur. The surveys will document the presence or absence of nesting colonies of tricolored blackbird. Surveys will conclude no more than two calendar days prior to construction. To avoid last minute changes in schedule or contracting that may occur if an active nest is found, the project proponent may also conduct a preliminary survey up to 14 days before construction. The Wildlife Agencies will be notified immediately of any nest locations.

Mitigation Measure 3.3.7c: Covered activities must avoid tricolored blackbird nesting habitat that is currently occupied or have been used in the past 5 years. If tricolored blackbird colonies are identified during the breeding season, covered activities will be prohibited within a 250-foot no-activity buffer zone around the outer edge of all hydric vegetation associated with the colony. This buffer may be reduced in areas with dense forest, buildings, or other habitat features between the construction activities and the active nest colony, or where there is sufficient topographic relief to

protect the colony from excessive noise or visual disturbance. Depending on site characteristics, the sensitivity of the colony, and surrounding land uses, the buffer zone may be increased. Land uses potentially affecting a colony will be observed by a qualified biologist to verify that the activity is not disrupting the colony. If it is, the buffer will be increased. Implementing Entity technical staff will coordinate with the Wildlife Agencies and evaluate exceptions to the minimum no-activity buffer distance on a case-by-case basis.

Mitigation Measure 3.3.7d: If construction takes place during the breeding season when an active colony is present, a qualified biologist will monitor construction to ensure that the 250-foot buffer zone is enforced. If monitoring indicates that construction outside of the buffer is affecting a breeding colony, the buffer will be increased if space allows (e.g., move staging areas farther away). If space does not allow, construction will cease until the colony abandons the site or until the end of the breeding season, whichever occurs first. The biological monitor will also conduct training of construction personnel on the avoidance procedures, buffer zones, and protocols to follow in the event that tricolored blackbirds fly into an active construction zone (i.e., outside the buffer zone).

3.3.8 Impacts to Foothill Yellow-Legged Frogs

Potential Impacts. Potentially suitable breeding and upland habitat for the Foothill yellow-legged frog (FYLF) is present within the project site in the form of Calero Arroyo and riparian habitat associated with Calero Arroyo. FYLF may also be expected to move out of the riparian area onto the remainder of the site from time to time as well. The project, as proposed, will not impact any breeding habitat. Injury or mortality of an individual FYLF would be considered a significant impact to FYLF under CEQA.

Mitigation. Implementation of the following mitigation measures would reduce impacts to FYLF to a less-than-significant level.

Mitigation Measure 3.3.8a: The applicant will follow all SCVHP requirements in regard to FYLF, including the submittal of relevant applications and payment of required fees discussed in Mitigation Measure 3.3.16. The SCVHP does not require surveys for this species.

3.3.9 Impacts to California Red-Legged Frogs

Potential Impacts. Potentially suitable breeding and upland habitat for the California red-legged frog (CRLF) is present within the project site in the form of Calero Arroyo and riparian habitat

associated with Calero Arroyo. CRLF may also be expected to move out of the riparian area onto the remainder of the site from time to time as well. The project, as proposed, will not impact any breeding habitat. Injury or mortality of an individual CRLF would be considered a significant impact to CRLF under CEQA.

Mitigation. Implementation of the following mitigation measures would reduce impacts to CRLF to a less-than-significant level.

Mitigation Measure 3.3.9a: The applicant will follow all SCVHP requirements in regard to CRLF, including the submittal of relevant applications and payment of required fees discussed in Mitigation Measure 3.3.16. The SCVHP does not require surveys for this species.

3.3.10 Impacts to Western Pond Turtles

Potential Impacts. The proposed project would result in the loss of a small area of upland habitat for western pond turtles. Rearing habitat exists adjacent to the site in the form of Calero Arroyo. Impacts to WPT habitat would be considered minimal. However, it is possible that WPT would move into the construction zone, which may result in mortality to individual western pond turtles. The loss of these individuals would constitute a significant impact under CEQA.

Mitigation. To reduce impacts to the WPT to a less-than-significant level, the applicant will implement the following mitigation in conjunction with the Santa Clara Valley Habitat Plan.

- ***Mitigation Measure 3.3.11a:*** The applicant will follow all Habitat Plan requirements in regard to WPT, including the submittal of relevant applications and payment of required fees discussed in Mitigation Measure 3.3.16.

3.3.11 Impacts to San Francisco Dusky-Footed Woodrats

Potential Impacts. Woodrat nests have the potential to occur within the coyote brush habitat of the site. Construction activities could result in harm to individual woodrats while in their nests. This would be considered a significant impact under CEQA.

Mitigation. Implementation of the following mitigation measures would reduce impacts to the San Francisco dusky-footed woodrat to a less-than-significant level.

- ***Mitigation Measure 3.3.12a:*** A qualified biologist should conduct a pre-construction survey for San Francisco dusky-footed woodrat nests no more than 30 days prior to the onset of construction activities. The survey should encompass all construction zones within the riparian habitat and developed areas, and surrounding lands within 50 feet.
- ***Mitigation Measure 3.3.12b:*** Identified nests should be avoided, where possible. If avoidance is not possible, the nest(s) should be manually deconstructed when helpless young are not present, typically during the non-breeding season (October through January).
- ***Mitigation Measure 3.3.12c:*** If it is determined that young may be present during the pre-construction survey, a suitable buffer should be established around the nest until the young are independent enough to successfully move from the deconstructed nest.

3.3.12 Impacts to American Badgers

Potential Impacts. American badgers have been observed within the general vicinity of the site (CDFW 2020) and the site supports suitable habitat for this species. No badgers or badger burrows were observed on the project site during the 2019 site visit; however, should badgers occur onsite at the time of construction, the project could result in mortality of individuals of this species, which would constitute a significant impact under CEQA.

Mitigations. Implementation of the following measures prior to construction activities will reduce impacts to American badgers from direct mortality to a less-than-significant level.

Mitigation Measure 3.3.13a (Pre-construction Surveys). During the course of the preconstruction surveys for other species, a qualified biologist shall also determine the presence or absence of badgers prior to the start of construction. If badgers are found to be absent, no other mitigations for the protection of badgers shall be warranted.

Mitigation Measure 3.3.13b (Avoidance and Monitoring). If an active badger den is identified during pre-construction surveys within or immediately adjacent to an area subject to construction, a construction-free buffer of up to 300 feet shall be established around the den. Once the biologist has determined that badger has vacated the burrow, the burrow can be collapsed or excavated, and ground disturbance can proceed. Should the burrow be determined to be a natal or reproductive den, and because badgers are known to use multiple burrows in a breeding burrow complex, a biological monitor shall be present onsite during construction activities in the vicinity of the burrows to ensure the buffer is adequate to avoid direct impact to individuals or natal/reproductive

den abandonment. The monitor will be required to be present until it is determined that young are of an independent age and construction activities would not harm individual badgers.

Mitigation Measure 3.3.13c (Tailgate Training). All workers on the project and access corridor shall attend a tailgate training that includes a description of the species, a brief summary of its biology, and minimization measures and instructions on what to do if an American badger is observed.

3.3.13 Impacts to Riparian Habitat and Other Sensitive Natural Communities, Including Federally and State Protected Wetlands

Potential Impacts. As Calero Arroyo is considered to be a Category 1 Stream under the SCVHP, and the SCVHP geobrowser shows a required setback of 200 feet from the creek and riparian habitat.

Mitigation. As all project elements are outside the 200' setback, impacts to riparian habitat and other sensitive natural communities is not a part of this project. No mitigation is warranted.

3.3.14 Degradation of Water Quality in Seasonal Drainages, Stock Ponds and Downstream Waters

Potential Impact. Eventual site development and construction may require grading that leaves the soil of construction zones barren of vegetation and, therefore, vulnerable to sheet, rill, or gully erosion. Eroded soil is generally carried as sediment in surface runoff to be deposited in natural creek beds, canals, and adjacent wetlands. Furthermore, urban runoff is often polluted with grease, oil, pesticide and herbicide residues, heavy metals, etc. These pollutants may eventually be carried to sensitive wetland habitats used by a diversity of native wildlife species. The deposition of pollutants and sediments in sensitive riparian and wetland habitats would be considered a potentially significant adverse environmental impact. The project would comply with the County's grading requirements. Therefore, the project buildout would result in a less-than-significant impact to water quality.

Mitigation. No mitigation is warranted.

3.3.15 Conflict with Local Policies and Ordinances: Santa Clara County Tree Ordinance

Potential Impacts. A tree survey was not conducted as a part of this project. A tree survey should be conducted should any trees onsite in order to confirm whether ordinance-sized trees occur onsite. A permit from the County would be required to remove ordinance-sized trees onsite.

Mitigation. Should protected trees occurring onsite require removal a permit must be obtained from the County and compensatory mitigation for loss of trees should occur. All measures of the permit must be followed.

3.3.16 Conflict with Local Policies and Ordinances: Santa Clara Valley Habitat Conservation Plan

Proposed development would be considered a covered project under the SCVHP and, as such, would be subject to conditions and fees of the SCVHP. Failure to comply with the SCVHP would constitute a significant impact under CEQA.

Compliance with the SCVHP includes payment of fees according to the "Fee Zone" designation of the property, payment of nitrogen deposition fees related to the number of residential units and/or anticipated car trips (for non-residential projects) resulting from the development, and any surcharge fees that are required based on site-specific impacts to sensitive habitats or sensitive species. The onsite portion of the proposed project would be subject to Zone B fees, which are currently $14,725 per acre (2018-2019 rates), and nitrogen deposition fees, which are currently $48.33 for each new single-family residence. For any temporary impacts, all the same fees are applied, but at a fraction of the total cost depending on how long the project expects the temporary impact to last. Potential onsite temporary fees include, but are not limited to trenching for utilities or leach fields. The project is not expected to impact the Mixed Riparian Woodland and Forest onsite along Calero Arroyo.

In addition to fees, the project would be required to comply with applicable conditions of the SCVHP. Conditions of the SCVHP, summarized above (Section 3.2.7.2), that would apply to the project include Conditions 1, 3, 7, 10, 11, 12, 15 and 17 (Table 3).

TABLE 3. APPLICABLE SANTA CLARA VALLEY HABITAT PLAN (SCVHP) CONDITIONS OF THE PROPOSED 21551 SCHILLINGSBURG AVENUE PROJECT, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA

Condition (page references ICF International 2012)	Applicable to project	Comments/Requirements
Condition 1 (page 6-7). Avoid Direct Impacts on Legally Protected Plant and Wildlife Species	Applies	This condition requires actions conducted under the SCVHP to comply with existing laws protecting plant and wildlife species including those species not covered as part of the SCVHP. This requires compliance with Migratory Bird Treaty Act, which prohibits killing or possessing covered migratory birds, their young, nests, feathers, or eggs. Several species of nesting bird that could use the project site are protected by the MBTA. Project mitigations for pre-construction surveys for migratory birds, including for burrowing owls, ensures compliance with this condition.
Condition 2 (page 6-9). Incorporate Urban-Reserve System Interface Design Requirements	N/A	The project is not interfacing with the reserve system.
Condition 3 (page 6-12). Maintain Hydrologic Conditions and Protect Water Quality	Applies	This condition requires all projects to incorporate appropriate measures itemized in the SCVHP's Table 6-2 (refer to ICF International 2012) to minimize indirect and direct effects to covered species and their aquatic habitat. This condition also requires the local jurisdiction (i.e. the City of San Jose) to verify that all appropriate measures from Table 6-2 are implemented. Measures from Table 6-2 should be incorporated into project engineering and SWPPP plans.
Condition 4 (page 6-14). Avoidance and Minimization for In-Stream Projects	N/A	The project is not impacting streams.
Condition 5 (page 6-18). Avoidance and Minimization Measures for In-Stream Operations and Maintenance	N/A	The project is not impacting streams.
Condition 6 (Page 6-21). Design and Construction Requirements for Covered Transportation Projects	N/A	Project is not a transportation project.
Condition 7 (page 6-28). Rural Development Design and Construction Requirements	Applies	The project is considered to be a rural development, and therefore, must implement design and construction requirements of Condition 7, including, but not limited to outdoor lighting design limitations and maintaining as much natural vegetation as possible.
Condition 8 (page 6-35). Implement Avoidance and Minimization Measures for Rural Road Maintenance	N/A	No rural road maintenance.
Condition 9 (page 6-37). Prepare and Implement a Recreation Plan	N/A	Project is not part of the Reserve System.
Condition 10 (page 6-42). Fuel Buffer	Applies	A fuel buffer is required for this project.

TABLE 3. APPLICABLE SANTA CLARA VALLEY HABITAT PLAN (SCVHP) CONDITIONS OF THE PROPOSED 21551 SCHILLINGSBURG AVENUE PROJECT, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA

Condition (page references ICF International 2012)	Applicable to project	Comments/Requirements
Condition 11 (page 6-44). Stream and Riparian Setbacks	Applies	The project is not impacting streams, however, construction of the project should ensure the 200-foot setback from Calero Arroyo is upheld.
Condition 12 (page 6-56). Wetland and Pond Avoidance and Minimization	Applies	The project is not impacting wetlands or ponds, however, as a potential wetland occurs onsite adjacent to the creek, avoidance and minimization of Condition 12 measures would apply.
Condition 13 (page 6-58). Serpentine and Associated Covered Species Avoidance and Minimization	N/A	Serpentine habitat and species are absent.
Condition 14 (page 6-60). Valley Oak and Blue Oak Woodland Avoidance and Minimization	N/A	Valley and blue oak woodlands are absent.
Condition 15 (page 6-62). Western Burrowing Owl	Applies	Although the site is outside the burrowing owl fee zone, overwintering burrowing owls may occur onsite, and therefore, in order to comply with Condition 1, this project must also comply with Condition 15, including preconstruction surveys and avoidance measures for owls and nests, and requirements for construction monitoring. Measure 3.3.6 (above) defines the required actions for compliance with this condition.
Condition 16 (page 6-68) Least Bell's Vireo	N/A	Suitable habitat is absent from the site, and this species is only known to occur in southern Santa Clara County.
Condition 17 (page 6-69) Tricolored Blackbird	Applies	Suitable habitat for the tricolored blackbird occurs adjacent to the site in Calero Arroyo and the northern half of the property occurs within 250 feet of SCVHP-mapped tricolored blackbird habitat.
Condition 18 (page 6-71) San Joaquin Kit Fox	N/A	Project outside of modeled habitat for the San Joaquin kit fox.
Condition 19 (page 6-74). Plant Salvage when Impacts are Unavoidable	N/A	Covered plants are absent.
Condition 20 (page 6-76). Avoid and Minimize Impacts to Covered Plant Occurrences	N/A	Covered plants are absent.

Implementation of the measures listed and described above, including payment of Land Zone B, and nitrogen deposition fees and compliance with Conditions 1, 3, 7, 10, 11, 12, 15, and 17, the project would be in compliance with the SCVHP. To ensure compliance, it is recommended that the project proponent thoroughly review the identified sections of the SCVHP, including Table 6-2.

Mitigation. As all fees will be paid, there is no mitigation is warranted.

4 LITERATURE CITED

Beier, P 1996 Dispersal of juvenile cougars in fragmented habitat. [Abstract]. Fifth Mountain Lion Workshop. Organized by the California Department of Fish and Game and the Southern California Chapter of the Wildlife Society, San Diego, California, February 27 - March 1, 1996.

Beier, P. and S. Loe. 1992. A Checklist for Evaluating Impacts to Wildlife Movement Corridors. Wildlife Society Bulletin 20(4):434-440.

Beier, P. and R.F. Noss. 1998. Do Habitat Corridors Provide Connectivity? Conservation Biology 12(6):1241-1252. December.

California Department of Fish and Wildlife. 2019. Annual Report on the Status of California State Listed Threatened and Endangered Animals and Plants. The Resources Agency, Sacramento, CA.

California Department of Fish and Game. 2002. California Fish and Game code. Gould Publications. Binghamton, N.Y.

California Department of Fish and Wildlife. 2020. California Natural Diversity Database, Rarefind5. The Resources Agency, Sacramento, CA.

California Native Plant Society (CNPS). 2020. Inventory of Rare and Endangered Plants (online edition, v6-05c). California Native Plant Society. Sacramento, CA. http://www.cnps.org/inventory.

Harris, L.D., Gallagher, P.B., 1989. New initiatives for wildlife conservation: the need for movement corridors. In: Mackintosh, G. (Ed.), Preserving Communities and Corridors. Defenders of Wildlife, Washington DC, pp. 11–34.

Holland, R.F. 1986. Preliminary Description of the Terrestrial Natural Communities of California. Resources Agency, Sacramento, CA. 156 pp.

Mayer, K. E., and W. F. Laudenslayer, Jr. Ed. 1988. A guide to wildlife habitats of California. California Department of Forestry and Fire Protection. Sacramento, CA. 166 pp.

Natural Resource Conservation Service. 2019. Web Soil Survey. USDA.

Remy, M. H., T. A. Thomas, J. G. Moose, and W. F. Manley. 1996. Guide to the California Environmental Quality Act.

Shuford, W. David and Thomas Gardall eds. 2008. California Bird Species of Special Concern. Western Field Orinthologists and California Department of Fish and Game.

Thomson, Robert C., Amber N. Wright, and H. Bradley Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. California Department of Wildlife. University of California Press.

University of California Agriculture and Natural Resources (UCANS). California Fish Website. Accessed January 2020. http://calfish.ucdavis.edu/location/?ds=698&reportnumber=1293&catcol=4712&categorysearch=%27Alamitos%20Creek%2D180500030301%27

USACE. 1987. Corps of Engineers Wetlands Delineation Manual. Department of the Army.

U.S. Fish and Wildlife Service. 2018. Endangered and threatened wildlife and plants.

Wetland Training Institute, Inc. 1990. Federal Wetland Regulation Reference Manual. B.N. Goode and R.J. Pierce (eds.) WTI 90-1. 281pp.