Revised Biological Resource Evaluation

1050 St. Elizabeth Drive

San Jose, California

January 20, 2023

Prepared by

EMC Planning Group

REVISED BIOLOGICAL RESOURCE EVALUATION

1050 St. Elizabeth Drive

San Jose, California

PREPARED FOR

SANDIS

Nate Dickinson

1700 Winchester Blvd., Ste. 200

Campbell, CA 95005

Tel 408.636.0900

PREPARED BY

EMC Planning Group Inc.

601 Abrego Street

Monterey, CA 93940

Tel 831.649.1799

Patrick Furtado, Senior Biologist

furtado@emcplanning.com

www.emcplanning.com

January 20, 2023

Table of Contents

Appendices

Figures

Executive Summary

EMC Planning Group conducted a reconnaissance-level biological survey of the project site at 1050 St. Elizabeth Drive in the City of San Jose, Santa Clara County, California (APN 28407018). The approximately 2.0-acre project site is in a residential neighborhood. Los Gatos Creek Trail runs along the southern and eastern boundaries of the site. This biological resource evaluation was conducted to analyze the potential impacts from the proposed project on special-status biological resources, and to provide specific measures to avoid or minimize these impacts.

Impacts to special-status species and their habitats are considered significant under state and federal law. Mitigation measures have been provided to reduce potential impacts to protected nesting birds and roosting bats to a less than significant level. These measures require completion of preconstruction surveys prior to ground disturbance. Should protected nesting birds or bats be identified during preconstruction surveys, project activities that may disturb or harm the nests may not proceed until protective measures are in place.

The proposed project will not conflict with any local policies or ordinance protecting biological resources, including the City of San Jose's Riparian Corridor Protection and Bird Safe Design Policy (City of San Jose 2016) with approval of the requested reduced setback, or result in significant impacts to wildlife movement. The proposed project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

This side intentionally left blank.

1.0 Introduction

1.1 Location and Setting

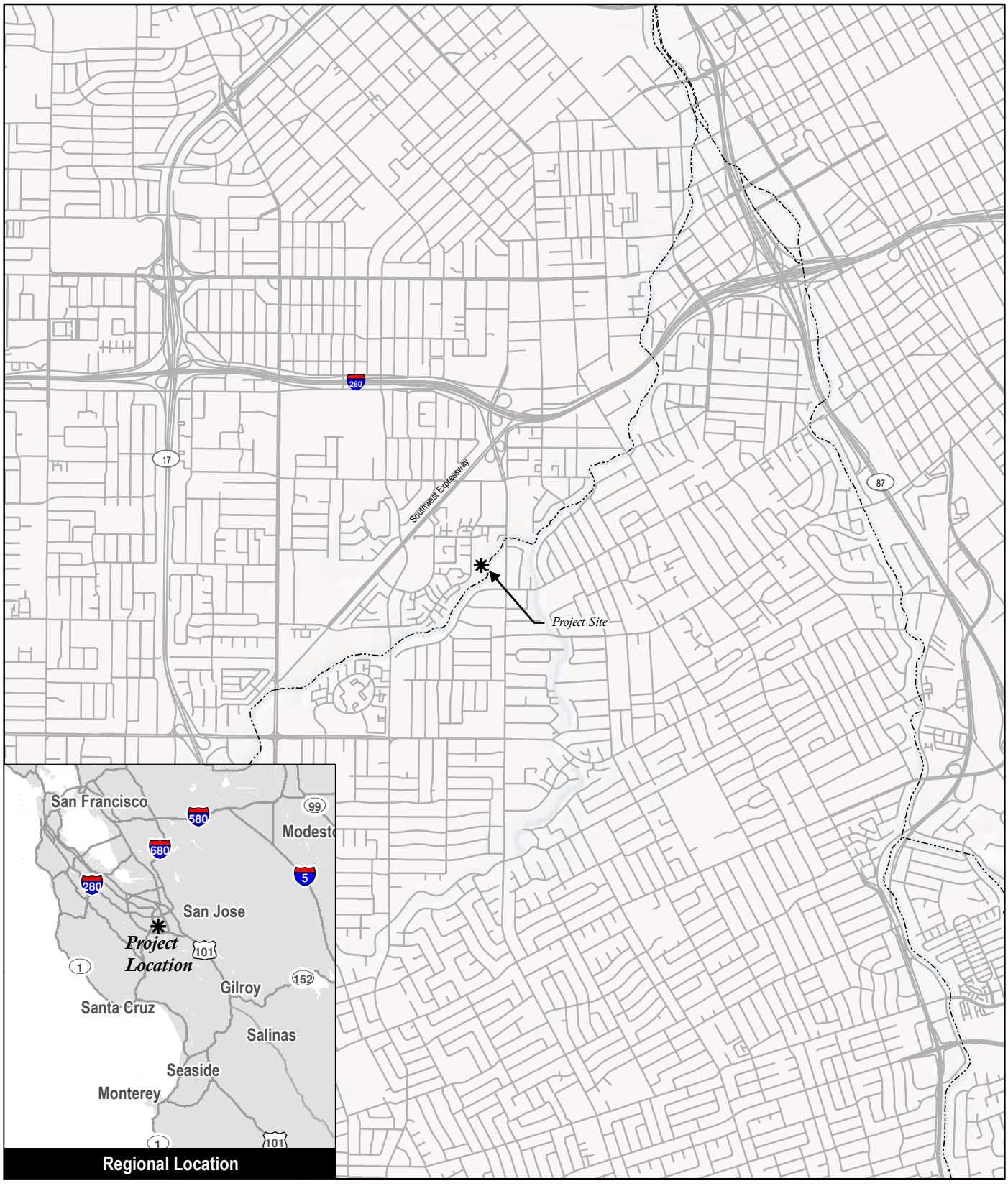
The project site is located at 1050 St. Elizabeth Drive in the City of San Jose, Santa Clara County, California (APN 28407018). The approximately 2.0-acre project site is in a residential neighborhood and is bordered on the west by St. Elizabeth Drive and on the east by Los Gatos Creek. The project site is bordered on the north and south by residential facilities. Los Gatos Creek Trail runs along the southern and eastern boundaries of the site. Figure 1-1, Location Map, shows the general vicinity of the project site, and Figure 1-2, Aerial Photograph, details the project site location. Figure 1-3, Proposed Development, details the proposed development and the riparian buffer zones.

Topography at the project site is flat with an elevation of approximately 144 feet above sea level. Soils on the site are modified urban soils with a component of alluvium derived from metamorphic and sedimentary rock (USDA 2022).

The climate in the area is Mediterranean, with wet, mild winters and dry, hot summers. Rainfall between the months of May and October is relatively rare, totaling approximately ten percent of the average annual precipitation of 16.1 inches (U.S. Climate Data 2022).

The site is currently developed with several residential buildings, an auxiliary building, and paved parking spaces and driveways. The proposed project includes the demolition of existing structures and the rebuilding of the facility on the same footprint with some modifications.

This side intentionally left blank.



0 2 miles

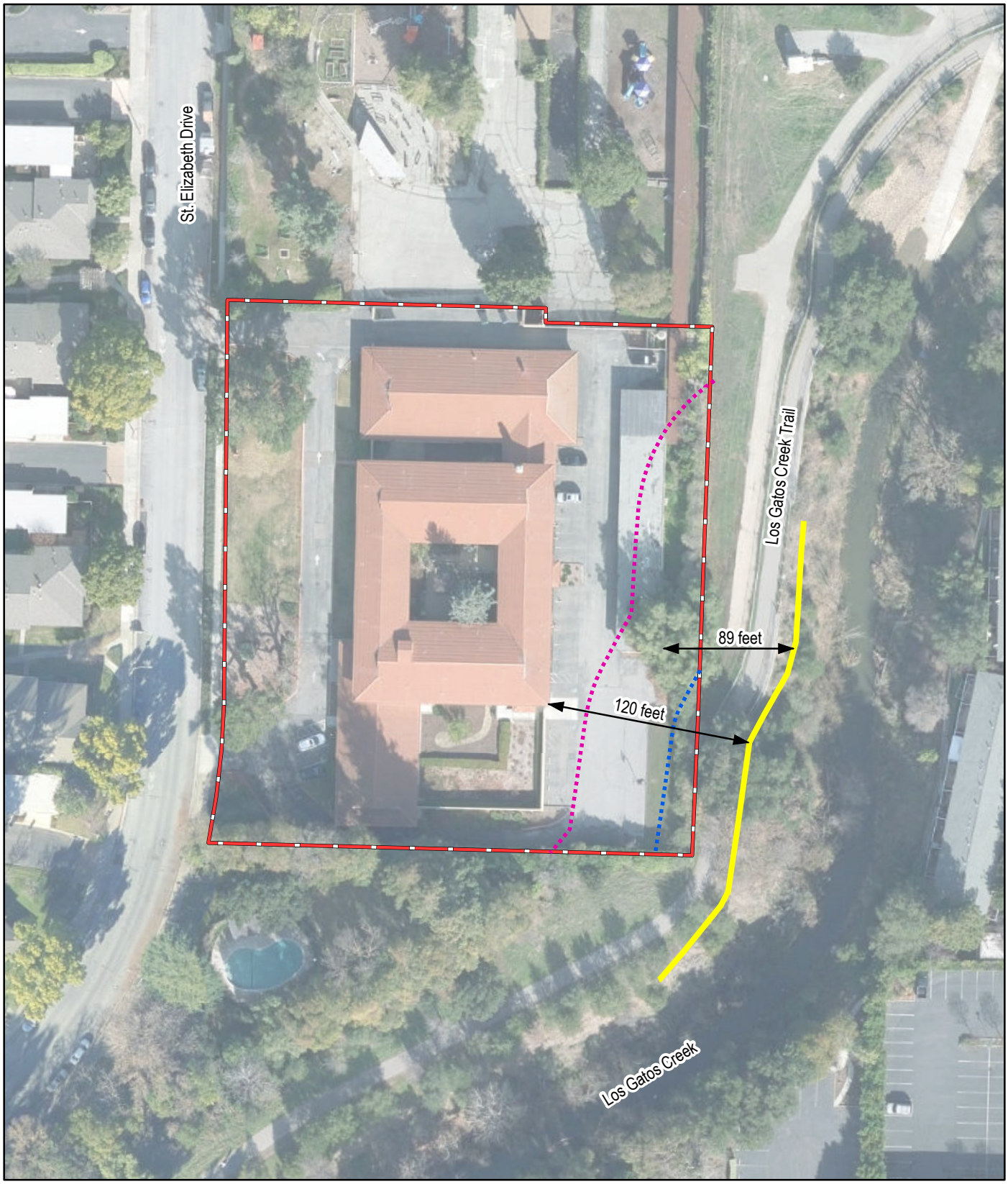
Source: Santa Clara County GIS 2021

Figure 1-1

Location Map

1050 St. Elizabeth Drive Biological Resource Evaluation

This side intentionally left blank.



0 80 feet

Source: Santa Clara County GIS 2017, Google Earth 2018, SANDIS 2020

Riparian Edge (04/29/22) also Top of Bank

Requested 45-foot Reduced Setback

100 foot Riparian Buffer

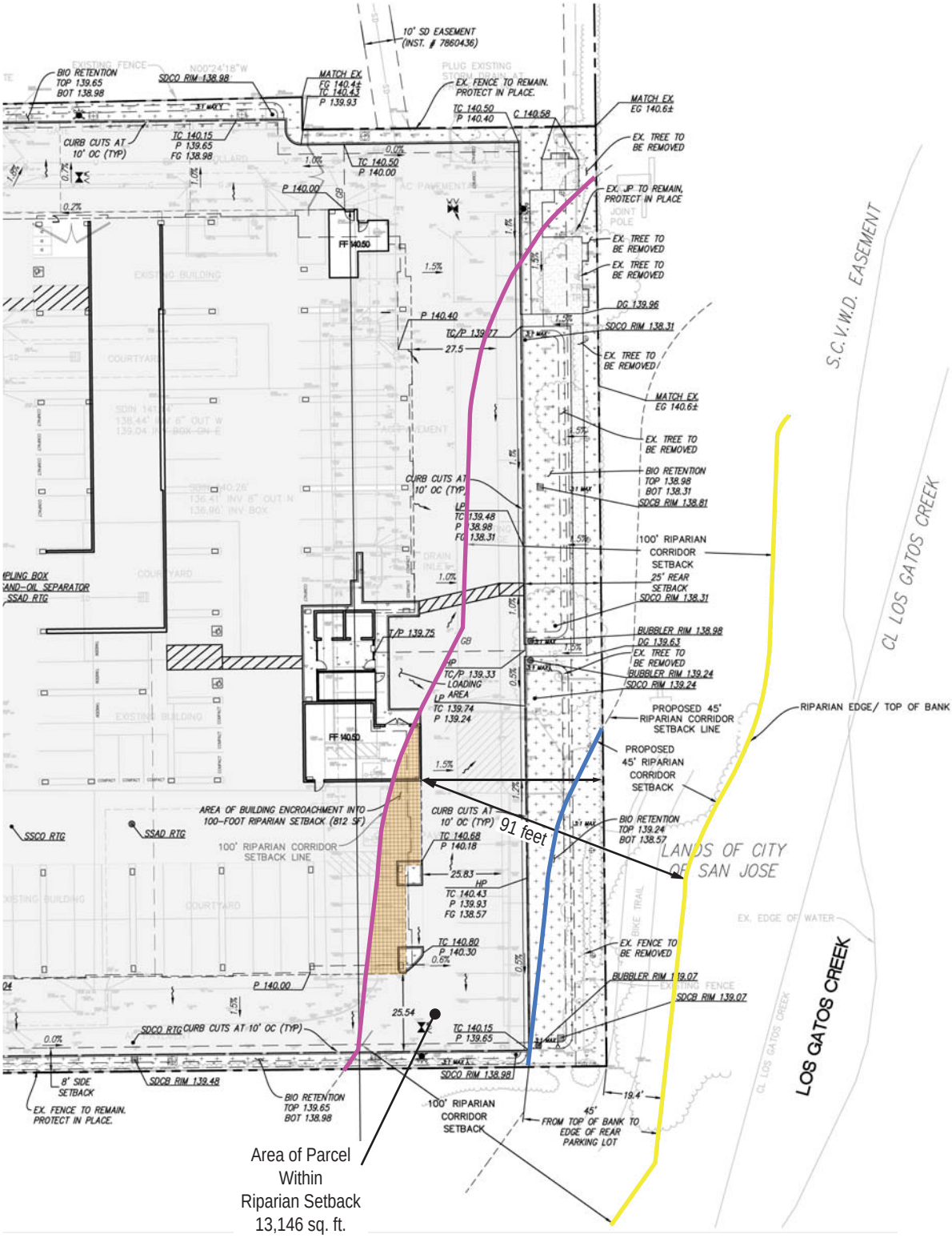
Parcel Boundary

Figure 1-2

Aerial Photograph

1050 St. Elizabeth Drive Biological Resource Evaluation

This side intentionally left blank.



0 50 feet

Development Within Riparian Setback (812 sq. ft.)

Riparian Edge (04/29/22) also Top of Bank

Requested 45-foot Reduced Setback

100 foot Riparian Buffer

Source: SANDIS 2023

Figure 1-3

Proposed Development

1050 St. Elizabeth Drive Biological Resource Evaluation

EMC

This side intentionally left blank.

2.0 Regulatory Setting

2.1 Federal Regulations

Endangered Species Act

The federal Endangered Species Act of 1973 protects species that the U.S. Fish and Wildlife Service (USFWS) has listed as Endangered or Threatened. Permits may be required from USFWS if activities associated with a project would result in the "take" of a federally listed species or its habitat. Under the Act, the definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." USFWS has also interpreted the definition of "harm" to include significant habitat modification that could result in take. "Take" of a listed species is prohibited unless (1) a Section 10(a) permit has been issued by the USFWS or (2) an Incidental Take Statement has been obtained through formal consultation between a federal agency and the USFWS pursuant to Section 7 of the Act.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 prohibits killing, possessing, or trading in migratory birds, and protects the nesting activities of native birds including common species, except in accordance with certain regulations prescribed by the Secretary of the Interior. Over 1,000 native nesting bird species are currently protected under the federal law. This Act encompasses whole birds, parts of birds, bird nests, and eggs.

The USFWS published a proposed rule to clarify prohibitions governing the "take" of birds under the Migratory Bird Treaty Act on February 3, 2020. This proposed rule clarifies that the scope of the Migratory Bird Treaty Act applies only to intentional injuring or killing of birds. Conduct that results in the unintentional (incidental) injury or death of migratory birds is not prohibited under the Act. On January 7, 2021, the final regulation defining the scope of the Migratory Bird Treaty Act was published in the Federal Register. The rule went into effect on February 8, 2021.

On October 4, 2021, the USFWS published a final rule revoking the January 7, 2021, regulation that limited the scope of the Migratory Bird Treaty Act. With this final and formal revocation of the January 7 rule, the USFWS returns to implementing the Migratory Bird Treaty Act as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent and long-standing agency practice prior to 2017. This final rule went into effect on December 3, 2021.

Clean Water Act

Section 404 of the Clean Water Act of 1972 regulates the discharge of dredge and fill material into "Waters of the United States." "Waters of the United States" are waters such as oceans, rivers, streams, lakes, ponds, and wetlands subject to U.S. Army Corps of Engineers Regulatory Program jurisdiction under Section 404 of the Clean Water Act. Certain artificial drainage channels, ditches and wetlands are also considered jurisdictional "Waters of the United States." On June 22, 2020, the Environmental Protection Agency and the Department of the Army's Navigable Waters Protection Rule: Definition of "Waters of the United States" became effective in 49 states and in all US territories. The San Francisco USACE District uses this definition of "Waters of the United States" when making permit decisions and providing landowners written determinations of the limits of federal jurisdiction on their property. On June 9, 2021, the agencies halted implementation of the Navigable Waters Protection Rule nationwide and are interpreting "waters of the United States" consistent with the pre-2015 regulatory regime until further notice.

The USACE determines the extent of its jurisdiction as defined by ordinary high-water marks on channel banks, wetland boundaries, and/or connectivity to a navigable water. Wetlands are habitats with soils that are intermittently or permanently saturated or inundated. The resulting anaerobic conditions naturally select for plant species known as hydrophytes that show a high degree of fidelity to such soils. Wetlands are identified by the presence of hydrophytic vegetation, hydric soils (soils intermittently or permanently saturated by water), and wetland hydrology according to methodologies outlined in the 1987 Corps of Engineers Wetlands Delineation Manual and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0).

Activities that involve the discharge of fill into jurisdictional wetlands or waters are subject to the permit requirements of the USACE. Discharge permits are typically issued on the condition that the project proponent agrees to provide compensatory mitigation which results in no net loss of area, function, or value, either through wetland creation, restoration, or the purchase of credits through an approved mitigation bank. In addition to individual discharge permits, the USACE also issues nationwide permits applicable for certain activities.

Pursuant to the USACE Manuals, key criteria for determining the presence of wetlands are:

- The presence of inundated or saturated soil conditions resulting from permanent or periodic inundation by ground water or surface water; and
- A prevalence of vegetation typically adapted for life in saturated soil conditions (hydrophytic vegetation).

Explicit in the definition is the consideration of three environmental parameters: hydrology, soil, and vegetation. Positive wetland indicators of all three parameters are normally present in wetlands. The assessment of all three parameters in normal circumstances enhances the technical accuracy, consistency, and credibility of a wetland determination and is required per the USACE Manuals.

2.2 State Regulations

California Endangered Species Act

Pursuant to the California Endangered Species Act and Section 2081 of the California Fish and Game Code, an Incidental Take Permit from the CDFW is required for projects that could result in the "take" of a state-listed threatened or endangered species. Take is defined under these laws as an activity that would directly or indirectly kill an individual of a species. If a project would result in the take of a state-listed species, then a CDFW Incidental Take Permit, including the preparation of a conservation plan, would be required.

Nesting Birds and Birds of Prey

Sections 3505, 3503.5, and 3800 of the California Fish and Game Code prohibit the take, possession, or destruction of birds, including their nests or eggs. Birds of prey (the orders Falconiformes and Strigiformes) are specifically protected in California under provisions of the California Fish and Game Code, Section 3503.5. This section of the Code establishes that it is unlawful to take, possess, or destroy any birds of prey or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this Code. Disturbance that causes nest abandonment and/or loss of reproductive effort, such as construction during the breeding season, is considered take by the CDFW.

Streambed Alterations

The CDFW has jurisdiction over the bed and bank of natural drainages according to provisions of Sections 1601 through 1603 of the California Fish and Game Code. Diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake in California that support wildlife resources and/or riparian vegetation are subject to CDFW regulations. Activities that would disturb these drainages are regulated by the CDFW; authorization is required in the form of a Streambed Alteration Agreement. Such an agreement typically stipulates measures that will protect the habitat values of the drainage in question.

California Porter-Cologne Water Quality Control Act

Under the California Porter-Cologne Water Quality Control Act, the applicable Regional Water Quality Control Board (regional board) may necessitate Waste Discharge Requirements for the fill or alteration of "Waters of the State," which according to California Water Code Section 13050

includes "any surface water or groundwater, including saline waters, within the boundaries of the state." The regional board may, therefore, necessitate Waste Discharge Requirements even if the affected waters are not under USACE jurisdiction.

Also, under Section 401 of the Clean Water Act, any activity requiring a USACE Section 404 permit must also obtain a state Water Quality Certification (or waiver thereof) to ensure that the proposed activity will meet state water quality standards. The applicable state regional board is responsible for administering the water quality certification program and enforcing National Pollutant Discharge Elimination System permits.

California Environmental Quality Act (CEQA)

The CEQA Guidelines indicate that a project may have a significant effect on the biological resources if it would have any of the effects listed below.

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- 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;
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan.

2.3 Regional/Local Regulations

City of San Jose

The City of San Jose's Riparian Corridor Protection and Bird-Safe Design policy (August 2016) provides guidance for protecting, preserving, or restoring riparian habitat. The policy directs how

"Riparian Projects" should be designed to protect and preserve the City's riparian corridors. "Riparian Project" means any development or activity that is located within 300 feet of a riparian corridor's top of bank or vegetative edge, whichever is greater, and that requires approval of a development permit.

The policy requires a minimum 100-foot setback from a riparian corridor's top of bank or vegetative edge, whichever is greater, for new development.

The policy's guidelines supplement the regulations for Riparian Corridor protection in the City's-adopted Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan), the Zoning Code, and other existing City policies that may provide for riparian protection and bird-safe design.

Santa Clara Valley Habitat Plan

The Santa Clara Valley Habitat Plan (SCVHP) is a 50-year regional plan to protect endangered species and natural resources while allowing for future development in southern Santa Clara Valley. It is both a habitat conservation plan and natural community conservation plan, or HCP/NCCP. The SCVHP is a regional partnership between six local partners (the 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 CDFW and the USFWS).

According to the Geobrowser (Santa Clara Valley Habitat Agency 2022), the project site is located within the Habitat Plan permit area (Area 4: Urban Development Equal to or Greater Than 2 Acres) and is subject to the review requirements of the plan.

Riparian corridors are protected by policy in the SCVHP. The SCVHP defines "riparian habitat" as riparian vegetation associated with river, stream, or lake banks and floodplains. Condition 11 requires that stream setbacks be required for all covered activities occurring near streams and riparian areas to minimize effects on covered species. The point from which a stream setback is measured is, in general, the top of bank or the edge of riparian vegetation, whichever is greater. The SCVHP establishes a minimum required setback of 100 feet for all development projects along Category 1 streams and 35 feet for projects along Category 2 streams. Los Gatos Creek is a Category 1 stream. If the project is considered a covered activity under the SCVHP, the project would be subject to the 100-foot setback under the SCVHP. All covered activities must adhere to both the applicable existing local regulations and the requirements of the SCVHP.

This side intentionally left blank.

3.0 Methodology

3.1 Background Research

Prior to the field survey, aerial photographs, natural resource database accounts, and other relevant scientific literature were reviewed. This included searching the USFWS Endangered Species Program (USFWS 2022), CDFW California Natural Diversity Database (CDFW 2022a), and California Native Plant Society (CNPS) Inventory of Rare and Endangered Plants (CNPS 2022) to identify special-status plants, wildlife, and habitats known to occur in the vicinity of the project site. Special-status species in this report are those listed as Endangered, Threatened, or Rare, or as Candidates for listing by the USFWS and/or CDFW; as Species of Special Concern or Fully Protected species by the CDFW; or as Rare Plant Rank 1B or 2B species by the CNPS.

3.2 Field Surveys

EMC Planning Group senior biologist Patrick Furtado conducted a reconnaissance-level biological survey of the project site on April 29, 2022. All species observed were recorded in field notes, along with information on plant communities and wildlife habitats. Qualitative observations of plant cover, structure, and species composition were used to determine plant communities and wildlife habitats. Plant species were identified in the field or collected for subsequent identification. Searches for reptiles and amphibians were performed by overturning and then replacing rocks and debris, as well as assessment of potentially suitable habitat areas found on the site. Birds were identified by visual and/or auditory recognition; mammals were identified by diagnostic signs (including scat and tracks).

Survey points were also collected with a sub-meter GPS receiver along the top of bank of Los Gatos Creek.

This side intentionally left blank.

4.0
Existing Conditions

4.1 Plant Communities

The project site is located in the California Floristic Province's Central Western California region, in the "Central Coast" sub-region. The Central Coast sub-region extends along the Pacific Ocean, is variable in width, and supports coastal communities, with high plant endemism (species unique to a defined geographic location) (Jepson Flora Project 2011).

There are no natural plant communities on the site. All vegetation has been planted as part of the developed facility landscaping. The landscaping includes manicured lawns, shrubs, vines, and mature trees. Shrubs on the project site include crimson bottlebrush (*Callistemon citrinus*), New Zealand flax (*Phormium* sp.), oleander (*Nerium oleander*), cotoneaster (*Cotoneaster* sp.), and rosemary (*Rosmarinus officinalis*). Trees on the project site include Italian stone pine (*Pinus pinea*), tree of heaven (*Ailanthus altissima*), and Peruvian pepper tree (*Schinus molle*).

4.2 Wildlife Habitat

As the project site is entirely developed and landscaped, there is no natural wildlife habitat present. Any wildlife present would likely be adapted to the urban environment.

Bird species observed on the site include: American crow (*Corvus brachyrhynchos*), house finch (*Haemorhous mexicanus*), Anna's hummingbird (*Calypte anna*), Eurasian collared-dove (*Streptopelia decaocto*), California towhee (*Melozone crissalis*), and American robin (*Turdus migratorius*).

Mammal species that could potentially utilize the habitat include California vole (*Microtus californicus*), Botta's pocket gopher (*Thomomys bottae*), striped skunk (*Mephitis mephitis*), California ground squirrel (*Spermophilus beecheyi*), and raccoon (*Procyon lotor*). Reptile species that could potentially utilize the habitat include western fence lizard (*Sceloporus occidentalis*) and California alligator lizard (*Elgaria multicarinata multicarinata*).

This side intentionally left blank.

5.0
Special-Status Species

5.1 Special-Status Plants

Special-status plant species potentially occurring in the project vicinity were evaluated for potential to occur on the project site. Information on special-status plants, including listing status, suitable habitat conditions, and potential to occur on the site is presented in Appendix A.

As illustrated by Figure 5-1, a number of special-status plants have been reported as occurring within the overall project vicinity. However, because the project site consists of developed landscaping with few native species present, there is little potential to support special-status plants based on the absence of suitable habitat. One species, Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), is recorded in the CNDDB as a general occurrence within the San Jose area and is discussed further, below.

Congdon's Tarplant. Congdon's tarplant is a low-growing annual herb that typically blooms May to October, with peak blooming from late summer to early fall. It is found on a range of substrates and is tolerant of disturbed and ruderal (weedy) areas, often occurring in patches of non-native grassland. The CNDDB includes a historic general record for Congdon's tarplant that includes the project site (occurrence no. 40). The record is from a collection that occurred in 1908. The area was searched in 1998 but none were found and the population is believed to be extirpated. No Congdon's tarplant was observed at the project site during the April 2022 biological survey.

5.2 Special-Status Wildlife

Special-status wildlife species potentially occurring in the project vicinity were evaluated for potential to occur on the project site. Information on special-status wildlife species, including listing status, suitable habitat conditions, and potential to occur on the project site is presented in Appendix A. Species with the potential to occur on the project site are discussed in more detail, below.

Special-Status Bats

Trees in the project area and/or buildings or structures on or adjacent to the property could provide roosting habitat for special-status bat species known to occur in the vicinity of the property, such as Townsend's big-eared bat (*Corynorhinus townsendii*). Townsend's big-eared bat prefers building roosts, hanging from walls and ceilings. The species has moderate potential to occur on the property due to the presence of suitable habitat.

Nesting Migratory Birds and Raptors

Vegetation on the project site provides suitable foraging and nesting opportunities for bird species protected under the Migratory Bird Treaty Act, which regulates or prohibits taking, killing, and possession of migratory bird species and their nests. Human proximity to the nest, excessive noise around the nest, and/or loss of foraging grounds may lead to nest failure. Based on the presence of mature trees and shrubs located on and adjacent to the project site, there is a moderate to high probability that nesting birds, including raptors, could occur within and/or adjacent to the property during the breeding bird season (February 1 to August 31).

5.3 Sensitive Natural Communities and Riparian Buffer

There were no sensitive natural communities found on the project site. However, the project site is adjacent to Los Gatos Creek, which is considered a sensitive natural community.

The proposed project has been designed to adhere to the riparian setback restrictions outlined in the Riparian Corridor Protection and Bird-Safe Design Policy (City of San Jose 2016). The City has determined that the project is not a covered activity under the SCVHP and therefore would not be subject to Condition 11 (Stream and Riparian Setbacks) of the SCVHP.

The "top of bank" of Los Gatos Creek was mapped using Environmental Systems Research Institute's (ESRI) Field Maps mobile mapping application and a Trimble R1 sub-meter Global Positioning System (GPS) receiver. Top of bank was mapped up-slope from the scoured channel of the creek, where an abrupt change of slope was visible. The top of bank line and 100-foot buffer are shown in Figure 1-2.

Along the stream reach adjacent to the project site, Los Gatos Creek is entrenched in a steep ravine with restored native vegetation. The top of bank was established at the break in slope between the creek bank and the surrounding flat terrain where the Los Gatos Creek Trail is located. In accordance with the City's Riparian Corridor and Bird Safe Design policy, the top of bank was used as the start of the 100-foot riparian buffer, rather than the vegetative edge, as this is the greater of the two. There are oak trees along the trail but these were determined to be components of upland vegetation rather than riparian vegetation.

As shown on Figure 1-2, the existing building is approximately 89 feet west of Los Gatos Creek, the existing senior living facility building is approximately 120 feet west of Los Gatos Creek, and the portion of the project site within the 100-foot riparian buffer is currently developed with a 2,351 square foot carport, 5,257 square feet of pavement, and 5,538 square feet of landscaped area. Under the proposed project, the existing building, and ornamental landscaping along the St. Elizabeth

Source: ESRI 2022, Santa Clara County GIS 2017, SANDIS 2020

Figure 5-1

CNDDB Map

1050 St. Elizabeth Drive Biological Resource Evaluation

This side intentionally left blank.

Drive frontage as well as the carport, and paved areas would be removed, and replaced with a new seven-story building that would occupy the existing development footprint and extend to the St. Elizabeth Drive right-of-way. The proposed building would be approximately 90-100 feet west of the Los Gatos Creek top of bank, with a corner of the building (812 square feet) extending slightly into the 100-foot setback. No additional structures are proposed within the 100-foot riparian buffer. 5,257 square feet of existing pavement and fence would be replaced, 1,927 square feet of paving would be added, two decomposed granite patios and a granite walkway would be placed alongside the new fence, and nine new landscaping trees would be planted within the riparian buffer zone.

The proposed building would feature windows on all facades. However, no mirrors and large areas of reflective glass are proposed and the project design does not include transparent glass skyways, walkways, or entryways, free-standing glass walls, or transparent building corners. Up-lighting and spotlights are also not planned to be in the project.

The proposed project would remove 12 existing landscaping trees, all of which are non-native ornamental species, and the majority of existing shrubs and groundcovers to be removed are ornamental, including turf and English Ivy. With implementation of the project, approximately 35% of the plant species planted would be native, and all plants selected would be climate-adaptive. Furthermore, within the riparian corridor, all plant species will be native and compatible with riparian areas.

As previously noted, the proposed building would be nearly entirely located outside of the riparian buffer (a small corner of the building extends into the 100-foot buffer). We would like to stress that the new development has been designed to stay maximally away from the riparian habitat along Los Gatos Creek and that existing structures within the setback, such as the parking garage, will be removed, thus improving the overall open space within the buffer and adjacent to the riparian corridor.

The proposed project requests a reduction in the riparian buffer to allow for the proposed replacement of existing pavement and landscaping, and an incremental increase (238 square feet) in impervious area within the riparian buffer. As noted above, the project proposes replacement of the carport and paved areas with new pavement, landscaping, and bioretention areas within the riparian setback, resulting in an incremental increase (238 square feet) in impervious surfaces within the riparian setback compared to existing conditions. The project is requesting a reduced setback of 45 feet from the Los Gatos Creek top of bank. According to Riparian Guidance A.3), applicants requesting a reduction in setbacks may be required to submit a report by a qualified biologist certifying the existence of some or all of the following conditions:

a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor.

c. The proposed uses are not fundamentally incompatible with riparian habitats (see Chapter 3, Section IB Incompatible Land Uses of the Policy Study).

d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.

e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

Based on our assessment of existing conditions at the site and the proposed project, we believe the project qualifies for an exemption due to conditions a, b, d, and e.

Condition A.

If the 100-foot setback were to be maintained, the building would be reduced by approximately 40,000 square feet and 41 residential units would not be constructed. The loss of 41 units would render the project financially infeasible. In order to meet City parking requirements and comply with Fire Code and emergency vehicle access requirements, there is no reasonable alternative location for the proposed access road and surface parking spaces.

Condition B.

As discussed above, the project site is currently developed and does not contain riparian vegetation. The area between the parcel boundary and Los Gatos Creek top of bank includes the Los Gatos Creek Trail, a Class I paved bike trail for bicycle and pedestrian use, and does not contain riparian vegetation or trees requiring removal. All proposed development activity would occur within the project site, and would not extend into Los Gatos Creek such that riparian vegetation would be affected by the project. Furthermore, under existing conditions, stormwater drains uncontrolled to the landscaped area along the eastern property line. Under the proposed project all stormwater will be directed to bioretention areas along the eastern property line before being discharged to the City's storm drain system. Thus, the project would reduce potential for runoff to travel uncontrolled from the site to Los Gatos Creek. No stormwater will be directed towards Los Gatos Creek. The buffer area within the parcel boundary is currently developed and includes a covered carport, pavement, and landscape vegetation. As previously stated, the carport will be removed, fence replaced, and the project would replace existing non-native plants with a combination of native and climate-adapted plant species. Pre-project conditions will therefore be improved within the riparian setback.

Although the proposed project includes minor grading and an incremental increase (238 square feet) in impervious area within the riparian buffer area, the reduced setback will not significantly reduce or adversely impact the riparian corridor.

Condition C.

Incompatible land uses are defined the *Riparian Corridor Policy Study* as, "land uses which typically generate littering and/or dumping; off-road vehicle use; removal of native vegetation; and those uses that create noxious odors, or use, store or create toxic materials (including fertilizers, herbicides and pesticides), or generate high volumes of vehicular traffic." (San Jose 1999). Because the parcel is currently developed and land use will not change as a result of this project, condition c does not apply.

Condition D.

Based on the reconnaissance level survey of the site and Los Gatos Creek completed for this project, no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the setback area were observed.

Condition E.

For the reasons discussed under Conditions A., B., and D. above, granting of the exception will allow for uses similar to what are currently occurring and will not be detrimental or injurious to adjacent and/or downstream properties.

5.3.1 Shadow Study

All plants require adequate light and water to survive. Riparian overstory plants, such as trees and shrubs, shade understory plants, which have adapted to conditions with lower light. When located adjacent to riparian corridors, shade from man-made structures, such as bridges or buildings, can alter water temperature and the amount of light available to plants. Lowering water temperature is typically considered a beneficial impact, however the introduction of additional shading could influence plant composition and survival rates.

A shadow study was prepared to determine whether the proposed building would shade riparian vegetation along Los Gatos Creek. The City of San Jose does not have an established standard or threshold for shade and shadow impacts on riparian corridors. The extent of possible shading was modeled for the equinoxes and solstices on June 21 at 3pm, September 21 at 3pm, December 21 at 3pm, and December 21 at 4pm (DNA Design and Architecture 2022). Figure 5-2, Shadow Studies, shows the results of the modelling.

As shown on Figure 5-2, shadows from the proposed seven-story building would not shade riparian vegetation within the Los Gatos Creek riparian corridor except on winter solstice. Therefore, it is anticipated that there will be some impacts from shading after 4pm during the winter months, when the sun as at its lowest. These impacts are considered short term (1-2 hours per day from December through January) and will occur when most riparian species are dormant. Shading of the riparian corridor is not anticipated when the sun is higher in spring and summer, the typical growing season.

Shading impacts as a result of construction of the proposed building are therefore considered minimal.

5.4 Jurisdictional Wetlands and Waters of the United States

There were no potentially jurisdictional wetlands or water features identified on the project site.

5.5 Trees

A tree inventory and assessment were conducted for the project site in 2020 by HortScience|Bartlett Consulting which included all trees with trunk diameters greater than four inches (those trees protected by the Ordinance). The City's Heritage Tree List identifies more than 100 trees with special significance to the community because of their size, history, unusual species, or unique quality. Sixteen (16) trees were evaluated, representing 12 species. All trees had been planted as part of landscape treatment. Species present were typical of landscape and orchard plants used in the San Jose area. None of the species present are native to the San Jose area. No heritage trees are present.

The project proposes removal of 12 of 16 trees on-site. Pursuant to Municipal Code Section 13.32, a permit from the City of San Jose is required to remove a tree. This includes street trees, heritage trees, and ordinance-size trees.

5.6 Wildlife Movement Corridors

Wildlife movement includes migration (i.e., usually movement one way per season), inter-population movement (i.e., long-term dispersal and genetic flow), and small travel pathways (i.e., daily movement within an animal's territory). While small travel pathways usually facilitate movement for daily home range activities, such as foraging or escape from predators, they also provide connection between outlying populations and the main populations, permitting an increase in gene flow among populations. These habitat linkages can extend for miles and occur on a large scale throughout the greater region. Habitat linkages facilitate movement between populations located in discrete locales and populations located within larger habitat areas.

The Los Gatos Creek corridor is adjacent to the proposed project. However, the proposed project has been designed specifically to avoid impacts to the riparian corridor. The project would maintain the existing fenceline separating the project site from the riparian corridor.

Up-lighting and spotlights will not be used at the project site, avoiding potential impacts to wildlife utilizing the riparian corridor. It is anticipated that the proposed project would not alter the paths of wildlife utilizing the Los Gatos Creek corridor for wildlife movement. Therefore, impacts to wildlife movement are considered negligible.

Summer Solstice 3pm

Equinox 3pm

Winter Solstice 3pm

Winter Solstice 4pm

0 NTS

Source: DNA Design and Architecture 2022

Figure 5-2
Shadow Studies

This side intentionally left blank.

6.0
Impacts and Mitigation Measures

The CEQA standards of significance were used to determine potentially significant or significant impacts. Please refer to the tables in Appendix A for a summary of special-status plant and animal species potentially occurring in the project vicinity that were considered as part of the impact analysis.

6.1 Recommended Mitigation Measures

Based on the preliminary project plans, construction of the proposed project will require tree removal, which could impact to nesting migratory birds and raptors or roosting bats, if present. In addition, the project is located adjacent to the Los Gatos Creek riparian corridor, where construction noise and vibration could impact to nesting migratory birds and raptors or roosting bats, if present. The following mitigation measures are recommended to reduce potential impacts to nesting migratory birds and raptors and/or roosting bats:

Protected Nesting Birds and Raptors

During the nesting bird season (generally considered February 1 through August 31), protected birds, such as thrushes, larks or warblers have potential to nest on the ground; other species in vegetation or trees adjacent to the project site. If nesting birds protected by state and federal regulations are present in trees proposed for removal or adjacent to the project site along the Los Gatos Creek corridor, construction activities including demolition and site preparation may directly result in loss of active nests, or indirectly result in nest abandonment and thereby cause loss of fertile eggs or nestlings. To avoid impacts to nesting birds, the following measure is recommended:

BIO-1 To avoid impacts to nesting birds during the nesting season (February 1 through August 31), construction activities should be conducted between September 1 and January 31, outside of the bird nesting season. If project-related work is scheduled during the nesting season (February 15 to August 31 for small bird species such as passerines; February 1 to August 31 for owls; and February 15 to August 31 for other raptors), a qualified biologist shall conduct nesting bird surveys.

a. Two surveys for active bird nests will occur within 14 days prior to start of construction, with the final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding each work area are

typically 250 feet for passerines, 500 feet for smaller raptors, and 1,000 feet for larger raptors. Surveys will be conducted at the appropriate times of day to observe nesting activities. If no nesting birds are found, a letter report confirming absence will be prepared and no further mitigation is required.

b. If the qualified biologist documents active nests within the project site or in nearby surrounding areas, an appropriate buffer between each nest and active construction shall be established. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist shall conduct baseline monitoring of each nest to characterize "normal" bird behavior and establish a buffer distance, which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily during construction activities and increase the buffer if birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman shall have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active. Once the absence of nesting birds has been confirmed, a letter report will be prepared to document compliance with this mitigation measure and submitted to the City of San Jose.

Roosting Special-Status Bats

Trees and/or buildings or structures on or adjacent to the project site could provide roosting habitat for state-listed species of special concern Townsend's big-eared bat (*Corynorhinus townsendii*). Tree removal and construction activities at the project site could result in the disturbance of roost and natal sites occupied by special-status bats on or adjacent to the project site, if present. To avoid impacts to roosting special-status bats, the following measure is recommended:

BIO-2 Approximately 14 days prior to tree removal or demolition and construction activities, a qualified biologist shall conduct a habitat assessment for bats and potential roosting sites in trees to be removed and in trees or buildings within 50 feet of the construction site. These surveys shall include a visual inspection of potential roosting features (bats need not be present) and a search for presence of guano within the construction site, construction access routes, and 50 feet around these areas. Cavities, crevices, exfoliating bark, and bark fissures that could provide suitable potential nest or roost habitat for bats shall be surveyed. Assumptions can be made on what species is present due to observed visual characteristics along with habitat use, or the bats can be identified to the species level with the use of a bat echolocation detector such as an "Anabat" unit. Potential roosting features found during the survey shall be flagged or marked.

If no roosting sites or bats are found, a letter report confirming absence shall be prepared and submitted to the City of San Jose and no further mitigation is required.

If bats or roosting sites are found, bats shall not be disturbed without specific notice to and consultation with California Department of Fish and Wildlife.

If bats are found roosting outside of the nursery season (May 1 through October 1), California Department of Fish and Wildlife shall be consulted prior to any eviction or other action. If avoidance or postponement is not feasible, a Bat Eviction Plan will be submitted to California Department of Fish and Wildlife for written approval prior to project implementation. A request to evict bats from a roost includes details for excluding bats from the roost site and monitoring to ensure that all bats have exited the roost prior to the start of activity and are unable to re-enter the roost until activity is completed. Any bat eviction shall be timed to avoid lactation and young-rearing. If bats are found roosting during the nursery season, they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or by monitoring the roost after the adults leave for the night to listen for bat pups. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. Therefore, if a maternal roost is present, a 50-foot buffer zone (or different size if determined in consultation with the California Department of Fish and Wildlife) shall be established around the roosting site within which no construction activities including tree removal or structure disturbance shall occur until after the nursery season.

Protected Trees

Impacts to trees from the proposed project were assessed in the arborist report using the landscape plans prepared by Jett Landscape Architecture & Design. The plans depict a complete re-development of the site. The existing facility and parking areas would be demolished. The site will be re-graded and new improvements installed. The arborist recommends the preservation of the four off-site trees and removal of the 12 on-site trees.

Removal of trees would be required to conform to the replacement requirements as identified in the Municipal Code Section 13.28.300, General Plan Policies MS-21.4, MS-21.5, and MS-21.6 and City of San José Tree Removal Control (Municipal Code Section 13.31.010 to 13.32.100). Pursuant to these requirements, the project would be required to implement the following Standard Permit Conditions:

1. Tree Replacement. A tree removal permit would be required from the City of San José for the removal of ordinance trees. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 5-1 below.

Table 5-1: Tree Replacement Ratios				
Circumference of Tree to be Removed	***Type of Tree to be Removed***			***Minimum Size of Each Replacement Tree***
	Native	***Non-Native***	***Orchard***	
38 inches or more	*5:1*	*4:1*	*3:1*	*15-gallon*
19 up to 38 inches	*3:1*	*2:1*	*none*	*15-gallon*
Less than 19 inches	*1:1*	*1:1*	*none*	*15-gallon*

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box tree = two 15-gallon trees

Single Family and two-dwelling properties may be mitigated at a 1:1 ratio.

Habitat Plan

According to the Geobrowser (Santa Clara Valley Habitat Agency 2022), the project site is located within the Habitat Plan permit area, in an Urban Area (no land cover fee). Focused special-status species surveys for covered plants or wildlife were not identified in the Geobrowser for the site. According to the Habitat Plan land cover type data, the project site is mapped as "Urban – Suburban." Habitat Plan coverage screening form will be processed at the time of application for planning approvals and grading and/or building permits from the City of San Jose. If the project is considered a covered project under the Habitat Plan, an application for private projects will be required along with compliance with the requirements of the Habitat Plan. No additional measures are necessary.

7.0 Sources

Baldwin, B. G., D. H. Goldman, et al. 2012. *The Jepson Manual: Vascular Plants of California*, University of California Press.

Biogeographic Information and Observation System (BIOS) online database. California Department of Fish and Wildlife. 2022. http://bios.dfg.ca.gov

Calflora Database. 2022. *Calflora: Information on California plants for education, research and conservation online database.* Berkeley, California. https://www.calflora.org/

California Natural Diversity Database (CNDDB) online database. 2022. https://wildlife.ca.gov/data/cnddb

California Native Plant Society (CNPS), Rare Plant Program. 2022. Inventory of Rare and Endangered Plants of California online database. http://www.rareplants.cnps.org

City of San Jose. 1999. *Riparian Corridor Policy Study*.

CNPS. 2001. *CNPS Botanical Survey Guidelines*. Sacramento, California, June 2001. http://www.cnps.org.

DNA Design and Architecture. 2022. Shadow Studies.

HortScience Bartlett Consulting. 2020. Tree Report, 1050 St. Elizabeth Drive.

Jepson Flora Project. 2022. *The Jepson Online Interchange: California Floristics*. Regents of the University of California. http://ucjeps.berkeley.edu/interchange.html.

Santa Clara Valley Habitat Agency. 2022. Geobrowser. http://www.hcpmaps.com/habitat/

Santa Clara Valley Habitat Agency. 2012. *Santa Clara Valley Habitat Plan*.

United States Fish and Wildlife Service (USFWS). 2022. Endangered Species Program online database. Species list for Santa Clara County. Washington, D.C. http://www.fws.gov/endangered/

USFWS. 2022. *National Wetlands Inventory*. Branch of Resource and Mapping Support. Washington, D.C. http://www.fws.gov/wetlands/

This side intentionally left blank.

Special-Status Species Lists

A

APPENDIX

Appendix A Special-Status Plant Species with Potential to Occur in the Project Vicinity

Species	Status (Federal/State/ CNPS)	Suitable Habitat Description	Potential to Occur on Project Site
Alkali milk-vetch *(Astragalus tener* var. *tener)*	--/--/1B.2	Alkaline sites in playas, valley and foothill grassland (on adobe clay), and vernal pools; elevation 1-60m. Blooming Period: March – June.	Unlikely. Suitable habitat not found at the project site.
Arcuate bush-mallow *(Malacothamnus arcuatus)*	--/--/1B.2	Chaparral, in gravelly alluvium; elevation 80-355m. Blooming Period: April – September.	Unlikely. Suitable habitat not found at the project site.
Big-scale balsamroot *(Balsamorhiza macrolepis)*	--/--/1B.2	Valley and foothill grassland, and cismontane woodland; sometimes on serpentine; elevation 35-1000m. Blooming Period: March – June.	Unlikely. Suitable habitat not found at the project site.
Brittlescale *(Atriplex depressa)*	--/--/1B.2	Chenopod scrub, meadows, playas, valley and foothill grassland, and vernal pools. Usually in alkali scalds or alkali clay in meadows or annual grassland; rarely associated with riparian, marshes or vernal pools; elevation 1-320m. Blooming Period: May – October.	Unlikely. Suitable habitat not found at the project site.
California alkali grass *(Puccinellia simplex)*	--/--/1B.2	Meadows and seeps, chenopod scrub, valley and foothill grasslands, vernal pools. Alkaline, vernally mesic. Sinks, flats,and lake margins; elevation 1-915m. Blooming Period: March – May.	Unlikely. Suitable habitat not found at the project site.
California seablite *(Suaeda californica)*	FE/--/1B.1	Marshes and swamps; margins of coastal salt marshes; elevation 0-5m. Blooming Period: July - October	Unlikely. Suitable habitat not found at the project site.
Chaparral harebell *(Campanula exigua)*	--/--/1B.2	Chaparral (rocky, usually serpentine); elevation 275-1250m. Blooming Period: May – June.	Unlikely. Suitable habitat not found at the project site.
Chaparral ragwort *(Senecio aphanactis)*	--/--/2B.2	Cismontane woodland and coastal scrub. Prefers drying alkaline flats; elevation 20-575m. Blooming Period: January – April.	Unlikely. Suitable habitat not found at the project site.
Congdon's tarplant *(Centromadia parryi* spp. *congdonii)*	--/--/1B.1	Valley and foothill grassland (alkaline); elevation 1-230m. Known to occur on various substrates, and in disturbed and ruderal (weedy) areas. Blooming Period: June – November.	Unlikely. Suitable habitat not found at the project site.
Contra Costa goldfields *(Lasthenia conjugens)*	FE/--/1B.1	Wet areas in cismontane woodland, playas (alkaline), valley and foothill grassland, and vernal pools; elevation 0-470m. Blooming Period: March – June.	Unlikely. Suitable habitat not found at the project site.
Fragrant fritillary *(Fritillaria liliacea)*	--/--/1B.2	Coastal scrub, valley and foothill grassland, and coastal prairie. Often on serpentine; various soils reported though usually clay in grassland; elevation 3-410m. Blooming Period: February – April.	Unlikely. Suitable habitat not found at the project site.
Hairless popcorn flower *(Plagiobothrys glaber)*	--/--/1A	Meadows and seeps (alkaline), marshes and swamps (coastal salt); elevation 15-180m. Blooming Period: March – May.	Unlikely. Suitable habitat not found at the project site.
Hall's bush-mallow *(Malacothamnus hallii)*	--/--/1B.2	Chaparral, some populations on serpentine; elevation 10-550m. Blooming Period: May – September.	Unlikely. Suitable habitat not found at the project site.

Species	Status (Federal/State/ CNPS)	Suitable Habitat Description	Potential to Occur on Project Site
Hoover's button-celery *(Eryngium aristulatum* var. *hooveri)*	--/--/1B.1	Vernal pools. Alkaline depressions, roadside ditches, and other wet places near the coast; elevation 5-45m. Blooming Period: July.	Unlikely. Suitable habitat not found at the project site.
Hospital Canyon larkspur *(Delphinium californicum* ssp. *interius)*	--/--/1B.2	Cismontane woodland and chaparral, in wet, boggy meadows, openings in chaparral, and in canyons; elevation 225-1060m. Blooming Period: April – June.	Unlikely. Suitable habitat not found at the project site.
Lesser saltscale *(Atriplex minuscula)*	--/--/1B.1	Chenopod scrub, playas, and valley and foothill grassland. In alkali sinks in sandy, alkaline soils; elevation 20-100m. Blooming Period: May – October.	Unlikely. Suitable habitat not found at the project site.
Loma Prieta hoita *(Hoita strobilina)*	--/--/1B.1	Wet areas on serpentine substrate in chaparral, cismontane woodland, and riparian woodland; elevation 30-860m. Blooming Period: May – October.	Unlikely. Suitable habitat not found at the project site.
Long-styled sand-spurrey (*Spergularia macrotheca* var. *longistyla*)	--/--/1B.2	Marshes and swamps, meadows and seeps. Alkaline; elevation 0-220m. Blooming Period: February – May.	Unlikely. Suitable habitat not found at the project site.
Maple-leaved checkerbloom *(Sidalcea malachroides)*	--/--/1B	Broadleaved upland forest, coastal prairie, coastal scrub, North Coast coniferous forest, often in disturbed areas; elevation 2-700m. Blooming Period: April – August.	Unlikely. Suitable habitat not found at the project site.
Metcalf Canyon jewel-flower *(Streptanthus albidus* ssp. *albidus)*	FE/--/1B.1	Valley and foothill grassland. Endemic to Santa Clara County. Relatively open areas in dry grassy meadows on serpentine soils/serpentine balds; elevation 45-245m. Blooming Period: April – July.	Unlikely. Suitable habitat not found at the project site.
Most beautiful jewel-flower *(Streptanthus albidus* ssp. *peramoenus)*	--/--/1B.2	Chaparral, valley and foothill grassland, and cismontane woodland; serpentine outcrops, on ridges and slopes; elevation 120-730m. Blooming Period: April – June.	Unlikely. Suitable habitat not found at the project site.
Mt. Hamilton fountain thistle *(Cirsium fontinale* var. *campylon)*	--/--/1B.2	Serpentine seeps in chaparral, cismontane woodland, and valley and foothill grassland; elevation 100-890m. Blooming Period: February – October.	Unlikely. Suitable habitat not found at the project site.
Point Reyes bird's-beak *(Chloropyron maritimum* ssp. *palustre)*	--/--/1B.2	Coastal salt marshes, usually with *Salicornia, Distichlis, Jaumea,* and *Spartina*; elevation 0-15m. Blooming Period: June – October.	Unlikely. Suitable habitat not found at the project site.
Prostrate vernal pool navarretia *(Navarretia prostrata)*	--/--/1B.1	Coastal scrub, valley and foothill grassland, and vernal pools. Alkaline soils in grassland, or in vernal pools; elevation 15-700m. Blooming Period: April – July.	Unlikely. Suitable habitat not found at the project site.
Robust spineflower *(Chorizanthe robusta* var. *robusta)*	FE/--/1B.1	Sandy or gravelly openings in cismontane woodland, coastal dunes, and coastal scrub; prefers sandy terraces and bluffs or loose sand; elevation 3-300m. Blooming Period: April – July.	Unlikely. Suitable habitat not found at the project site.
Saline clover *(Trifolium hydrophilum)*	--/--/1B.2	Marshes and swamps, valley and foothill grassland, and vernal pools. Prefers wet, alkaline sites; elevation 0-300m. Blooming Period: April – June.	Unlikely. Suitable habitat not found at the project site.

Species	Status (Federal/State/ CNPS)	Suitable Habitat Description	Potential to Occur on Project Site
San Francisco collinsia *(Collinsia multicolor)*	--/--/1B.2	Serpentine sites in closed cone coniferous forest and coastal scrub. Prefers decomposed shale (mudstone) mixed with humus; elevation 30-250m. Blooming Period: March – May.	Unlikely. Suitable habitat not found at the project site.
San Joaquin spearscale *(Atriplex joaquinana)*	--/--/1B.2	Alkaline sites in chenopod scrub, meadows and seeps, playas, and valley and foothill grassland; elevation 1-320m. Blooming Period: April – October.	Unlikely. Suitable habitat not found at the project site.
Santa Clara red ribbons *(Clarkia concinna* ssp. automixa)	--/--/4.3	Cismontane woodland, chaparral. On slopes and near drainages, elevation 80-225m. Blooming Period: May – June.	Unlikely. Suitable habitat not found at the project site.
Santa Clara Valley dudleya *(Dudleya abramsii* ssp. *setchellii)*	FE/--/1B.1	Valley and foothill grassland, and cismontane woodland. Endemic to serpentine outcrops and on rocks within grassland or woodland in Santa Clara County; elevation 80-335m. Blooming Period: April – June.	Unlikely. Suitable habitat not found at the project site.
Smooth lessingia *(Lessingia micradenia* var. *glabrata)*	--/--/1B.2	Chaparral; endemic to Santa Clara County. Serpentine, often on roadsides; elevation 120-485m. Blooming Period: July – November.	Unlikely. Suitable habitat not found at the project site.
Western leatherwood *(Dirca occidentalis)*	--/--/1B.2	Broadleaf upland forest, chaparral, closed cone coniferous forest, cismontane woodland, North Coast coniferous forest, riparian forest, and riparian woodland. Found on brushy slopes, in mesic sites, mostly in mixed evergreen and foothill woodland communities; elevation 30-550m. Blooming Period: January – April.	Unlikely. Suitable habitat not found at the project site.
Woodland woollythreads *(Monolopia gracilens)*	--/--/1B.2	Serpentine, open sites in broadleaved upland forest, chaparral, cismontane woodland, North Coast coniferous forest, and valley and foothill grassland; elevation 100-1200m. Blooming Period: March – July.	Unlikely. Suitable habitat not found at the project site.

SOURCE: CDFW 2022, CNPS 2022

NOTE: Status Codes:

Federal (USFWS)

FE: Listed as Endangered under the Federal Endangered Species Act.

FT: Listed as Threatened under the Federal Endangered Species Act.

FC: A Candidate for listing as Threatened or Endangered under the Federal Endangered Species Act.

FSC: Species of Special Concern.

FD: Delisted under the Federal Endangered Species Act.

State (CDFW)
SE: Listed as Endangered under the California Endangered Species Act.
ST: Listed as Threatened under the California Endangered Species Act.
SR: Listed as Rare under the California Endangered Species Act.
SC: A Candidate for listing as Threatened or Endangered under the California Endangered Species Act.
SSC: Species of Special Concern.
SFP: Fully Protected species under the California Fish and Game Code.
SD: Delisted under the California Endangered Species Act.

CNPS Rare Plant Ranks and Threat Code Extensions
1B: Plants that are considered Rare, Threatened, or Endangered in California and elsewhere.
2B: Plants that are considered Rare, Threatened, or Endangered in California, but more common elsewhere.
.1: Seriously endangered in California (over 80% of occurrences threatened/high degree and immediacy of threat).
.2: Fairly endangered in California (20-80% occurrences threatened).
.3: Not very endangered in California (<20% of occurrences threatened or no current threats known).

Appendix A Special-Status Wildlife Species with Potential to Occur in the Project Vicinity

Species	Status (Federal/State)	Suitable Habitat Description	Potential to Occur on Project Site
Alameda song sparrow *(Melospiza melodia pusillula)*	--/SSC	Resident of salt marshes bordering south arm of San Francisco Bay. Inhabits *Salicornia* marshes; nests low in *Grindelia* bushes (high enough to escape high tides) and in *Salicornia*.	Unlikely. Suitable habitat not found at the project site.
Alameda whipsnake *(Masticophis lateralis euryxanthus)*	FT/ST	Typically found in chaparral and scrub habitats, but will also use adjacent grassland, oak savannah, and woodland habitats. Found mostly on south-facing slopes and ravines with rock outcrops, deep crevices, or abundant rodent burrows.	Unlikely. Suitable habitat not found at the project site.
American peregrine falcon *(Falco peregrinus anatum)*	FD/SD,SFP	Occurs near wetlands, lakes, rivers, or other waters on cliffs, banks, dunes, mounds, and human-made structures. Nest consists of a scrape on a depression or ledge in an open site.	Unlikely. Suitable habitat not found at the project site.
Bank swallow *(Riparia riparia)*	--/ST	Highly colonial species that nests in alluvial soils along rivers, streams, lakes, and ocean coasts. Nesting colonies only occur in vertical banks or bluffs of friable soils at least one meter tall, suitable for burrowing with some predator deterrence values. Breeding colony present in Salinas River.	Unlikely. Suitable habitat not found at the project site.
Bay checkerspot butterfly *(Euphydryas editha bayensis)*	FT/--	Restricted to native grasslands on outcrops of serpentine soil in the vicinity of San Francisco Bay. *Plantago erecta* is the primary host plant; *Castilleja densiflora* and *C. exserta* are secondary host plants.	Unlikely. Suitable habitat not found at the project site.
Burrowing owl *(Athene cunicularia)*	--/SSC	Open, dry, annual or perennial grasslands, desert, or scrubland, with available small mammal burrows.	Unlikely. Suitable habitat not found at the project site.
California black rail *(Laterallus jamaicensis coturniculus)*	--/ST	Inhabits freshwater marshes, wet meadows, and shallow margins of saltwater marshes bordering larger bays. Needs water depth of about 1 inch that does not fluctuate during the year and dense vegetation for nesting.	Unlikely. Suitable habitat not found at the project site.
California giant salamander *(Anodonta californiensis)*	--/SSC	Known from wet coastal forests near streams ad seeps from Mendocino County south to Monterey County and east to Napa County. Aquatic larvae found in cold, clear streams, occasionally in lakes and ponds. Adults known from wet forests under rocks and logs near streams and lakes.	Unlikely. Suitable habitat not found at the project site.
California least tern *(Sternula antillarum browni)*	FE/SE	Nests along the coast from San Francisco Bay south to northern Baja California. Colonial breeder on bare or sparsely vegetated, flat substrates (sand beaches, alkali flats, landfills, or paved areas).	Unlikely. Suitable habitat not found at the project site.
California linderiella *(Linderiella occidentalis)*	FSC/--	Seasonal pools in unplowed grasslands with old alluvial soils underlain by hardpan or in sandstone depressions. Water in the pools typically has very low alkalinity, conductivity, and total dissolved solids.	Unlikely. Suitable habitat not found at the project site.

Species	Status (Federal/State)	Suitable Habitat Description	Potential to Occur on Project Site
California red-legged frog *(Rana draytonii)*	FT/SSC	Rivers, creeks, and stock ponds with pools and overhanging vegetation. Requires dense, shrubby or emergent riparian vegetation, and prefers short riffles and pools with slow-moving, well-oxygenated water. Needs upland habitat to aestivate (remain dormant during dry months) in small mammal burrows, cracks in the soil, or moist leaf litter.	Unlikely. Suitable habitat not found at the project site.
California Ridgway's rail *(Rallus obsoletus obsoletus)*	FE/SE	Found in saltwater and brackish marshes, traversed by tidal sloughs in the vicinity of San Francisco Bay. Associated with abundant growths of pickleweed, but feeds away from cover on invertebrates from mud-bottomed sloughs.	Unlikely. Suitable habitat not found at the project site.
California tiger salamander *(Ambystoma californiense)*	FT/ST	Grasslands and oak woodlands near seasonal pools and stock ponds in central and coastal California. Needs upland habitat to aestivate (remain dormant during dry months) in small mammal burrows, cracks in the soil, or moist leaf litter. Requires seasonal water sources that persist into late March for breeding habitat.	Unlikely. Suitable habitat not found at the project site.
Cooper's hawk *(Accipter cooperii)*	--/SSC	Oak or riparian woodlands.	Unlikely. Suitable habitat not found at the project site.
Foothill yellow-legged frog *(Rana boylii)*	--/SSC	Partly shaded, shallow streams and riffles with rocky substrate in a variety of habitats. Requires at least some cobble-sized substrate for egg-laying and 15 weeks of available water to attain metamorphosis.	Unlikely. Suitable habitat not found at the project site.
Golden eagle *(Aquila chrysaetos)*	--/SFP	Rolling foothill mountain areas, sage-juniper flats, and desert. Cliff-walled canyons provide nesting habitat in most parts of range. Also uses large trees in open areas.	Unlikely. Suitable habitat not found at the project site.
Hoary bat *(Lasiurus cinereus)*	--/SSC	Prefers open habitats or habitat mosaics, with access to trees for cover and open areas or habitat edges for feeding. Roosts in dense foliage of medium to large trees. Feeds primarily on moths. Requires water.	Low Potential. Potential habitat found at the project site and species known to occur within the vicinity.
Long-eared myotis *(Myotis evotis)*	--/--	Found in all brush, woodland and forest habitats from sea level to about 9,000 feet. Prefers coniferous woodlands and forests. Nursery colonies in buildings, crevices, spaces under bark and snags. Caves used primarily as night roosts.	Low Potential. Potential habitat found at the project site and species known to occur within the vicinity.
Longfin smelt *(Spirinchus thaleichthys)*	FC/SE	Euryhaline, nektonic and anadromous fish found in open waters of estuaries, mostly in middle or bottom of water column. Prefers salinities of 15-30 ppt, but can be found in completely freshwater to almost pure seawater.	Unlikely. Suitable habitat not found at the project site.

Species	Status (Federal/State)	Suitable Habitat Description	Potential to Occur on Project Site
Monarch butterfly *(Danaus plexippus)*	--/--	Winter roost sites. Wind protected tree groves (Eucalyptus, Monterey pine, cypress) with nectar and water sources nearby.	Unlikely. Suitable habitat not found at the project site.
Northern California legless lizard *(Anniella pulchra)*	--/SSC	Sandy or loose loamy soils under sparse vegetation, moist soils. *Anniella pulchra* is traditionally split into two subspecies: *A. pulchra pulchra* (silvery legless lizard) and *A. pulchra nigra* (black legless lizard), but these subspecies are typically no longer recognized.	Unlikely. Suitable habitat not found at the project site.
Northern harrier *(Circus cyaneus)*	--/SSC	Found near coastal salt and freshwater marshes. Nests and forages in grasslands. Nests on ground in shrubby vegetation, usually at marsh edge; nest built of a large mound of sticks in wet areas.	Unlikely. Suitable habitat not found at the project site.
Opler's longhorn moth *(Adela oplerella)*	FSC/--	From Marin county and the Oakland area on the inner coast ranges south to Santa Clara County. Serpentine grassland, larvae feed on *Platystemon californicus*.	Unlikely. Suitable habitat not found at the project site.
Pallid bat *(Antrozous pallidus)*	--/SSC	Deserts, grasslands, scrublands, woodlands, and forests. Most common in open, dry habitats with rocky areas for roosting. Roosts must protect bats from high temperatures.	Low Potential. Potential habitat found at the project site and species known to occur within the vicinity.
Prairie falcon *(Falco mexicanus)*	--/SSC	Nesting Habitats. Open terrain, either level or hilly breeding sites located on cliffs. Forages far distances, including to marshlands and ocean shores.	Unlikely. Suitable habitat not found at the project site.
Saltmarsh common yellowthroat *(Geothlypis trichas sinuosa)*	--/SSC	Fresh and saltwater marshes; requires thick continuous cover down to water surface for foraging, tall grasses, tule patches, and willows for nesting.	Unlikely. Suitable habitat not found at the project site.
Salt-marsh harvest mouse *(Reithrodontomys raviventris)*	FE/SE	Found only in the saline emergent wetlands of San Francisco Bay and its tributaries. Pickleweed is the primary habitat. Species does not burrow, but builds loosely organized nests. Requires higher areas for flood escape.	Unlikely. Suitable habitat not found at the project site.
Salt-marsh wandering shrew *(Sorex vagrans halicoetes)*	--/SSC	Salt marshes of the southern arm of San Francisco Bay. Found in medium high marsh, 6-8 feet above sea level where abundant driftwood is scattered among *Salicornia*.	Unlikely. Suitable habitat not found at the project site.
San Francisco dusky-footed woodrat *(Neotoma fuscipes annectens)*	--/SSC	Forest habitats of moderate canopy and moderate to dense understory. Constructs nest of shredded grass, leaves, and other materials.	Unlikely. Suitable habitat not found at the project site.

Species	Status (Federal/State)	Suitable Habitat Description	Potential to Occur on Project Site
Santa Cruz black salamander *(Aneides flavipunctatus niger)*	--/SSC	Mixed deciduous and coniferous woodlands and coastal grasslands in San Mateo, Santa Cruz, and Santa Clara Counties. Adults found under rocks, talus, and damp woody debris.	Unlikely. Suitable habitat not found at the project site.
Santa Cruz kangaroo rat *(Dipodomys venustus venustus)*	--/--	Silverleaf manzanita mixed chaparral in the Zayante sand hills ecosystem of the Santa Cruz Mountains. Needs soft, well-drained sand.	Unlikely. Suitable habitat not found at the project site.
Sharp-shinned hawk *(Accipiter striatus)*	--/SSC	Ponderosa pine, black oak, riparian deciduous, mixed conifer and Jeffrey pine habitats. Prefers riparian areas. North-facing slopes, with plucking perches are critical requirements. Nests usually within 275 feet of water.	Unlikely. Suitable habitat not found at the project site.
Steelhead *(Oncorhynchus mykiss irideus)*	FT/--	Coastal stream with clean spawning gravel. Requires cool water and pools. Needs migratory access between natal stream and ocean.	Unlikely. Suitable habitat not found at the project site.
Swainson's hawk *(Buteo swainsoni)*	--/ST	Breeds in grasslands with scattered trees, juniper-sage flats, riparian areas, savannahs, and agricultural or ranch lands with groves or lines of trees. Requires adjacent suitable foraging areas, such as grasslands or agricultural fields supporting rodent populations.	Unlikely. Suitable habitat not found at the project site.
Townsend's big-eared bat *(Corynorhinus townsendii)*	--/SCT	Inhabits a wide variety of habitats. Most common in mesic sites. Roosts in the open, hanging from walls and ceilings. Roosting sites limiting. Extremely sensitive to human disturbance.	Low Potential. Potential habitat found at the project site and species known to occur within the vicinity.
Tricolored blackbird *(Agelaius tricolor)*	--/SE	Areas adjacent to open water with protected nesting substrate, which typically consists of dense, emergent freshwater marsh vegetation.	Unlikely. Suitable habitat not found at the project site.
Vernal pool tadpole shrimp *(Lepidurus packardi)*	FE/--	Inhabits vernal pools and swales in the Sacramento Valley containing clear to highly turbid water. Pools commonly found in swales of unplowed grasslands.	Unlikely. Suitable habitat not found at the project site.
Western pond turtle *(Emys marmorata)*	--/SSC	Ponds, marshes, rivers, streams, and irrigation ditches with aquatic vegetation. Needs basking sites (such as rocks or partially submerged logs) and suitable upland habitat for egg-laying (sandy banks or grassy open fields).	Unlikely. Suitable habitat not found at the project site.
Western snowy plover *(Charadrius alexandrinus nivosus)*	FT/SSC	Sandy beaches, salt pond levees, shores of large alkali lakes; sandy, gravelly, or friable soils for nesting.	Unlikely. Suitable habitat not found at the project site.

Species	Status (Federal/State)	Suitable Habitat Description	Potential to Occur on Project Site
Western yellow-billed cuckoo *(Coccyzus americanus)*	FC/SE	Riparian forest nester, along the broad, lower flood-bottoms of larger river systems. Nests in riparian jungles of willow, often mixed with cottonwoods, with lower story of blackberry, nettles, or wild grape.	Unlikely. Suitable habitat not found at the project site.
White-tailed kite *(Elanus leucurus)*	--/SFP	Rolling foothills and valley margins with scattered oaks, and river bottomlands or marshes next to deciduous woodlands. Open grasslands, meadows, or marshes for foraging close to isolated, dense-topped trees for nesting and perching.	Unlikely. Suitable habitat not found at the project site.
Yellow rail *(Corturnicops noveboracensis)*	--/SSC	Summer resident in eastern Sierra Nevada, prefers freshwater marshlands.	Unlikely. Suitable habitat not found at the project site.
Yuma myotis *(Myotis yumanensis)*	--/--	Optimal habitats are open forests and woodlands with sources of water over which to feed. Distribution is closely tied to bodies of water. Maternity colonies in caves, mines, buildings, or crevices.	Low Potential. Potential habitat found at the project site and species known to occur within the vicinity.

SOURCE: CDFW 2022

NOTE: Status Codes:

Federal (USFWS)

FE: Listed as Endangered under the Federal Endangered Species Act.

FT: Listed as Threatened under the Federal Endangered Species Act.

FC: A Candidate for listing as Threatened or Endangered under the Federal Endangered Species Act.

FSC: Species of Special Concern.

FD: Delisted under the Federal Endangered Species Act.

State (CDFW)

SE: Listed as Endangered under the California Endangered Species Act.

ST: Listed as Threatened under the California Endangered Species Act.

SR: Listed as Rare under the California Endangered Species Act.

SC: A Candidate for listing as Threatened or Endangered under the California Endangered Species Act.

SSC: Species of Special Concern.

SFP: Fully Protected species under the California Fish and Game Code.

SD: Delisted under the California Endangered Species Act.

Site Photographs

B

APPENDIX

(1) West side of project site

(3) Inner courtyard vegetation

(2) East side of project site

(4) Los Gatos Creek Trail at southeast corner of project site

Photographs: EMC Planning Group 2022