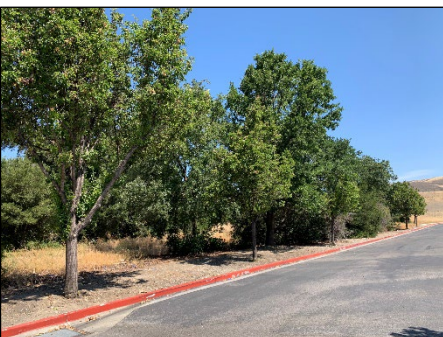




H. T. HARVEY & ASSOCIATES

Ecological Consultants



**865 Embedded Way
Biological Resources Report**

Project #4643-01

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November 7, 2023

List of Abbreviated Terms

BMPs	best management practices
Cal-IPC	California Invasive Plant Council
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CNDDDB	California Natural Diversity Database
CNPS	California Native Plant Society
CRPR	California Rare Plant Rank
CWA	Clean Water Act
EFH	Essential Fish Habitat
FESA	Federal Endangered Species Act
FMP	Fisheries Management Plan
HMMP	habitat mitigation and monitoring plan
LSAA	Lake and Streambed Alteration Agreement
MBTA	Migratory Bird Treaty Act
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
OHW	ordinary high water
Porter-Cologne	Porter-Cologne Water Quality Control Act
RWQCB	Regional Water Quality Control Board
SCVHA	Santa Clara Valley Habitat Agency
SWRCB	State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
Valley Water	Santa Clara Valley Water District
VegCAMP	Vegetation Classification and Mapping Program
VHP	Santa Clara Valley Habitat Plan

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Section 1. Introduction

This report describes the biological resources present in the area of the proposed 865 Embedded Way project, the potential impacts of the proposed project on biological resources, and measures necessary to reduce project impacts to less-than-significant levels under the California Environmental Quality Act (CEQA). This assessment is based on the project plans and description provided to H. T. Harvey & Associates by David J. Powers & Associates through March 2023.

1.1 Project Location

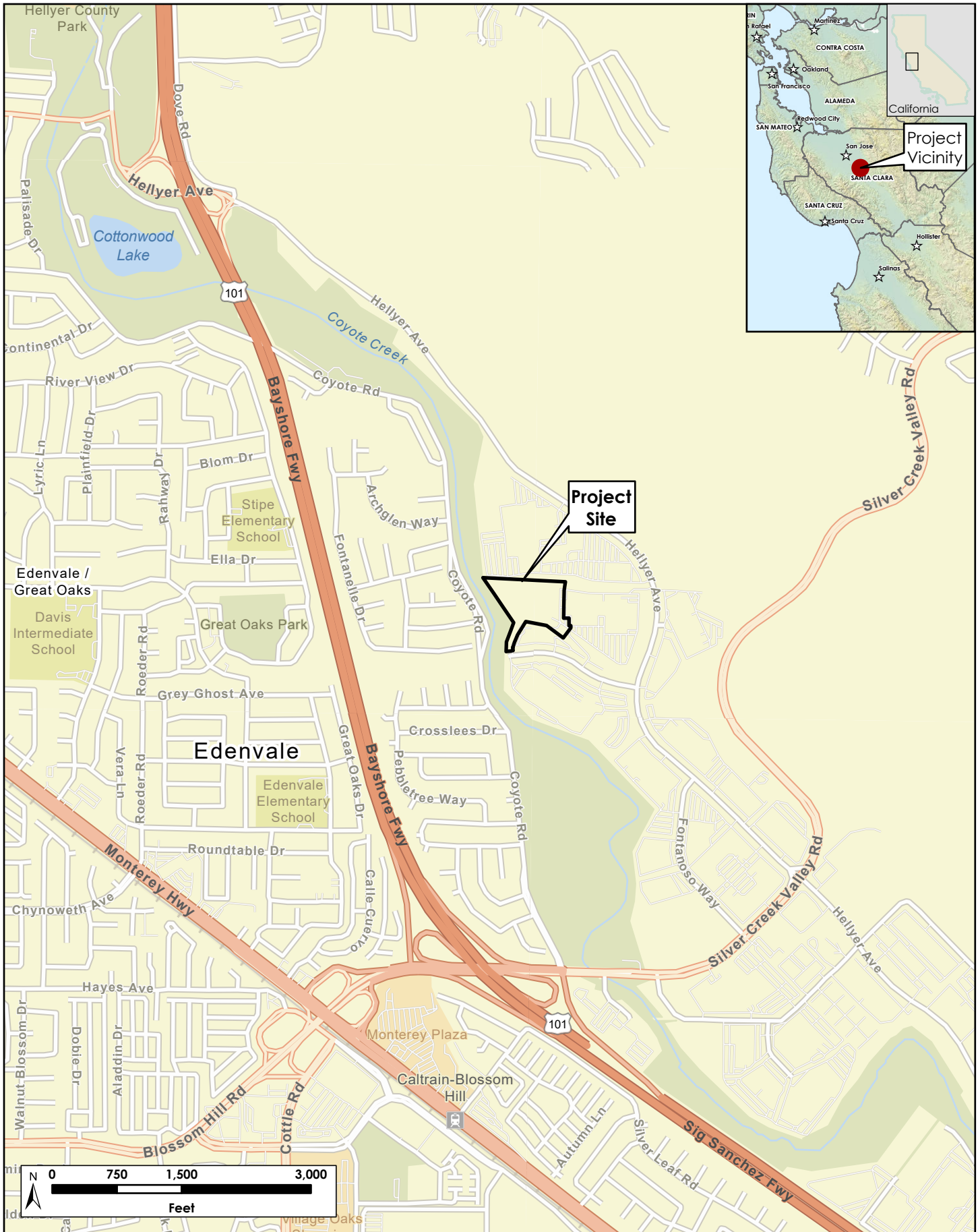
The project site is located at 865 Embedded Way in San José, California (Figures 1 and 2). The 10.2-acre site is generally bounded by Coyote Creek and the Coyote Creek Trail to the west and commercial development to the north, east, and south. Surrounding areas consist of commercial development east of Coyote Creek, residential development west of Coyote Creek, and large areas of undeveloped grasslands associated with the Silver Creek Hills 0.2 miles northeast of the site. Coyote Creek flows south to north just west of the project site. The project site is located on the *San Jose East, California* 7.5-minute United States Geological Survey (USGS) quadrangle.

1.2 Project Description

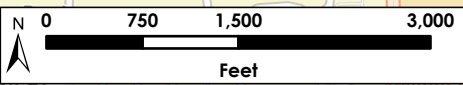
The project proposes to construct an approximately 36-foot tall, single-story, 121,400 square-foot industrial/manufacturing building surrounded by a paved parking lot with approximately 298 parking spaces on the project site. While a designated end use has not yet been determined for the project, the project is designed for a research and development use.

1.1.1 Stormwater Management

To manage stormwater runoff on the site, the project proposes to construct two bioretention basins and a subsurface infiltration system consisting of underground reservoirs that capture, temporarily store, and infiltrate stormwater into the surrounding soil. A 3,400 square-foot bioretention basin will be located adjacent to the western surface parking area and a 7,404 square-foot bioretention basin will be located on the southern portion of the site adjacent to the existing drive aisle on the 845 Embedded Way property. Both bioretention basins would be unlined with an underdrain system. The subsurface infiltration system would be located underneath the western parking lot adjacent to the 3,400 square-foot detention basin. The infiltration system would have a volume of 47,333 cubic feet.



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Figure 1. Vicinity Map

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Figure 2. Project Site

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1.1.2 Landscaping

The project site will be landscaped with drought-tolerant, medium-water, and low-water-use trees, shrubs, and grasses. Vegetation will be planted along the perimeter of the property line and the proposed building. In addition, trees and shrubs will be placed in planters throughout the surface parking lot.

1.1.3 Site Lighting

The project would install security lighting throughout the project site in parking areas, along pathways, and adjacent to buildings. All lighting will conform to the City of San José's Outdoor Lighting Policy (Policy 4-3), as applicable, and will be shielded to direct light downwards to ensure that lighting does not spill over onto adjacent residential properties, consistent with City standards.

1.1.4 Construction

The total construction period would be 10 months. The site is vacant and would not require demolition. Construction activities would include site preparation, grading, building construction, architectural coating, and paving.

1.1.5 Utility Work

The project would also complete utility work in the project's driveway off of Embedded Way. A 15-inch storm drain pipe and two 2-inch water lines would be installed. The utility work would require construction phases, such as excavation, trenching, and paving, which would be completed alongside the overall construction of the project and not take more than several months to complete. The driveway would be returned to its existing conditions as a driveway following construction.

1.2 Santa Clara Valley Habitat Plan Conditions

The project site is located within the Santa Clara Valley Habitat Plan (VHP) permit area, and the proposed project is a *covered project* under the VHP (ICF International 2012). As a result, the proposed project is required to implement conservation measures specified by VHP conditions. Thus, all applicable VHP conditions (discussed in Section 6.1 *Santa Clara Valley Habitat Plan* below), including payment of VHP impact fees, are considered part of the proposed project description rather than as mitigation measures.

Section 2. Methods

2.1 Background Review

Prior to conducting field work, H. T. Harvey & Associates ecologists reviewed the project description, project plans, and maps provided by David J. Powers & Associates through March 2023; aerial images (Google Inc. 2022); a USGS topographic map; the California Department of Fish and Wildlife's (CDFW's) California Natural Diversity Database (CNDDDB) (2022); the *Final Program Environmental Impact Report for the Envision San José 2020 General Plan* (City of San José. 2015); the City of San José's General Plan *Envision San José 2040* (City of San José 2022); habitat and species information from the VHP (ICF International 2012); and other relevant reports, scientific literature, and technical databases. For the purposes of this report, the *project vicinity* is defined as the area within a 5-mile radius surrounding the project site.

In addition, for plants, we reviewed all species on current California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1A, 1B, 2A, 2B, 3, and 4 lists occurring in the project region, which is defined as the *San Jose East, California* USGS 7.5-minute quadrangle and surrounding eight quadrangles (*Milpitas, Calaveras Reservoir, Lick Observatory, Los Gatos, Mt. Day, Morgan Hill, Santa Teresa Hills, and San Jose West*). In addition, we queried the CNDDDB (2022) for natural communities of special concern that occur on the project site, and we perused records of birds reported in nearby areas, such along the Coyote Creek Trail, on eBird (Cornell Lab of Ornithology 2022) and on the South-Bay-Birds List Serve (2022).

2.2 Site Visits

H. T. Harvey & Associates senior ecologist Steve Rottenborn, Ph.D., and wildlife ecologist Jane Lien, B.S., conducted a reconnaissance-level survey of the project site on May 24, 2022. The purpose of the survey was to provide an impact assessment specific to the proposed construction of the project, as described above. Specifically, surveys were conducted to (1) assess existing biotic habitats and plant and animal communities on the project site, (2) assess the project site for its potential to support special-status species and their habitats, and (3) identify potential jurisdictional and sensitive habitats, such as waters of the U.S./state and riparian habitat.

Because the proposed project is a covered project under the VHP (ICF International 2012), VHP mapping of land cover types was field-verified and modified as necessary based upon site conditions observed during the survey. In addition, because the reach of Coyote Creek adjacent to the project site is mapped by the VHP as potentially suitable nesting habitat for the tricolored blackbird (*Agelaius tricolor*), S. Rottenborn conducted a habitat survey to determine whether any potential nesting substrate for tricolored blackbirds is present within 250 feet of the project site, per Condition 17 of the VHP. The ecologists also conducted a focused survey for (1) suitable burrowing owl (*Athene cunicularia*) roosting and nesting habitat (i.e., burrows of California ground squirrels [*Otospermophilus beecheyi*]), (2) evidence of previous raptor nesting activity (i.e., large stick nests), (3)

potential bat roosting habitat, and (4) nests of the San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) on and adjacent to the project site. Finally, S. Rottenborn conducted a focused survey for special-status plant species on the project site on May 24, 2022, and returned to the site on October 11, 2022 to conduct an additional focused survey for special-status plant species that bloom in the fall.

Due to the close proximity of Coyote Creek to the project site, the ecologists mapped the limits of the riparian canopy on the west side of the creek using a sub-meter GPS in the field. Top of bank along Coyote Creek adjacent to the site was mapped based on top-of-bank/topography data from the Santa Clara Valley Water District (Valley Water) (2022), as verified in the field. Biotic habitats, the top of bank, and the edge of the riparian canopy are shown on Figure 3.

S. Rottenborn made an additional site visit on March 12, 2023, to assess wet-season site conditions, especially in light of a number of prior storm events since December 2022. He also conducted a focused survey for adult Bay checkerspot butterflies during the species' flight season on April 16, 2023, per requirements of the VHP.

H. T. Harvey & Associates botanists Katherine Marlin, M.S., and Vanessa Morales, B.A., conducted additional focused surveys for special-status plants on the project site on March 17, April 14, May 10, and August 8, 2023.



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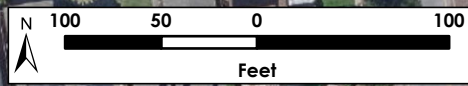


Figure 3. Land Cover Map

Section 3. Regulatory Setting

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

3.1 Federal Regulations

3.1.1 Clean Water Act

The Clean Water Act (CWA) functions to maintain and restore the physical, chemical, and biological integrity of waters of the U.S., which include, but are not limited to, tributaries to traditionally navigable waters currently or historically used for interstate or foreign commerce, and adjacent wetlands. Historically, in non-tidal waters, U.S. Army Corps of Engineers (USACE) jurisdiction extends to the ordinary high water (OHW) mark, which is defined in Title 33, Code of Federal Regulations, Part 328.3. If there are wetlands adjacent to channelized features, the limits of USACE jurisdiction extend beyond the OHW mark to the outer edges of the wetlands. Wetlands that are not adjacent to waters of the U.S. are termed “isolated wetlands” and, depending on the circumstances, may be subject to USACE jurisdiction. In tidal waters, USACE jurisdiction extends to the landward extent of vegetation associated with salt or brackish water or the high tide line. The high tide line is defined in 33 Code of Federal Regulations Part 328.3 as “the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide.” If there are wetlands adjacent to channelized features, the limits of USACE jurisdiction extend beyond the OHW mark or high tide line to the outer edges of the wetlands.

Construction activities within jurisdictional waters are regulated by the USACE. The placement of fill into such waters must comply with permit requirements of the USACE. No USACE permit will be effective in the absence of Section 401 Water Quality Certification. The State Water Resources Control Board (SWRCB) is the state agency (together with the Regional Water Quality Control Boards [RWQCBs]) charged with implementing water quality certification in California.

Project Applicability: The project site does not support wetland or aquatic habitats. Coyote Creek, located off-site to the west, is considered waters of the U.S. based the presence of an OHW mark, regular flow, and direct hydrologic connectivity to the San Francisco Bay. These jurisdictional waters are located immediately adjacent to, but outside of, the subject property, and no project activities are proposed within the bed and banks of Coyote Creek. As a result, a permit from the USACE would not be required for the project.

3.1.2 Rivers and Harbors Act

Section 10 of the Rivers and Harbors Act of 1899 prohibits the creation of any obstruction to the navigable capacity of waters of the U.S., including discharge of fill and the building of any wharfs, piers, jetties, and other

structures without Congressional approval or authorization by the Chief of Engineers and Secretary of the Army (33 U.S.C. 403).

Navigable waters of the U.S., which are defined in 33 CFR, Part 329.4, include all waters subject to the ebb and flow of the tide, and/or those which are presently or have historically been used to transport commerce. The shoreward jurisdictional limit of tidal waters is further defined in 33 CFR, Part 329.12 as “the line on the shore reached by the plane of the mean (average) high water.” It is important to understand that the USACE does not regulate wetlands under Section 10, only the aquatic or open waters component of bay habitat, and that there is overlap between Section 10 jurisdiction and Section 404 jurisdiction. According to 33 CFR, Part 329.9, a waterbody that was once navigable in its natural or improved state retains its character as “navigable in law” even though it is not presently used for commerce as a result of changed conditions and/or the presence of obstructions. Historical Section 10 waters may occur behind levees in areas that are not currently exposed to tidal or muted-tidal influence and meet the following criteria: (1) the area is presently at or below the mean high water line; (2) the area was historically at or below mean high water in its “unobstructed, natural state”; and (3) there is no evidence that the area was ever above mean high water.

As mentioned above, Section 404 of the CWA authorizes the USACE to issue permits to regulate the discharge of dredged or fill material into waters of the U.S. If a project also proposes to discharge dredged or fill material and/or introduce other potential obstructions in navigable waters of the U.S., a Letter of Permission authorizing these impacts must be obtained from the USACE under Section 10 of the Rivers and Harbors Act.

Project Applicability: Coyote Creek contains current Section 10 waters approximately 14 miles to the northwest of the project site, along the creek’s lower reaches where it is subject to tidal influence. However, no current or historical Section 10 Waters are present on or close to the project site. Therefore, a Letter of Permission from the USACE is not required.

3.1.3 Federal Endangered Species Act

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

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

Project Applicability: The Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), a federally endangered plant species, is present on the project site and would be impacted by the project. Suitable habitat is present on the project site for the federally endangered Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*) and Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), but surveys conducted during the flowering seasons for these species did not detect them, so they are determined to be absent. Because the project does not occur on federal lands, these federally listed plant species are not subject to take protections under FESA where they occur on the project site.

Suitable habitat to support a viable population of the federally threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) is absent from the project site, though there is some potential for occasional individuals to disperse to the project site, in which case the project may result in impacts on this species if it is present. No adults were observed during a survey conducted on April 16, 2023, during the species' flight season. The monarch butterfly (*Danaus plexippus*), a candidate for listing under FESA, may also occur on the project site but is not expected to be impacted substantively by the project. No additional federally listed or candidate animal species occur or potentially occur on the project site. The federally threatened Central California Coast steelhead (*Oncorhynchus mykiss*) is known to occur in Coyote Creek immediately adjacent to the project site and could potentially be impacted indirectly by project activities.

3.1.4 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act governs all fishery management activities that occur in federal waters within the United States' 200-nautical-mile limit. The Act establishes eight Regional Fishery Management Councils responsible for the preparation of fishery management plans (FMPs) to achieve the optimum yield from U.S. fisheries in their regions. These councils, with assistance from NMFS, establish Essential Fish Habitat (EFH) in FMPs for all managed species. Federal agencies that fund, permit, or implement activities that may adversely affect EFH are required to consult with NMFS regarding potential adverse effects of their actions on EFH, and respond in writing to recommendations by NMFS.

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

3.1.5 Federal Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA), 16 U.S.C. Section 703, prohibits killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. The MBTA protects whole birds, parts of birds, and bird eggs and nests, and it prohibits the possession of all nests of protected bird species whether they are active or inactive. An *active* nest is defined as having eggs or young, as described by the USFWS in its June 14, 2018, memorandum "Destruction and Relocation of Migratory Bird Nest Contents". Nest starts (nests that are under construction and do not yet contain eggs) and inactive nests are not protected from destruction.

Project Applicability: With the exception of California quail (*Callipepla californica*), which is in a family excluded from coverage under the MBTA, all native bird species that occur on the project site are protected under the MBTA.

3.2 State Regulations

3.2.1 Porter-Cologne Water Quality Control Act

The SWRCB works in coordination with the nine RWQCBs to preserve, protect, enhance, and restore water quality. Each RWQCB makes decisions related to water quality for its region, and may approve, with or without conditions, or deny projects that could affect waters of the state. Their authority comes from the CWA and the Porter-Cologne Water Quality Control Act (Porter-Cologne). Porter-Cologne broadly defines waters of the state as “any surface water or groundwater, including saline waters, within the boundaries of the state.” Because Porter-Cologne applies to any water, whereas the CWA applies only to certain waters, California’s jurisdictional reach overlaps and may exceed the boundaries of waters of the U.S. For example, Water Quality Order No. 2004-0004-DWQ states that “shallow” waters of the state include headwaters, wetlands, and riparian areas. Moreover, the San Francisco Bay Region RWQCB’s Assistant Executive Director has stated that, in practice, the RWQCBs claim jurisdiction over riparian areas. Where riparian habitat is not present, such as may be the case at headwaters, jurisdiction is taken to the top of bank.

On April 2, 2019, the SWRCB adopted the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State*. In these new guidelines, as revised April 6, 2021, riparian habitats are not specifically described as waters of the state but instead as important buffer habitats to streams that do conform to the State Wetland Definition. The *Procedures* describe riparian habitat buffers as important resources that may both be included in required mitigation packages for permits for impacts to waters of the state, as well as areas requiring permit authorization from the RWQCBs to impact.

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

Project Applicability: Coyote Creek, adjacent to the project site, would be regulated by the RWQCB as described for waters of the U.S. in Section 3.1.1 above. In addition, the RWQCB will also consider the banks above OHW, up to top of bank, and the riparian vegetation rooted below top of bank, to be important buffers to

waters of the state associated with the creek. No impacts on waters of the state or riparian habitat will result from the project because no work is proposed within the Coyote Creek channel or the riparian corridor, and a Section 401 permit or Waste Discharge Requirement from the RWQCB would not be required.

3.2.2 California Endangered Species Act

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

Project Applicability: Suitable habitat for the state threatened Tiburon paintbrush is present on the site, but surveys conducted during the flowering seasons for this species did not detect it, so it is determined to be absent. The mountain lion (*Puma concolor*), a candidate for listing under CESA, and the state threatened tricolored blackbird may occur on the site occasionally as nonbreeders. In addition, the Crotch’s bumble bee (*Bombus crotchii*), a candidate for listing under CESA, may occur on the site in small numbers and could potentially breed there. The project may affect these species, if they are present. No suitable habitat for additional state-listed or candidate plant or animal species occurs on or near the project site.

3.2.3 California Environmental Quality Act

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

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

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

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

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

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

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

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

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

3.2.4 California Fish and Game Code

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

Pursuant to California Fish and Game Code Section 1603, CDFW regulates any project proposed by any person that will “substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds.” California Fish and Game Code Section 1602 requires an entity to notify CDFW of any proposed activity that may modify a river, stream, or lake. If CDFW determines that proposed activities may substantially adversely affect fish and wildlife resources, a Lake and Streambed Alteration Agreement (LSAA) must be prepared. The LSAA sets reasonable conditions necessary to protect fish and wildlife and must comply with CEQA. The applicant may then proceed with the activity in accordance with the final LSAA.

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

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

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

Project Applicability: CDFW jurisdiction under Section 1602 of the California Fish and Game Code would extend up to the top of bank or to the outer edge of the riparian canopy (whichever is greater) along Coyote Creek adjacent to the project site. There will be no project impacts within the banks of Coyote Creek or within the riparian corridor that is subject to CDFW jurisdiction because no work is proposed within these areas. Therefore, a CDFW LSAA would not be required for the project.

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

3.2.5 State Water Resources Control Board Stormwater Regulation

Construction Phase. Construction projects in California causing land disturbances that are equal to 1 acre or greater must comply with state requirements to control the discharge of stormwater pollutants under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended and administratively extended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of best management practices (BMPs) to protect water quality until the site is stabilized.

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

Post-Construction Phase. In many Bay Area counties, including Santa Clara County, projects must also comply with the California RWQCB, San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit (Water Board Order No. R2-2015-0049, as amended). This permit requires that all projects implement BMPs and incorporate Low Impact Development practices into the design that prevent stormwater runoff pollution, promote infiltration, and hold/slow down the volume of water coming from a site. In order to meet

these permit and policy requirements, projects must incorporate the use of green roofs, impervious surfaces, tree planters, grassy swales, bioretention and/or detention basins, among other factors.

Project Applicability. The project will comply with the requirements of the NPDES Statewide Storm Water Permit and Statewide General Construction Permit. Therefore, construction-phase activities would not result in detrimental water quality effects on biological or regulated resources.

3.3 Local Regulations

3.3.1 City of San José Tree Ordinance

The City of San José promotes the health, safety, and welfare of the city by regulating the planting, removal, and maintenance of trees in the city. The City provides tree protection under the Municipal Code Section 13.28 (street trees, hedges, and shrubs), 13.32 (tree removal controls), and 13.44.220 (damaging park property). The Municipal Code details permit requirements for tree related work, including removal, pruning, and planting. Removal of trees within the street right-of-way are subject to tree removal permitting by the City of San José. Street trees are located in the public right-of-way between the curb and the sidewalk. Pruning or removal of street trees is illegal without a permit issued by the City. Replacement trees are required for the removal of ordinance-size street trees. A single trunk tree qualifies as an ordinance-size tree if it measures 38 inches or more in circumference at 4.5 feet above ground (approximately 12 inches diameter at breast height). A multi-trunk tree qualifies as ordinance-size if the combined measurement of each trunk circumference (at 4.5 feet above ground) adds up to 38 inches or more. As part of the permit application, it is required to contact the planning division with regard to the replacement of ordinance-size trees.

Removal of trees on private property, commercial, and industrial properties are also subject to tree removal permitting by the City of San José. A permit is required to remove a tree of “any size” from a commercial and industrial property. A separate “permit adjustment application” is required to be filed for non-ordinance-sized trees that will be removed from commercial and industrial properties. As part of the permit application, it is required to contact the City’s planning division with regard to the replacement of trees on private, commercial and industrial properties.

Project Applicability: A tree survey identified 12 ordinance-sized trees on the project site. The project will comply with the City’s tree replacement guidelines and policies for any trees that need to be removed.

3.3.2 City of San José Riparian Corridor Protection

Measures to protect riparian corridors are provided in the City’s *Riparian Corridor Policy Study* (City of San José 1999), which was incorporated into the City’s *Envision San José 2040 General Plan* (City of San José 2022); the Zoning Code (Title 20 of the San José Municipal Code); and the City Council-adopted VHP, specifically Condition 11. The term *riparian corridor* as defined by the City means any defined stream channel, including the

area up to the bank full-flow line, as well as all characteristic streamside vegetation in contiguous adjacent uplands.

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

Project Applicability: A riparian corridor associated with Coyote Creek is located immediately adjacent to the project site. The top of bank and riparian edge along this corridor were mapped as part of the field surveys described in Section 2.2. The edges of the riparian corridor are shown on Figure 3 and correspond to the outer edge of the riparian canopy or the top of bank, whichever is farthest landward from the creek. The riparian vegetation does not extend onto the project site itself, and all project improvements and construction activities will be located outside of the riparian corridor.

Council Policy 6-34 specifies that new buildings, roads, and parking facilities should be set back a minimum distance of 100 feet from the adjacent riparian corridor. All project improvements and construction activities will be located outside of the City's 100-foot setback. The project will also request a setback reduction for use of an existing road located within the 100-foot setback. Thus, the project would comply with the City's riparian corridor policy by avoiding construction activities and improvements within the 100-foot setback, and requesting a setback reduction for use of the existing road.

3.3.3 Santa Clara Valley Habitat Plan

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

The VHP was developed in association with the USFWS and CDFW and in consultation with stakeholder groups and the general public. The USFWS has issued the Permittees a 50-year permit that authorizes incidental

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

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

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

Project Applicability. The project is located within the VHP permit area. Therefore, project activities are considered covered under the VHP and are required to comply with VHP conditions (ICF International 2012).

Section 4. Environmental Setting

4.1 General Project Area Description

The project site is located in San José in Santa Clara County, California (Figure 1). The climate in the project vicinity is coastal Mediterranean, with most rain falling in the winter and spring. Mild cool temperatures are common in the winter. Hot to mild temperatures are common in the summer. Climate conditions in the vicinity include a 30-year average of 17.1 inches of annual precipitation with a monthly average temperature range from 40.1°F to 83.6°F (PRISM Climate Group 2022). Elevations on the project site range from 199–258 feet above mean sea level (Google Inc. 2022). The Natural Resource Conservation Service (NRCS) has mapped three soil units on the project site: (1) Xerothents, anthropogenic fill, 0–2% slopes, (2) Urbanland-Elpaloalto complex, 0–2% slopes, and (2) Urban land, 0–2% slopes, alluvial fans (NRCS 2022). All of these complexes are found on basin floors and alluvial fans, and are composed of disturbed and human transported material. Xerothents soils are poorly drained, whereas Urbanland soils are well-drained (NRCS 2022).

4.2 Land Cover

As described above, biotic habitats on the project site were classified according to the land cover classification system described in the VHP (ICF International 2012), with modifications to their mapped extent in the VHP based upon site conditions verified during the 2022 field survey. The reconnaissance-level survey identified four land cover types on the project site: California annual grassland, serpentine bunchgrass grassland, urban-suburban (i.e., developed/landscaped), and mixed oak woodland (Figure 3). These land cover types are described in detail below.

4.2.1 California Annual Grassland

Vegetation. California annual grassland (7.0 acres) is the dominant land cover type on the project site (Photo 1). Nonnative grasses such as wild oat (*Avena* sp.), ripgut brome (*Bromus diandrus*), foxtail barley (*Hordeum murinum*), and soft brome (*Bromus hordeaceus*), as well as weedy nonnative forbs such as short-podded mustard (*Hirschfeldia incana*), black mustard (*Brassica nigra*), redstem filaree (*Erodium cicutarium*), annual yellow sweetclover (*Melilotus indicus*), and rose clover (*Trifolium hirtum*) are present within this habitat. Native California poppies (*Eschscholzia californica*) are widely distributed throughout this habitat, and small patches of native dwarf plantain (*Plantago erecta*) are interspersed among the annual grasses. In the central portion of the site, the



Photo 1. California annual grassland habitat on the project site.

California annual grassland habitat has been previously disturbed and is dominated by nonnatives (Photo 1), but portions of the site that have not been previously disturbed support small patches of native California sage (*Artemisia californica*) or widely dispersed individuals of native naked buckwheat (*Eriogonum nudum*). In addition, dense patches of nonnative poison hemlock (*Conium maculatum*), black mustard, and sweetclovers (*Melolitus* spp.) are present in the northwest and southwest corners of this habitat the site. A shallow swale along and immediately outside of the southwestern part of the site is dominated by California annual grassland, and even following a number of heavy rain events December 2022 through mid-March 2023, there was no evidence of flow or wetlands within this swale. The annual grassland land cover on the project site contains a number of plant species ranked by the California Invasive Plant Council (Cal-IPC) as being moderately invasive (Cal-IPC 2022); these species are discussed further in Section 5.3.5 below.

Wildlife. Wildlife use of California annual grassland habitat on the project site is limited due to human-related disturbances, including human activity in nearby areas and previous ground disturbance that has reduced the quality of this habitat on the site. The limited extent of the grassland area and the isolation of this habitat from more extensive grasslands in the region (i.e., in the Diablo Range to the east) further reduce the quality of this habitat for wildlife. As a result, wildlife species associated with extensive grasslands in the South Bay, such as the grasshopper sparrow (*Ammodramus savannarum*), would not nest in grasslands on the project site. Instead, many of the wildlife species that regularly use the California grassland habitat on the site inhabit adjacent developed or riparian areas and use the grasslands on the site for foraging. Such species include the house finch (*Haemorhous mexicanus*), bushtit (*Psaltriparus minimus*), and lesser goldfinch (*Spinus psaltria*), which forage on seeds in grassland areas, and the black phoebe (*Sayornis nigricans*), cliff swallow (*Petrochelidon pyrrhonota*), and Mexican free-tailed bat (*Tadarida brasiliensis*), which forage aerially over grassland habitats for insects.

Burrows of California ground squirrels and Botta's pocket gophers (*Thomomys bottae*) are present in moderate numbers on the project site. These fossorial mammal species are an important component of grassland communities, providing a prey base for diurnal raptors and terrestrial predators. Other rodent species that can potentially occur in the grassland habitat on the project site include the California vole (*Microtus californicus*) and deer mouse (*Peromyscus maniculatus*). Diurnal raptors such as red-tailed hawks (*Buteo jamaicensis*) and red-shouldered hawks (*Buteo lineatus*) forage for these small mammals over grasslands during the day, and at night nocturnal raptors, such as barn owls (*Tyto alba*), will forage for nocturnal rodents, such as deer mice.

Several reptile species regularly occur in grassland habitats, including the western fence lizard (*Sceloporus occidentalis*), gopher snake (*Pituophis catenifer*), and southern alligator lizard (*Elgaria multicarinata*). Burrows of California ground squirrels provide refuges for these reptile species, as well as for common amphibians that may occur in adjacent riparian habitat such as the western toad (*Anaxyrus boreas*) and Pacific tree frog (*Hyla regilla*). Mammals such as the native striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and black-tailed jackrabbit (*Lepus californicus*), as well as the nonnative Virginia opossum (*Didelphis virginiana*) and feral cat (*Felis catus*) use the grassland habitats on the project site for foraging.

4.2.2 Serpentine Bunchgrass Grassland

Vegetation. Serpentine bunchgrass grassland (1.5 acres) is present along the boundaries of the previously disturbed area on the project site (Photo 2) (Figure 3). The nonnative annual grass species that occur in California annual grassland habitat on the site are also present in varying abundances in serpentine bunchgrass grassland on the site. However, areas of serpentine bunchgrass grassland on the site have a greater component of natives as well as a lower density of vegetation, distinguishing these areas from California annual grasslands. Native plants present within this habitat include grasses such as purple needlegrass (*Stipa pulchra*) and small fescue (*Festuca microstachys*); shrubs such as toyon (*Heteromeles arbutifolia*); and forbs such as dwarf plantain, hayfield tarweed (*Hemizonia congesta luzulifolia*), blow wives (*Achyrochaena mollis*), gumweed (*Grindelia hirsutula*), popcorn flower (*Cryptantha* sp.), naked buckwheat, and California poppy. Approximately 85 individuals of Santa Clara Valley dudleya, a CNPS 1B.1 and federally endangered species, are present on approximately 10 serpentine rock outcrops in these grasslands on the project site (Photo 3). Thirteen mature individuals (plus three seedlings noted on March 12, 2023) of Hall's bush mallow (*Malacothamnus hallii*), a CNPS 1B.2 species often associated with serpentine habitats, are also present in this habitat on the project site (Photo 4).



Photo 2. Serpentine bunchgrass grassland on the project site.



Photo 3. Santa Clara Valley dudleya on rock outcrops in serpentine bunchgrass grassland on the project site.



Photo 4. Hall's bush mallow in serpentine bunchgrass grassland on the project site.

Wildlife. Wildlife use of serpentine bunchgrass grasslands on the project is similar to wildlife use of California annual grasslands, as described above. Shallow soils in serpentine areas generally results in fewer burrowing mammals; however, California ground squirrels are present in moderate abundance within serpentine

bunchgrass grasslands on the project site. In the foothills southeast of the project site, the Bay checkerspot butterfly occurs in native serpentine bunchgrass grassland communities that support dense stands of its primary larval food plant, dwarf plantain. Dwarf plantain is present in dense patches throughout the project site, and there is a small possibility that individual Bay checkerspot butterflies could occur in small numbers in these areas. However, the habitat on the project site is isolated from larger patches of serpentine habitat located to the southeast on Coyote Ridge, as well as from extant breeding populations of this species (which are limited). Due to the very limited extent of serpentine grassland on the site, and the lack of topographic heterogeneity that is necessary for the long-term maintenance of this species' populations, individuals that occur on the site would not be likely to reproduce successfully, so no Bay checkerspot breeding population is expected to be present on the project site.

4.2.3 Urban-Suburban

Vegetation. A 1.4-acre portion of the project site consists of existing developed areas, which fall within the VHP's urban-suburban land cover type (Photo 5). These areas include paved asphalt parking lots, sidewalks, and roadways that are interspersed with small islands of landscape vegetation, as well as a graveled roadway that extends westward across the previously disturbed portion of the site from the site's eastern boundary. Landscape vegetation present within these areas includes nonnative creeping rosemary (*Rosemarinus officinalis*), flowering pear (*Pyrus calleryana*), and strawberry tree (*Arbutus unedo*).



Photo 5. Urban-suburban areas adjacent to grassland areas (left) on the eastern edge of the project site.

Wildlife. Urban-suburban areas of the project site serve as wildlife habitat only in a very limited capacity, and most wildlife species that occur in these areas are tolerant of frequent human disturbances. Species that use these areas include the nonnative European starling (*Sturnus vulgaris*), rock pigeon (*Columba livia*), house mouse (*Mus musculus*), and Norway rat (*Rattus norvegicus*), as well as the native raccoon and striped skunk. Western fence lizards commonly occur in urban-suburban areas, and may bask on road or parking lot surfaces in order to raise their body temperature. Bird species including the American crow (*Corvus brachyrhynchos*), California scrub-jay (*Aphelocoma californica*), Anna's hummingbird (*Calypte anna*), California towhee (*Melospiza crissalis*), bushtit, and dark-eyed junco (*Junco hyemalis*) will nest and forage in landscape vegetation in these areas.

4.2.4 Mixed Oak Woodland

Vegetation. Mixed oak woodland makes up 0.3 acre of the project site (Photo 6) (Figure 3). This habitat is located in the southwestern portion of the site and includes native coast live oaks (*Quercus agrifolia*), valley oaks (*Quercus lobata*), toyon, elderberry (*Sambucus nigra*), and coyote bush (*Baccharis pilularis*). Several nonnative

flowering pears and ornamental plums (*Prunus* sp.) are also present in this habitat. Herbaceous vegetation in the understory is similar in composition to the California annual grassland habitat on the project site, described above.



Photo 6. Mixed oak woodland habitat in the southwest corner of the project site.

Wildlife. The mixed oak woodland on the project site provides suitable nesting habitat for a variety of common bird species that occur in adjacent urban-suburban areas and along Coyote Creek such as the California scrub-jay, American robin (*Turdus migratorius*), American crow, lesser goldfinch, and bushtit. Small raptors such as the red-shouldered hawk and Cooper's hawk (*Accipiter cooperii*) can potentially use larger trees within this woodland for nesting; however, raptors that occur in the vicinity are more likely to nest in the adjacent riparian habitat along Coyote Creek where taller trees and denser vegetation are present to provide superior cover for nest locations. No raptor nests (either old nests or nests currently in use) were detected within this habitat on the site during the reconnaissance survey. Additional wildlife species that are common within mixed oak woodland areas in urban settings include the native striped skunk and raccoon and the non-native Virginia opossum and eastern gray squirrel (*Sciurus carolinensis*), all of which may use the trees for cover and foraging opportunities. Bird species associated with the riparian habitat along Coyote Creek that will use this habitat for nesting and foraging opportunities include the chestnut-backed chickadee (*Poecile rufescens*), oak titmouse (*Baeolophus inornatus*), white-breasted nuthatch (*Sitta carolinensis*), downy woodpecker (*Picoides pubescens*), and many others. Individual bats may also be attracted to this woodland to roost in trees; however, no large cavities that might provide suitable habitat for a large roosting or maternity colony of bats were observed during the reconnaissance survey.

4.3 Adjacent Habitat Areas

The project site is located adjacent to Coyote Creek, which supports mixed riparian forest and woodland habitat just outside the western boundary of the project site.

The mixed riparian forest and woodland along Coyote Creek is characterized by a moderately dense canopy with mature native trees such as coast live oaks, valley oaks, and black walnuts (*Juglans* sp.), as well as several standing dead trees/snags. The understory in this habitat is composed primarily of poison oak (*Toxicodendron diversilobum*) and areas of mostly bare soil with some annual grasses and widely scattered forbs such as ripgut brome, wild oats, prickly lettuce (*Lactuca serriola*), hedgeparsley (*Torilis arvensis*), and Italian thistle (*Carduus pycnocephalus*) (Photo 7).



Photo 7. Mixed riparian forest and woodland habitat along Coyote Creek adjacent to the project site.

Riparian habitats in California generally support exceptionally rich animal communities and contribute disproportionately to landscape-level species diversity. The presence of seasonal flows and abundant invertebrate fauna provide foraging opportunities and the diverse habitat structure provides cover and breeding opportunities for many species along this reach of Coyote Creek. Many bird species that are attracted to herbaceous vegetation and aquatic habitats along the creek are expected to move past the project site when flying to, from, or along Coyote Creek. Breeding birds that are likely to use riparian habitats within the project site include the Anna’s hummingbird, dark-eyed junco, downy woodpecker, spotted towhee (*Pipilo maculatus*), Cooper’s hawk, chestnut-backed chickadee, bushtit, white-breasted nuthatch, and many others. Numerous additional bird species use these riparian habitats for foraging and cover during migration and winter; these include the white-crowned sparrow (*Zonotrichia leucophrys*), yellow-rumped warbler (*Setophaga coronata*), and ruby-crowned kinglet (*Regulus calendula*).

We consider the riparian habitat along this reach of Coyote Creek to be of relatively high quality for birds. The large numbers of mature trees, including native trees, as well as presence of patches of dense understory vegetation contribute positively to the value of this habitat for birds. However, the relatively narrow width of the riparian canopy, the presence of patches of bare ground understory, and its urban surroundings negatively affect the quality of this habitat for birds. Nevertheless, songbirds that migrate along the Pacific Flyway and travel through the site vicinity are expected to be attracted to this reach of Coyote Creek, and this habitat is used fairly heavily by migrating birds. Further, this reach of Coyote Creek is used regularly by resident birds that are present in the vicinity year-round and are attracted to the riparian habitat for foraging and nesting opportunities. Although eBird, a database of bird sightings curated by Cornell University’s Laboratory of Ornithology, has no “hotspot” for the segment of creek adjacent to the project site, approximately 136 bird species have been recorded at the Coyote Creek Parkway – Silver Creek Staging Area located 0.7 mile to the southeast, and approximately 147 species have been recorded at Hellyer County Park 1.0 mile to the northeast (Cornell Lab of Ornithology 2022). These observations demonstrate the high bird diversity associated with habitats along this general reach of Coyote Creek.

Reptiles such as the gopher snake, western fence lizard, and southern alligator lizard also are present in the riparian habitat along Coyote Creek. Amphibians such as the arboreal salamander (*Aneides lugubris*) occur in the leaf litter in this habitat, and the native Pacific tree frog and western toad are also commonly present. Urban-adapted mammals, such as the native raccoon and striped skunk, as well as the nonnative Virginia opossum, Norway rat, black rat, feral cat, and eastern gray squirrel reside in riparian habitat along Coyote Creek.

4.4 Wildlife Movement

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

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

Due to the presence of development north, east, and south of the project site there are currently no well-defined or important movement corridors for mammals, amphibians, or reptiles on or through the project site. Wildlife species may move through the area using cover and refugia as they find them available. Coyote Creek, which eventually drains to the open waters of the San Francisco Bay, and its associated riparian corridor adjacent to the site serves as a movement corridor for several common and special-status species of birds fish, mammals, reptiles, and amphibians. In addition, a number of birds, mammals, reptiles, and amphibians utilize the riparian corridor of Coyote Creek for movement purposes, as it provides sufficient vegetative cover preferred by these species when navigating across the landscape. Specifically, migratory passerines, rabbits, striped skunks, raccoons, Pacific treefrogs, and alligator lizards, amongst other species, are expected to move along this corridor adjacent to the project site.

Section 5. Special-Status Species and Sensitive Habitats

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

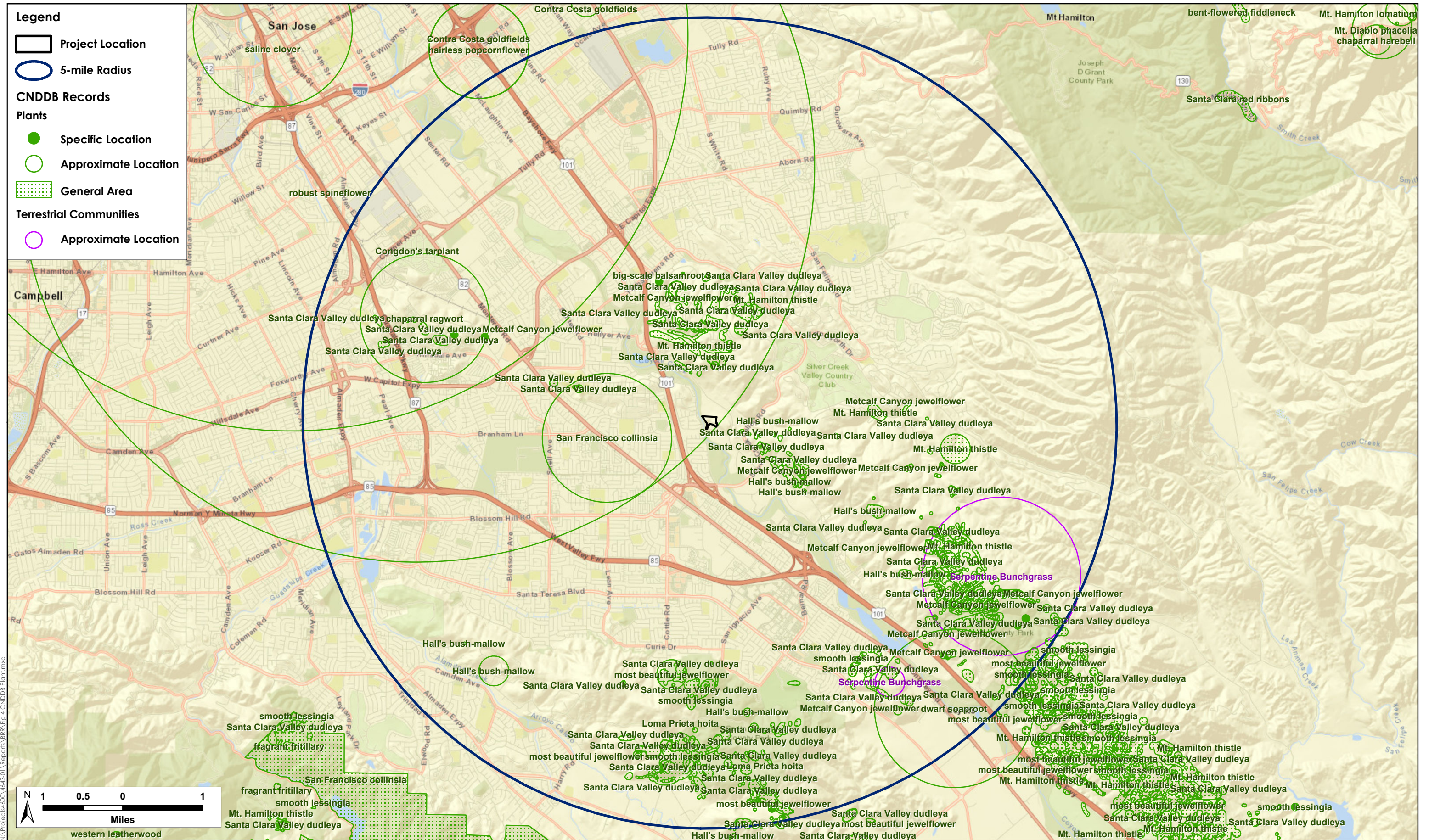
For purposes of this analysis, “special-status” plants are considered plant species that meet one or more of the following criteria:

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

For purposes of this analysis, “special-status” animals are considered animal species that meet one or more of the following criteria:

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

Information concerning threatened, endangered, and other special-status species that potentially occur on the project site was collected from several sources and reviewed by H. T. Harvey & Associates biologists as described in Section 2.1 above. Figure 4 depicts CNDDDB records of special-status plant species in the general vicinity of the project site and Figure 5 depicts CNDDDB records of special-status animal species. These generalized maps show areas where special-status species are known to occur or have occurred historically.



N:\Projects\4643-01\Reports\BR\Fig 4 CNDDB Plant.mxd

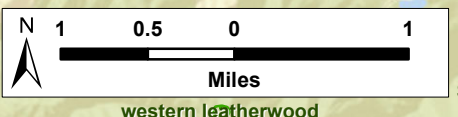


Figure 4. CNDDB-Mapped Records of Special-Status Plants

5.1 Special-Status Plant Species

The CNPS (2022) and CNDDDB (2022) identify 69 special-status plant species as potentially occurring in at least one of the nine USGS 7.5-minute quadrangles containing or surrounding the project site (for CNPS) or within the project vicinity (for CNDDDB) (Appendix A). Of the 69 potentially occurring special-status plant species, 53 were determined to be absent from the project site for at least one of the following reasons: (1) absence of suitable habitat types, (2) lack of specific microhabitat or edaphic requirements, (3) the elevation range of the species is outside of the range of the project site, and/or (4) the project site is outside the species' known geographic range and/or there are no nearby extant records (Appendix A).

Suitable habitat, edaphic requirements, and elevation range are present on the project site for 16 special-status plant species; these species are addressed in greater detail in Table 1 below. Of the 16 special-status plant species for which suitable habitat is present on the site, focused surveys conducted in May and October 2022 as well as March, April, May, and August 2023 determined that Tiburon paintbrush, coyote ceanothus (*Ceanothus ferrisiae*), Metcalf Canyon jewel-flower, arcuate bush mallow (*Malacothamnus arcuatus*), big-scale balsamroot (*Balsamorhiza macrolepis*), Brewer's clarkia (*Clarkia breweri*), most beautiful jewel-flower (*Streptanthus albidus* ssp. *albidus*), woolly-headed lessingia (*Lessingia bololeuca*), bent-flowered fiddleneck (*Amsinckia lunaris*), fragrant fritillary (*Fritillaria liliacea*), pink creamsacs (*Castilleja rubicundula* ssp. *rubicundula*), San Francisco collinsia (*Collinsia multicolor*), woodland woollythreads (*Monolopia gracilens*), and smooth lessingia (*Lessingia micradenia* var. *glabrata*) are absent from the project site. Santa Clara Valley dudleya and Hall's bush mallow were observed on the project site during the May 2022 site visit. In addition to the species discussed above, Table 1 also addresses three species that warrant additional consideration despite there not being suitable habitat on the project site. These are Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), due to the presence of a historical occurrence nearby, and Mt. Hamilton thistle (*Cirsium fontinale* var. *campylon*) and Loma Prieta hoita (*Hoita strobilina*), because these species are covered by the VHP.

5.2 Special-Status Animal Species

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

Table 1. Special-Status Plant Species, Their Status, and Potential for Occurrence on the Project Site

Name	*Status	Habitat and Blooming Period	Potential for Occurrence on the Project Site
Federal or State Endangered, Threatened, or Candidate Species			
Tiburon paintbrush (<i>Castilleja affinis</i> ssp. <i>neglecta</i>)	FE, ST, CRPR 1B.2, VHP	Valley and foothill grassland (serpentinite)/serpentine bunchgrass grassland (blooming period April to June).	Absent. Suitable serpentine grassland habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.
Coyote ceanothus (<i>Ceanothus ferrisiae</i>)	FE, CRPR 1B.1, VHP	Chaparral and valley and foothill grassland, in serpentine soils (blooming period January to May).	Absent. Suitable serpentine grassland habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.
Santa Clara Valley dudleya (<i>Dudleya abramsii</i> ssp. <i>setchellii</i>)	FE, CRPR 1B.1, VHP	Cismontane woodland, valley and foothill grassland on serpentinite, rocky/serpentine rock outcrop (blooming period April to October).	Present. Approximately 85 individual plants were observed on serpentine rock outcrops within areas mapped as serpentine bunchgrass grassland on the project site during the May 2022 site visit.
Metcalf Canyon jewel-flower (<i>Streptanthus albidus</i> ssp. <i>albidus</i>)	FE, CRPR 1B.1, VHP	Valley and foothill grassland (serpentinite)/serpentine bunchgrass grassland (blooming period April to July).	Absent. Suitable serpentine grassland habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.
CNPS-Listed Plant Species			
Arcuate bush mallow (<i>Malacothamnus arcuatus</i>)	CRPR 1B.2	Chaparral, cismontane woodland (blooming period April to September)	Absent. Suitable habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.
Bent-flowered fiddleneck (<i>Amsinckia lunaris</i>)	CRPR 1B.2	Coastal bluff scrub, cismontane woodland, valley and foothill grassland/oak woodland and chaparral (blooming period March to June).	Absent. Suitable grassland habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted in May 2023. Determined to be absent.

Name	*Status	Habitat and Blooming Period	Potential for Occurrence on the Project Site
Big-scale balsamroot (<i>Balsamorhiza macrolepis</i>)	CRPR 1B.2	Chaparral, cismontane woodland, valley and foothill grassland sometimes in serpentinite/serpentine bunchgrass grassland, mixed serpentine chaparral, and oak woodland (blooming period March to June).	Absent. Suitable serpentine habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.
Brewer's clarkia (<i>Clarkia breweri</i>)	CRPR 4.2	Northern coastal scrub, foothill woodland, chaparral, serpentine (blooming period April to June).	Absent. Marginally suitable grassland serpentine habitat for this species is present on the project site. However, no individuals were observed during a focused survey for this species conducted during the May 2022 site visit. Determined to be absent.
Congdon's tarplant (<i>Centromadia parryi</i> ssp. <i>congdonii</i>)	CRPR 1B.1	Valley and foothill grassland (alkaline)/ California annual grassland habitat on alkaline soils, often in swales and seasonal wetlands with clay soils (blooming period June to October).	Absent. Although there is a CNDDDB (2022) record from south San Jose, this occurrence is mapped near the site only because the precise location is poorly known (resulting in a very large "circle" indicating the occurrence location). This occurrence is very old (1908), and CNDDDB considers it extirpated. No suitably alkaline or heavy clay soils favored by the species exist on the site. The site is also well-drained and does not present mesic conditions that could provide suitable habitat. Determined to be absent.
Fragrant fritillary (<i>Fritillaria liliacea</i>)	CRPR 1B.2, VHP	Cismontane woodland, coastal prairie, coastal scrub, valley and foothill grassland, often in serpentinite/oak woodland, serpentine bunchgrass grassland (blooming period February to March).	Absent. Although the soils on site are not ideal for this species, as they are well drained and do not consist of heavy clays, due to the serpentine influence there is some limited potential for this species to occur on the project site. However, no individuals were observed during a focused survey conducted in March 2023. Determined to be absent.
Hall's bush mallow (<i>Malacothamnus hallii</i>)	CRPR 1B.2	Chaparral, coastal scrub/ chaparral (blooming period May to September).	Present. Thirteen mature individuals were detected within areas mapped as serpentine bunchgrass grassland on the project site during a focused survey conducted in May 2022, and on March 12, 2023, an additional three bush mallow seedlings were noted. Two additional individuals were detected immediately off-site, on the slope between the site boundary and the Coyote Creek Trail.
Loma Prieta hoita (<i>Hoita strobilina</i>)	CRPR 1B.1, VHP	Chaparral, cismontane woodland, riparian woodland, usually serpentinite/mesic mixed serpentine chaparral, serpentine seeps	Absent. Suitable habitat to support this species is absent from the project site, and no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.

Name	*Status	Habitat and Blooming Period	Potential for Occurrence on the Project Site
Most beautiful jewel-flower (<i>Streptanthus albidus</i> ssp. <i>peramoenus</i>)	CRPR 1B.2, VHP	Chaparral, cismontane woodland, valley and foothill grassland in serpentinite/serpentine bunchgrass grassland, mixed serpentine chaparral (blooming period April to September).	Absent. Suitable serpentine bunchgrass grassland habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.
Mt. Hamilton thistle (<i>Cirsium fontinale</i> var. <i>campylon</i>)	CRPR 1B.2, VHP	Chaparral, cismontane woodland, and valley and foothill grassland in serpentinite seeps/serpentine seeps (blooming period April to October).	Absent. No suitable serpentine seep or stream habitat for this species is present on the project site, and no individuals were observed during a focused survey conducted during the May 2022 site visit. Determined to be absent.
Pink creamsacs (<i>Castilleja rubicundula</i> var. <i>rubicundula</i>)	CRPR 1B.2	Openings in chaparral, cismontane woodland, and valley and foothill grassland (blooming period April to June)	Absent. Suitable grassland habitat to support this species is present on the project site. However, no individuals were observed during a focused survey conducted in May 2023. Determined to be absent.
San Francisco collinsia (<i>Collinsia multicolor</i>)	CRPR 1B.2	Coniferous forest and coastal scrub – on serpentinite (blooming period March to May)	Absent. Suitable serpentine soils to support this species are present on the project site. However, no individuals were observed during a focused survey conducted in May 2023. Determined to be absent.
Smooth lessingia (<i>Lessingia micradenia</i> var. <i>glabrata</i>)	CRPR 1B.2, VHP	Chaparral, cismontane woodland - on serpentinite, often roadsides/mixed serpentine chaparral and oak woodland (blooming period July to November).	Absent. Suitable serpentine habitat is present on the site to support this species. However, no individuals were observed during a focused survey conducted in August 2023. Determined to be absent.
Woodland woollythreads (<i>Monolopia gracilens</i>)	CRPR 1B.2	Openings in broadleaved upland forest and chaparral, cismontane woodland, and valley and foothill grassland (blooming period March to July)	Absent. Suitable grassland habitat to support this species is present on the project site, and this species is known to occur on Coyote Ridge approximately 3.5 miles to the south. However, no individuals were observed during a focused survey conducted in May 2023. Determined to be absent.
Woolly-headed lessingia (<i>Lessingia hololeuca</i>)	CRPR 3	Clay and serpentinite soils in broadleaved upland forest, coastal scrub, lower montane coniferous forest, and valley and foothill grassland habitats.	Absent. Suitable serpentine habitat is present on the site to support this species. However, no individuals were detected during a focused survey conducted in October 2022. Determined to be absent.

*Key to Status Abbreviations: Federally Endangered (FE); State Threatened (ST); VHP Covered Species (VHP); California Rare Plant Rank (CRPR).

CRPR 1B = Rare, Threatened, or Endangered in California and elsewhere

CRPR 3 = Plants about which more information is needed (a review list)

CRPR 4 = Plants of limited distribution - Watch list

.1 = Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)

.2 = Moderately threatened in California (20-80% of occurrences threatened)

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

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Federal or State Endangered, Threatened, or Candidate Species			
Bay checkerspot butterfly (<i>Euphydryas editha bayensis</i>)	FT, VHP	Native grasslands on serpentine soils. Larval host plants are <i>Plantago erecta</i> and/or <i>Castilleja</i> sp. The flight season extends from late February to early May.	Unlikely to be Present. This species has not been recorded on the project site, and a focused survey conducted during the species' flight period on April 16, 2023 did not detect Bay checkerspot butterflies. VHP-mapped suitable habitat and USFWS Designated Critical Habitat Unit 5 are located approximately 0.4 mile to the east of the project site, and additional documented occurrences are located within approximately 1.0 mile of the site (CNDDDB 2022). Dense patches of dwarf plantain are present on the site, and these plants provide ostensibly suitable host plants/breeding habitat for this species. However, due to the limited size of the project site, its isolation from extant populations of the species, and its urban surroundings, a population of Bay checkerspot butterflies is not expected to establish on the project site. Subpopulations of the Bay checkerspot do not persist in areas lacking topographic heterogeneity, which allows the species to breed successfully and recruit new individuals into the population under a variety of weather conditions; the site lacks suitable heterogeneity. Therefore, it is unlikely that the species occurs on the site at all, though the possibility that occasional individuals from nearby populations could disperse onto the project site to forage, or attempt to breed in small numbers, cannot be ruled out.
Monarch butterfly (<i>Danaus plexippus</i>)	FC	Requires milkweeds (<i>Asclepias</i> spp.) for egg-laying and larval development, but adults obtain nectar from a wide variety of flowering plants in many habitats. Individuals congregate in winter roosts, primarily in Mexico and in widely scattered locations on the central and southern California coast.	May be Present as Nonbreeder. No milkweed is present on the project site to provide breeding habitat for this species. The monarch butterfly occurs throughout the region as a migrant, and small numbers of individuals may forage on the project site, especially during spring and fall migration. However, the site does not provide high-quality foraging habitat for this species. No current or historical overwintering sites are known in Santa Clara County.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Crotch's bumble bee (<i>Bombus crotchii</i>)	SC	Open grassland and scrub habitats with abundant flowers providing nectar and pollen and with subterranean nest sites (such as animal burrows).	Unlikely to be Present. Although this species was historically found throughout the southern two-thirds of California, including the project vicinity, population declines and range contractions (25% relative to its historical range) have made this species very scarce in the region (CDFW 2019). From 2019 to 2022, single individuals were recorded in six scattered locations in Santa Clara County, and three were at Coyote Reservoir (Bumble Bee Watch 2022, iNaturalist 2022), indicating that the species is still extant in the county. The project site does not provide high-quality habitat for this species, as few flowering plants were observed during project surveys. However, individuals may occur occasionally and in small numbers as foragers, and the possibility that nesting could occur on the site (e.g., in a ground squirrel burrow) cannot be ruled out.
Western bumble bee (<i>Bombus occidentalis</i>)	SC	Occurs in a variety of grassland, scrub, and open woodland habitats.	Absent. Although the species was historically found throughout much of central and northern California, including the project vicinity, it has been extirpated from much of its former range, and there are no recent records from Santa Clara County or nearby areas (CDFW 2019, Bumble Bee Watch 2022, iNaturalist 2022). Therefore, this species is absent from the project site.
Central California Coast steelhead (<i>Oncorhynchus mykiss</i>)	FT	Cool streams with suitable spawning habitat and conditions allowing migration between spawning and marine habitats.	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for steelhead, and this species is absent from the project site. However, the project site is located immediately adjacent to Coyote Creek, and steelhead are known to occur in all accessible reaches of Coyote Creek (i.e., from the San Francisco Bay upstream as far as Anderson Dam), and these areas are mapped as critical habitat for steelhead (NMFS 2005). Suitable spawning and rearing habitat for steelhead is concentrated primarily in the colder reach of Coyote Creek between Anderson Dam and the Ogier Ponds, located approximately 7.2 miles upstream of the project site. Barriers to migration present downstream of the site reduce the potential for spawning individuals to access the project reach, and high water temperatures reduce habitat quality within the creek, making spawning unlikely adjacent to the project site (Smith 2013). This reach of Coyote Creek functions as a migration corridor for individuals traveling between the San Francisco Bay and spawning and rearing habitat present farther upstream.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
California tiger salamander (<i>Ambystoma californiense</i>)	FT, ST, VHP	Vernal or temporary pools in annual grasslands or open woodlands.	Absent. Populations of this species located on the Santa Clara Valley floor have been extirpated due to habitat loss, and the species is now considered absent from the majority of the Valley floor, including the project site (H. T. Harvey & Associates 1999a and 2012, Valley Water 2011). The VHP maps potential breeding habitat at the Metcalf Pond/Parkway Lakes complex approximately 2.6 miles to the south (ICF International 2012). However, surveys have not detected tiger salamanders breeding in the Metcalf Pond/Parkway Lakes complex and along Coyote Creek (H. T. Harvey & Associates 2012). The closest extant records of the species are located on Coyote Ridge approximately 2.5 miles to the southeast and at Joseph D. Grant County Park approximately 5.5 miles to the northeast (CNDDDB 2022). However, individuals from these populations are not expected to disperse to the site due to the intervening distance. No suitable breeding ponds are located close to the site, and surrounding development would likely preclude salamanders from dispersing to the site even if suitable ponds were present nearby. Determined to be absent.
California red-legged frog (<i>Rana draytonii</i>)	FT, CSSC, VHP	Streams, freshwater pools, and ponds with emergent or overhanging vegetation.	Absent. Populations of this species have been extirpated from the majority of the project region, including the entire urbanized Santa Clara Valley floor, due to development, the alteration of hydrology of its aquatic habitats, and the introduction of nonnative predators such as nonnative fishes and bullfrogs (H. T. Harvey & Associates 1997, Valley Water 2011). The VHP maps Coyote Creek adjacent to the site as breeding habitat for the California red-legged frog (ICF International 2012). The species was historically recorded along Coyote Creek at the Metcalf Pond/Parkway Lakes complex and at an abandoned canal along Metcalf Road (CNDDDB 2022), and was more recently documented breeding in a freshwater marsh east of U.S. Route 101 2.8 miles southeast of the project site (Jennings 2017, CNDDDB 2022). However, recent surveys have not detected red-legged frogs along Coyote Creek, and the presence of predatory fish and bullfrogs in this area likely precludes the presence viable breeding populations. In addition, no recent records of the species are located within 2.0 miles of the project site (CNDDDB 2022), and no suitable breeding habitat is located close to the site. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Foothill yellow-legged frog (<i>Rana boylei</i>)	SC, VHP	Partially shaded shallow streams and riffles with a rocky substrate. Occurs in a variety of habitats in coast ranges.	Absent. Not known to occur in the project vicinity, and no suitable habitat is present within Coyote Creek adjacent to or near the project site. The nearest occurrences of this species are located along Llagas Creek 8.5 miles to the south (CNDDDB 2022). The VHP maps Coyote Creek as secondary habitat for foothill yellow-legged frogs (ICF International 2012); however, the species has been extirpated from Valley floor areas of Santa Clara County, and is no longer known to occur along the County's streams below major reservoirs, including Anderson Reservoir (H. T. Harvey & Associates 1999b). Determined to be absent.
Swainson's hawk (<i>Buteo swainsoni</i>)	ST	Prime breeding habitat encompasses riparian draws or clumps of trees surrounded by open grassland or oak savannah for foraging.	Absent. Apparently nested in small numbers in Santa Clara County historically, and there is an 1894 nest record from the Berryessa area (in eastern San José) (Bousman 2007a). Each year from 2013 to 2020, a pair of Swainson's hawks nested near Coyote Creek in northern Coyote Valley, providing the first County nesting record since the 1890s (Phillips et al. 2014). Otherwise, this species is known to occur in the project vicinity only as a very infrequent transient during migration. Although nesting Swainson's hawks may be returning to the region, Swainson's hawks are not expected to nest on or adjacent to the project site due to high levels of human disturbance (e.g., roads, trails, and human activities associated with surrounding commercial and residential development). This species may forage in the region when in transit through the County, albeit infrequently and in very low numbers. However, the grassland area on the project site is too limited in extent and too sparse in most areas to provide suitable foraging habitat for this species. Determined to be absent.
Bald eagle (<i>Haliaeetus leucocephalus</i>)	SE, SP	Occurs mainly along seacoasts, rivers, and lakes; nests in tall trees or in cliffs, occasionally on electrical towers. Feeds mostly on fish.	Absent. Known to nest (or to have recently nested) in Santa Clara County in at least 10 locations, mostly near reservoirs (Bousman 2007b, Ventana Wildlife Society 2012). No suitable nesting or foraging habitat for bald eagles is present on the project site or along Coyote Creek adjacent to the site. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Least Bell's vireo (<i>Vireo bellii pusillus</i>)	FE, SE, VHP	Nests in heterogeneous riparian habitat, often dominated by cottonwoods and willows.	Absent. This species has not been recorded nesting along Coyote Creek, which does not provide high-quality nesting habitat, or anywhere in the project vicinity. The only breeding records in Santa Clara County are from Llagas Creek southeast of Gilroy in 1997 and the Pajaro River south of Gilroy in 1932 (Rottenborn 2007a). The only other confirmed records are of one or two singing males along lower Llagas Creek in May 2001 and a spring migrant in Alviso in May 2016. A singing male Bell's vireo in June 2006 along Coyote Creek near the Coyote Creek Golf Club was heard only, and hence may have been either a least Bell's vireo or a vagrant eastern Bell's vireo (<i>V. b. bellii</i>), a subspecies that has also occurred in Santa Clara County. Although least Bell's vireos may increase in number and distribution in Santa Clara County as core populations increase, it is unlikely to be more than a rare and very locally occurring breeder along South County streams (south of the project site). Determined to be absent.
Tricolored blackbird (<i>Agelaius tricolor</i>)	ST, VHP	Nests near fresh water in dense emergent vegetation.	May be Present as Nonbreeder. In Santa Clara County, has bred in only a few scattered locations, and is absent from, or occurs only as a nonbreeder in, most of the County (Rottenborn 2007b). Typically nests in extensive stands of tall emergent herbaceous vegetation in non-tidal freshwater marshes and ponds. No suitable nesting habitat is present on the project site or along Coyote Creek adjacent to the site, as all tall herbaceous vegetation or understory vegetation occurs in or adjacent to mature, woody habitat, and no large patches of emergent vegetation, blackberry stands, or other suitable vegetation are present. This species (whose colonies are loud and conspicuous) has never been recorded nesting within or adjacent to the site, and high levels of adjacent disturbance likely preclude nesting by this species. Thus, this species is expected to occur only in low numbers, and only occasionally, as a nonbreeding forager, if it occurs on the site at all.
San Joaquin kit fox (<i>Vulpes macrotis mutica</i>)	FE, ST, VHP	Annual grassland or mixed shrub and grassland habitats throughout low, rolling hills and in valleys.	Absent. This species has not been recorded on or near the project site. The closest area of potential occurrence (based on VHP mapping) is more than 20 miles southeast of the project site in the vicinity of Pacheco Creek and the uppermost reaches of the Pajaro River, where it may occur infrequently and in low numbers during dispersal (ICF International 2012). Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Mountain lion (Southern California/Central Coast ESU) (<i>Puma concolor</i>)	SC	Has a large home range size and occurs in a variety of habitats. Natal dens are typically located in remote, rugged terrain far from human activity. May occasionally occur in areas near human development, especially during dispersal.	May be Present as Nonbreeder. In the project region, there are verified sightings reported on BAPP.org (2022) and numerous unpublished reports. Occurs widely, though at low densities, throughout the Santa Cruz Mountains and Diablo Range, and may disperse into lowland/valley floor areas. Mountain lions are not expected to regularly use the project site or establish a den on the site due to high levels of human activity and a lack of suitable denning habitat, but individuals may occur on the site as rare dispersants due to the site's location on the periphery of the Valley floor.
California Species of Special Concern			
Central Valley fall-run Chinook salmon (<i>Oncorhynchus tshawytscha</i>)	CSSC	Cool rivers and large streams that reach the ocean and that have shallow, partly shaded pools, riffles, and runs.	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Chinook salmon. Chinook salmon are known to occur in Coyote Creek below Anderson Dam, although the quality of potential spawning and rearing habitat for Chinook salmon in Coyote Creek within and downstream of the project site is limited due to water quality issues (e.g., due to runoff) (Smith 2013). This species could potentially occur in the reach of Coyote Creek adjacent to the site during migration between the ocean and upstream spawning and rearing areas. However, genetic analyses indicate that Chinook salmon in South Bay streams are all derived from Central Valley fall-run or Columbia River stock (Salsbery et al. 2004, Garza and Pearse 2008). There is no evidence that adults are successfully returning to spawn in these creeks, and thus there is no evidence that the species has naturalized in South Bay streams (Valley Water 1998–2005, Salsberry 2009).
Pacific lamprey (<i>Entosphenus tridentatus</i>)	CSSC	Medium- and large-sized, low-gradient cold rivers and streams, with a wide range of habitats (e.g., gravel, low-gradient riffles).	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Pacific lamprey. This species is known to be present in Coyote Creek adjacent to the project site (Buchan et al. 2002, Valley Water 2008). Spawning is expected to occur primarily in cooler water; ammocoetes may be present in warmer areas farther downstream (Valley Water 2008).
Central California roach (<i>Lavinia symmetricus symmetricus</i>)	CSSC	Generally found in small streams, they are well adapted to intermittent watercourses (e.g., tolerant of high temperatures and low oxygen levels).	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Central California roach. This species is known to be present in Coyote Creek (Buchan et al. 2002, Leidy 2007, Valley Water 2008). It occurs widely, often in unshaded pools with warm temperatures, and is expected to occur within Coyote Creek adjacent to the project site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Sacramento hitch (<i>Lavinia exilicauda exilicauda</i>)	CSSC	Warm, lowland, waters including clear streams, turbid sloughs, lakes, and reservoirs. Has a high tolerance for varying stream conditions and water temperature.	Present in Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for Sacramento hitch. This species is known to be present in Coyote Creek (Buchan et al. 2002, Leidy 2007, Valley Water 2008, Smith 2017, Smith 2018). It has been recorded upstream nearly to Anderson Dam and with its high tolerance of stream conditions and water temperatures it is expected to occur adjacent to the project site.
Riffle sculpin (<i>Cottus gulosus</i>)	CSSC	Permanent, cool, headwater streams with an abundance of riffles and rocky substrates.	Likely Absent from Adjacent Waters. No aquatic habitats are present on the project site to provide suitable habitat for riffle sculpin. Although this species is known to be present in upper Coyote Creek, it is not known to occur downstream from Anderson Dam (Smith 2006). Not expected to occur along the reach of Coyote Creek adjacent to the project site.
Southwestern pond turtle (<i>Emys pallida</i>)	CSSC, VHP	Permanent or nearly permanent water in a variety of habitats.	May be Present as Nonbreeder. Breeding populations of pond turtles have been extirpated from most urbanized areas in the region. However, individuals of this long-lived species still occur in urban streams and ponds in the Santa Clara Valley (CNDDDB 2022). Known to occur in Coyote Creek and at the Metcalf Pond/Parkway Lakes complex approximately 2.6 miles to the south. The VHP maps primary habitat for western pond turtles along Coyote Creek adjacent to the project site, and secondary habitat in adjacent grasslands on the site (ICF International 2012). No pond turtles were observed on or adjacent to the site during the May 2022 site visit, and the creek was dry during the site visit. Due to the absence of year-round water in the reach of the creek adjacent to the site, pond turtles are unlikely to occur at this location. The presence of steep slopes along the banks of Coyote Creek adjacent to the site, as well as a tall retaining wall separating much of the project site from the creek, reduces the likelihood that individual pond turtles would disperse from Coyote Creek to the site. Rocky soils on the project site are expected to preclude nesting by this species.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Burrowing owl (<i>Athene cunicularia</i>)	CSSC, VHP	Nests and roosts in open grasslands and ruderal habitats with suitable burrows, usually those made by California ground squirrels.	Absent. Burrows of California ground squirrels on the project site provide ostensibly suitable nesting and roosting habitat for this species, and grasslands on the site provide ostensibly suitable foraging habitat. However, burrowing owls are not known to occur on the project site, and no individuals were observed during the May or October 2022 site visits. The VHP does not map the project site as occupied breeding habitat (ICF International 2012), and surveys for breeding burrowing owls conducted annually for the VHP have not documented breeding activity in the project vicinity in recent years (Santa Clara Valley Habitat Agency 2021). Nonbreeding burrowing owls are known to occur along Coyote Ridge and in the foothills east of San Jose during winter months (Cornell Lab of Ornithology 2022). However, they are not expected to occur on the project site due to the limited extent of suitable habitat, presence of surrounding human disturbances, and presence of trees that provide perches for predatory raptors. Rather, burrowing owls that occur in the vicinity are expected to overwinter in higher-quality habitat on Coyote Ridge nearby. Determined to be absent.
Loggerhead shrike (<i>Lanius ludovicianus</i>)	CSSC (nesting)	Nests in tall shrubs and dense trees; forages in grasslands, marshes, and ruderal habitats.	Absent. Shrubs and trees on and adjacent to the project site provide ostensibly suitable nesting habitat for loggerhead shrikes, and grasslands on the site provide ostensibly suitable foraging habitat. However, the regional loggerhead shrike population has declined substantially in recent years, and this species is not expected to occur on the project site due to the limited extent of the available habitat. Rather, loggerhead shrikes that occur in the vicinity are expected to occur in higher-quality habitat on Coyote Ridge nearby. Determined to be absent.
Yellow warbler (<i>Setophaga petechia</i>)	CSSC (nesting)	Nests in riparian woodlands.	May be Present in Adjacent Areas. No suitable nesting habitat for yellow warblers is present on the project site. However, suitable riparian nesting habitat for this species is present adjacent to the site along Coyote Creek, and up to one or two pairs of yellow warblers can potentially nest adjacent to the project site. The species is an abundant migrant throughout the project region during the spring and fall, when nonbreeding individuals may forage along Coyote Creek adjacent to the site and in the mixed oak woodland habitat on the site.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
Grasshopper sparrow (<i>Ammodramus savannarum</i>)	CSSC (nesting)	Nests and forages in grasslands, meadows, fallow fields, and pastures.	May be Present as Nonbreeder. Known to occur in the region primarily in grasslands and less frequently disturbed agricultural habitats, mostly in the foothills. This species does not breed in grasslands on the Santa Clara Valley floor. Small numbers of individuals may forage in grasslands in the project site during migration.
Bryant's savannah sparrow (<i>Passerculus sandwichensis alaudinus</i>)	CSSC	Nests in pickleweed dominant salt marsh and adjacent ruderal habitat.	May be Present as Nonbreeder. In the South San Francisco Bay, nests primarily in short pickleweed-dominated portions of diked/muted tidal salt marsh habitat and in adjacent ruderal habitats (Rottenborn 2007c). No suitable nesting habitat occurs on the project site. Individuals of several savannah sparrow subspecies, including <i>alaudinus</i> , may forage on the project site during migration and winter.
Pallid bat (<i>Antrozous pallidus</i>)	CSSC	Forages over many habitats; roosts in caves, rock outcrops, buildings, and hollow trees.	May be Present as Nonbreeder. Historically, pallid bats were likely present in a number of locations throughout the project region, but their populations have declined in recent decades. No trees that provide particularly large or high-quality cavities to support a roosting colony of this species are present on or close enough to the project site to be disturbed by work activities, and no known maternity colonies of this species are present on or adjacent to the project site. There is a low probability that the species occurs in the site vicinity at all due to urbanization; however, individuals from colonies nearby (especially in the Diablo Range to the east) could occasionally forage on the project site.
Townsend's big-eared bat (<i>Corynorhinus townsendii</i>)	CSSC	Roosts in caves and mine tunnels, and occasionally in deep crevices in trees such as redwoods or in abandoned buildings, in a variety of habitats.	Absent. No known extant populations of the Townsend's big-eared bat occur on the Santa Clara Valley floor. Suitable breeding habitat is not present in the project site, and no colonies are known from the site vicinity. Determined to be absent.
San Francisco dusky-footed woodrat (<i>Neotoma fuscipes annectens</i>)	CSSC	Nests in a variety of habitats including riparian areas, oak woodlands, and scrub.	Absent. Suitable habitat for this species is present along Coyote Creek adjacent to the project site, and there are several known records of this species along Coyote Creek approximately 1.5 miles to the south (H. T. Harvey & Associates 2010). However, a focused survey for this species conducted in May 2022 determine that no woodrat nests are present on or adjacent to the project site. Determined to be absent.

Name	*Status	Habitat	Potential for Occurrence on the Project Site
American badger (<i>Taxidea taxus</i>)	CSSC	Burrows in grasslands and occasionally in infrequently disked agricultural areas.	May be Present as Nonbreeder. Known to occur in the project region primarily in extensive grasslands and agricultural habitats, mostly in the foothills of the Diablo Range and Santa Cruz Mountains, and individuals may disperse into lowland/Valley floor areas. Badgers are not expected to regularly use the project site or establish a den on the site due to high levels of human activity, but individuals may occur on the site as rare dispersants due to the site's location on the periphery of the Valley floor.
State Fully Protected Species			
American peregrine falcon (<i>Falco peregrinus anatum</i>)	SP	Forages in many habitats; nests on cliffs and tall bridges and buildings.	May be Present as Nonbreeder. Peregrine falcons are known to nest on City Hall in downtown San José, but are not known or expected to nest on the project site due to a lack of suitable cliff-like habitat for nesting. This species may occasionally forage in open areas such as the project site during the nonbreeding season, though always at low densities.
Golden eagle (<i>Aquila chrysaetos</i>)	SP	Breeds on cliffs or in large trees (rarely on electrical towers); forages in open areas.	May be Present as Nonbreeder. No suitable nesting habitat for golden eagles is present on the project site. This species occurs in the project vicinity as an occasional forager, primarily during migration and winter. The project site provides only very limited foraging habitat for this species due to its small size, and golden eagles are expected to forage on the site rarely, if at all.
White-tailed kite (<i>Elanus leucurus</i>)	SP	Nests in tall shrubs and trees; forages in grasslands, marshes, and ruderal habitats.	May be Present. White-tailed kites are common residents in open areas in the project vicinity. Trees in the mixed oak woodland habitat on the project site provide suitable nesting habitat for this species, although individuals are more likely to nest in trees along Coyote Creek adjacent to the site where taller trees and denser vegetation are present to provide superior cover for nest locations. No white-tailed kites or nests of this species were observed on or adjacent to the site during the May 2022 site visit; however, up to one pair of white-tailed kites may nest in trees on or adjacent to the project site. Individuals may forage in open habitats on and adjacent to the site year-round.

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

The following special-status species that are present in less urbanized settings in the South Bay or in specialized habitats in the South Bay, or that occurred in the South Bay historically but are no longer present, are absent from the project site due to a lack of suitable habitat and/or isolation of the site from populations by urbanization: the western bumble bee (*Bombus occidentalis*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), foothill yellow-legged frog (*Rana boylei*), Swainson's hawk (*Buteo swainsoni*), bald eagle (*Haliaeetus leucocephalus*), least Bell's vireo (*Vireo belli pusillus*), San Joaquin kit fox (*Vulpes macrotis mutica*), burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), and Townsend's big-eared bat (*Corynorhinus townsendii*). While bald eagles, burrowing owls, and loggerhead shrikes may fly over the project site at times, none are expected to nest in, or make use of, any resources on the project site. No nests of San Francisco dusky-footed woodrats (*Neotoma fuscipes annectens*) were observed on the project site during a focused survey conducted on May 24, 2022, and this species is determined to be absent.

No aquatic habitats to support special-status fish species are present on the project site. However, the site is located adjacent to Coyote Creek, which provides habitat for the Central California Coast steelhead, Central Valley fall-run Chinook salmon, Pacific lamprey (*Entosphenus tridentatus*), Sacramento hitch (*Lavinia exilicauda exilicauda*), and Central California roach (*Lavinia symmetricus symmetricus*). Although these special-status fish species will not be directly affected by the project, there is some potential for project activities to result in indirect effects on these species due to their close proximity to the project site. The riffle sculpin (*Cottus gulosus*) is not known to occur in Coyote Creek downstream from Anderson Dam, and is thus absent from Coyote Creek adjacent to the project site.

A number of special-status bird species can occasionally occur on the project site as nonbreeding foragers (i.e., they do not nest on the site). These are the tricolored blackbird, Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), golden eagle (*Aquila chrysaetos*), and peregrine falcon (*Falco peregrinus anatum*). The mountain lion (*Puma concolor*), a candidate for listing under CESA, as well as the pallid bat (*Antrozous pallidus*) and American badger (*Taxidea taxus*), which are California species of special concern, may also forage on the project site. As discussed in Table 2, these species are not expected to nest, roost, or breed in or immediately adjacent to the project site due to a lack of suitable nesting, roosting, or breeding habitat, and will be affected very little, if at all, by the proposed project. In addition, the grasshopper sparrow, a bird species that is considered a California species of special concern only when nesting, may occur occasionally in grasslands on the project site as a nonbreeding transient, forager, or migrant, but no suitable nesting habitat for this species occurs on the project site.

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

The southwestern pond turtle (*Emys pallida*), a California species of special concern, may occur along Coyote Creek adjacent to the site. However, due to steep topography along the banks of the creek as well as the presence of a tall retaining wall separating much of the site from the creek, individuals are unlikely to disperse from the creek to the project site, and rocky soils on the site preclude nesting by this species. Thus, individuals would occur on the site only as occasional nonbreeding dispersants, if at all.

The Bay checkerspot butterfly, Crotch's bumble bee (*Bombus crotchii*), yellow warbler (*Setophaga petechia*), and white-tailed kite (*Elanus leucurus*) are addressed in greater detail in this report because these species can potentially breed or occur on or immediately adjacent to the project site and/or may be significantly impacted by the proposed project (see Section 6 *Impacts and Mitigation Measures* below).

5.3 Sensitive Natural Communities, Vegetation Alliances, and Habitats

Natural communities have been considered part of the Natural Heritage Conservation triad, along with plants and animals of conservation significance, since the state inception of the Natural Heritage Program in 1979. The CDFW determines the level of rarity and imperilment of vegetation types, and tracks sensitive communities in its Rarefind database (CNDDDB 2022). Global rankings (G) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas state (S) rankings are a reflection of the condition of a habitat within California. Natural communities are defined using NatureServe's standard heritage program methodology as follows (Faber-Langendoen et al. 2012):

G1/S1:	Critically imperiled
G2/S2:	Imperiled
G3/S3:	Vulnerable.
G4/S4:	Apparently secure
G5/S4:	Secure

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

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

generally subject to regulation, protection, or consideration by the USACE, RWQCB, CDFW, and/or the USFWS.

5.3.1 Sensitive Natural Communities

A query of sensitive habitats in the CNDDDB (2022) identified one sensitive natural community as occurring within the nine 7.5-minute USGS quadrangles containing or surrounding the project site: serpentine bunchgrass grassland (Rank G2/S2.2). Mixed riparian woodland and forest habitat along Coyote Creek adjacent to the project site does not meet the definition of the *sycamore alluvial woodland* natural community type, which is dominated by western sycamore (*Platanus racemosa*), and occurs within braided, depositional channels of intermittent streams, usually with cobble or boulder substrate (Holland 1986).

5.3.2 Sensitive Vegetation Alliances

Areas of serpentine bunchgrass grassland on the project site likely qualify as the “*Nasella pulchra* – *Avena* spp. – *Bromus* spp.” alliance. This alliance is ranked as G3/S3? (Sawyer et al. 2009) and is therefore ranked as apparently secure at the globally and statewide level (CDFW 2022), with some uncertainty on the statewide ranking. While this alliance is not considered a sensitive vegetation alliance by this definition, this natural community type, serpentine bunchgrass grassland, is still tracked by the CNDDDB and considered a sensitive alliance by the CDFW in VegCAMP (CDFW 2022).

Portions of the site mapped as California annual grassland are dominated by wild oats and *Bromus* sp. and would be considered “Wild oats and annual brome grasslands (*Avena* spp. – *Bromus* spp.)” alliance (CDFW 2022). This alliance does not have a global or state ranking, but because it is defined by dominance of nonnative species, is not considered sensitive by VegCAMP.

Mixed oak woodland on the site corresponds to the “*Quercus lobata* – *Quercus agrifolia*/grass” alliance. Although all *Quercus lobata* associations (71.040.00) are considered to be G3/S3, this alliance is considered sensitive by the CDFW in VegCAMP (CDFW 2022).

5.3.3 CDFW Riparian Habitat

Due to its rarity and disproportionately high habitat values and functions to wildlife, the CDFW considers riparian habitat to be sensitive. As described above in Section 3.2.4, the CDFW would likely claim jurisdiction over areas at, and below, the top of bank lines on either side of Coyote Creek regardless of the vegetative composition of these areas. Riparian habitat associated with Coyote Creek corridor does not occur on the project site, nor would it be directly or indirectly impacted by project activities.

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

No wetlands or other waters of the U.S./state occur on the project site. Coyote Creek, adjacent to the project site, is considered jurisdictional waters of the U.S. up to the OHWM, and the RWQCB may claim the banks of the creek, and riparian habitat rooted below top of bank, as waters of the state.

5.3.5 Nonnative and Invasive Species

Several nonnative, invasive plant species occur on the project site. Of these, the following have a “moderate” rating, indicating that they have substantial and apparent-but generally not severe-ecological impacts on physical processes, plant and animal communities, and vegetation structure, and that their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment would be generally dependent upon ecological disturbance: wild oats, ripgut brome, foxtail barley, Italian thistle (*Carduus pycnocephalus*), stinkwort, hedgeparsley, poison hemlock, black mustard, short-podded mustard, and Mexican fan palm (*Washingtonia robusta*). Species with a “high” invasive rating by the Cal-IPC have the potential to cause severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment, and most are widely distributed ecologically (Cal-IPC 2022). On the project site, a small number of individuals of yellow starthistle (*Centaurea solstitialis*), a species with a “high” rating, were observed. Additionally, one species with a high rating, giant reed (*Arundo donax*), was observed in Coyote Creek, adjacent to the project site. Due to conformance with VHP conditions protecting sensitive areas in Coyote Creek adjacent to the site, as well as adherence to construction stormwater requirements that would prevent weed-seed laden sediment from washing off site into the Coyote Creek corridor, project activities are not expected to result in the spread of nonnative and invasive plant species.

Section 6. Impacts and Mitigation Measures

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

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

- A. “have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service”
- B. “have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service”
- C. “Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means”
- D. “interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites”
- E. “conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance”
- F. “conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan”

Potential impacts on biological resources as a result of the proposed project were systematically evaluated at the project level based on the project plans, description, and impact area provided to us by David J. Powers & Associates through March 2023. Based on this information, it is our understanding that all project impacts, including grading, construction, staging, and access, will occur within the limits of the *outline of site landscape improvement boundary* shown on these files, and that all project impacts within this boundary will be permanent. Accordingly, we have used this boundary to delineate the *Permanent Impact Area* on Figure 6. We further understand that no direct project impacts will occur within the portion of the project site located outside of this boundary, including all areas within the City of San José and VHP setbacks along Coyote Creek. These areas are shown as *No Impact* areas on Figure 6.



Figure 6. Project Impacts

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Impacts on biological resources were first evaluated to qualitatively describe how proposed project activities could impact biological resources. Impacts were then evaluated with the application of any applicable VHP conditions (see below) with which the proposed project must comply to determine whether the impacts were significant (and thus required mitigation) even with VHP compliance.

6.1 Santa Clara Valley Habitat Plan

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

As an NCCP, the VHP fulfills the requirements of the California Natural Community Conservation Planning Act, which requires both contribution to the recovery of listed species and the preservation of natural communities at the ecosystem scale (ICF 2012). As such, the VHP goes above and beyond addressing project-specific impacts and mitigation by providing a higher level of in-perpetuity conservation of plant and animal species and their habitats at an ecosystem level. The VHP’s reserve system provides comprehensive ecosystem conservation for a wide range of natural resources, and benefits numerous Santa Clara County plant and animal species and their habitats. Thus, although permits issued under the VHP name specific species (i.e., “covered species”), which are either listed as threatened or endangered or may be listed in the future during the permit term, the VHP contributes to the conservation of entire communities of common and rare plant and wildlife species and their habitats in Santa Clara County.

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

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

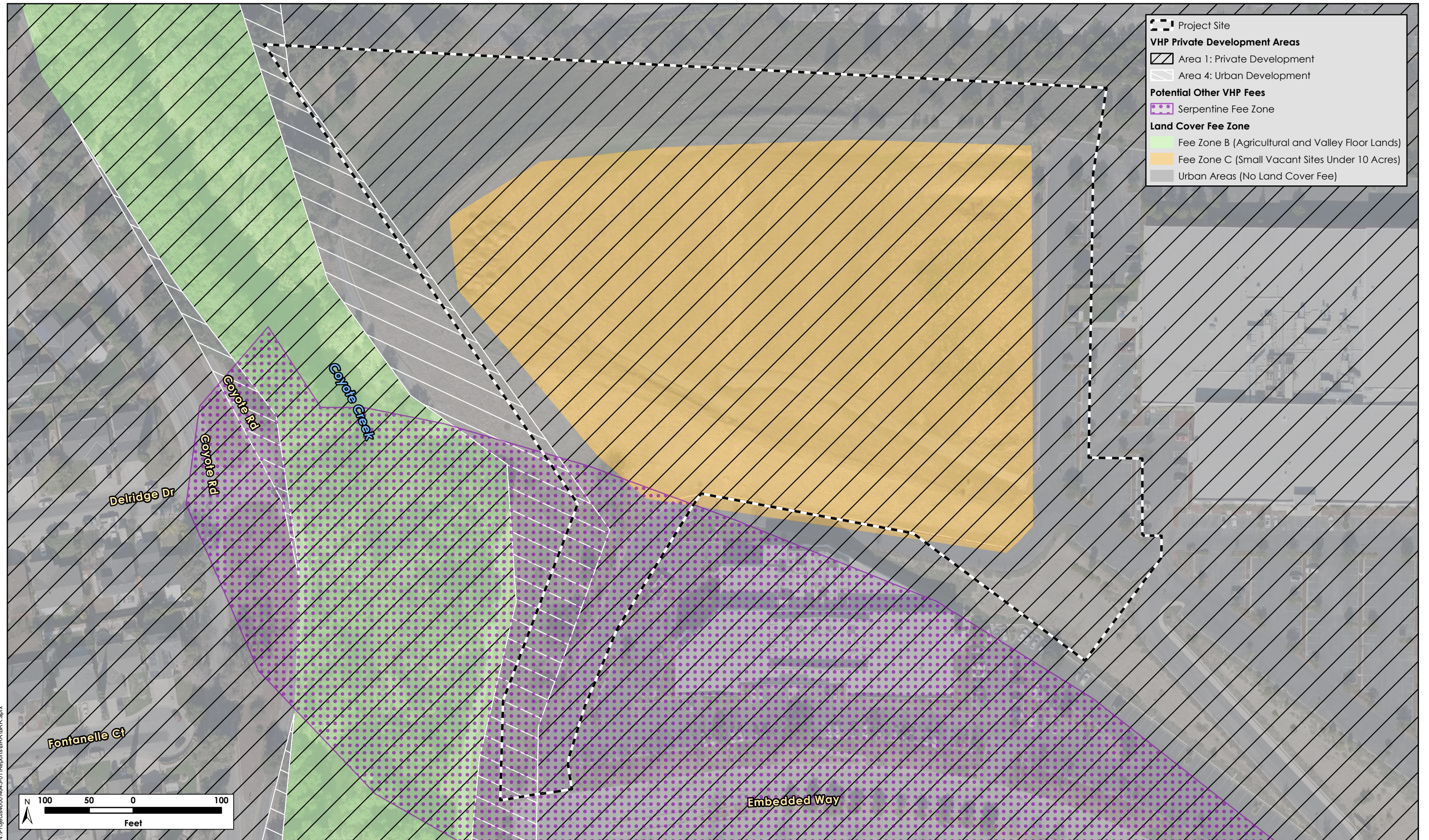
In conformance with the VHP, project proponents are required to pay impact fees in accordance with the types and acreage of habitat or “land cover” impacted, and to implement conservation measures specified by the VHP. Land cover impacts are used because it is the best predictor of potential species habitat, and is applicable to all of the covered species (with the exception of the burrowing owl). The SCVHA has mapped the following three fee zones in the VHP area: (1) rangeland and natural lands, (2), agricultural and valley floor lands, and (3) small vacant sites (SCVHA 2022). The following areas are exempt from land cover fees:

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

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

The project is located within the VHP Urban Service Area for San José (Figure 7). In regards to the VHP’s land cover fee zones, 5.6 acres of the project site fall within Fee Zone C (Small Vacant Sites Under 10 Acres) and 4.6 acres of the project site fall within Urban Areas (No Land Cover Fee) (Figure 7). A portion of the site is located within a serpentine fee zone, and a serpentine specialty fee will apply to project impacts within serpentine land cover types. The project site does not include lands mapped as occupied burrowing owl nesting habitat, and no burrowing owl fee applies. The project will engender an anticipated 6,987 vehicle trips per month by personnel visiting the facilities and may therefore be required to pay fees for nitrogen emissions.

The impact assessment in Section 6.2 below summarizes the types of applicable fees and conservation measures that are required by the VHP. VHP conditions that apply to the proposed project are as follows:



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Figure 7. VHP Urban Service Area, Development Areas, and Fee Zones

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

Several wildlife species that occur in the project vicinity are protected under state and federal laws. Some of these animal species are listed as fully protected under the California Fish and Game Code (e.g., the white-tailed kite), and eagles are protected under the Bald and Golden Eagle Protection Act. Further, all native bird species and their nests are protected under the MBTA and California Fish and Game Code. Actions conducted under the VHP must comply with the provisions of the MBTA and California Fish and Game Code.

Condition 3. Maintain Hydrologic Conditions and Protect Water Quality

Condition 3 applies to all projects and identifies a set of programmatic BMPs, performance standards, and control measures to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during project construction. These requirements include preconstruction, construction site, and post-construction actions. Preconstruction conditions are site design planning approaches that protect water quality by preventing and reducing the impacts of stormwater pollutants and increases in peak runoff rate and volume. They include hydrologic source control measures that focus on the protection of natural resources. Construction site conditions include source and treatment control measure to prevent pollutants from leaving the construction site and minimizing site erosion and local stream sedimentation during construction. Post-construction conditions include measures for stormwater treatment and flow control.

Condition 11. Stream and Riparian Setbacks

Condition 11 applies to covered projects that may affect streams and associated riparian vegetation within the VHP plan area. This condition requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors. The standard required setback for Coyote Creek (a Category 1 stream) is 100 feet from the top of bank or 35 feet from the outer edge of the riparian canopy, whichever is greater. On the project site, the VHP setback is 100 feet from top of bank because the slope of the project site is, on average, less than 30%, no areas 35 feet from the edge of riparian vegetation extend past the 100-foot buffer, and the project site is located inside the VHP-designated urban service area.

Condition 13. Serpentine and Associated Covered Species Avoidance and Minimization

Reconnaissance surveys identified areas of serpentine bunchgrass grassland and covered serpentine plants (i.e., Santa Clara Valley dudleya) on the project site. In addition, fragrant fritillary, a VHP-covered serpentine plant species, can potentially occur on the project site. Where project impacts on serpentine bunchgrass grassland and VHP-covered plants cannot be avoided, the project will implement the following measures:

- Where serpentine bunchgrass grassland habitat is present on the project site, reconnaissance-level surveys for adult Bay checkerspot butterflies during the peak of the flight period (i.e., late February to early May) are required to determine presence or absence of this species.

- The project site should be located as far from the covered species or the highest-quality serpentine habitat as feasible. Applicable buffers as identified in Chapter 6 of the VHP will be utilized.
- If covered plants occur on the site and cannot be avoided, the SCVHA shall be notified of the construction schedule so that plant salvage can be considered and potentially implemented (see Condition 19 below).

Condition 17. Tricolored Blackbird

This condition applies to projects that are located within 250 feet of any riparian, coastal, and valley freshwater marsh and helps to protect tricolored blackbirds by prescribing preconstruction surveys, construction buffer zones, biological monitoring, and other requirements. If a project is located within 250 feet of habitat mapped as pond by the VHP, a qualified biologist must confirm that the pond land cover type is present. If a qualified biologist verifies that the project area is within 250 feet of pond habitat, a qualified biologist must conduct a field investigation to identify and map potential nesting substrate. If suitable nesting substrate is identified, avoidance and minimization measures must be implemented (see pages 4-43 to 4-44 of the VHP).

Although tricolored blackbirds have never been recorded nesting on or near the project site, the proposed project is located within 250 feet of an area (i.e., Coyote Creek) mapped by the VHP as suitable nesting habitat for the tricolored blackbird (ICF International 2012). Therefore, per Condition 17 of the VHP, H. T. Harvey & Associates senior wildlife ecologist S. Rottenborn, Ph.D., conducted a field investigation to identify and map potential nesting substrate for tricolored blackbirds on May 24, 2022. No suitable vegetation for nesting by tricolored blackbirds was present along Coyote Creek within 250 feet of the project site due to predominance of mature, woody riparian vegetation and shorter ruderal vegetation, and the absence of large stands of emergent vegetation or other tall, dense herbaceous vegetation. Thus, no tricolored blackbird nesting colonies are expected to occur on or within 250 feet of the site, and no additional surveys or avoidance and minimization measures pertaining to this species are required.

Condition 19. Plant Salvage when Impacts are Unavoidable

Condition 20. Avoid and Minimize Impacts to Covered Plant Occurrences

The requirements of Condition 19 are integrated into the requirements of Condition 20. These conditions apply to projects that are located in areas where covered plant species are likely to occur and within designated Plant Survey Areas, and help protect certain plant species by requiring plant surveys, specific avoidance and minimization practices (e.g., using seclusion fencing), and monitoring.

If a project is located within a Plant Survey Area as mapped by the VHP, a qualified biologist must verify if the on-site land cover is suitable to support one of the nine VHP covered plants. If the relevant land cover type(s) is determined to be present, surveys for covered plants must be conducted. If an occurrence of a covered plant species is found, avoidance and minimization measures must be implemented (see pages 4-49 to 4-54 of the VHP).

A portion of the project site is located within a Plant Survey Area identified by the VHP; this area is commensurate with the serpentine fee zone shown on Figure 7. Surveys on May 24 and October 11, 2022, and focused surveys for special-status plants on March 17, April 14, May 10, and August 8, 2023, identified serpentine bunchgrass grassland and Santa Clara Valley dudleya on the project site. All other VHP-covered special-status plants were eliminated from potential occurrence on the project site, as they were not detected during those surveys. To comply with Condition 20, the project will avoid impacts on individuals of Santa Clara Valley dudleya, where feasible. If avoidance is not feasible, the following measures will be implemented as described on pages 6-78 to 6-80 of the VHP:

- The applicant will submit advance notification of project impacts on covered plants to the SCVHA.
- The SCVHA will conduct monitoring of the plant population to (1) assess whether the impact reduces the long-term viability of the occurrences and whether supplemental management actions are feasible and warranted, and (2) determine whether the SCVHA must protect and enhance or create occurrences in the Reserve System according to Table 5-16 of the VHP.
- The SCVHA will conduct population monitoring for a minimum of five years following the completion of the project to assess the health of the population.
- The SCVHA will implement conservation measures (described in Chapter 5 of the VHP) to help maintain or improve the population of covered plant species that are impacted by the project.
- Where impacts on covered plants cannot be avoided, the SCVHA may salvage the covered plants per the methods outlined in VHP Condition 19 (pages 6-74 to 6-76 of the VHP).

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

6.2.1 Impacts on California Annual Grassland, Urban-Suburban Land Cover, and Associated Common Plant and Wildlife Species (Less than Significant)

Proposed project activities would result in the permanent removal of 6.6 acres of California annual grassland habitat and some disturbance of 1.3 acres of urban-suburban land cover on the project site. These impacts would reduce the extent of vegetation within the impact area and result in a reduction in the abundance of some of the common plant and wildlife species that occur there. However, the California annual grassland and urban-suburban habitat on the project site occurs in a location in San José that has been subject to disturbance and fragmentation in the past, and is embedded within a highly developed urban area such that this grassland does not provide regionally rare or especially high-value habitat for native vegetation, wildlife, or special-status species. In addition, these land cover types are abundant and widespread regionally and is not particularly sensitive, and the habitat on the project site is not especially valuable (from the perspective of providing important plant or wildlife habitat) or an exemplary occurrence of this habitat type. Therefore, impacts on these

habitats are considered less than significant under CEQA. Further, because the number of individuals of any common plant or animal species within these habitats, and the proportion of these species' regional populations that could be disturbed, is very small, the project's impacts would not substantially reduce regional populations of these species. Thus, these impacts do not meet the CEQA standard of having a *substantial* adverse effect, and would not be considered significant under CEQA.

6.2.2 Impacts on Serpentine Bunchgrass Grassland and Associated Special-Status Plants (Less than Significant)

The project would result in the permanent conversion of 1.0 acre of serpentine bunchgrass grassland to urban-suburban land uses on the project site. These impacts would result in a reduction in the extent of native serpentine vegetation on the site. Direct impacts would include grading or filling areas supporting serpentine species, trampling or crushing of plants, and soil compaction. Indirect impacts would include increased mobilization of dust onto plants, which can affect their photosynthesis and respiration, changes to hydrology supporting these plants due to grading or construction in nearby habitats, and nitrogen deposition resulting from an increase in vehicle trips associated with the completed project.

The project would adhere to the general conditions of the VHP described in Section 6.1 above, including Conditions 13, which will help to avoid and minimize proposed project impacts on serpentine habitat. In addition, the project would pay VHP land cover and serpentine impact fees for impacts, as well as nitrogen deposition fees; these fees would contribute to the VHP's conservation program, which includes habitat acquisition, restoration, preservation, and management targeted at serpentine grasslands. With adherence to Condition 13 and payment of VHP fees, project impacts on serpentine bunchgrass grassland would be reduced to less-than-significant levels under CEQA.

A population of 85 Santa Clara Valley dudleya, a federally endangered species ranked by the CNPS as CRPR 1B.1 (seriously threatened in California), and 13 mature Hall's bush mallow (plus three seedlings present in March 2023), ranked by the CNPS as CRPR 1B.2 (moderately threatened in California), are present within serpentine bunchgrass grassland habitat on the project site (Figure 6). Two additional Hall's bush mallow individuals are present 22 feet west of the site boundary (Figure 6). The 85 Santa Clara Valley dudleya are located within the project's impact area, whereas the 13 mature Hall's bush mallow individuals and three seedlings are located outside of the project's impact area (Figure 6). The project would affect special-status plant species that occur on and adjacent to the site due to disturbance or destruction of individuals and suitable habitat. The project will result in the direct removal of all 85 Santa Clara Valley dudleya on the site, and within the project's impact area, during construction (Figure 6). Direct impacts could include grading or filling areas supporting this species, trampling or crushing of plants, and soil compaction. Indirect impacts could affect special-status plants outside of the project's impact area, including 13 mature Hall's bush mallow individuals and three seedlings that the project will avoid by 4 feet (Figure 6). The two additional off-site Hall's bush mallow individuals located approximately 70 feet west of the project's impact area are not expected to be indirectly affected by project activities (Figure 6). Project impacts on the 13 mature Hall's bush mallow individuals and three seedlings located 4 feet from the impact area could include increased mobilization of dust onto plants, which can affect their

photosynthesis and respiration, shading of plants by project features, and/or changes to hydrology supporting these plants due to grading or construction in nearby habitats. Due to the relatively small distance (i.e., 4 feet) between the project and the locations of the Hall's bush mallow plants, it is possible that these indirect impacts will result in the loss of Hall's bush mallow plants, and/or in a significant decline in health of Hall's bush mallow individuals on and adjacent to the project site.

Conservation of CRPR 1 species is important because their populations contribute to preserving genetic resources and help ensure persistence of these rare species in the county and state. As discussed in more detail below, impacts to the VHP-covered Santa Clara Valley dudleya will be less than significant because the project will comply with the VHP. Impacts to Hall's bush mallow are described separately below.

Santa Clara Valley dudleya is covered under the VHP. The project would comply with the general conditions of the VHP described in Section 6.1 above, which will help to avoid and minimize proposed project impacts on this species and its habitats, and minimize impacts on individual plants where appropriate. Applicable VHP Conditions that will reduce project impacts on this species are:

- **Condition 13. Serpentine and Associated Covered Species Avoidance and Minimization.** The project will avoid impacts on serpentine bunchgrass grassland and Santa Clara Valley dudleya, where feasible. If impacts cannot be avoided, the project will notify the SCVHA and comply with Conditions 19 and 20, as needed.
- **Conditions 19 and 20. Plant Salvage when Impacts are Unavoidable / Avoid and Minimize Impacts on Covered Plant Occurrences.** Surveys for Metcalf Canyon jewelflower, most beautiful jewelflower, Tiburon paintbrush, coyote ceanothus, fragrant fritillary, and smooth lessingia were completed during the field surveys conducted for this assessment, and these species are determined to be absent from the project site.

If avoidance of impacts on serpentine bunchgrass grassland and Santa Clara Valley dudleya is not feasible, the applicant will implement measures to assess whether supplemental management actions are feasible and warranted, including post-construction monitoring, conservation measures, and potentially plant salvage as outlined in Conditions 19 and 20.

In addition, the applicant would pay VHP land cover and serpentine impact fees for impacts; these fees would contribute to the VHP's conservation program, which includes habitat acquisition, restoration, preservation, and management specifically targeted at serpentine bunchgrass grassland and Santa Clara Valley dudleya. Thus, even if the project is unable to avoid or minimize impacts on Santa Clara Valley dudleya, the project's payment of VHP impact fees would ensure that project impacts on this species are less than significant.

Hall's bush mallow is not covered under the VHP (although it is proposed for addition as a covered species via a VHP amendment in progress). The project's contribution to the SCVHA's reserve system via the payment of VHP land cover fees and serpentine specialty fees is expected to benefit Hall's bush mallow, which is known to occur in existing SCVHA reserves. As discussed in Section 6.1 above and in the EIR for the VHP (USFWS

et al. 2012), as an NCCP the VHP's reserve system will benefit whole communities of plant and animal species in Santa Clara County, including many rare plant species, in addition to the species that are explicitly "covered species" under the VHP. In particular, the VHP's EIR analyzed potential impacts of VHP-covered future development as well as anticipated VHP conservation on Hall's bush mallow, because that species had been considered for possible VHP coverage. The EIR stated that the reserve system would have a net benefit to Hall's bush mallow due to the preservation of more than 400 acres of suitable habitat for the species – which were assumed to support the species – as well as enhancement of habitat conditions in the reserve system from planned management activities (USFWS et al. 2012). We concur with this conclusion based on the relatively wide distribution of Hall's bush mallow in Santa Clara County as well as the presence of known populations of this species within the reserve system (Calflora 2023).

Based on observations of vegetation on the project site, the relatively low number of individual Hall's bush mallow that will potentially be impacted (up to 13 mature individuals and 3 seedlings), and the known occurrence of Hall's bush mallow in SCVHA reserves, there is no expectation that the number of individuals of this species that could be impacted by the project will be so large that the SCVHA reserve system would not contain sufficient populations to offset the project's impacts. In addition, Hall's bush mallow is proposed to be added as covered species in an upcoming amendment to the VHP (which is currently in progress). Thus, payment of VHP fees and compliance with the VHP's conditions will reduce, and likely offset, the project's impacts on Hall's bush mallow. Nevertheless, the City of San Jose (as the CEQA lead agency) has expressed concern that VHP compliance alone would not compensate for impacts on this species because, unless/until the species is formally added to the VHP as a covered species, there is no guarantee that SCVHA management of VHP conservation lands would benefit this species. Therefore, project impacts on Hall's bush mallow require mitigation as long as the species is not covered under the VHP; implementation of Mitigation Measures BIO-1 and BIO-2 would reduce these impacts to less than significant levels. If Hall's bush mallow is formally added to the VHP as a covered species in the future and the project is not yet entitled and has not submitted a VHP application, compliance with VHP conditions and payment of VHP fees would reduce impacts on Hall's bush mallow to less-than-significant levels under CEQA, and Mitigation Measures BIO-1, BIO-2, and BIO-3 would not be necessary.

Mitigation Measure BIO-1. Protect Hall's Bush Mallow Individuals. All individual Hall's bush mallow located within and adjacent to the project site will be clearly depicted on any construction plans. A minimum 4-foot construction-free buffer around the individuals located within the project's impact area will be maintained. Prior to initial ground disturbance or vegetation removal, the established buffers will be marked in the field (e.g., with flagging, fencing, paint, or other means appropriate for the site in question). This marking will be maintained intact and in good condition throughout project-related construction activities, and all construction personnel will be trained (through a Worker Environmental Awareness Program or WEAP) on the locations of these plants, how their locations and the surrounding buffer are marked, and how impacts on these plants are to be avoided (i.e., the entry of construction personnel and vehicles within the marked buffers will be prohibited, and no storage of equipment or materials within the marked buffers will occur).

Mitigation Measure BIO-2. Monitoring. A qualified plant ecologist will monitor the population of Hall's bush mallow on the project site to determine if Mitigation Measure BIO-1 successfully protects Hall's bush mallow individuals on the project site, or if indirect impacts of the project (e.g., dust mobilization, shading, and/or changes to hydrology) result in the death or decline in health of mature Hall's bush mallow plants. This monitoring will consist of an annual site visit, conducted during the species' May-September flowering period, for 3 years following the completion of project construction. No monitoring during construction is necessary, as the biologist will not be able to assess whether or not the project results in the death or decline of these plants until after construction is complete.

If the qualified plant ecologist determines that more than 10% of the 13 mature Hall's bush mallow population (i.e., more than 1 mature plants) on and adjacent to the site dies or declines substantially in health following completion of the project, Mitigation Measure BIO-3 will be implemented. However, if at least 90% of the mature Hall's bush mallow population (i.e., at least 12 mature plants) continues to be present and in good health 3 years following the completion of construction, no additional mitigation is required.

Mitigation Measure BIO-3. Create or Enhance, Preserve, and Manage Mitigation Populations. If avoidance of Hall's bush mallow is not feasible and more than 10% of the population would be impacted, compensatory mitigation will be provided via the preservation, enhancement, and management of occupied habitat for the species to increase the size of an existing population, or the creation and management of a new population to offset the impact. If mitigation occurs through enhancement of an existing population, then on-site or off-site habitat occupied by the affected species will be enhanced (e.g., through focused management for the species in question) to increase the number of individuals present. Mitigation may occur on-site if a qualified biologist identifies a location on the project site with sufficient available area to support the plants as well as suitable habitat conditions (e.g., slope, soils, lack of shading, and other factors) in the context of site conditions following project construction. If no locations on the site are suitable, off-site mitigation would be necessary. The increase in numbers will be at least twice the number of individuals impacted (i.e., a 2:1 mitigation:impact ratio). The permanent preservation and management of these mitigation lands shall be ensured through an appropriate mechanism, such as a conservation easement or fee title purchase.

If mitigation occurs through creation of a new population, seed from the population to be impacted may be harvested (or seed may be obtained from another Santa Clara County source) and used either to expand an existing population or to establish an entirely new population in suitable habitat. The number of individuals produced by this population expansion or creation will be at least twice the number of individuals impacted (i.e., a 2:1 mitigation:impact ratio). The permanent preservation and management of these mitigation lands shall be ensured through an appropriate mechanism, such as a conservation easement or fee title purchase.

Areas proposed to be preserved and enhanced as compensatory mitigation for impacts to Hall's bush mallow plants must contain extant populations of the species (as verified by a qualified plant ecologist), or in the event that expansion or establishment of a new population is selected, the area must contain sufficient suitable habitat to support the new mitigation population, as determined by a qualified plant ecologist. Verification of the

presence of suitable habitat may be performed by a qualified plant ecologist at any time prior to establishment of the mitigation. Mitigation areas will be permanently preserved and managed to encourage persistence and even expansion of this species. Mitigation lands cannot be located on land that is currently held publicly for resource protection unless substantial enhancement of habitat quality will be achieved by the mitigation activities, as determined by a qualified plant ecologist. The mitigation habitat will be of equal or greater habitat quality compared to the impacted areas, as determined by a qualified plant ecologist, in terms of soil features, extent of disturbance, vegetation structure, and dominant species composition. At the time the mitigation is established, the mitigation habitat will contain sufficient habitat to support at least twice as many individuals as are impacted, as determined by a qualified plant ecologist. The permanent protection and management of mitigation lands will be ensured through an appropriate mechanism, such as a conservation easement or fee title purchase. A habitat mitigation and monitoring plan (HMMP) will be developed by qualified plant or restoration ecologists and implemented for the mitigation lands for a minimum of 10 years. That plan will include, at a minimum, the following information:

- a summary of impacts to Hall's bush mallow, including impacts to its habitat, and the proposed mitigation;
- a description of the location and boundaries of the mitigation site and description of existing site conditions;
- a description of measures to be undertaken to enhance (e.g., through focused management that may include removal of invasive species in adjacent suitable but currently unoccupied habitat, or other appropriate methods such as grazing, prescribed burns, planting native species, or mowing) the mitigation site for the species;
- a description of measures to transplant individual plants or seeds from the impact area to the mitigation site, if appropriate (which will be determined by a qualified plant or restoration ecologist, who will take into account factors such as genetics and the spread of pathogens, such as *Phytophthora*);
- proposed management activities to maintain high-quality habitat conditions for the species;
- a description of habitat and species monitoring measures on the mitigation site, including specific, objective final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc. At a minimum, performance criteria will include demonstration that any plant population fluctuations over the monitoring period of a minimum of 10 years do not indicate a downward trajectory in terms of reduction in numbers and/or occupied area for the preserved mitigation population that can be attributed to management (i.e., that are not the result of local weather patterns, as determined by monitoring of a nearby reference population, or other factors unrelated to management). The duration of the monitoring activities (a minimum of 10 years, as stated above) will ultimately be determined by the qualified plant or restoration ecologist based on the number of years that are necessary to ensure that the mitigation is successful;
- the new population must contain at least twice the number of impacted individuals, by year 10, as determined by a qualified plant ecologist. If year 10 is a poor weather year for summer and fall-blooming

annual plants and reference populations show a decline, this criteria can be measured in the next year occurring with average or better rainfall; and

- contingency measures for mitigation elements that do not meet performance criteria. For example, if by year 10 (or the next suitable rainfall year after year 10) of monitoring, the project is unable to establish a self-sustaining population of the required number of individuals as described above, the applicant shall create and manage an extant population of that same species in order to achieve the success criteria under a revised HMMP. The ultimate performance criteria for the revised HMMP will be unchanged, but the methods used to achieve the criteria may change, and additional land may need to be purchased.

Approval of the HMMP by the City will be required before project impacts to Hall's bush mallow occur. The applicant must fund the management and monitoring of the mitigation site at least until the success criteria are achieved; if the applicant sells the land or its interest in the project and its mitigation, it must provide the City financial assurances that it will satisfy its mitigation obligations.

6.2.3 Impacts on Water Quality, Special-Status Fish, and Southwestern Pond Turtle (Less than Significant)

No direct impacts to Coyote Creek, which flows south to north adjacent to the site, are proposed. Indirect impacts on water quality in the creek could potentially occur as a result of project activities, which are located immediately adjacent to Coyote Creek above the top of bank. Project activities could potentially impact the Central California Coast steelhead, Central Valley fall-run Chinook salmon, Pacific lamprey, Central California roach, and Sacramento hitch, as well as the southwestern pond turtle, in Coyote Creek due to a temporary increase in erosion, sedimentation, and turbidity in aquatic habitats located downstream of the work area. Additionally, minor spills of petrochemicals, hydraulic fluids, and solvents may occur during vehicle and equipment refueling. Such leaks/spills could adversely affect water quality downstream of construction activities, potentially impairing the health of fish or turtles in the creek.

Indirect impacts on water quality from construction of the project would be avoided and minimized by implementing erosion and sediment control measures, as well as BMPs for work near aquatic environments. The project shall comply with all VHP conditions, including Condition 3, which requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of storm water and to reduce runoff of pollutants to protect water quality, including during construction. In addition, construction projects in California causing land disturbances that are equal to 1 acre or greater must comply with state requirements to control the discharge of storm water pollutants under the NPDES *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended and administratively extended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained during the project and it must include the use of BMPs to protect water quality until the site is stabilized. Standard permit conditions under the Construction General Permit require that the applicant utilize various measures including: on-site sediment

control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors.

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

Compliance with these permit requirements and VHP Condition 3 will minimize the potential for impacts on water quality due to increases in erosion, sedimentation, and turbidity as well as releases of pollutants into the creek water. Therefore, project activities are not expected to result in substantial adverse indirect effects on water quality, special-status fish, or southwestern pond turtles in Coyote Creek, and such impacts would be less than significant.

6.2.4 Impacts on the Bay Checkerspot Butterfly and Crotch's Bumble Bee (Less than Significant)

Project activities will permanently impact 1.0 acre of serpentine bunchgrass grassland that has at least a low potential to be occupied by Bay checkerspot butterflies and Crotch's bumble bees, as well as 6.6 acres of California annual grassland that could possibly provide foraging and/or nesting habitat for Crotch's bumble bees. Given the very limited extent of potentially suitable habitat within the project impact area; the low quality of this habitat; the lack of any detections of these species during an April 16, 2023 survey (in which both species were looked for); and the isolation of this habitat from known populations, few, if any, Bay checkerspot butterflies or Crotch's bumble bees are expected to be present on the project site when work occurs. Nevertheless, should small numbers of individuals be present, proposed project activities will result in the loss of larval host plants and adult nectar sources for Bay checkerspot butterflies, nesting and foraging habitat for Crotch's bumble bees, and potentially also the loss of individuals of both species due to crushing by construction personnel or equipment, vegetation removal, excavations, and placement of soil stockpiles. The project will also result in nitrogen deposition resulting from an increase in vehicle trips associated with the completed project, which could degrade suitable habitat for the Bay checkerspot (including habitat in areas remote from the site where the species is known to occur).

The VHP does not provide species-level avoidance and minimization measures for the Bay checkerspot butterfly. Nevertheless, the project would comply with the general conditions of the VHP described in Section 6.1 above, which will help to reduce proposed project impacts on the Bay checkerspot butterfly and its habitats. Applicable VHP Conditions that will reduce project impacts on this species are:

- **Condition 13. Serpentine and Associated Covered Species Avoidance and Minimization.** The project is required to conduct flight-season surveys for Bay checkerspot butterflies prior to the start of work activities for purposes of impact avoidance.

In addition, the applicant would pay VHP impact fees, including general land cover impact fees, serpentine specialty fees for impacts to serpentine bunchgrass grassland habitat, and nitrogen deposition fees. These fees would contribute to the VHP's conservation program, which includes habitat acquisition, restoration, preservation, and management targeted at the Bay checkerspot butterfly and its habitat. Because the project will comply with all relevant VHP conditions, including the payment of VHP fees for permanent impacts on serpentine bunchgrass grassland, impacts on the Bay checkerspot butterfly will be less than significant under CEQA.

The Crotch's bumble bee is not currently a covered species under the VHP, though it is proposed for addition as a covered species via the VHP amendment currently in progress. However, compliance with VHP conditions would help reduce project impacts on this species by reducing impacts to biological resources in general. In addition, if the proposed project impacts the species at all, it would impact only a very small proportion of the species' regional population, given that the project site provides a very small proportion of the species' regionally available habitat (i.e., grassland, scrub, and woodland throughout the South San Francisco Bay area). The areas of serpentine bunchgrass grassland and California annual grassland that will be impacted by the project are limited in extent, and do not support high-quality foraging habitat for this species. Grassland that will remain unimpacted, and possibly landscaped areas, may provide suitable habitat (at least for foraging) following project construction. Thus, due to the abundance of suitable foraging habitat in the project region (i.e., east and south of the project site in the foothills of the Diablo Range and along Coyote Ridge), project activities are not expected to result in a substantial impact on nesting and foraging habitat for Crotch's bumble bees. Further, the Crotch's bumble bee will benefit from the VHP conservation program (i.e., the preservation, enhancement, and management of numerous habitat types throughout the VHP Reserve System) to which the project applicant would contribute via payment of VHP impact fees. As discussed in Section 6.1 above and in the EIR for the VHP (USFWS et al. 2012), as an NCCP the VHP's reserve system will benefit whole communities of plant and animal species in Santa Clara County, including many common and rare animal species. The reserve system will benefit Crotch's bumble bee based on the wide distribution of this species' habitats in Santa Clara County, the known occurrence of the species on some existing reserves, and its expected occurrence on future acquisitions, given the locations of recent occurrences in Santa Clara County. Therefore, with the payment of VHP fees and compliance with the VHP's conditions, the potential loss of small numbers of individual Crotch's bumble bees as a result of the project, as well as the permanent loss of potential nesting and foraging habitat, would not constitute a significant impact on this species or its habitat under CEQA, in our opinion, because the VHP is expected to have a net benefit on the conservation of this species. Therefore, these impacts would thus not constitute a significant impact on this species or its habitat under CEQA.

6.2.5 Impacts on the Yellow Warbler and White-Tailed Kite (Less than Significant)

The yellow warbler (a California species of special concern) could potentially nest adjacent to the project site in riparian trees along Coyote Creek, and the white-tailed kite (a state fully protected species) may nest in trees along Coyote Creek or in mixed oak woodland habitat or landscape trees on and adjacent to the project site. These species are assessed together because the potential impacts of the project on these species would be similar.

Based on site observations, the areal extent of suitable habitats within and adjacent to the project site, and known nesting densities of these species, it is likely that no more one or two pairs of yellow warblers and one pair of white-tailed kites could potentially nest on or immediately adjacent to the project site. The project would not result in the loss of suitable nesting habitat for the yellow warbler, as no activities are proposed within the bed and banks of Coyote Creek. The project would result in the permanent loss of suitable nesting and foraging habitat for the white-tailed kite, as well as suitable foraging habitat for the yellow warbler. In addition, activities that occur during the nesting season and cause a substantial increase in noise or human activity near active nests may result in the abandonment of active nests (i.e., nests with eggs or young). Heavy ground disturbance, noise, and vibrations caused by project activities could potentially disturb nesting and foraging individuals and cause them to move away from work areas.

The project is expected to increase the number of human users of the Coyote Creek Trail immediately adjacent to the site, potentially subjecting nesting special-status birds to increased human disturbance. However, this trail is already heavily used by pedestrians and cyclists. Any increase in users of Coyote Creek trail as a result of this project is not expected to contribute substantially to human disturbance of special-status birds that nest within the Coyote Creek corridor or in other nearby areas.

Because the number of nesting pairs of each species that could be disturbed is very small (i.e., 1–2 pairs), the impacts of project activities would represent a very small fraction of the regional population of these species. Therefore, neither the potential loss of individual yellow warblers or white-tailed kites, nor the disturbance of nesting and foraging habitat, would rise to the CEQA standard of having a *substantial* adverse effect, and these impacts would thus not constitute a significant impact on these species or their habitat under CEQA. All native bird species, including yellow warblers and white-tailed kites, are protected from direct take by federal and state statutes, and the project shall comply with VHP Condition 1 either by restricting work to the non-nesting season (September 1 through January 31) or by conducting preconstruction surveys prior to project activities and maintaining appropriate buffers around active nests of protected birds.

6.2.6 Impacts on Nonbreeding Special-Status Birds and Mammals (Less than Significant)

Several special-status invertebrate, bird, and mammal species may occur on the project site as nonbreeding migrants, transients, or foragers, but they are not known or expected to breed or occur in large numbers within or near the project impact area. These are the monarch butterfly, southwestern pond turtle, tricolored blackbird,

Bryant's savannah sparrow, grasshopper sparrow, American peregrine falcon, golden eagle, mountain lion, American badger, and pallid bat.

The monarch butterfly (a federal candidate) may forage in the site vicinity, especially during spring and fall migration, but is not expected to breed or overwinter on the project site due to a lack of suitable habitat. The southwestern pond turtle (a California species of special concern) may occur along the adjacent reach of Coyote Creek, but the presence of steep banks along Coyote Creek as well as a tall retaining wall along the western boundary of the project site reduce the likelihood that individual pond turtles will disperse from Coyote Creek to the project site, and the rocky soil on the project site is expected to preclude nesting by this species. The tricolored blackbird (a state threatened species and covered under the VHP) is not expected to occur on or close to the project site as a breeder due to the absence of suitable habitat, but individuals may occur occasionally as foragers during the nonbreeding season. The Bryant's savannah sparrow (a California species of special concern) breeds in marshes along the San Francisco Bay to the north, and individuals may forage in California annual grassland on the project site during the nonbreeding season. Similarly, the grasshopper sparrow (a California species of special concern) breeds in expansive grassland habitats in the foothills, and individuals may occasionally forage in grasslands in the project site during migration. The American peregrine falcon and golden eagle (state fully protected species) are not expected to nest on the project site due to a lack of suitable habitat, though individuals may occasionally forage on the project site in small numbers. Due to the site's location on the periphery of the Valley floor, the mountain lion (a state candidate species) and American badger (a California species of special concern) may briefly traverse the site as non-breeding dispersants or foragers, but they are not expected to linger for any length of time due to high levels of human activity. The pallid bat (a California species of special concern) may occur on the project site as an occasional forager, but is not expected to breed on the project site due to a lack of suitable habitat, and there are no known maternity colonies on the project site. Nevertheless, individuals from more remote colonies could potentially forage over open grasslands in the project site on rare occasions.

Activities under the proposed project would have some potential to impact foraging habitats and/or disturb individuals of these species. Construction activities might result in a temporary direct impact through the alteration of foraging patterns (e.g., avoidance of work sites because of increased noise and activity levels during maintenance activities) but would not result in the loss of individuals, as individuals of these species would move away from any construction areas or equipment before they could be injured or killed. Further, the project site does not provide important foraging habitat used regularly or by large numbers of individuals of any of these species. As a result, impacts of the project will have little impact on these species' foraging habitat and no substantive impact on regional populations of these species. The project is expected to increase the number of human users of the Coyote Creek Trail immediately adjacent to the site, potentially subjecting nesting special-status birds to increased human disturbance. However, this trail is already heavily used by pedestrians and cyclists. Any increase in users of Coyote Creek trail as a result of this project is not expected to contribute substantially to human disturbance of these nonbreeding wildlife species (e.g., mountain lions, badgers, or other species that disperse along Coyote Creek will not be impacted substantially as a result of any increase in trail

use resulting from the project). Therefore, impacts on nonbreeding special-status species would be less than significant.

6.2.7 Impacts due to Bird Collisions (Less than Significant)

Under existing conditions, the project site predominantly consists of undeveloped areas dominated by grasslands and a small mixed oak woodland, with several developed areas along the site's eastern and southern boundaries. Terrestrial land uses and habitat conditions in areas immediately surrounding the project site consist of commercial buildings with associated parking lots, roads, and landscape vegetation to the north, east, and south; and Coyote Creek with associated native riparian trees and vegetation to the west. Extensive urban residential development is present east of Coyote Creek, and extensive areas of undeveloped grasslands are present approximately 0.2 mile east of the site in the Silver Creek Hills.

Vegetation in commercial and residential areas that surround the project site is absent or very limited in extent, and consists primarily of nonnative landscape trees and shrubs. Nonnative vegetation supports fewer of the resources required by native birds compared to native vegetation, and the structural simplicity of the vegetation (without well-developed ground cover, understory, and canopy layers) further limits resources available to birds (Anderson et al. 1977, Mills et al. 1989). As a result, the number of individual landbirds that inhabit and regularly use vegetation within these developed areas at any given time is relatively low under existing conditions.

As discussed in Section 4.3, the riparian habitat along Coyote Creek adjacent to the project site supports relatively high bird diversity and abundance, and songbirds that migrate along the Pacific Flyway disperse and forage along Coyote Creek in relatively large numbers (Cornell Lab of Ornithology 2022, South-Bay-Birds List Serve 2022). Resident birds that are present in the vicinity year-round are similarly attracted to this riparian habitat in relatively large numbers for foraging and nesting opportunities compared to regional populations (Cornell Lab of Ornithology 2022, South Bay Birds Listserve 2022). In contrast, grassland-associated bird species that occur in the Silver Creek Hills are not expected to occur on the project site in large numbers due to the relatively limited extent and low quality (compared to Silver Creek Hills and Coyote Ridge) of the grassland habitat on the site. Although these bird species are expected to periodically use the vegetation on the project site, they would typically do so in low numbers.

Under proposed conditions, much of the project site may provide habitat of greater value to landbirds compared to existing conditions due to the addition of landscape trees on the site. A number of existing mature trees will be removed, including native coast live oaks and valley oaks that provide high-quality foraging habitat for birds, and this will reduce the quality of habitat on the site for birds to some extent. However, the project's preliminary landscape plans indicate that more trees will be planted on the site than are removed, which will help balance this loss. Proposed trees to be planted include native western redbud (*Cercis occidentalis*) and coast live oak as well as nonnative red maple (*Acer rubrum*), deodar cedar (*Cedrus deodara*), Chinese elm (*Ulmus parvifolia*), and bay laurel (*Laurus nobilis*). Shrubs and plants to be planted include native toyon, wax myrtle (*Myrica californica*), California fuchsia (*Epilobium canum*), tufted hairgrass (*Deschampsia cespitosa*), common rush (*Juncus patens*), purple needlegrass, and coyote bush; locally nonnative meadow sedge (*Carex pansa*), bush anemone

(*Carpenteria californica*), purple sage (*Salvia leucophylla*), and deer grass (*Muhlenbergia rigens*); and nonnative cape rush (*Chondropetalum tectorum*), myoporum (*Myoporum parvifolium*), and rosemary (*Rosmarinus officinalis*). Additionally, several small areas of the site will be hydroseeded with a mix of native and nonnative grasses. Thus, the future landscape vegetation that will be planted on the site is expected to provide more extensive foraging opportunities for landbirds compared to the existing grassland vegetation, primarily due to the addition of greater numbers of trees and woody shrubs compared to existing conditions. However, the proposed mix of native and nonnative vegetation and its limited extent within landscape islands on the site will provide relatively low-quality habitat resources for birds. Nevertheless, under proposed conditions, we expect birds to move between the riparian habitat along Coyote Creek and planted landscape vegetation on the project site (i.e., toward the proposed building) to look for feeding and resting opportunities in landscape vegetation. In contrast, we expect grassland-associated bird species that occur in the Silver Creek Hills to the east to use the project site less frequently following project construction due to the conversion of the majority of the grassland habitat on the site to development.

It is well documented that glass windows and building façades can result in injury or mortality of birds due to birds' collisions with these surfaces (Klem et al. 2009, Sheppard and Phillips 2015). Because birds do not perceive glass as an obstruction the way humans do, they may collide with glass when the sky or vegetation is reflected in glass (e.g., they see the glass as sky or vegetated areas); when transparent windows allow birds to perceive an unobstructed flight route through the glass (such as at corners); and when the combination of transparent glass and interior vegetation (such as in planted atria) results in attempts by birds to fly through glass to reach that vegetation. The greatest risk of avian collisions with buildings occurs in the area within 40–60 feet of the ground, because this is the area in which most bird activity occurs (San Francisco Planning Department 2011, Sheppard and Phillips 2015). Very tall buildings (e.g., buildings 500 feet or more high) may also pose a threat to birds that are migrating through the area, particularly to nocturnal migrants that may not see the buildings or that may be attracted to lights on the buildings (San Francisco Planning Department 2011).

Some migrating landbirds are expected to disperse from the riparian habitat along Coyote Creek onto the project site from the west. As a result, the highest potential for bird collisions with the new building is with glazing that faces Coyote Creek (i.e., the west façade of the proposed new building). In addition, rows of trees that extend alongside the proposed building provide connectivity between the habitat along Coyote Creek and portions of the project site located farther to the east (Figure 8). Therefore, there is some potential for collisions of moderate numbers of birds with glazed areas of all building facades due to the connectivity of this landscape vegetation with Coyote Creek.

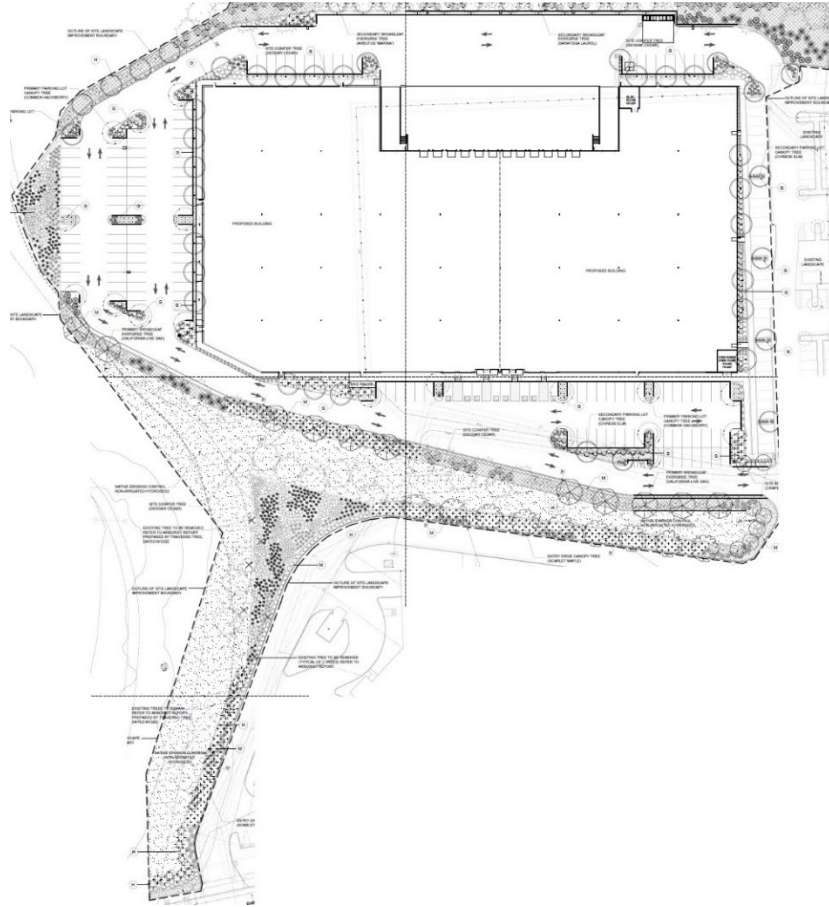


Figure 8. Preliminary Landscape Plan. The project's preliminary landscape plan shows the proposed building location as well as the number and locations of landscape trees to be planted on the site.

There is potential for birds to collide with glazed façade areas of the proposed building for the following reasons:

- Songbirds utilizing habitat along Coyote Creek may disperse outward looking for other foraging, nesting, or roosting sites. If glass is present on the facades of this building, birds making such movements are unlikely to be able to distinguish these façades as solid features to avoid and, as a result, some of these birds are expected to collide with the building.
- Under the project, trees and other landscaping will be present adjacent to glass façades of the proposed building. Such vegetation is expected to attract birds. Once birds are using that vegetation, they may not perceive the glass as a solid structure. Vegetation will be reflected in the glass of the building's façades, potentially causing birds to attempt to fly in to the reflected "vegetation" and strike the glass. As a result, some birds that are attracted to the trees and other landscaping that are adjacent to the glass façades are expected to collide with the glass.

- Reflections of the sky in glass façades may be perceived by birds as an open flight path (i.e., the sky) rather than solid glass, and birds may then collide with the façades.
- Night lighting associated with new building has some potential to disorient birds, especially during inclement weather when night migrating birds descend to lower altitudes. As a result, some birds moving through the project site at night may be disoriented by night lighting and potentially collide with the proposed building.

Several features of the architecture of the proposed building would reduce the potential for avian collisions. Based on the project plans, the building façades are composed primarily of opaque wall panels broken up by smaller windows, and no extensive areas of glazing are proposed (Figure 9). As a result, birds would be better able to perceive the building façades as solid obstructions to flight than if the glassy surface appeared more uniform. Further, no high-risk collision hazards, such as free-standing glass features or transparent glass corners, are proposed as part of the project.



Figure 9. Proposed Facades. The north (top), south (second from top), east (second from bottom), and west (bottom) elevations of the proposed building. The extent of glazing on each façade is shaded in black.

One somewhat larger area of glazing is present at the building’s main entrance on the south façade of the building, which faces future areas of landscape vegetation (Figures 8 and 9). Because vegetation will be planted opposite this facade, birds moving along the creek may be attracted to this vegetation, where they would be more likely to collide with glazing on this façade. However, this glazing is relatively limited in extent, is broken up by mullions and opaque wall panels, and represents only a small portion of the overall façade area. Due to these combined factors, bird collisions with this glazing are expected to be relatively low.

Thus, some of the birds using adjacent riparian habitats are expected to occasionally collide with the new building, resulting in injury or death. However, we expect the number and frequency of avian collisions with glass façades on the proposed building to be low due to the predominantly opaque nature of the building façades. Due to the low number of expected collisions, the project would not result in the loss of a substantial

proportion of any species' Bay-area populations or any Bay-area bird community, and according to CEQA standards, we would consider such impacts to be less than significant.

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

The project will result in the construction of buildings and other features (e.g., pedestrian walkways and parking areas) that will increase the amount of lighting on and around the project site. Lighting from the project would be the result of light fixtures illuminating buildings, building architectural lighting, and parking lot and pedestrian lighting. No up-lighting is proposed in the project design. Depending on the location, direction, and intensity of exterior lighting, this lighting can potentially spill into adjacent natural areas, thereby resulting in an increase in lighting compared to existing conditions. Areas to the north, east, and south are primarily developed urban habitats that do not support sensitive species that might be significantly impacted by illuminance from the project, and lighting from the project is not expected to spill past surrounding buildings to illuminate grassland habitats within Silver Creek Hills to the east. However, the riparian and wetland habitats along Coyote Creek provide suitable habitat for a variety of wildlife species, including sensitive species such as the yellow warbler, and are close enough to the project site to be affected by an increase in lighting.

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

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

Although the literature has shown how an increase in artificial lighting may indirectly affect birds, mammals, fish, and nesting sea turtles, little is known about potential effects of artificial lighting on many species of amphibians and reptiles, including freshwater turtles (Perry et al. 2008). Southwestern pond turtles, which can occur along Coyote Creek adjacent to the site, most likely exhibit physiological and behavioral responses in the presence of novel artificial light sources. However, few studies have revealed any conclusive data on what the impacts may be from artificial lighting in urban environments on adjacent habitats where freshwater turtles may occur (Perry et al 2008). To our knowledge, no specific studies have been conducted that have attempted to

elucidate pond turtle responses to an increase in artificial lighting conditions in their natural aquatic habitats. Southwestern pond turtles are primarily active during the day, spending the majority of their time basking on haul-out structures, such as patches of floating vegetation and logs near the edges or in the middle of their aquatic habitats, where they can quickly escape if threatened (Jennings and Hayes 1994). Some crepuscular and nocturnal movements have been observed by the species, but pond turtles typically take refuge at the bottom of aquatic habitats, burying themselves in muddy bottoms or dense vegetation during the night, and thus, in our opinion, would not be significantly affected by an increase in artificial light conditions.

Wildlife species inhabiting the sensitive habitats along Coyote Creek are already habituated to the existing artificial illuminance from a variety of urban and natural light sources that are found nearby. However, due to the ecological importance of the riparian and aquatic habitats of Coyote Creek and the fish and wildlife communities they support, substantial increases in illuminance of Coyote Creek and its associated riparian and aquatic habitats could result in a potentially significant impact under CEQA by disrupting the natural behaviors of the species using these habitats. Although there is agreement throughout the literature that increases in illuminance can affect wildlife behavior, as described above, there is no quantitative level of illuminance increase (above ambient light) that is agreed upon as a threshold for significant impacts to animals. In our professional opinion, implementation of Mitigation Measure BIO-3 below would reduce this impact to a less-than-significant level under CEQA. Because wildlife species along Coyote Creek can be affected by new lighting on the project site both directly (e.g., due to lighting that is directed at the riparian corridor) and indirectly (e.g., due to an increase in lighting in adjacent areas and associated glow that spills light outwards), Mitigation Measure BIO-3 includes measures both to reduce lighting directed at Coyote Creek and other lighting on the project site itself.

Mitigation Measure BIO-3. Minimize Project Lighting. Due to the potential for lighting on the project site to affect wildlife species that occur on the site and along Coyote Creek adjacent to the site, the project will implement the following measures to minimize lighting on the site.

- All exterior lighting shall be fully shielded to block illumination from shining outward towards Coyote Creek.
- Exterior fixtures shall comply with lighting zone LZ-2, *Moderate Ambient*, as recommended by the International Dark-Sky Association (2011) for light commercial business districts and high-density or mixed-use residential districts. The allowed total initial luminaire lumens for the project site is 2.5 lumens per square foot of hardscape, and the BUG rating for individual fixtures shall not exceed B3 or G2, as follows:
 - B3: 2,500 lumens high (60–80 degrees), 5,000 lumens mid (30–60 degrees), 2,500 lumens low (0–30 degrees)
 - G2: 225 lumens (forward/back light 80–90 degrees), 5,000 lumens (forward 60–80 degrees), 1,000 lumens (back light 60–80 degrees asymmetrical fixtures), 5,000 lumens (back light 60–80 degrees quadrilateral symmetrical fixtures)

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

6.2.9 Nitrogen Deposition Impacts (Less than Significant)

Several special-status plant and animal species occur on serpentine substrates in hills on either side of the Santa Clara Valley. These species include the Bay checkerspot butterfly and a number of rare plants, including the VHP-covered Tiburon Indian paintbrush, coyote ceanothus, Mount Hamilton thistle, Santa Clara Valley dudleya, fragrant fritillary, Loma Prieta hoita, smooth lessingia, Metcalf Canyon jewelflower, most beautiful jewelflower, and Hall's bush mallow. Because the project site is located on the periphery of these hills and supports serpentine bunchgrass grassland habitat, several of these species occur or potentially occur on the project site itself. Species that are known to be present on the project site are Santa Clara Valley dudleya and Hall's bush mallow. The Bay checkerspot butterfly may also occur in small numbers on the project site and surrounding vicinity, and fragrant fritillary may also occur on the site.

The USFWS has identified critical habitat for the federally threatened Bay checkerspot butterfly (73 FR 50406) south of U.S. Highway 101 and Yerba Buena Road in San José, approximately 0.4 mile east of the project site (Unit 5 - Coyote Ridge) (USFWS 2008). The conservation of critical habitat is considered essential for the conservation of the Bay checkerspot butterfly, and this serpentine habitat also supports serpentine-associated rare plant species (including the VHP-covered species listed above). Nonnative grasses have been reported to increase in these habitats, crowding out native rare plants as well the native larval host plants needed by the Bay checkerspot butterfly, due to increased nitrogen deposition from human sources throughout San José and the greater Bay Area.

Nitrogen deposition contribution estimates in Santa Clara County were made as a part of the development of the VHP (ICF International 2012). About 46% of nitrogen deposition on habitat areas of concern for the base years (2005–2007) was estimated to come from existing development and traffic generated locally within the VHP study area, which includes all of San José. The remainder of Santa Clara County was estimated to contribute a substantially smaller amount (17% of the nitrogen deposition) while the other eight Bay Area counties account for about 11%. Nitrogen deposition modeling completed for future years (2035 and 2060) as a part of the VHP process assumed that urban and rural development in the County and broader San Francisco Bay Area is expected to increase air pollutant emissions due to an increase in passenger and commercial vehicle trips and other new industrial and nonindustrial sources.

Construction of the project will result in an estimated 6,987 new vehicle trips per month to the project site. Providing new office space in San José (which is housing rich) may reduce some vehicle trips currently occurring to other cities in the region and thus reduce NO_x emissions to some extent. Nevertheless, these new vehicle trips will result in an increase in NO_x emissions, which in turn will contribute to the effects of nitrogen deposition on the serpentine grassland ecosystem. To mitigate this impact, a conservation strategy in the VHP includes collection of fees within the VHP area based upon the generation of new vehicle trips to fund

acquisition and management of serpentine grasslands in the Coyote Ridge area and elsewhere in the foothills along the Santa Clara Valley. The goal of this strategy is to improve the viability of existing populations of the Bay checkerspot butterfly and rare plants, increase the number of populations, and expand the geographic distribution to ensure the long-term persistence of serpentine-associated species in the VHP area.

A nexus study was completed for the VHP to assist with identifying appropriate fees to fund measures in the VHP. The nitrogen deposition fee was calculated and adopted based on VHP costs related to mitigating the impacts of airborne nitrogen deposition from covered activities in the VHP area. The amount of the fee is based on the number of new daily vehicle trips generated by a covered activity. The fee-per-vehicle-trip is a surrogate that captures the overall effects of a project, recognizing that vehicle trips are not the only source of a project's NOx emissions. Due to an increase in NOx emissions under CEQA, the project shall be required to pay nitrogen deposition fees, which will then be used to fund the acquisition and management of habitat for the serpentine-associated species potentially impacted by nitrogen deposition. As a result, the project's nitrogen deposition impacts will be less than significant under CEQA.

6.2.10 Impacts on Wildlife Due to Increased Noise Levels (Less than Significant)

There is some potential for the project to result in the indirect disturbance of wildlife species using habitats along Coyote Creek because of the noise and activity of workers and heavy equipment during project activities, as well as due to post-construction noise levels during operation of the new facility. Disturbance from increased noise levels can result in a reduction in foraging efficiency, increased movement or flushing from cover, or altered activity patterns that reduce energy reserves and increase predation risk. Animals can be forced to adjust the boundaries of their territories or disperse to other habitat areas, and may be exposed to increased competition from conspecifics already occupying the area to which they are displaced. However, the project site is set back a minimum of 100 feet from the riparian corridor. Because noise and vibration levels would attenuate with increasing distance from the source, the 100-foot distance between project activities and riparian habitat will help minimize effects of noise and vibrations on wildlife using the riparian corridor. In addition, wildlife that occur along Coyote Creek adjacent to the site are acclimated to the existing noise levels within this habitat from surrounding urban disturbances, including the operation of commercial facilities north and south of the site, residents located west of Coyote Creek, vehicle traffic on busy roadways such as Coyote Road and Hellyer Avenue, and recreational activity along the Coyote Creek Trail. Thus, given the distance between the site and Coyote Creek, as well as existing noise levels in the surrounding area, wildlife inhabiting areas along Coyote Creek adjacent to the site are not expected to be substantially affected by increased noise levels during or following project construction, and this impact is less than significant under CEQA.

6.3 Impacts on Sensitive Communities: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFW or USFWS (Less than Significant)

6.3.1 Impacts on Riparian Habitat, Oak Woodland Habitat, or Other Sensitive Natural Communities (Less than Significant)

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

Coyote Creek flows from south to north adjacent to, but not through, the project site. The entirety of ground-disturbing project impacts will occur outside of the riparian habitat along Coyote Creek, and east of the Coyote Creek Trail; thus, the proposed project will have no direct permanent or temporary impacts on riparian habitat. There is potential for indirect effects to occur within riparian areas adjacent to the project site if runoff from the project increases in intensity or frequency due to the proposed project. However, required construction period BMPs and post-construction stormwater requirements will apply to the proposed project as discussed above in Section 6.2.3, and these requirements would avoid and reduce these impacts to a less-than-significant level.

The project would result in the permanent conversion of 0.4 acre of mixed oak woodland to urban-suburban land uses on the project site. These impacts would result in a reduction in the extent of native oak woodland vegetation on the site, including mature native oak trees. Direct impacts would include grading or filling areas supporting oak woodland species, trampling or crushing of plants, and soil compaction. Indirect impacts would include increased mobilization of dust onto plants, which can affect their photosynthesis and respiration, and changes to hydrology supporting these plants due to grading or construction in nearby habitats.

The project would pay VHP land cover fees for impacts to mixed oak woodland; these fees would contribute to the VHP's conservation program, which includes habitat acquisition, restoration, preservation, and management targeted at oak woodland habitats. With payment of VHP fees, project impacts on 0.4 acre of mixed oak woodland would be reduced to less-than-significant levels under CEQA.

Serpentine bunchgrass grassland habitat on the project site is also a sensitive natural community. Project impacts on this habitat are addressed under Section 6.2.2 above.

6.3.2 Impacts Due to Encroachment into the Stream/Riparian Buffer (Less than Significant)

The City of San José's riparian buffer policy is administered through use of the City's Policy Study document that describes suggested buffer widths (City of San José 1999). The Policy Study, which was incorporated into the City's Envision San José 2040 General Plan (City of San José 2022) and further clarified by the Riparian Corridor Protection and Bird Safe Design Council Policy (City of San José 2016), states that riparian setbacks should be measured 100 feet from the outside edges of riparian habitat or the top of bank, whichever is greater. However, the Policy Study also states that setback distances for individual sites may vary if consultation with the City and a qualified biologist, or other appropriate means, indicates that a smaller or larger setback is more appropriate for consistency with riparian preservation objectives (City of San José 1999). Goal E2.2 of the City's General Plan also requires a 100-foot setback in all but a limited number of instances, and only where no significant environmental impacts would occur (City of San José 2022). Based on discussion at the Planning Commission hearing for a recent project along the Guadalupe River (Almaden Office Project), we understand that the City may not require a setback in areas where impact areas are already developed; however, this would need to be determined by the City.

Similarly, the City Council-adopted VHP, specifically Condition 11, includes an analysis of relevant literature and studies informing the applicant of appropriate setbacks based on stream hydrology and function that are adequate to provide protection of habitat functions and values (ICF International 2012). The standard required setback for Coyote Creek (a Category 1 stream) is 100 feet from the top of bank or 35 feet from the outer edge of the riparian canopy, whichever is greater. On the project site, the VHP setback is 100 feet from top of bank because the slope of the project site is, on average, less than 30%, no areas 35 feet from the edge of riparian vegetation extend past the 100-foot buffer, and the project site is located inside the VHP-designated urban service area. The VHP provides for exceptions to standard stream setbacks, including an exception to prevent denying an owner economically viable use of their land or adversely affecting recognized real property interests (ICF International 2012), which the SCVHA may grant in the case of the project. However, regardless of project location, the VHP does not allow a stream setback to be reduced to a distance less than 50 feet for new development or 35 feet for existing development. Because the project will impact land cover types (California annual grassland, serpentine bunchgrass grassland, and mixed oak woodland), the project is considered covered under the VHP, and Condition 11 applies to the project.

For the purposes of this project, the City's standard 100-foot setback extends landward from the outer edge of the riparian habitat along Coyote Creek or, in limited areas, from the top of bank. The VHP setback extends 100 feet landward from the top of bank (Figure 6). Throughout the site, the City's setback either coincides with the VHP setback (where the City's setback is 100 feet from top of bank) or extends further into the project site than the VHP setback (where the City's setback is 100 feet from the outer edge of the riparian canopy). These setbacks are applicable to all proposed project improvements.

Under the proposed project, no modifications to areas supporting natural land cover types are proposed within the City or VHP standard setbacks, and no permanent impacts, or temporary impacts from construction and

staging, would occur within the setbacks. The only project activities proposed within the riparian setbacks are (1) utility work within the limits of the existing paved driveway just north of Embedded Way, as described in Section 1.1.5 above; and (2) use of the same driveway for site access during and following construction. This driveway already exists, and no above-ground modifications to the driveway would occur. Installation of the proposed utility improvements will not result in any long-term effects on the riparian corridor or its wildlife use relative to baseline conditions, as these improvements will be located below ground. Up to several months of temporary construction-related disturbance would occur during installation of the proposed utilities, and construction-related traffic as well as traffic associated with operational use of the project after construction will result in an increase in the number of vehicles using this driveway, relative to baseline conditions. However, given that traffic associated with existing businesses already uses that driveway; that installation of the utilities will be limited in duration; that the utility installation activities and new project-related traffic would still be approximately 90 feet or more from the edge of riparian vegetation; and that animals using the riparian habitat along the adjacent reach of Coyote Creek are habituated to traffic, trail use, and other activities on both sides of the creek, the temporary disturbance due to utility installation as well as the long-term increase in use of the driveway will not substantially affect the ecological value of the riparian corridor or its use by wildlife. Therefore, temporary disturbance during utility installation and use of this driveway by project-related traffic would not result in a new or substantially increased impact on the riparian corridor or its wildlife use, relative to baseline conditions.

In summary, the project will have no significant ecological impact due to encroachment within the riparian corridor under CEQA.

6.4 Impacts on Wetlands: Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means (Less than Significant)

Wetlands and other waters of the U.S./state are present adjacent to the project site within the Coyote Creek corridor. The project design avoids all direct impacts on state or federally protected wetlands and aquatic habitats.

The project will comply with all VHP conditions, including Condition 3, which requires implementation of design phase, construction phase, and post-construction phase measures, including programmatic BMPs, performance standards, and control measures, to minimize increases of peak discharge of storm drain water and to reduce runoff of pollutants to protect water quality, including during construction. In addition, required construction period BMPs and post-construction storm water requirements will apply to the project as discussed above in Section 6.2.3, and these requirements would further avoid and reduce these impacts. Thus, with compliance with VHP Condition 3, and permit requirements, potential project impacts on wetlands and other waters would be less than significant under CEQA.

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

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

Coyote Creek and the associated riparian corridor provide an important movement pathway for both aquatic and terrestrial wildlife species, connecting the associated wetlands to the San Francisco Bay. Songbirds that migrate along the Pacific Flyway disperse and forage along Coyote Creek in relatively large numbers. Common, urban-adapted species such as raccoons and striped skunks may use the vegetation along the creek to move north and south through the San José area. Small mammals, such as mice and shrews, will also use this vegetation to move between habitats. Common species of reptiles and amphibians, such as Pacific treefrogs, and alligator lizards, amongst other species, are also expected to move along this corridor adjacent to the project site. Proposed project development along the creek will not result in any loss of aquatic, wetland, or riparian habitat along Coyote Creek or in any substantial reduction in the value of the Coyote Creek corridor for wildlife movement. The project is expected to increase the number of human users of the Coyote Creek Trail, potentially subjecting animals within the riparian corridor to increased human disturbance. However, this trail is already heavily used by pedestrians and cyclists, and use of the riparian habitat along the creek by homeless already introduces human disturbance within the riparian habitat. The increase in users of the Coyote Creek Trail as a result of this project is not expected to contribute substantially to human disturbance of animals using the Coyote Creek corridor. Similarly, as discussed in Section 6.3.2 above, an increase in vehicular use of the existing driveway for site access would not result in a substantial decline in wildlife movement along Coyote Creek. Thus, aquatic and terrestrial species would continue to be able to move north to south along Coyote Creek following project development, without any substantial reduction in such movement. Therefore, the project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites, and this impact is determined to be less than significant.

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

6.6.1 Impacts Due to the Removal of Ordinance-Sized Trees (Less than Significant)

The project proposes to remove a number existing trees on the site, including several ordinance-sized trees as defined by the City of San José, and the applicant will submit a permit application for tree removal. In accordance with the provisions of the San José Municipal Code, the Standard Permit Conditions listed below would be implemented by the project.

Standard Permit Conditions

Trees impacted by the project will be replaced in accordance with all applicable laws, policies or guidelines, including Chapter 13 of the San José Municipal Code, General Plan policies MS-21.4, MS-21.5, MS-21.6, and CD-1.24, and City tree replacement ratios outlined in Table 2 below. Following the removal of trees on the site, a greater number of trees will be planted on the project site following construction.

Table 3. City of San José Standard Tree Replacement Ratios

Diameter of Tree to Be Removed	Type of Tree to be Removed ¹			Minimum Size of Each Replacement Tree
	Native	Nonnative	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon container
19–38 inches	3:1	2:1	none	15-gallon container
Less than 9 inches	1:1	1:1	none	15-gallon container

¹ x:x = tree replacement to tree loss ratio; Trees greater than 38" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

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

Table 2 shows tree replacement ratios required by the project proponent. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

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

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

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

6.6.2 Impacts Due to Conflicts with San José Riparian Setback Policies (Less than Significant)

As discussed in Section 6.3.2 above, an existing paved driveway that would be used for access to the project site would involve movement of vehicles within the City of San José’s 100-foot riparian setback. Because this paved driveway already exists, vehicular activity would still be approximately 90 feet or more from the edge of riparian vegetation, and project-related increases in vehicular use of the driveway would not substantially affect the ecological quality of the riparian vegetation along Coyote Creek or wildlife use of that habitat, the ecological impact of the project’s use of this existing driveway is less than significant.

6.7 Impacts due to Conflicts with an Adopted Habitat Conservation

Plan: Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan (Less than Significant with Mitigation)

The City of San José is a signatory to the VHP, which is a Habitat Conservation Plan and Natural Community Conservation Plan. As described in Section 6.1, the project is considered a “covered project” under the VHP. All VHP-covered species that may be affected by the proposed project are discussed in this report, including Santa Clara Valley dudleya and fragrant fritillary (Section 6.2.2 above), the Bay checkerspot butterfly (Section 6.2.4 above), and the tricolored blackbird and southwestern pond turtle (Section 6.2.5 above). Similarly, impacts on sensitive habitats, such as stream and serpentine habitats for which the VHP requires specific impact fees, are discussed in this report. The project will apply for VHP coverage and will adhere to all applicable VHP Conditions during project implementation, as discussed in Sections 6.1 above. Conditions applicable to the proposed project include Conditions 1 (avoid direct impacts to legally protected plant and wildlife species), 3 (maintain hydrologic conditions and protect water quality), 11 (stream and riparian setbacks), 13 (serpentine and associated covered species avoidance and minimization), 17 (tricolored blackbird) 19 (plant salvage when impacts are unavoidable), and 20 (avoid and minimize impacts to covered plant occurrences). Therefore, the proposed project would not be in conflict with the VHP.

The proposed project would not be in conflict with any other adopted habitat conservation plans or natural community conservation plans, or with any other approved local, regional, or state habitat conservation plans

or natural community conservation plans. Thus, impacts associated with conflicts between the proposed project and any adopted habitat conservation plan or natural community conservation plan are less than significant.

VHP Condition 11 requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors. The standard required setback for the reach of Coyote Creek (a Category 1 stream) adjacent to the project site is 100 feet from the top of bank (Figure 6). The project would not result in encroachment within the standard VHP stream setback, as described under Section 6.3.2 above. Thus, the project will have no impact due to conflicts with VHP Condition 11 under CEQA.

Construction disturbance and project tree removal during the avian breeding season (February 1 through August 31 inclusive, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests. Because such an impact would conflict with Condition 1 of the VHP, it would be considered a significant impact under CEQA. Mitigation Measures BIO-4 and 5 would be implemented to reduce impacts due to conflicts with Condition 1 of the VHP to a less-than-significant level.

Mitigation Measure BIO-4. Nesting-Season Avoidance. To the extent feasible, construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code would be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31, inclusive.

Mitigation Measure BIO-5. Preconstruction/Pre-disturbance Surveys and Buffers. If it is not possible to schedule construction activities and/or tree removal between September 1 and January 31, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. These surveys shall be conducted no more than seven days prior to the initiation of demolition or construction activities, including tree removal and pruning. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code shall be disturbed during project implementation.

6.8 Cumulative Impacts (Less than Significant)

Cumulative impacts arise due to the linking of impacts from past, current, and reasonably foreseeable future projects in the region. Future development activities in the City of San José and development activities covered by the VHP will result in impacts on the same habitat types and species that will be affected by the proposed

project. The proposed project, in combination with other projects in the area and other activities that impact the species that are affected under the project, could contribute to cumulative effects on special-status species. Other projects in the area include both development and maintenance projects that could adversely affect these species and restoration projects that will benefit these species.

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

However, the San José General Plan contains conservation measures that would benefit biological resources, as well as measures to avoid, minimize, and mitigate impacts on these resources and the VHP includes numerous conservation measures to offset adverse effects on covered activities. Many projects in the region that impact resources similar to those impacted by the proposed project will be covered activities under the VHP and will mitigate impacts on sensitive habitats and many special-status species through that program, which will require payment of fees for habitat restoration. Further, the project would implement a number of avoidance, minimization, and compensatory mitigation measures to reduce impacts on both common and special-status species, as described above. Thus, the project will not contribute to substantial cumulative effects on biological resources.

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Appendix A. Special-Status Plants Considered but Rejected for Occurrence

Common Name	Scientific Name	No Suitable Habitat	Edaphic Conditions Absent	Outside the Elevation Range	Outside of Known Geographic Range/No Nearby Extant Records
alkali milk-vetch	<i>Astragalus tener</i> var. <i>tener</i>	x	x		
bay buckwheat	<i>Eriogonum umbellatum</i> var. <i>bahiiforme</i>	x		x	
Brewer's calandrinia	<i>Calandrinia breweri</i>	x			x
bristly leptosiphon	<i>Leptosiphon acicularis</i>				x
brittlescale	<i>Atriplex depressa</i>	x	x		x
California alkali grass	<i>Puccinellia simplex</i>	x	x		x
California androsace	<i>Androsace elongata</i> ssp. <i>acuta</i>			x	
California seablite	<i>Suaeda californica</i>	x	x	x	x
chaparral harebell	<i>Campanula exigua</i>	x		x	
chaparral ragwort	<i>Senecio aphanactis</i>	x	x		x
clay buckwheat	<i>Eriogonum argillosum</i>	x	x	x	
coast iris	<i>Iris longipetala</i>	x			
Contra Costa goldfields	<i>Lasthenia conjugens</i>	x	x		
Douglas' spineflower	<i>Chorizanthe douglasii</i>	x	x		
dwarf soaproot	<i>Chlorogalum pomeridianum</i> var. <i>minus</i>	x		x	
elongate copper moss	<i>Mielichhoferia elongata</i>	x			x
hairless popcornflower	<i>Plagiobothrys glaber</i>	x			x
Hickman's popcornflower	<i>Plagiobothrys chorisianus</i> var. <i>hickmanii</i>	x			x
Hoover's button-celery	<i>Eryngium aristulatum</i> var. <i>hooveri</i>	x			x
Jepson's woolly sunflower	<i>Eriophyllum jepsonii</i>	x		x	
large-flowered leptosiphon	<i>Leptosiphon grandiflorus</i>		x		
lesser saltscare	<i>Atriplex minuscula</i>	x	x		x
Lewis' clarkia	<i>Clarkia lewisi</i>				x
Loma Prieta hoita	<i>Hoita strobilina</i>	x			
maple-leaved checkerbloom	<i>Sidalcea malachroides</i>				x
Mt. Day rockcress	<i>Boechera rubicundula</i>	x	x	x	

Common Name	Scientific Name	No Suitable Habitat	Edaphic Conditions Absent	Outside the Elevation Range	Outside of Known Geographic Range/No Nearby Extant Records
Mt. Diablo phacelia	<i>Phacelia phacelioides</i>		x	x	
Mt. Hamilton coreopsis	<i>Leptosyne hamiltonii</i>		x	x	
Mt. Hamilton lomatium	<i>Lomatium observatorium</i>	x	x	x	
Mt. Hamilton thistle	<i>Cirsium fontinale</i> var. <i>campylon</i>	x			
Oakland star-tulip	<i>Calochortus umbellatus</i>			x	
phlox-leaf serpentine bedstraw	<i>Galium andrewsii</i> ssp. <i>gatense</i>			x	
Point Reyes bird's-beak	<i>Chloropyron maritimum</i> ssp. <i>palustre</i>	x	x	x	
prostrate vernal pool navarretia	<i>Navarretia prostrata</i>	x			x
robust spineflower	<i>Chorizanthe robusta</i> var. <i>robusta</i>	x	x		x
rock sanicle	<i>Sanicula saxatilis</i>			x	
saline clover	<i>Trifolium hydrophilum</i>	x	x		
San Francisco wallflower	<i>Erysimum franciscanum</i>		x		
San Joaquin spearscale	<i>Extriplex joaquinana</i>	x	x		x
Sanford's arrowhead	<i>Sagittaria sanfordii</i>	x			x
Santa Clara red ribbons	<i>Clarkia concinna</i> ssp. <i>automixa</i>	x			
Santa Clara thorn-mint	<i>Acanthomintha lanceolata</i>	x	x		
Santa Cruz Mountains beardtongue	<i>Penstemon rattanii</i> var. <i>kleei</i>	x		x	x
Santa Cruz Mountains pussypaws	<i>Calyptridium parryi</i> var. <i>hesseae</i>	x	x	x	
Satan's goldenbush	<i>Isocoma menziesii</i> var. <i>diabolica</i>	x			x
serpentine leptosiphon	<i>Leptosiphon ambiguus</i>			x	
Small spikerush	<i>Eleocharis parvula</i>	x			x
Small-flowered morning-glory	<i>Convolvulus simulans</i>	x			x
Small-leaved lomatium	<i>Lomatium parvifolium</i>	x			x
South Coast Range morning-glory	<i>Calystegia collina</i> ssp. <i>venusta</i>			x	x
spring lessingia	<i>Lessingia tenuis</i>			x	
western leatherwood	<i>Dirca occidentalis</i>	x			x