LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

FOX PROPERTY
BIOLOGICAL EVALUATION
CITY OF SAN JOSE, CALIFORNIA

Prepared by

LIVE OAK ASSOCIATES, INC.

Rick Hopkins, Ph.D., Principal and Senior Conservation Biologist
Melissa Denena, M.S., Director of Ecological Services and Plant/Wetland/Wildlife Ecologist
Davinna Ohlson, M.S., Senior Project Manager and Plant/Wetland/Wildlife Ecologist

Prepared for

David J. Powers & Associates
Attn: Will Burns
1885 The Alameda, Suite 204
San Jose, CA 95136

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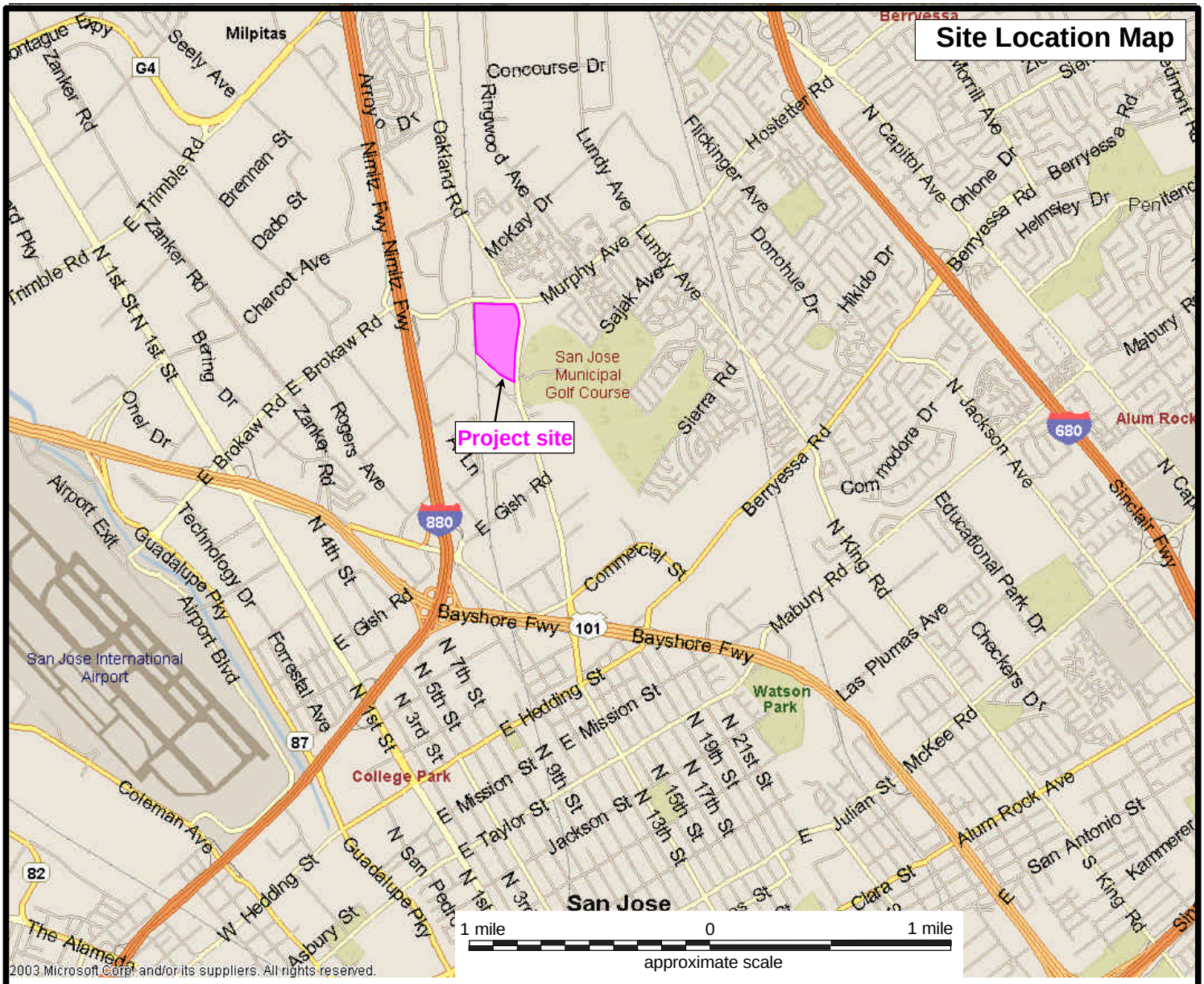
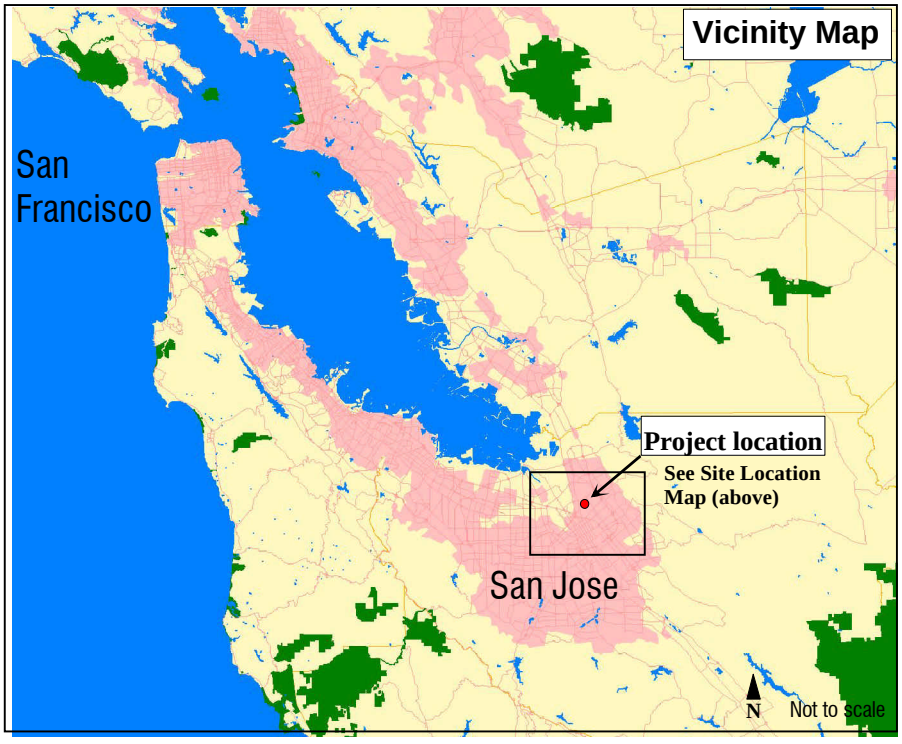
1.0 INTRODUCTION

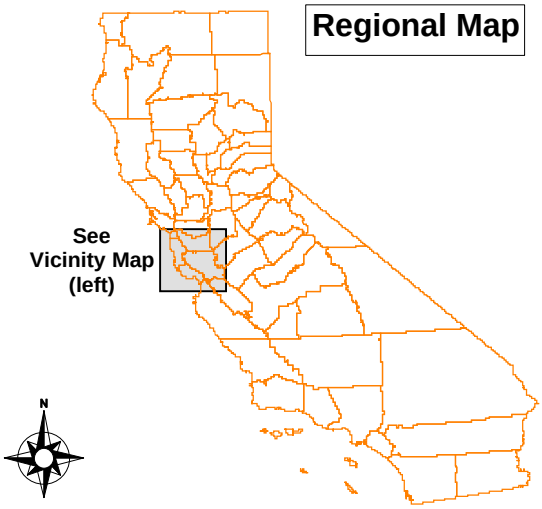
Live Oak Associates, Inc. (LOA), has prepared the following report, which describes the biotic resources of the approximately 30-acre Fox Property (APN 237-03-061, -069, and -070) located at the southwest corner of Brokaw Road and Old Oakland Road in the City of San Jose, California, and evaluates likely impacts to these resources resulting from the proposed redevelopment of the property. The project site is located in the Milpitas U.S.G.S. 7.5" quadrangle, in portions of Sections 29 and 30, Township 6 south, Range 1 east. The project site currently supports development in the form of an office complex and a vacant lot previously used as a metals recycling facility. The only natural biotic habitat occurring on the site is the habitat along the upper banks of Coyote Creek, which runs along the southern boundary of the site.

Construction projects can damage or modify biotic habitats used by sensitive plant and wildlife species. In such cases, these projects may be regulated by state or federal agencies, subject to provisions of the California Environmental Quality Act (CEQA), and/or covered by policies and ordinances of the City of San Jose. This report addresses issues related to: 1) sensitive biotic resources occurring on the site; 2) the federal, state, and local laws regulating such resources, and 3) mitigation measures which may be required to reduce the magnitude of anticipated impacts. As such, the objectives of this report are to:

- Summarize all site-specific information related to existing biological resources;
- Make reasonable inferences about the biological resources that could occur onsite based on habitat suitability and the proximity of the site to a species' known range;
- Summarize all state and federal natural resource protection laws that may be relevant to possible future site development;
- Identify and discuss project impacts to biological resources likely to occur on the site within the context of CEQA or any state or federal laws; and
- Identify avoidance and mitigation measures that would reduce impacts to a less-than-significant level as identified by CEQA and that are generally consistent with recommendations of the resource agencies for affected biological resources.







Live Oak Associates, Inc.

Fox Property B.E.
Site / Vicinity Map

Date	Project #	Figure #
3/12/2010	874-03	1

The analysis of impacts, as discussed in Section 3.0 of this report, is based on the known and potential biotic resources of the site, discussed in Section 2.0. Sources of information used in the preparation of this analysis included: 1) the *California Natural Diversity Data Base* (CDFG 2010), 2) the *Inventory of Rare and Endangered Vascular Plants of California* (CNPS 2010), and 3) manuals and references related to plants and animals of Santa Clara Valley. A reconnaissance-level field survey of the study area was conducted on February 16, 2010, by LOA ecologists Melissa Denena and Davinna Ohlson, at which time the principal biotic habitats and land uses of the site were identified, and the constituent plants and animals of each were noted.

Focused surveys for sensitive plant and animal species were not conducted as part of this study. The level of investigation was sufficient to locate and establish the general extent of potentially suitable habitat present for such species but was not sufficient to establish the presence or absence of any relevant species unless it was incidentally sighted during the general survey.

1.1 PROJECT DESCRIPTION

The proposed project consists of a general plan amendment and Planned Development (PD) zoning to allow a mix of commercial, residential, and park uses on the site. General commercial uses would be allowed on 13.7 acres on the northern portion of the site, residential uses on 13.7 acres in the southern portion of the site, and 2.5 acres of open space adjacent to Coyote Creek. The proposed zoning would allow development of up to 150,000 square feet of retail center or other general commercial uses and up to 300,000 square feet of office development on the Commercial/Mixed-Use Area of the site. The Residential Area of the site would be developed with a minimum of 274 residential units and up to a maximum of 650 residential units. If required by the City, parkland on the site would be located at the southeast corner of the site adjacent to Old Oakland Road and the Open Space/Riparian Area. The Open Space/Riparian Area, which provides an approximately 100-foot setback from Coyote Creek, would include a 25-foot right-of-way or 0.6 acres for a trail to be dedicated to the City. The site would be served by a network of private streets and would include landscaping throughout.

An outfall from the site into Coyote Creek was filled and its use discontinued as part of the decommissioning of the metals recycling facility. The proposed project is assumed to include the removal or reconstruction of this outfall.

2.0 EXISTING CONDITIONS

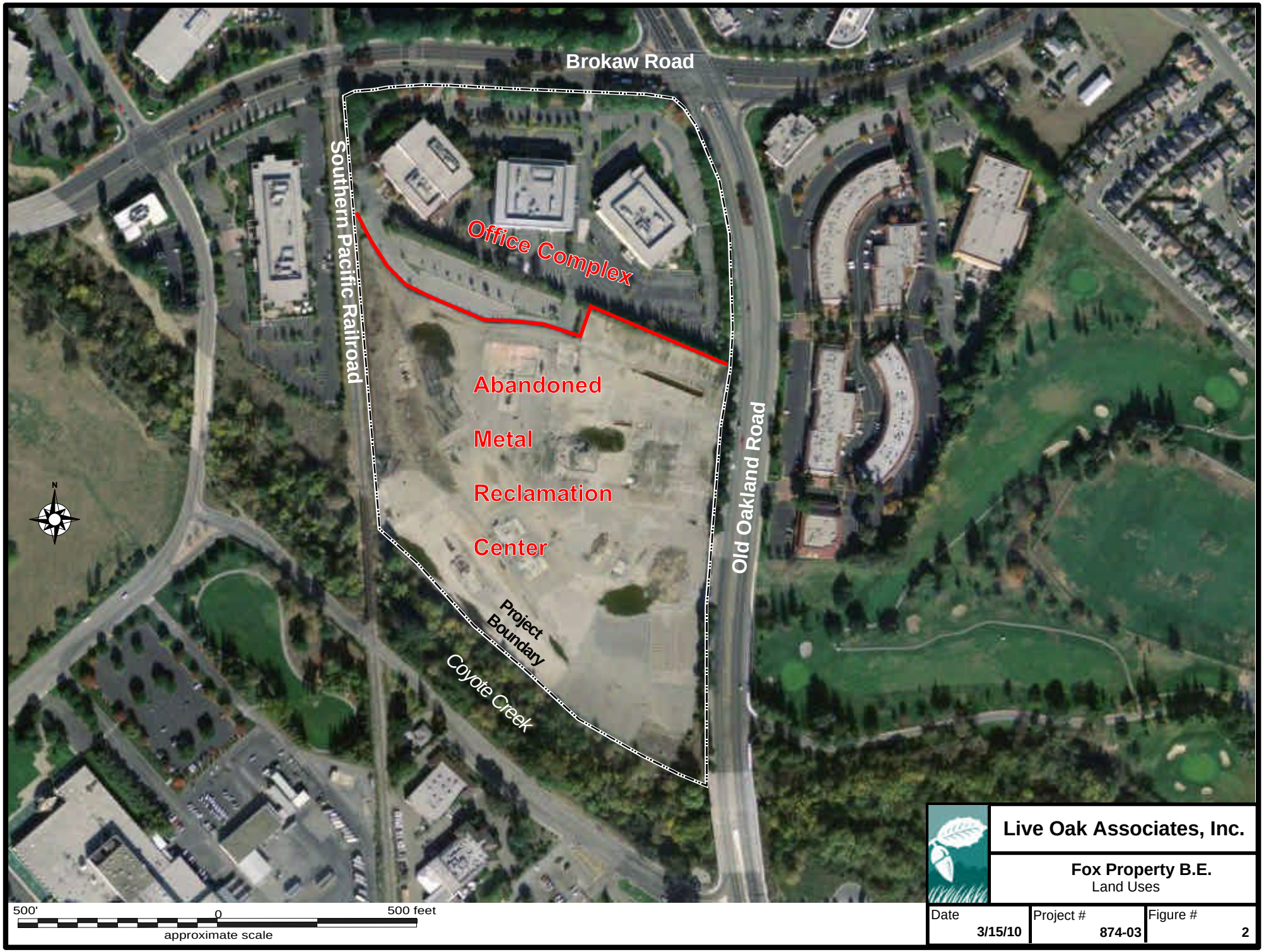
The project site is located in northern San Jose, California. The site is bounded by Brokaw Road to the north, Oakland Road to the east, Coyote Creek to the south, and the Union Pacific Railroad to the west. Surrounding lands primarily consist of commercial and industrial development, and a golf course is located on the east side of Oakland Road. The northern half of the site consists of an office complex, and the southern half of the site is primarily vacant land that was previously used as a metals recycling facility. Topographically, the site is relatively flat at approximately 65 ft. (20 m) National Geodetic Vertical Datum (NGVD) in the developed portion of the site; the elevation within Coyote Creek is approximately 40 ft. (12 m) NGVD.

The site is underlain by two soil types from one soil series: Mocho loam and Mocho clay loam. Mocho soils formed in alluvium derived mostly from sandstone and shale rock sources. These soils are well drained with moderate to moderately slow permeability. Neither of these soil types are considered to be hydric, although hydric inclusions may occur.

Annual precipitation in the general vicinity of the study area averages 16 to 25 inches, almost 85% of which falls between October and March. Virtually all precipitation falls in the form of rain. Stormwater runoff readily infiltrates the soils of the site, but when field capacity has been reached, gravitational water flows into Coyote Creek along the southern boundary, which is a tributary of the San Francisco Bay.

2.1 BIOTIC HABITATS

The majority of the site supports existing development in the form of an office complex and an abandoned metals recycling facility. However, one natural biotic habitat, the habitat associated with Coyote Creek, occurs along the southern boundary of the site (Fig. 2). The onsite land use and habitat are described in greater detail below. A list of the vascular plant species observed on the site is provided in Appendix A.



Live Oak Associates, Inc.

Fox Property B.E.
Land Uses

Date	Project #	Figure #
3/15/10	874-03	2

2.1.1 Development

The site primarily supports development. The northern portion of the site consists of two office buildings along with associated parking lots and landscaping. The southern portion of the site is vacant land that was previously used as a metals recycling facility.

Landscaped vegetation observed within the office complex and along the eastern boundary of the metal reclamation facility consisted of tree species such as coast redwood (*Sequoia sempervirens*), California sycamore (*Platanus racemosa*), pine (*Pinus* sp.), and California walnut (*Juglans californica*). Ornamental shrubs observed include Indian hawthorne (*Raphiolepis indica*), heavenly bamboo (*Nandina domestica*), oleander (*Nerium oleander*), red-tipped photinia (*Photinia fraseri*), and crape myrtle (*Lagerstroemia indica*). English ivy (*Hedera helix*) was used as a ground cover in many areas and a dense lawn was planted in portions of the complex.

Vegetation within the vacant lot of the former metals recycling facility was sparse to non-existent. There were a few herbaceous species and stunted trees and shrubs observed growing through the pavement cracks. Non-native forb species observed on the lot include Russian thistle (*Salsola tragus*), common mallow (*Malva neglecta*), white-stemmed filaree (*Erodium moschatum*), and cudweed (*Gnaphalium* sp.). Tree and shrub species observed include willow (*Salix* sp.), Mexican elderberry (*Sambucus mexicana*), fan palm (*Washingtonia filifera*), and coyote bush (*Baccharis pilularis*).

Developed lands provide minimal habitat for locally occurring wildlife species. Amphibian and reptiles would not be expected to utilize the site on a regular basis as part of their home range or for movement. However, a number of human-tolerant bird and mammalian species are expected to occur onsite from time to time.

Avian species expected to utilize the onsite trees and shrubs for perching, with the larger trees providing marginal nesting habitat, include the American crow (*Corvus brachyrhynchos*), western scrub-jay (*Aphelocoma californica*), northern mockingbird (*Mimus polyglottos*), rock dove (*Columba livia*), Anna's hummingbird (*Calypte anna*), house finch (*Carpodacus*

mexicanus), and house sparrow (*Passer domesticus*). There is also the slight chance that common raptors, such as the red-tailed hawk (*Buteo jamaicensis*), could nest in the onsite trees.

There are a few mammalian species that wander onto the site occasionally due to the close proximity to residential development or when looking for food (i.e., food left in the dumpsters). Raccoon (*Procyon lotor*) tracks were observed in the remediation area. Other species that may occur in this area include eastern fox squirrels (*Sciurus nigra*), domestic cat (*Felis catus*), domestic dog (*Canis familiaris*), and Virginia opossum (*Didelphis virginiana*).

2.1.2 Coyote Creek

A reach of Coyote Creek runs along the southern boundary of the site. The actual channel is located offsite, but a small sliver of the upper banks may occur within the property boundary. Coyote Creek is a perennial stream with headwaters in the Mt. Hamilton range in southeastern Santa Clara County. It empties into the San Francisco Bay approximately ten miles northwest of the project site.

The reach of Coyote Creek along the project boundary is highly disturbed with existing development starting at the top of bank. As noted in Section 1.1, an outfall from the site into Coyote Creek was filled and its use discontinued as part of the decommissioning of the metals recycling facility. Additionally, this reach of the creek is currently being utilized as a homeless encampment. Regardless of the disturbed nature of the creek, riparian vegetation is present along the banks, and a number of wildlife species utilize the channel for breeding and movement.

Vegetation within the creek corridor consisted of an overstory of tree and shrub species with an herbaceous and vine layer growing under the canopies. Riparian tree and shrub species observed within the riparian overstory include coast live oak (*Quercus agrifolia*), California buckeye (*Aesculus californica*), elm (*Ulmus* sp.), Fremont cottonwood (*Populus fremontii*), blue gum eucalyptus (*Eucalyptus globulus*), Peruvian peppertree (*Schinus molle*), Mexican elderberry (*Sambucus mexicanua*), box elder (*Acer negundo*), willow (*Salix* spp.), and snowberry (*Symphoricarpos albus*).

The understory had been trampled in many locations but appeared to be dominated by common non-native grass and forb species. These included black mustard (*Brassica nigra),* johnsongrass (*Sorghum halepense),* periwinkle (*Vinca minor*), curly dock (*Rumex crispus),* poison hemlock (*Conium maculatum*), cape ivy (*Delairea odorata),* and bedstraw (*Galium aparine*). Some geranium (*Geranium dissectum),* milk vetch (*Astragalus* sp.*),* drug fumitory (*Fumaria officinalis),* woodsorrel (*Oxalis* sp.), and bull thistle (*Cirsium vulgare)* were also observed on the site. Both Himalayan blackberry (*Rubus discolor*) and California blackberry (*Rubus ursinus*), as well as poison oak (*Toxicodendron diversiloba*), were growing in the understory. There were also scattered stands of giant reed (*Arundo donax*) growing along the channel banks.

The structural diversity of the riparian habitat provides suitable habitat for a number of wildlife species. Amphibians and reptiles that may inhabit the area include the ensatina (*Ensatina eschscholtzi*), arboreal salamander (*Aneides lugubris*), California slender salamander (*Batrachoseps attenuatus*), Pacific chorus frog (*Pseudacris regilla*), western fence lizard (*Sceloporus occidentalis*), southern alligator lizard (*Gerrhonotus multicarinatus*), and western toad (*Bufo boreas*).

Avian species observed foraging along the banks of the creek or perching in the trees include a northern flicker (*Colaptes auratus*), Nuttall's woodpecker (*Picoides nuttallii*) and mourning doves (*Zenaida macroura*). Other resident species likely to utilize this reach of Coyote Creek include the black phoebe (*Sayornis nigricans*) and spotted towhee (*Pipilo aculates*), along with the species occurring within the developed habitat of the site. The riparian trees provide suitable nesting habitat for a number of avian species, particularly raptors. Evidence of raptors breeding in the riparian trees was observed in a Fremont cottonwood (i.e., an abandoned stick nest remained from the previous year's breeding season) during a site survey in January 2006; however, no raptors or evidence of raptors were seen during the February 2010 field survey.

Mammalian species are expected to reside within and move through the corridor of Coyote Creek. A tree squirrel nest was observed in the riparian tree canopy. In addition to the species that may occur in the developed habitat, other mammalian species expected to occur along

Coyote Creek include the Botta's pocket gopher (*Thomomys bottae*), California mouse (Peromyscus californicus), striped skunk (*Mephitis mephitis*), and brush rabbit (*Sylvilagus bachmani*).

2.2 MOVEMENT CORRIDORS

Many terrestrial animals need more than one biotic habitat in order to perform all of their biological activities. With increasing encroachment of humans on wildlife habitats, it has become important to establish and maintain linkages, or movement corridors, for animals to be able to access locations containing different biotic resources that are essential to maintaining their life cycles. Terrestrial animals use ridges, canyons, riparian areas, and open spaces to travel between their required habitats.

The importance of an area as a movement corridor depends on the species in question and its consistent use patterns. Animal movements generally can be divided into three major behavioral categories:

- Movements within a home range or territory;
- Movements during migration; and
- Movements during dispersal.

While no detailed study of animal movements has been conducted for the study area, knowledge of the site, its habitats, and the ecology of the species potentially occurring onsite permits sufficient predictions about the types of movements occurring in the region and whether or not proposed development would constitute a significant impact to animal movements.

Coyote Creek, which borders the site to the south, serves as a movement corridor for local wildlife species that persist in nearby lands. However, the creek is expected to facilitate regional movements of only some wildlife species, as animals would have to travel through miles of poor habitat (i.e., urban development) before reaching the site and surrounding areas, which are themselves of low habitat value.

As noted in Section 2.1, some wildlife species adapted to urban areas may use the site itself as part of their home range and dispersal movements. The movements of these species, however, do not indicate that the site functions as a significant movement corridor. Reptiles, birds, and mammals would move through all portions of the site, as they would also do on the surrounding developed lands.

2.3 SPECIAL STATUS PLANTS AND ANIMALS

Several species of plants and animals within the state of California have low populations and/or limited distributions. Such species may be considered "rare" and are vulnerable to extirpation as the state's human population grows and the habitats these species occupy are converted to agricultural and urban uses. As described more fully in Section 3.2, state and federal laws have provided the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting the diversity of plant and animal species native to the state. A sizable number of native plants and animals have been formally designated as "threatened" or "endangered" under state and federal endangered species legislation. Others have been designated as candidates for such listing. Still others have been designated as "species of special concern" by the CDFG. The California Native Plant Society (CNPS) has developed its own set of lists of native plants considered rare, threatened, or endangered (CNPS 2010). Collectively, these plants and animals are referred to as "special status species."

A number of special status plants and animals occur in the site's vicinity (Fig. 3). These species and their potential to occur on the site are listed in Table 1 on the following pages. Sources of information for this table included *California's Wildlife, Volumes I, II, and III* (Zeiner et. al 1988), *California Natural Diversity Data Base* (CDFG 2010), *Endangered and Threatened Wildlife and Plants* (USFWS 2010), *State and Federally Listed Endangered and Threatened Animals of California* (CDFG 2010), and *The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California* (CNPS 2010). This information was used to evaluate the potential for special status plant and animal species that occur on the site. Figure

3 depicts the location of special status species found by the California Natural Diversity Data Base (CNDDB). It is important to note that the CNDDB is a volunteer database; therefore, it may not contain all known or gray literature records.

A search of published accounts for all relevant special status plant and animal species was conducted for the Milpitas USGS 7.5" quadrangle in which the project site occurs and for the eight surrounding quadrangles (Niles, La Costa Valley, Mountain View, Cupertino, Newark, Calaveras Reservoir, San Jose West, and San Jose East) using the California Natural Diversity Data Base Rarefind (CDFG 2010). All species listed as occurring in these quadrangles on CNPS Lists 1A, 1B, 2, 3, or 4 were also reviewed.

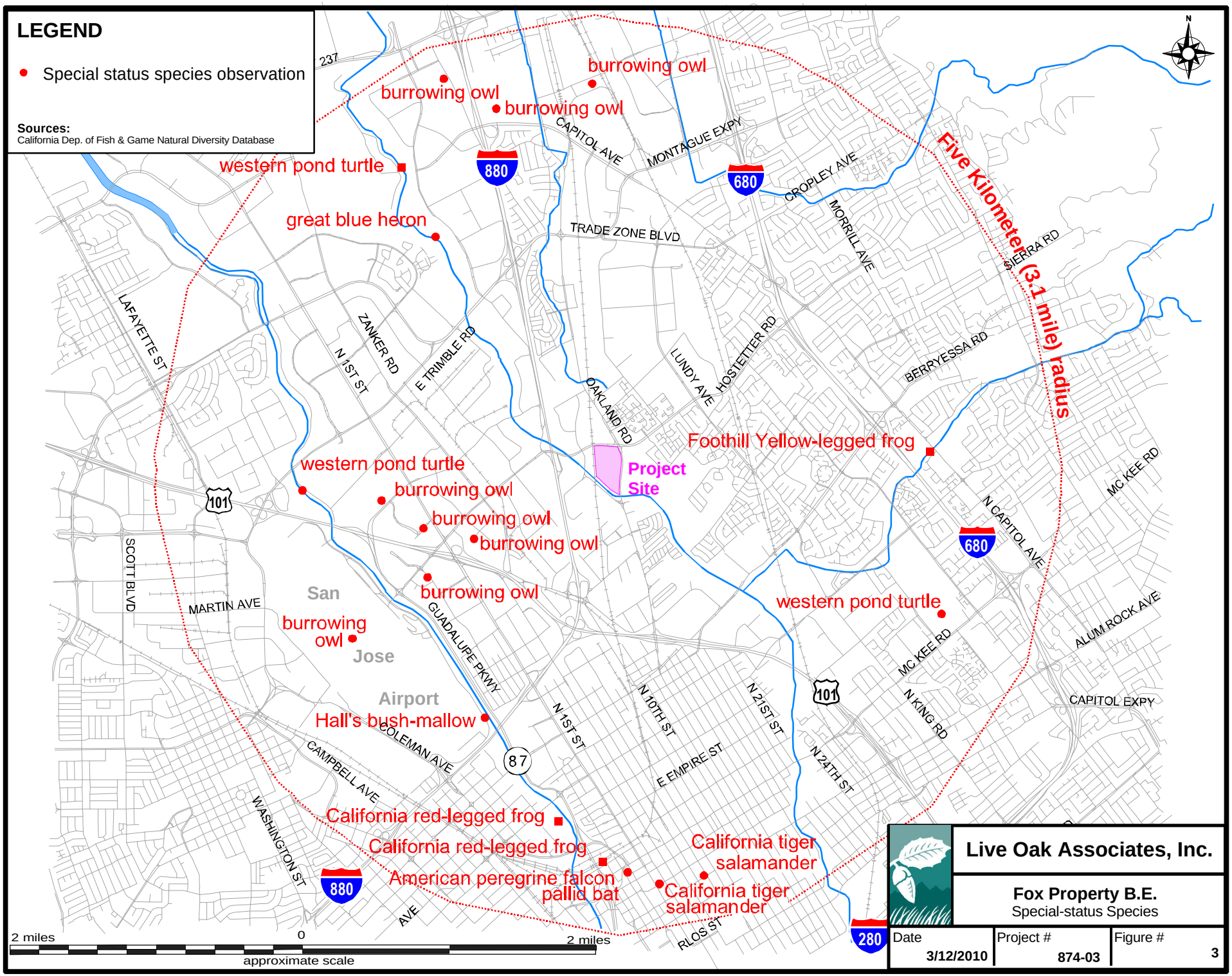

LEGEND
Special status species observation
Sources:
California Dep. of Fish & Game Natural Diversity Database
Five Kilometer (3.1 mile) radius
Project Site
burrowing owl
western pond turtle
great blue heron
Foothill Yellow-legged frog
Hall's bush-mallow
California red-legged frog
American peregrine falcon
pallid bat
California tiger salamander
CAPITOL AVE
MONTAGUE EXPY
CROPLEY AVE
MORRILL AVE
SIERRA RD
TRADE ZONE BLVD
LAFAYETTE ST
ZANKER RD
N 1ST ST
E TRIMBLE RD
OAKLAND RD
LUNDY AVE
HOSTETTER RD
BERRYESSA RD
MC KEE RD
N CAPITOL AVE
SCOTT BLVD
MARTIN AVE
GUADALUPE PKWY
ALUM ROCK AVE
CAPITOL EXPY
N KING RD
N 10TH ST
N 21ST ST
N 24TH ST
E EMPIRE ST
COLEMAN AVE
CAMPBELL AVE
WASHINGTON ST
RLOS ST
San Jose Airport
880
680
280
101
87
237
2 miles
0
2 miles
approximate scale
Live Oak Associates, Inc.
Fox Property B.E.
Special-status Species
Date 3/12/2010
Project # 874-03
Figure # 3

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

PLANTS (adapted from CDFG 2010 and CNPS 2010)

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Study Area
Robust Spineflower (*Chorizanthe robusta* var. *robusta*)	FE, CNPS 1B	Openings of cismontane woodlands, coastal dunes and coastal scrub between 3 and 300 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Santa Clara Valley Dudleya (*Dudleya setchellii*)	FE, CNPS 1B	Serpentine outcrops in valley and foothill grasslands between 60 and 365 meters.	**Absent.** Suitable habitat does not occur on the site. The underlying soils are not serpentine and the site is below 60 meters.
Contra Costa Goldfields (*Lasthenia conjugens*)	FE, CNPS 1B	Mesic areas of valley and foothill grasslands as well as in vernal pools below 470 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Metcalf Canyon Jewel Flower (*Streptanthus albidus* ssp. a*lbidus*)	FE, CNPS 1B	Serpentine valley and foothill grasslands between 45 and 800 meters.	**Absent.** Suitable habitat does not occur on the site. The underlying soils are not serpentine and the site is below 45 meters.
California Seablite (*Suaeda californica*)	FE, CNPS 1B	Coastal salt marshes and swamps below 15 meters.	**Absent.** Suitable habitat does not occur and likely never occurred on the site.

Other special status plants listed by CNPS

Species	Status	Habitat	*Occurrence in the Study Area
Anderson's Manzanita (*Arctosaphylos andersonii*)	CNPS 1B	Openings and edges of broadleafed upland forest, chaparral, and north coast coniferous forests between 60 and 730 meters.	**Absent.** Suitable habitat does not occur on the site.
Alkali Milk-vetch (*Astragalus tener* var. *tener*)	CNPS 1B	Playas, adobe clay valley, foothill grasslands, and alkaline vernal pools below 60 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Brittlescale (*Atriplex depressa*)	CNPS 1B	Alkali chenopod scrub, meadows, playas, and valley and foothill grasslands below 320 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
San Joaquin Saltbush (*Atriplex joaquiniana*)	CNPS 1B	Alkali chenopod scrub, meadows, playas, and valley and foothill grasslands below 835 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Big-Scale Balsamroot (*Balsamorhiza macrolepis* var. *macrolepis*)	CNPS 1B	Chaparral, cismontane woodlands, and valley and foothill grasslands (sometimes on serpentine) between 90 and 1400 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Round-leaved Filaree (*California macrophylla*)	CNPS 1B	Cismontane woodlands and valley and foothill grasslands on clay soils between 15 and 1200 meters.	**Absent.** Suitable habitat does not occur on the site.

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

PLANTS – cont'd.

Other special status plants listed by CNPS (cont'd.)

Species	Status	Habitat	*Occurrence in the Study Area
Chaparral Harebell (*Campanula exigua*)	CNPS 1B	Rocky chaparral, often on serpentine, between 275 and 1250 meters.	**Absent.** Suitable habitat does not occur on the site. The underlying soils are not serpentine and the site is below 275 meters.
Congdon's Tarplant (*Centromadia parryi* ssp. *congdonii*)	CNPS 1B	Alkaline valley and foothill grasslands below 230 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Mt. Hamilton Thistle (*Cirsium fontinale* var. *campylon*)	CNPS 1B	Chaparral, cismontane woodlands, and seeps within valley and foothill grasslands, most commonly on serpentine soils, between 100 and 890 meters.	**Absent.** Suitable habitat does not occur on the site. The underlying soils are not serpentine and the site is below 100 meters.
San Francisco Collinsia (*Collinsia multicolor*)	CNPS 1B	Closed-cone coniferous forests and serpentine coastal scrub between 30 and 250 meters.	**Absent.** Suitable habitat does not occur on the site. The underlying soils are not serpentine and the site is below 30 meters.
Point Reyes Bird's-beak (*Cordylanthus maritimus* ssp. *palustris*)	CNPS 1B	Coastal salt marshes and swamps below 10 meters.	**Absent.** Suitable habitat does not occur and likely never occurred on the site.
Western Leatherwood (*Dirca occidentalis*)	CNPS 1B	Broadleaved upland forest, closed cone conifer forest, North Coast conifer forest, chaparral, and riparian woodlands between 50 and 395 meters.	**Absent.** Suitable habitat does not occur on the site. The project site is below 50 meters.
Ben Lomond Buckwheat (*Eriogonum nudum* var. *decurrens*)	CNPS 1B	Chaparral, cismontane woodland, lower montane coniferous forest, between 50 and 800 meters.	**Absent.** Suitable habitat does not occur on the site. The project site is below 50 meters.
Hoover's Button-celery (*Eryngium aristulatum* var. *hooveri*)	CNPS 1B	Vernal pools between 3 and 45 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Fragrant Fritillary (*Fritillaria liliacea*)	CNPS 1B	Cismontane woodlands, coastal prairies and scrub, and valley and foothill grasslands, often on serpentine, between 3 and 410 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Diablo Helianthella (*Helianthella castanea*)	CNPS 1B	Broadleaved upland forests, chaparral, cismontane and riparian woodlands, coastal scrub, and valley and foothill grasslands between 60 and 1300 meters.	**Absent.** Suitable habitat does not occur on the site. The project site is below 60 meters.
Loma Prieta Hoita (*Hoita strobilina*)	CNPS 1B	Chaparral and cismontane and riparian woodlands, often on serpentine, between 30 and 860 meters.	**Absent.** Suitable habitat does not occur on the site. The underlying soils are not serpentine and the site is below 30 meters.

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

PLANTS – cont'd.

Other special status plants listed by CNPS (cont'd.)

Species	Status	Habitat	*Occurrence in the Study Area
Delta Tule Pea (*Lathyrus jepsonii* var. *jepsonii*)	CNPS 1B	Freshwater and brackish marshes and swamps below 4 meters.	**Absent.** Suitable habitat does not occur and likely never occurred on the site.
Arcuate Bush Mallow (*Malacothamnus arcuatus*)	CNPS 1B	Chaparral and cismontane woodlands between 15 and 355 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Hall's Bush Mallow (*Malacothamnus hallii*)	CNPS 1B	Chaparral and coastal scrub between 10 and 760 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Robust Monardella (*Monardella villosa* ssp. *globosa*)	CNPS 1B	Openings within broadleaf upland forest and chaparral, cismontane woodlands, coastal scrub, and valley and foothill grasslands between 100 and 915 meters.	**Absent.** Suitable habitat does not occur on the site. The project site is below 100 meters.
Prostrate Navarretia (*Navarretia prostrate*)	CNPS 1B	Coastal scrub, alkali valley and foothill grasslands, and mesic vernal pools between 15 and 700 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Hairless Popcorn-Flower (*Plagiobothrys glaber*)	CNPS 1A	Alkaline meadows and seeps and coastal salt marshes and swamps between 15 and 180 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Maple-leaved Checkerbloom (*Sidalcea malachroides*)	CNPS 1B	Broadleaved upland forest, coastal prairie and scrub, and coniferous forests between 2 and 700 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have at one time been present onsite has been eliminated.
Most Beautiful Jewel-flower (*Streptanthus albidus* ssp. *peramoenus*)	CNPS 1B	Serpentine chaparral, cismontane woodlands, and valley and foothill grasslands between 110 and 1000 meters.	**Absent.** Suitable habitat does not occur on the site. The underlying soils are not serpentine and the site is below 110 meters.
Caper-fruited Tropidocarpum (*Tropidocarpum capparideum*)	CNPS 1A	Alkaline soils in low hills and valleys below 455 meters.	**Absent.** Suitable habitat does not occur on the site. Any suitable habitat that may have been present has been eliminated.

ANIMALS (adapted from CDFG 2010 and USFWS 2010)

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Study Area
Steelhead (*Oncorhynchus mykiss*)	FT	Migrate up fresh water rivers or streams in the spring and spend the remainder of the time in the ocean.	**Possible.** This species is absent from the site itself but is known to occur in Coyote Creek, which is located just beyond the southern boundary.
California Tiger Salamander (*Ambystoma californiense*)	FT, CT	Breeds in vernal pools and stock ponds of central California. Adults aestivate in grassland habitats adjacent to the breeding sites.	**Absent.** Suitable seasonal ponds are absent from the project site.

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

ANIMALS – cont'd.

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Study Area
California Red-legged Frog (*Rana aurora draytonii*)	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and coast range, preferring pools with overhanging vegetation.	**Absent.** This species is absent from the site. It is also believed that this species is absent from the reach of Coyote Creek just beyond the southern boundary due to the site's location. Locally occurring red-legged frogs occur upstream from the site in less developed areas of the Mt. Hamilton foothills.
Peregrine Falcon (*Falco peregrinus*)	CE	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	**Absent.** Suitable foraging and breeding habitat is absent from the site.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
Foothill yellow-legged frog (*Rana boylii*)	CSC	Partly shaded, shallow, swiftly-flowing streams and riffles with rocky substrate in a variety of habitats.	**Absent.** This species is absent from the site. It is also believed that this species is absent from the reach of Coyote Creek just outside the southern boundary.
Western pond turtle (*Actinemys marmorata*)	CSC	Open slow-moving water of rivers and creeks of central California with rocks and logs for basking.	**Possible.** This species is absent from the site itself, but suitable habitat is present in Coyote Creek, which is located just beyond the southern boundary.
Golden Eagle (*Aquila chrysaetos*)	CSC, CP	Typically frequents rolling foothills, mountain areas, sage-juniper flats and desert.	**Absent.** Suitable nesting and foraging habitat is absent from the site.
Northern Harrier (*Circus cyaneus*)	CSC	Frequents meadows, grasslands, open rangelands, freshwater emergent wetlands; uncommon in wooded habitats.	**Absent.** Suitable nesting and foraging habitat is absent from the site.
White-tailed Kite (*Elanus leucurus*)	CP	Open grasslands and agricultural areas throughout central California.	**Possible.** The site provides suitable nesting habitat along the riparian corridor of Coyote Creek and marginal nesting habitat in the larger trees within the developed areas. Foraging habitat is absent from the site.
Burrowing Owl (*Athene cunicularia*)	CSC	Found in open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. This species is often associated with California ground squirrels.	**Unlikely.** Suitable habitat in the form of ground squirrel burrows was absent from the project site at the time of the February 2010 field visit. The vast majority of the site consists of preexisting development and it is unlikely that a burrowing owl would seek refuge within the riparian corridor of Coyote Creek due to the canopy cover of the trees and shrubs.
Loggerhead Shrike (*Lanius ludovicianus*)	CSC	Nests in tall shrubs and dense trees, forages in grasslands, marshes, and ruderal habitats.	**Possible.** The site provides suitable nesting habitat along the riparian corridor of Coyote Creek. Foraging habitat is absent from the site.

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

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
Tricolored Blackbird (*Agelaius tricolor*)	CSC	Breeds near fresh water in dense emergent vegetation.	**Absent.** Suitable nesting and foraging habitat is absent from the site.
California Yellow Warbler (*Dendroica petechia brewster*)	CSC	Migrants move through many habitats of Sierra and its foothills. This species breeds in riparian thickets of alder, willow and cottonwoods.	**Possible.** Suitable foraging habitat is absent from the site due to the existing development. However, the larger trees onsite, particularly along Coyote Creek, provide suitable nesting habitat.
Pallid Bat (*Antrozous pallidus*)	CSC	Grasslands, chaparral, woodlands, and forests of California; most common in dry rocky open areas providing roosting opportunities.	**Unlikely.** This species may rarely forage over Coyote Creek. Breeding habitat is absent.
California Mastiff Bat (*Eumops perotis californicus*)	CSC	Forages over many habitats, requires tall cliffs or buildings for roosting.	**Unlikely.** This species may rarely forage over Coyote Creek. Breeding habitat is absent.
Townsend's Big-eared Bat (*Corynorhinus townsendii*)	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats of the state.	**Unlikely.** This species may rarely forage over Coyote Creek. Breeding habitat is absent.
Ringtail (*Bassariscus astutus*)	CP	Occurs in riparian and heavily wooded habitats near water.	**Possible.** Suitable habitat is present within the Coyote Creek riparian corridor along the southern boundary of the site.
American badger (*Taxidea taxus*)	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils.	**Absent.** Suitable habitat is absent from the site.

***Explanation of Occurrence Designations and Status Codes**

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

STATUS CODES

FE	Federally Endangered
FT	Federally Threatened
FPE	Federally Endangered (Proposed)
FC	Federal Candidate

CE	California Endangered
CT	California Threatened
CR	California Rare
CP	California Protected
CSC	California Species of Special Concern

CNPS	California Native Plant Society Listing
1A	Plants Presumed Extinct in California
1B	Plants Rare, Threatened, or Endangered in California and elsewhere
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere
3	Plants about which we need more information – a review list
4	Plants of limited distribution – a watch list

2.4 JURISDICTIONAL WATERS

Jurisdictional waters include rivers, creeks, and drainages that have a defined bed and bank and which, at the very least, carry ephemeral flows. Jurisdictional waters also include lakes, ponds, reservoirs, and wetlands. Such waters may be subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Game (CDFG), and the California Regional Water Quality Control Board (RWQCB). See Section 3.2.4 of this report for additional information.

The project site is located immediately adjacent to a reach of Coyote Creek, a known water of the United States. Coyote Creek is also subject to the jurisdiction of the CDFG and RWQCB.

No jurisdictional waters are present on the site itself.

3.0 IMPACTS AND MITIGATIONS

3.1 SIGNIFICANCE CRITERIA

Approval of general plans, area plans, and specific projects is subject to the provisions of the California Environmental Quality Act (CEQA). The purpose of CEQA is to assess the impacts of proposed projects on the environment before they are carried out. CEQA is concerned with the significance of a proposed project's impacts. For example, a proposed development project may require the removal of some or all of a site's existing vegetation. Animals associated with this vegetation could be destroyed or displaced. Animals adapted to humans, roads, buildings, pets, etc., may replace those species formerly occurring on the site. Plants and animals that are state and/or federally listed as threatened or endangered may be destroyed or displaced. Sensitive habitats such as wetlands and riparian woodlands may be altered or destroyed.

Whenever possible, public agencies are required to avoid or minimize environmental impacts by implementing practical alternatives or mitigation measures. According to Section 15382 of the CEQA Guidelines, a significant effect on the environment means a "substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest."

Specific project impacts to biological resources may be considered "significant" if they would:

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

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

- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;

- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or

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

Furthermore, CEQA Guidelines Section 15065(a) states that a project may trigger the requirement to make a "mandatory findings of significance" if the project has the potential to

> Substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

3.2 RELEVANT GOALS, POLICIES, AND LAWS

3.2.1 Threatened and Endangered Species

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

agencies review CEQA documents in order to determine the adequacy of their treatment of endangered species issues and to make project-specific recommendations for their conservation.

3.2.2 Migratory Birds

State and federal laws also protect most birds. The Federal Migratory Bird Treaty Act (16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

3.2.3 Birds of Prey

Birds of prey are also protected in California under provisions of the State Fish and Game Code, Section 3503.5, which states that it is "unlawful to take, possess, or destroy any birds in the order *Falconiformes* or *Strigiformes* (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto." Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the CDFG.

3.2.4 Wetlands and Other Jurisdictional Waters

Natural drainage channels and adjacent wetlands may be considered "Waters of the United States" (hereafter referred to as "jurisdictional waters") subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE). The extent of jurisdiction has been defined in the Code of Federal Regulations but has also been subject to interpretation of the federal courts. Jurisdictional waters generally include:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters including interstate wetlands:
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce;

- All impoundments of waters otherwise defined as waters of the United States under the definition;
- Tributaries of waters identified in paragraphs (a)(1)-(4) (i.e. the bulleted items above).

As recently determined by the United States Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (the SWANCC decision), channels and wetlands isolated from other jurisdictional waters cannot be considered jurisdictional on the basis of their use, hypothetical or observed, by migratory birds. However, the U.S Supreme Court decisions *Rapanos v. United States* and *Carabell v. U.S. Army Corps of Engineers* (referred together as the Rapanos decision) impose a "significant nexus" test for federal jurisdiction over wetlands. In June 2007, the USACE and Environmental Protection Agency (EPA) established guidelines for applying the significant nexus standard. This standard includes 1) a case-by-case analysis of the flow characteristics and functions of the tributary or wetland to determine if they significantly affect the chemical, physical, and biological integrity of downstream navigable waters and 2) consideration of hydrologic and ecologic factors (EPA and USACE 2007).

The USACE regulates the filling or grading of such waters under the authority of Section 404 of the Clean Water Act. The extent of jurisdiction within drainage channels is defined by “ordinary high water marks” on opposing channel banks. Wetlands are habitats with soils that are intermittently or permanently saturated, or inundated. The resulting anaerobic conditions select for plant species known as hydrophytes that show a high degree of fidelity to such soils. Wetlands are identified by the presence of hydrophytic vegetation, hydric soils (soils saturated intermittently or permanently saturated by water), and wetland hydrology according to methodologies outlined in the 1987 Corps of Engineers Wetlands Delineation Manual (USACE 1987).

All activities that involve the discharge of fill into jurisdictional waters are subject to the permit requirements of the USACE (Wetland Training Institute, Inc. 1991). Such permits are typically issued on the condition that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values. No permit can be issued until the Regional Water Quality Control Board (RWQCB) issues a certification (or waiver of such certification) that the proposed activity will meet state water quality standards. The filling of isolated wetlands, over which the USACE

has disclaimed jurisdiction under the SWANCC decision, is regulated by the RWQCB. It is unlawful to fill isolated wetlands without filing a Notice of Intent with the RWQCB. The RWQCB is also responsible for enforcing National Pollution Discharge Elimination System (NPDES) permits, including the General Construction Activity Storm Water Permit. All projects requiring federal money must also comply with Executive Order 11990 (Protection of Wetlands).

The California Department of Fish and Game has jurisdiction over the bed and bank of natural drainages according to provisions of Section 1601 and 1602 of the California Fish and Game Code (2003). Activities that would disturb these drainages are regulated by the CDFG via a Streambed Alteration Agreement. Such an agreement typically stipulates that certain measures will be implemented which protect the habitat values of the drainage in question.

3.2.5 Local Ordinances, Policies, and Habitat Conservation Plans

Tree ordinance. The City of San Jose has a tree ordinance (Chapter 13.32 of the Municipal Code) that regulates the removal of covered trees. According to the City, it is the purpose of the ordinance to "promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems."

An "ordinance tree" is defined as any native or non-native tree with a circumference of 56 inches (diameter of 18 inches) at 24 inches above the natural grade of slope. For multi-trunk trees, the circumference is measured as the sum of the circumferences of all trunks at 24 inches above the natural grade of slope. A tree removal permit is required from the City prior to the removal of any trees covered under the ordinance. Prior to the issuance of a removal permit, the City requires that a formal tree survey be conducted that indicates the number, species, trunk circumference, and location of all trees that will be removed or impacted by the project.

Riparian policy.

The City of San Jose has a riparian policy that addresses several issues relating to the identification, management, and protection of riparian resources within the City's Urban Service Area (USA). The City has assumed that riparian corridors outside the USA are substantially protected by the General Plan Policy's that govern these areas. This policy has noted that areas "outside the USA and not subject to specific General Plan direction regarding riparian protection, should be subject, at a minimum, to the development guidelines in this document" (City of San Jose, 1999).

Riparian corridors are defined as:

> Any defined stream channels including the area up to the bank full-flow line, as well as all riparian (streamside) vegetation in contiguous adjacent uplands. Characteristic wood riparian vegetation species could include (but are not limited to): willow, *Salix* sp.; alder, *Alnus* sp.; box elder, *Acer negundo*; Fremont cottonwood, *Populus fremontii*; bigleaf maple, *Acer macrophyllum*; western sycamore, *Platanus racemosa*; and oaks, *Quercus* sp. Stream channels include all perennial and intermittent streams shown as a solid or dashed blue line on USGS topographic maps, and ephemeral streams or "arroyos" with well-defined channels and some evidence of scour or deposition (City of San Jose 1999, 3).

The City's Riparian Policy recommends the following riparian setback dimensions:

> All buildings, other structures (with the exception of bridges and minor interpretative node structures), impervious surfaces, outdoor activity areas (except for passive or intermittent activities) and ornamental landscaped areas should be separated a minimum of 100 feet from the edge of the riparian corridor (or top of bank, whichever is greater) (City of San Jose 1999, 31).

While the policy does recommend a 100-ft. setback along riparian systems within the USA, it also provides for exceptions to the 100-ft. setback guideline. Exceptions include:

- Locations in or near downtown San Jose;
- Urban infill locations where most properties are already developed and parcels are generally small;
- Sites adjacent to small lower order tributaries whose riparian influence does not extend 100 feet;
- Sites with unusual geometric characteristics and/or disproportionately long riparian frontages;
- Instances where implementation of the project includes measures which can protect and enhance the riparian value of the corridor more than could a 100 foot setback;

- Recreation facilities deemed to be a critical need and for which alternative site locations are limited; and
- Utility or equipment installations, or replacements of existing ones, which involve no significant disturbance to the riparian corridor during construction and operation, and generate only incidental human activity.

During the CEQA process, the City evaluates an applicant's claim that their project meets the conditions of the relevant exceptions.

Established setbacks or buffers are designed to reduce anthropogenic effects on riparian systems. Usually, the resource agencies have asserted that buffers of 100 feet or more are necessary to reduce adverse affects on riparian systems. While reasonable evidence exists to support the notion that larger buffers provide significant additional benefit to riparian systems, there is a paucity of empirical data that allows for the establishment of a precise estimate. Therefore, the 100-ft. riparian buffer that is often adopted is a historically-accepted value rather than an empirically-derived one. While not empirically driven, a buffer of 100 ft. provides a useful starting point to evaluate the potential affects from a proposed project. For the purposes of this document, the primary purpose of the buffer is to minimize the effect of human development on riparian systems occurring onsite. Therefore, the existing condition of the riparian zone, including proximity of roads, development, and trails, is critical for understanding the potential effects of any future development.

Santa Clara Valley HCP/NCCP.

To date, there are no adopted habitat conservation plans that cover the project site. The City of San Jose and several partner agencies, including the County of Santa Clara, the Santa Clara Valley Water District, and the Santa Clara Valley Transportation Authority, are in the process of developing a multi-species Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) for the Santa Clara Valley. The HCP/NCCP has yet to be adopted and is currently non-operational. According to the latest schedule, approval is anticipated by the end of 2010.

The only species potentially impacted by this project that will be covered by the HCP/NCCP is the western pond turtle. If this HCP were approved prior to site development, the project would be subject to the provisions addressed in this HCP.

3.3 IMPACTS AND MITIGATIONS SPECIFIC TO THE PROJECT SITE

The proposed project consists of a general plan amendment and Planned Development (PD) zoning to allow a mix of commercial, residential, and park uses. General commercial uses would be allowed on 13.7 acres on the northern portion of the site, residential uses on 13.7 acres in the southern portion of the site, and 2.5 acres of open space adjacent to Coyote Creek. The Open Space/Riparian Area, which provides an approximately 100-foot setback from Coyote Creek, would include a 25-foot right-of-way or 0.6 acres for a trail to be dedicated to the City. The proposed project will also include the removal or reconstruction of a filled outfall from the site into Coyote Creek.

For the purposes of this analysis, it is assumed that any future proposal by the applicant will be consistent with the general locations of the site as currently represented in the plans provided by Charles W. Davidson Co. (2009) and Kenneth Rodrigues & Partners, Inc. (2010). Any appreciable difference in either scope or general location of the proposed project would require an additional impact assessment to ensure that unanticipated impacts to biotic resources are not likely to occur.

3.3.1 Loss of Habitat for Special Status Plants

Potential Impacts. Thirty-one special status vascular plant species are known to occur in the general project vicinity (Table 1). Site development would have no effect on regional populations of these species since the site provides no habitat for special status plants. Therefore, state and federal laws protecting special status plants would not be relevant to development of the site.

Mitigation. Mitigation measures are not warranted.

3.3.2 Loss of Habitat for Special Status Animals

Potential Impacts. Eighteen special status animal species occur, or once occurred, regionally (Table 1). With the exception of the steelhead, western pond turtle, white-tailed kite, loggerhead

shrike, California yellow warbler, and ringtail, all of these species would be absent from or unlikely to occur on the site due to unsuitable habitat conditions (i.e., the developed nature of the vast majority of the site). Eventual project build-out would have no effect on these species because there is little or no likelihood that they are present.

Steelhead, western pond turtles, white-tailed kites, loggerhead shrikes, California yellow warblers, and ringtails potentially occur more frequently as transients or residents to the site or Coyote Creek. White-tailed kites may utilize the trees within the riparian habitat of Coyote Creek and the larger trees within the developed portion of the site. The remaining species would be restricted to the Coyote Creek corridor. Steelhead may occur within the channel of Coyote Creek. Western pond turtles could seek cover along the channel banks, and potential basking sites are present as well. Loggerhead shrikes and California yellow warblers could potentially nest in the trees within the riparian habitat of Coyote Creek but would not be expected to nest in trees within the developed portion of the site.

Removal or reconstruction of the outfall could result in the loss of a small amount of habitat for steelhead and western pond turtles, which would be considered a less-than-significant impact. Impacts to habitat for white-tailed kites, loggerhead shrikes, California yellow warblers, and ringtails would not be considered significant, as project build-out would, at most, result in a minimal reduction of foraging and/or breeding habitat available regionally for these species, and there is suitable habitat in the project vicinity that would be available to these species both during and following project redevelopment.

Therefore, the loss of habitat for all species listed in Table 1 would be considered less-than-significant.

Even though ringtails may occur within the riparian habitat along Coyote Creek, individuals of this species are reclusive, nocturnal mammals that reside in the high canopies of the riparian trees. If ringtails were present within the vicinity of proposed construction, it is assumed that individuals would flush from the area unharmed.

Mitigation. The minimal amount of riparian habitat along Coyote Creek that would be impacted as a result of the proposed outfall work would not be considered significant as it relates to special status animals that would occur there. Nevertheless, mitigations required to address impacts to riparian habitat would adequately offset impacts to habitat for these species (Section 3.3.6). Additional mitigation measures are not warranted.

3.3.3 Impacts to Steelhead

Potential Impacts. Erosion and sediment runoff from the outfall removal or reconstruction work could have indirect adverse effects on steelhead. This would be considered a significant impact.

Mitigation. Prior to project construction, measures can be taken that would fully mitigate for impacts to steelhead:

- No construction should occur in Coyote Creek during the steelhead spawning season and rainy season (generally October 15 through June 14), when most runoff water would enter the channel.
- A tailgate meeting discussing the identification of steelhead and the purpose of implementing precautionary measures to avoid impacts to steelhead should be conducted with onsite workers prior to the start of construction.
- No materials or equipment should be staged within the Coyote Creek channel. All materials and equipment should be staged at least ten feet from the top of the creek bank.
- All open trenches or pipes should be covered or some escape method (e.g., escape board) placed within the trench or pipe at the end of each workday. Doing so would preclude steelhead from being trapped in the trench or pipe after working hours. The filling of any trenches should be monitored by a qualified biologist.
- Best management practices should be implemented during construction to prevent any construction debris or sediment from entering the creek channel (Section 3.3.8).
- A biological monitor should be present onsite during construction within potentially suitable habitat to ensure that no steelhead are harmed, injured, or killed during project build out.

3.3.4 Impacts to Western Pond Turtles

Potential Impacts. The Coyote Creek riparian corridor provides potentially suitable habitat for the western pond turtle. Removal or reconstruction of the outfall could result in the permanent loss of a small amount of basking and nesting habitat for the turtle and a temporary disturbance to the immediate vicinity of the outfall. The loss of habitat for this species would be considered a less-than-significant impact.

Construction work associated with this project could also result in the actual death or injury of a western pond turtle. This would be considered a significant adverse impact.

Mitigation. The minimal amount of habitat along Coyote Creek that would be impacted as a result of the proposed outfall work would not be considered significant as it relates to the western pond turtle. Nevertheless, mitigations required to address impacts to riparian habitat would adequately offset impacts to western pond turtle habitat (Section 3.3.6).

Prior to project construction, measures can be taken that would fully mitigate for impacts to any western pond turtles utilizing onsite habitats:

- A tailgate meeting discussing the purpose of implementing precautionary measures to avoid impacts to western pond turtles should be conducted with onsite workers prior to the start of construction.
- Pre-construction surveys should be conducted to ensure that western pond turtles are absent from the construction area supporting potentially suitable habitat prior to ground disturbance.
- The construction zone should be cleared, and silt fencing should be erected and maintained around construction zones to prevent western pond turtles from moving into these areas.
- A biological monitor should be present onsite during construction within potentially suitable habitat to ensure that no western pond turtles are harmed, injured, or killed during project build out.

3.3.5 Disturbance to Active Raptor, Loggerhead Shrike, and California Yellow Warbler Nests

Potential Impacts. Although no stick nests were observed on the site or within the riparian corridor of Coyote Creek during the February 2010 survey, large trees on the site provide potential nesting habitat for white-tailed kites and other tree-nesting raptors, and thickets along the creek provide potential nesting habitat for loggerhead shrikes and California yellow warblers as well. If any of these species were to nest on or adjacent to the site prior to construction, construction activities could result in the abandonment of active nests or direct mortality to these birds. Construction activities that adversely affect the nesting success of raptors, loggerhead shrikes, or California yellow warblers or result in mortality of individual birds constitute a violation of state and federal laws (Section 3.2.3) and would be considered a significant impact under CEQA.

Mitigation. Trees planned for removal from the site or from within the Coyote Creek riparian corridor should be removed during the non-breeding season (September 1 through January 31). If it is not possible to avoid tree removal or other disturbances during the breeding season (February 1 through August 31), a qualified biologist should conduct a pre-construction survey for nesting raptors, loggerhead shrikes, or California yellow warblers in all trees within the development footprint and within 250 feet of the footprint no more than 30 days of the onset of ground disturbance, if such disturbance will occur during the breeding season. If nesting raptors, loggerhead shrikes, and/or California yellow warblers are detected during the survey, a suitable construction-free buffer should be established around all active nests. The precise dimension of the buffer (up to 250 ft.) would be determined at that time and may vary depending on location and species. Buffers should remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents. Pre-construction surveys during the non-breeding season are not necessary for these species, as they are expected to abandon their roosts during construction. Implementation of the above measures would mitigate impacts to tree-nesting raptors, loggerhead shrikes, and California yellow warblers to a less-than-significant level.

3.3.6 Disturbance to Waters of the United States or Riparian Habitats

Potential Impacts. Removal or reconstruction of the existing outfall would result in permanent and temporary disturbances to approximately 1,200 sq. ft. of Coyote Creek, a known water of the U.S, and its associated riparian habitat. The placement of fill within jurisdictional waters and the loss of, or encroachment upon, riparian habitat would be considered significant impacts under CEQA.

The project also proposes a pedestrian trail within a 25-foot right of way in the riparian corridor setback area. The Riparian Corridor Policy Study allows for pedestrian-only trails to be located along the edge of the riparian corridor. Therefore, the proposed trail alignment would constitute a less-than-significant impact, and mitigation measures for this element of the project would not be warranted.

Mitigation. The following mitigations are designed to reduce project impacts to Coyote Creek and its associated riparian corridor to a less-than-significant level as a result of the outfall work.

Minimization. Because construction of the outfall cannot avoid Coyote Creek and its riparian corridor, actions should be taken to minimize impacts to the riparian corridor during construction. Measures taken during construction activities should include placing construction fencing around the riparian area(s) to be preserved to ensure that construction activities do not inadvertently impact these areas.

Additionally, as part of project build-out, all proposed lighting should be designed to avoid light and glare impacts to the riparian corridor. Light sources should not be visible from riparian areas and should not illuminate riparian areas or cause glare on the opposite side of Coyote Creek (e.g., to neighboring properties and Schallenberger Road).

Compensation. Compensation measures would be required to offset temporary and permanent impacts to the riparian corridor of Coyote Creek as a result of removal or reconstruction of the outfall. These measures would either result in the creation of new habitat, either onsite or offsite,

as replacement for habitat lost or enhance the quality of existing riparian habitat for native plants and wildlife. Compensation measures should include a replacement-to-loss ratio of up to 3:1 for permanent acreage impacts (3 acres created for each acre impacted) as well as reseeding of vegetation in temporarily disturbed areas. Any encroachments upon the riparian setback should be mitigated for at a 1:1 replacement-to-loss ratio (1 acre of riparian habitat created for each acre of encroachment within the riparian setback). Mitigation could include the enhancement of onsite riparian habitat for minimal impacts or the implementation of offsite efforts along a nearby tributary for larger impacts. Compensation measures may vary depending on the final project design.

Regulatory issues. The applicant should also comply with all state and federal regulations related to removal or replacement of the outfall, which will impact Coyote Creek and its riparian corridor. This may require obtaining a Section 404 Clean Water Act permit from the USACE, Section 401 Water Quality Certification from the RWQCB, and Section 1602 Lake or Streambed Alteration Agreement from the CDFG prior to initiating any construction, if deemed necessary, and fulfilling the mitigation requirements of these permits.

If the above measures are taken, impacts to Coyote Creek and its riparian corridor would be reduced to a less-than-significant level under CEQA.

3.3.7 Disturbance to Ordinance-Size Trees

Potential Impacts. Tree removal is expected to occur subject to proposed development plans, although it is currently unknown which trees occurring on the site will be removed or otherwise impacted by the project. The removal of 10 or more native ordinance-size trees, 20 or more non-native ordinance-size trees, or 100 or more non-ordinance-size trees would constitute a significant impact under CEQA.

Mitigation. Prior to the removal of any onsite trees, including the ornamental trees associated with the existing development, the City of San Jose would need to be contacted, and a permit would need to be obtain for the removal of any tree defined by a certified arborist. Additionally,

the following mitigation is designed to reduce project impacts due to the loss or disturbance of ordinance-size trees to a less-than-significant level.

All trees removed as a result of the project, regardless of their size, would require mitigation at replacement-to-removal ratios set forth by the City of San Jose and described more fully below. Trees to be removed by the project should be replaced at the following ratios:

- The replacement of all native ordinance-size trees at a 6:1 replacement-to-removal ratio and non-native ordinance-size trees at a 4:1 replacement-to-removal ratio with 24-inch box specimens or greater.

- The replacement of all native and non-native trees having a trunk diameter between 12 and 18 inches will occur at a 3:1 replacement-to-removal ratio and 2:1 replacement-to-removal ratio, respectively, with 24-inch box specimens or greater.

- The replacement of all trees having a trunk diameter of 12 inches or less will occur at a 1:1 replacement-to-removal ratio with 15-gallon specimens.

The exact number and species of trees to be utilized for the mitigation would be determined based on consultation with the City Arborist and with the Director of the Department of Planning, Building and Code Enforcement.

Replacement trees should be planted onsite to the maximum extent practicable. If it is determined that the site lacks sufficient areas to accommodate all of the replacement plantings, one or more of the following measures will be implemented:

- Replacement tree plantings may be accommodated at an alternative site(s). An alternative site may include local parks or schools, or an adjacent property where such plantings may be utilized for screening purposes. However, any alternatively proposed site will be pursuant to agreement with the Director of the Department of Planning, Building and Code Enforcement.

- A monetary donation per mitigation tree may be made to the *San Jose Beautiful* or *Our City Forest* programs. A receipt for any such donation will be provided to the Planning Project Manager prior to the removal of the trees.

Impacts to any retained trees during the construction and operation phases of the project can be reduced to a less-than-significant level by conforming to the following guidelines:

- The project proponent shall retain a consulting arborist prior to any ground disturbance activities. The consulting arborist will develop a tree-protection plan outlining specific procedures to ensure that retained trees are protected during the construction phase.

- Prior to any ground disturbance activities, fencing will be installed around the drip-line of all retained trees occurring within the development envelopes, and the fencing will remain in place throughout the construction phase of the project. The type of fencing to be utilized will be at the direction of the consulting arborist.

- Any limb or root pruning to be conducted on retained trees shall be approved and supervised by the consulting arborist and shall follow best management practices developed by the International Society of Arboriculture.

- Supplemental irrigation to retained trees shall be applied as determined by the consulting arborist.

- If any of the retained trees should be damaged during the construction phase, they will be evaluated at the earliest possible time by the consulting arborist so that appropriate measures can be taken.

3.3.8 Loss of Habitat for Native Wildlife

Potential Impacts. The entire site is developed and consists of hardscape and landscape vegetation, which provides only low-quality habitat for most species. No natural habitats occur on the site. Due to the small amount of low-quality habitat that would be impacted by project development, the loss of habitat for native wildlife resulting from the proposed project would constitute a less-than-significant impact.

Mitigation. Mitigation measures are not warranted.

3.3.9 Interference with the Movement of Native Wildlife

Potential Impacts. Although Coyote Creek immediately borders the site to the south and facilitates the movement of wildlife through the region, the project site itself provides minimal dispersal habitat for native wildlife and does not function as a movement corridor for native wildlife because it is developed and is bordered on its remaining sides by development. Site development is not expected to have a significant effect on home range and dispersal movements

of native wildlife that may occur in the region. Therefore, the project will result in a less-than-significant impact on the movements of native wildlife.

Mitigation. Mitigation measures are not warranted.

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

Potential Impacts. Eventual demolition of the existing office buildings and hardscape will result in soils left barren in the footprint of these removed structures and feature. Additionally, extensive grading often leaves the soils of construction zones barren of vegetation and, therefore, vulnerable to erosion. Eroded soil can be carried as sediment in seasonal creeks to be deposited in creek beds and adjacent wetlands. However, the project site is nearly level. Therefore, the potential for erosion and the degradation of water quality in Coyote Creek and other local creeks is negligible.

Furthermore, the applicant is expected to comply with the provisions of a City grading permit, including standard erosion control measures that employ best management practices (BMPs). Compliance with the above permit(s) should result in no impact to water quality in seasonal creeks, reservoirs, and downstream waters from the proposed project and should not result in the deposition of pollutants and sediments in sensitive riparian and wetland habitats.

Mitigation. Mitigation measures are not warranted.

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APPENDIX A: VASCULAR PLANTS OF THE STUDY AREA

The plants species listed below were observed on the Fox Property during the field survey conducted by Live Oak Associates in February 2010. The U.S. Fish and Wildlife Service wetland indicator status of each plant has been shown following its common name.

OBL - Obligate
FACW - Facultative Wetland
FAC - Facultative
FACU - Facultative Upland
UPL - Upland
+/- - Higher/lower end of category
NI - No investigation

APOCYNACEAE – Dogbane Family		
*Nerium oleander**	Oleander	UPL
ARALIACEAE – Ginseng Family		
*Hedera helix**	English ivy	UPL
ASTERACEAE - Sunflower Family		
Baccharis pilularis	Coyote brush	UPL
*Cirsium vulgare**	Bull thistle	FACU
*Lactuca serriola**	Prickly lettuce	FAC
*Picris echioides**	Bristly ox-tongue	FAC*
*Silybum marianum**	Milk thistle	UPL
BRASSICACEAE – Mustard Family		
*Brassica nigra**	Black mustard	UPL
CAPRIFOLIACEAE – Honeysuckle Family		
Sambucus mexicana	Blue elderberry	FAC
Symphoricarpos albus var. *laevigatus*	Common snowberry	FACU
CHENOPODIACEAE – Goosefoot Family		
*Salsola tragus**	Russian thistle	UPL
FABACEAE – Legume Family		
Lupinus sp.	Lupine	-
*Medicago polymorpha**	Burclover	UPL
Melilotus indicus	Yellow sweetclover	FAC
*Vicia sativa**	Spring vetch	FACU
GERANIACEAE – Geranium Family		
*Erodium cicutarium**	Redstem filaree	UPL
*Geranium dissectum**	Wild geranium	UPL
LYTHRACEAE – Loosestrife Family		
Lagerstroemia indica	Crape myrtle	UPL
MALVACEAE – Mallow Family		
*Malva neglecta**	Dwarf mallow	UPL
*Malva parviflora**	Cheeseweed mallow	UPL
ONAGRACEAE – Evening Primrose Family		
Epilobium brachycarpum	Panicled willowherb	UPL

PAPAVERACEAE – Poppy Family		
Fumaria capreolata	White ramping fumitory	UPL
PINACEAE – Pine Family		
Pinus sp.	Pine	-
PLATANACEAE – Sycamore Family		
Platanus racemosa	Western sycamore	FACW
POACEAE - Grass Family		
*Arundo donax**	Giant reed	FACW
*Bromus madritensis**	Foxtail chess	NI
Hordeum marinum ssp. *gussoneanum**	Mediterranean barley	FAC
*Piptatherum miliaceum**	Smilo grass	UPL
*Sorghum halepense**	Johnsongrass	FACU
POLYGONACEAE – Buckwheat Family		
*Polygonum arenastrum**	Common knotweed	UPL
*Rumex crispus**	Curly dock	FACW-
ROSACEAE – Rose Family		
*Rhaphiolepis indica**	Indian hawthorn	-
*Rubus discolor**	Himalayan blackberry	FACW*
Rubus ursinus	California blackberry	FACW*
SALICACEAE – Willow Family		
Populus fremontii ssp. *fremontii*	Fremont cottonwood	FACW
Salix sp.	Willow	-
SOLANACEAE – Nightshade Family		
*Nicotiana glauca**	Tree tobacco	FAC
TAXODIACEAE – Bald Cypress Family		
Sequoia sempervirens	Coast redwood	UPL

*Introduced, non-native species