LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

BIOLOGICAL EVALUATION
LESTER PROPERTY

CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA

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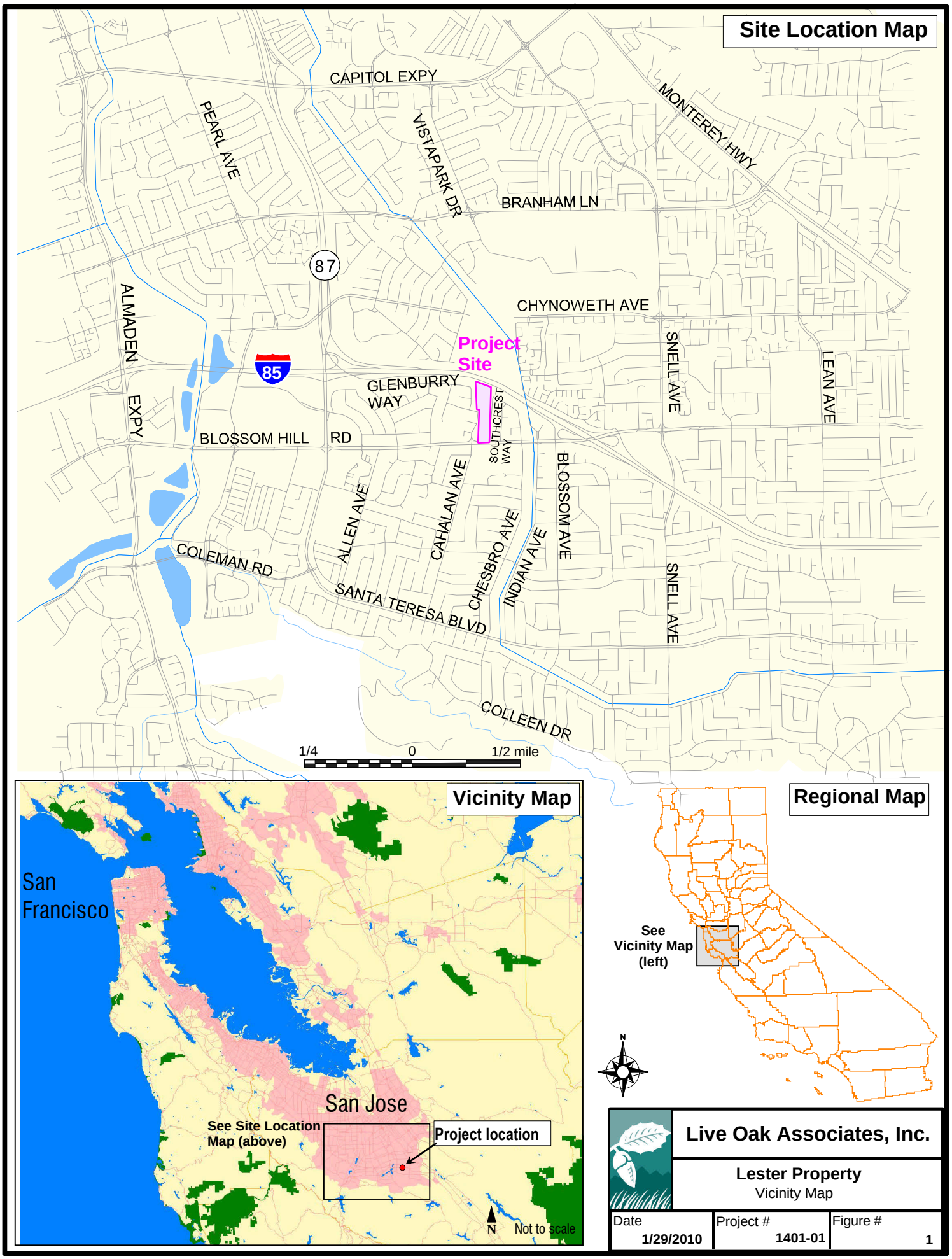
1.0 INTRODUCTION

The technical report that follows describes the biotic resources of the approximately 9.48-acre Lester Property (APNs 464-44-057 and 464-22-030) in the City of San Jose, Santa Clara County, California, and evaluates likely impacts to these resources resulting from proposed development of 84 courthomes and a section of residential roadway that will connect Chesbro Avenue and Blairburry Way. The property is located within the southern portion of the City of San Jose and is generally bounded by California State Route 85 to the north, Southcrest Way to the east, Blossom Hill Road to the south, and Cahalan Avenue and residential development to the west (Figure 1). The project site is located in the San Jose East U.S.G.S. 7.5' minute quadrangle, within the west ½ of the southeast quadrant of the north east quadrant of Section 10 of Township 8 South, Range 1 East.

Development of projects such as housing complexes can damage or modify biotic habitats used by sensitive plant and wildlife species. In such cases, site development may be regulated by state or federal agencies, subject to provisions of the California Environmental Quality Act (CEQA), and/or covered by policies and ordinances of the City of San Jose and Santa Clara County. This report addresses issues related to: 1) sensitive biotic resources occurring on the study area; 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 impact as identified by CEQA and that are generally consistent with recommendations of the resource agencies for affected biological resources.



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Lester Property
Vicinity Map

Date	Project #	Figure #
1/29/2010	1401-01	1

Natural resource issues related to these state and federal laws have been identified in past planning studies conducted in Santa Clara County, and it is reasonable to presume that such issues could be relevant to the site examined in this report. For example, numerous state- and/or federally-listed plant and animals, as well as other special status animal species (i.e., candidate species for listing and California Species of Special Concern), have been documented within 20 miles of the subject property. These include state and/or federally listed species such as the California tiger salamander (*Ambystoma californiense*). The western burrowing owl (*Athene cunicularia*) and western pond turtle (*Actinemys marmorata*), both of which are California species of special concern have also been documented on lands in the region. This report evaluates the site's suitability as habitat for these and other species.

CEQA is also concerned with a project's impacts on riparian habitat, wildlife movement corridors, fish and wildlife habitat, and jurisdictional wetlands, as well as project compliance with special ordinances and state laws protecting regionally sensitive biotic resources, and approved habitat conservation plans. Therefore, this report addresses the relevance of each of these issues to eventual project buildout.

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 2001), and 3) manuals and references related to plants and animals of the Santa Clara Valley. A reconnaissance-level field survey of the study area was conducted on January 25, 2010, by LOA ecologist Nathan Hale, 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. During this visit an initial Phase I burrowing owl survey was conducted to determine the presence or absence of potential burrowing owl habitat. Subsequent to this site visit, three additional Phase II burrowing owl surveys were completed by Mr. Hale on February 11, March 12, and March 22, 2010. Additional information was collected about the constituent plant and animal species utilizing the site and the vicinity of the site during these surveys. One additional site assessment was conducted by Mr. Hale on July 14, 2010 of the 1.16-acre parcel of the site (APN 464-44-057).

2.0 EXISTING CONDITIONS

The Lester Property ("site" or "property") is located in the southeast portion of the City of San Jose, Santa Clara County. It is surrounded by dense residential and commercial development, California State Route 85, and a large piece of farm land to the north of 85. Elevations range from approximately 157 feet (48 meters) National Geodetic Vertical Datum (NGVD) to 162 feet (49 meters) NGVD.

Two soil series have been identified on site (Table 1 and Figure 3 (NRCS 1964)).

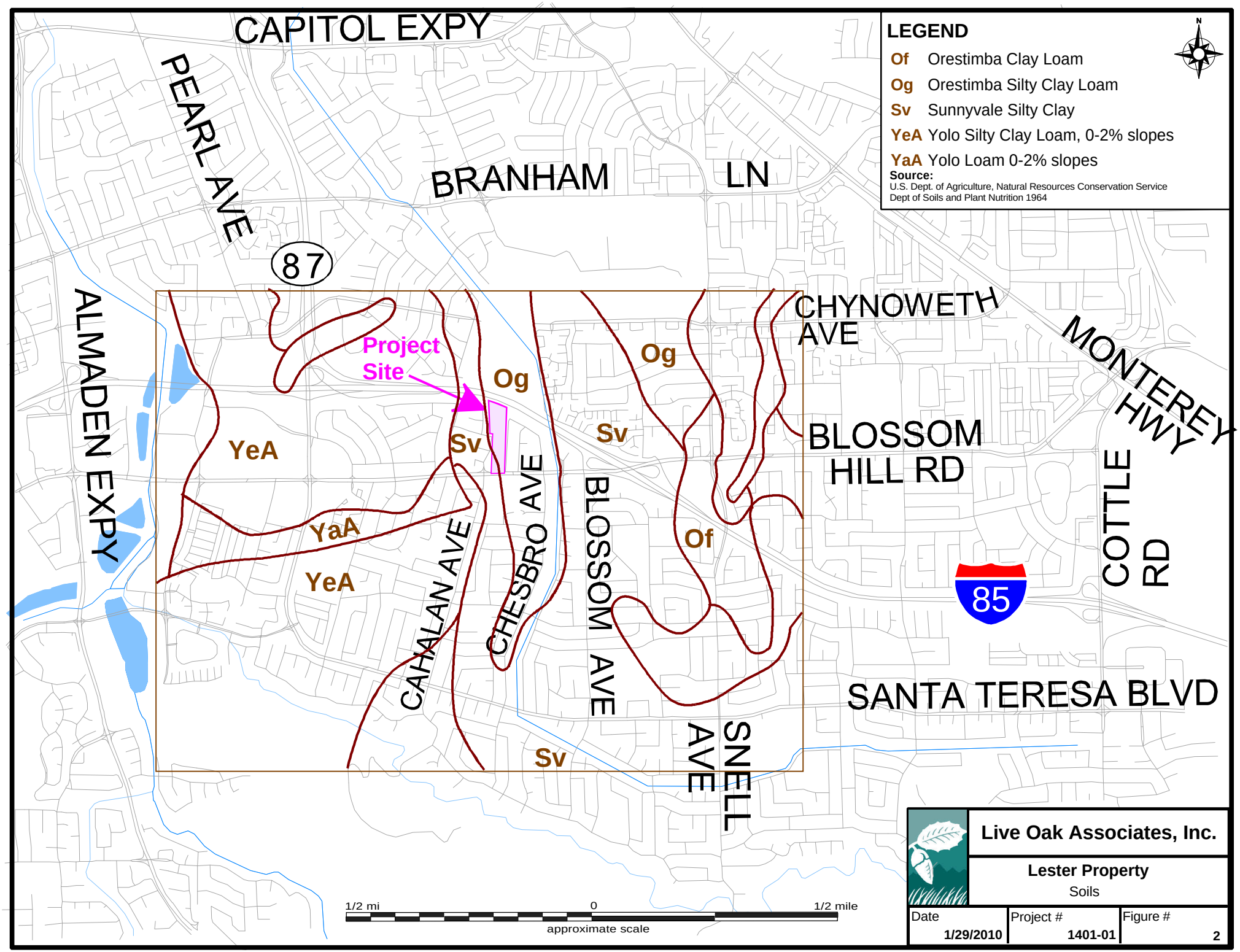
TABLE 1. SOILS OF THE STUDY AREA (from NRCS 1968 and 2009).

Soil Series/Soil	Map Symbol	Parent Material	Surface Permeability	Drainage Class	Hydric Percentage
ORESTIMBA Orestimba clay loam	Og	Alluvium from sedimentary rocks	Very slow	Poor	0
SUNNYVALE Sunnyvale silty clay	Sv	Alluvium from mixed, but dominantly sedimentary rocks	Slow	Poor to moderately well drained	2

Annual precipitation in the general vicinity of the study area is about 12 to 25 inches, almost 85% of which falls between the months of October and March. Virtually all precipitation falls in the form of rain. Some stormwater runoff infiltrates into the soils of the site, but when field capacity has been reached limited ponding may occur, but primarily gravitational water sheet flows off of the site to the northwest.

2.1 BIOTIC HABITATS

Two biotic habitats or land types have been identified within the project area, including non-native grassland/ruderal (i.e. disturbed areas) and developed land in the form of a small Santa Clara Valley Transportation Authority (VTA) facility (substation and access drive).


CAPITOL EXPY
PEARL AVE
BRANHAM LN
87
ALMADEN EXPY
CHYNOWETH AVE
MONTEREY HWY
BLOSSOM HILL RD
COTTLE RD
85
SANTA TERESA BLVD
CAHALAN AVE
CHESBRO AVE
BLOSSOM AVE
SNELL AVE
Project Site
Og
Sv
YeA
YaA
Of
LEGEND
Of Orestimba Clay Loam
Og Orestimba Silty Clay Loam
Sv Sunnyvale Silty Clay
YeA Yolo Silty Clay Loam, 0-2% slopes
YaA Yolo Loam 0-2% slopes
Source:
U.S. Dept. of Agriculture, Natural Resources Conservation Service
Dept of Soils and Plant Nutrition 1964
N
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approximate scale
Live Oak Associates, Inc.
Lester Property
Soils
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2.1.1 Non-native Grassland/Ruderal Field

The majority of the site supports non-native and ruderal, or disturbed, grassland habitats. A portion of this habitat appears to have once been used to support a Christmas or decorative tree farm. Several stunted evergreen stump-sprouted trees were observed within remaining rows of tree stumps within the southern half of the property. Also the soils and vegetation observed within this habitat type appear to have been manipulated (discing, mowing, and use of herbicide along the margins of the site).

Grasses and forbs of European origin dominate the vegetation of non-native grassland/ruderal habitat. Grasses common to this habitat and observed on site include wild oats (*Avena* sp.), ripgut (*Bromus diandrus*), and foxtail barley (*Hordeum murinum*). Common forbs observed include common fiddleneck (*Amsinckia menziesii* var. *intermedia*), black mustard (*Brassica nigra*), yellow star thistle (*Centauria solstitialis*), Italian thistle (*Carduus pycnocephalus*), broad leafed filaree (*Erodium botrys*), redstem filaree (*Erodium cicutarium*), whitestem filaree (*Erodium moschatum*), and rose clover (*Trifolium hirtum*). Consistent with its ruderal nature, several trees, some of which are likely escaped ornamental varieties from nearby landscaping, were observed along the margins of the site. These included the olive (*Olea europaea*), elderberry (*Sambucas* sp.), fan palms (*Washingtonia* sp.) and a small unidentified horticultural variety in the southwest corner of the site.

Non-native grassland provides important habitat to many terrestrial vertebrates. As many as 25 species of reptiles and amphibians, 100 species of birds and 50 species of mammals are known to use grassland habitats of central California (Mayer et al. 1988). While the study area provides suitable habitat for a few of these species, the urban setting and active management of the site have reduced its wildlife value. Nonetheless, some of the species that use the site are grassland residents. A number of others use a variety of other habitats as well. Some are migrants that use the grasslands of the site for only a portion of each year.

While no reptiles and amphibians were observed on site during the 2010 survey, several species could be expected to use the site for habitat. These could include, but may not be limited to, the

western toad (*Bufo boreas*), western fence lizards (*Sceloporus occidentalis*), and the gopher snake (*Pituophis melanoleucus*), which forages in grasslands and other habitats for small mammals.

Several avian species were observed on or near the site during the 2010 survey. Species observed included the Cooper's hawk (*Accipiter cooperii*), which was seen flying over a portion of the site before landing in pine trees adjacent to the site's eastern border, mourning dove (*Zeniada macroura*), Anna's hummingbirds (*Calypte anna*), American crow (*Corvus brachyrhynchos*), black phoebes (*Sayornis nigricans*), and white-crowned sparrow (*Zonotrichia leucophrys*). A variety of raptors, such as the Cooper's hawk, are likely attracted to this habitat by the presence of invertebrates and small reptiles, birds, and mammals. Additional raptors that could be expected to use the site for foraging habitat, and which could utilize tall trees within the site's immediate vicinity for roosting or even nesting habitat, include, but are not limited to, the white-tailed kite (*Elanus caeruleus*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), and turkey vulture (*Cathartes aura*).

Botta's pocket gopher (*Thomomys bottae*) burrows were observed in the non-native grassland/ruderal habitat of the site. A couple dozen California ground squirrel (*Spermophilus beecheyi*) burrows and scat were observed in this habitat. The California vole (*Microtus californicus*), the western harvest mouse (*Reithrodontomys megalotis*), and the ornate shrew (*Sorex ornatus*) are also likely residents, and several burrows consistent with the California vole were observed in the central portion of the site. Most mammalian predators, except for the non-native red fox (*Vulpes vulpes*), house cat (*Felis catus*), striped skunk (*Mephitis mephitis*), and raccoon (*Procyon lotor*), are likely to be absent from the site due to its isolation from other suitable grassland habitats in the region.

2.1.2 Developed Land/VTA facility

A small VTA facility building with a paved driveway and fencing occurs within the northern portion of the site. Developed lands are typically low in species richness and diversity. As observed during the January, February, and March 2010 surveys, the low-traffic nature of this facility has allowed for plant and animal species to establish in a limited way. Likely due to the

small size of this portion of the site faunal species observed in this area were and would likely remain consistent with the ruderal grassland species described above.

2.2 SPECIAL STATUS PLANTS AND ANIMALS

Several species of plants and animals within the state of California have low populations, limited distributions, or both. Such species may be considered "rare" and are vulnerable to extirpation as the state's human population grows and the habitats these species occupy are converted to agricultural and urban uses. As described more fully in Section 3.2, state and federal laws have provided the California Department of Fish and 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 2001). Collectively, these plants and animals are referred to as "special status species".

A number of special status plants and animals occur in the vicinity of the property. These species, and their potential to occur on site, are listed in Table 2 on the following pages. Sources of information for this table included *California's Wildlife, Volumes I, II, and III* (Zeiner et. al 1988 and 1990), *California Natural Diversity Data Base* (CDFG 2010), *Endangered and Threatened Wildlife and Plants* (USFWS 2009), *Annual Report on the Status of California State Listed Threatened and Endangered Animals and Plants* (CDFG 2009), and *The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California* (CNPS 2001).

A search of published accounts for all of the relevant special status plant and animal species was conducted for the San Jose East Quadrangle in which the project area occurs, and for the eight surrounding quadrangles (Milpitas, Calaveras Reservoir, Mt. Day, Lick Observatory, Morgan Hill, Santa Teresa Hills, Los Gatos, and San Jose West) using the California Natural Diversity Database 2010.

TABLE 2. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS (adapted from CDFG 2009 and CNPS 2001)

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

Species	Status	Habitat	*Occurrence in the Study Area
Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*)	FE, CT, CNPS 1B	Habitat: Valley and foothill grasslands on serpentinite. Elevation: 60-400 meters. Blooms: April-June.	**Absent.** Serpentine grassland habitat is absent from the site; furthermore, the grassland value of the site has been severely degraded through disturbances to the site and dense populations of non-native grassland species.
Coyote ceanothus (*Ceanothus ferrisiae*)	FE, CNPS 1B	Habitat: Chaparral, coastal scrub, and valley and foothill grasslands on serpentinite. Elevation: 120-460 meters. Blooms: January-May.	**Absent.** Serpentine grassland habitat is absent from the site; furthermore, the grassland value of the site has been severely degraded through disturbances to the site and dense populations of non-native grassland species.
Robust spineflower (*Chorizanthe robusta* var. *robusta*)	FE, CNPS 1B	Habitat: Maritime chaparral, openings of cismontane woodlands, coastal dunes, and coastal scrub on sandy or gravelly soils. Elevation: 3-300 meters. Blooms: April-September.	**Absent.** Suitable habitat is absent from the property.
Santa Clara Valley dudleya (*Dudleya setchellii*)	FE, CNPS 1B	Habitat: Cismontane woodland and valley and foothill grassland on rocky and serpentine soils. Elevation: 60-455 meters. Blooms: April-October.	**Absent.** Serpentine soils and rocky outcroppings were not observed on the site. In addition the dense non-native species observed within the site and the historical management of the site for agriculture and as a tree farm would further preclude the presence of this species even in spite of extant populations of this species occurring approximately 2 miles from the site.
Contra Costa goldfields (*Lasthenia conjugens*)	FE, CNPS 1B	Habitat: Cismontane woodlands, alkaline playas, valley and foothill grasslands, and vernal pools. Occurs in mesic soils. Elevation: 0-470 meters. Blooms: March-June.	**Absent.** The soils of the site are generally dry throughout the year except during and immediately following precipitation events. This suggests that mesic soils suitable to this species are absent. Furthermore, the disturbed and managed history of the site and dense non-native plant species observed on the site would further preclude the presence of this species.
San Francisco popcorn flower (*Plagiobothrys diffusus*)	CE, CNPS 1B	Habitat: Coastal prairie and valley and foothill grasslands. Elevation: 60-360 meters. Blooms: March-June.	**Absent.** Marginally suitable habitat is present in the non-native grasslands of the project site. However, the disturbed and managed history of the site and dense non-native plant species observed on the site would further preclude the presence of this species.
Metcalf Canyon jewel-flower (*Streptanthus albidus* ssp. *albidus*)	FE, CNPS 1B	Habitat: Valley and foothill grasslands on serpentinite. Elevation: 45-800 meters. Blooms: April-July.	**Absent.** Serpentine grassland habitat is absent from the site; furthermore, the grassland value of the site has been severely degraded through management of the site and dense populations of non-native grassland species.

TABLE 2. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS – 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 seablite (*Suaeda californica*)	FE, CNPS 1B	Habitat: Coastal salt marshes and swamps. Elevation: 0-15 meters. Blooms: July-October.	**Absent.** Suitable habitat is absent from the property.

Other special status plants listed by CNPS

Species	Status	Habitat	*Occurrence in the Study Area
Bent-flowered fiddleneck (*Amsinckia lunaris*)	CNPS 1B	Habitat: Coastal bluff scrub, cismontane woodlands, and valley and foothill grasslands. Elevation: 3-500 meters. Blooms: March-June.	**Absent.** Marginally suitable habitat is present in the non-native grasslands of the project site. However, the grassland value of the site has been severely degraded through management of the site and dense populations of non-native grassland species. Finally, the nearest known occurrence of this species within the vicinity of the site was observed far from the site in the Mt. Diablo range to the east.
Alkali milk-vetch (*Astragalus tener* var. *tener*)	CNPS 1B	Habitat: Playas, valley and foothill grasslands on adobe clay, and vernal pools. Occurs in alkaline soils. Elevation: 1-60 meters. Blooms: March-June.	**Absent.** Marginally suitable habitat is present on this site in the form of ruderal grasslands; however, adobe clays are not known to occur on the site and the site has been severely degraded through historical management and disturbance.
Brittlescale (*Atriplex depressa*)	CNPS 1B	Habitat: Chenopod scrub, meadows and seeps, playas, valley and foothill grasslands, and vernal pools. Occurs on alkaline or clay soils. Elevation: 1-320 meters. Blooms: April-October.	**Absent.** Marginally suitable habitat is present on this site in the form of ruderal grasslands; however, the grassland value of the site has been severely degraded through management of the site and dense populations of non-native plants.
San Joaquin spearscale (*Atriplex joaquininana*)	CNPS 1B	Habitat: Chenopod scrub, meadows and seeps, playas, and valley and foothill grasslands on alkaline soils. Elevation: 1-835 meters. Blooms: April-October.	**Absent.** Suitable habitats and soils are absent from the property.
Big-scale balsamroot (*Balsamorhiza macrolepis* var. *macrolepis*)	CNPS 1B	Habitat: Chaparral, cismontane woodland, and valley and foothill grassland, sometimes on serpentinite. Elevation: 90-1555 meters. Blooms: March-June.	**Absent.** Marginally suitable habitat is present in the non-native grasslands of the site; however, serpentine soils are absent from the site, and the historical management of the site for agriculture and as a tree farm would further preclude the presence of this species.
Round-leaved filaree (*California macrophylla*)	CNPS 1B	Habitat: Cismontane woodlands and valley and foothill grasslands on clay soils. Elevation: 15-1200 meters. Blooms: March-May.	**Absent.** Marginally suitable habitat is present in the non-native grasslands of the project site. However, the historical management of the site for agriculture and as a tree farm and the presence of dense stands of non-native grassland vegetation would preclude the presence of this species.

TABLE 2. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS – cont'd.

Other special status plants listed by CNPS

Species	Status	Habitat	*Occurrence in the Study Area
Santa Cruz Mountains pussypaws (*Calyptridium parryi* var. *hesseae*)	CNPS 1B	Habitat: Chaparral and openings within cismontane woodland, often occurring on sandy or gravelly soils. Elevation: 305-1,530 meters. Blooms: May-August.	**Absent.** Suitable habitat is absent from the property.
Chaparral harebell (*Campanula exigua*)	CNPS 1B	Habitat: Chaparral on rocky soils or serpentinite. Elevation: 275-1250 meters. Blooms: May-June.	**Absent.** Suitable habitat is absent from the property.
Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*)	CNPS 1B	Habitat: Valley and foothill grassland on alkaline soils. Elevation: 1-230 meters. Blooms: May-October (uncommonly in November).	**Unlikely.** Marginally suitable habitat is present in the ruderal grassland habitat of the site. Moderately alkaline soils are present; however, historic management and disturbances of the natural habitats of the site and the ruderal non-native plants observed growing in dense populations throughout the site would make the occurrence of Congdon's tarplant unlikely.
Mt. Hamilton fountain thistle (*Cirsium fontinale* var. *campylon*)	CNPS 1B	Habitat: Chaparral, cismontane woodland, and valley and foothill grassland on serpentine seeps. Elevation: 100-890 meters. Blooms: April-October (uncommonly in February).	**Absent.** Suitable habitat is absent from the property.
Santa Clara red ribbons (*Clarkia concinna* ssp. *automixa*)	CNPS 4	Habitat: Chaparral and cismontane woodland. Elevation: 90-1500 meters. Blooms: May-June (uncommonly in April and July).	**Absent.** Suitable habitat is absent from the property.
San Francisco collinsia (*Collinsia multicolor*)	CNPS 1B	Habitat: Closed-cone coniferous forest and coastal scrub, sometimes on serpentinite. Elevation: 30-250 meters. Blooms: March-May.	**Absent.** Suitable habitat is absent from the property.
Point Reyes bird's-beak (*Cordylanthus maritimus* ssp. *palustris*)	CNPS 1B	Habitat: Coastal salt marshes and swamps. Elevation: 0-10 meters. Blooms: June-October.	**Absent.** Suitable habitat is absent from the project site.
Mt. Hamilton coreopsis (*Coreopsis hamiltonii*)	CNPS 1B	Habitat: Cismontane woodlands on rocky soils. Elevation: 550-1300 meters. Blooms: March-May.	**Absent.** Suitable habitat is absent from the project site.
Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*)	CNPS 1B	Habitat: Vernal pools. Elevation: 3-45 meters. Blooms: July.	**Absent.** Suitable habitat is absent from the project site.

TABLE 2. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS – cont'd.

Other special status plants listed by CNPS

Species	Status	Habitat	*Occurrence in the Study Area
Fragrant fritillary (*Fritillaria liliacea*)	CNPS 1B	Habitat: Cismontane woodland, coastal prairie, coastal scrub, and valley and foothill grassland, often on serpentinite. Elevation: 3-410 meters. Blooms: February-April.	**Absent.** Suitable habitat is absent from the project site for this species. Disturbed non-native grassland habitat occurring on the site would not support the fragrant fritillary.
Loma Prieta hoita (*Hoita strobilina*)	CNPS 1B	Habitat: Chaparral, cismontane woodland, and riparian woodland, usually on serpentinite or mesic soils. Elevation: 30-860 meters. Blooms: May-July (uncommonly in August through September).	**Absent.** Suitable habitats and serpentine soils are absent from the site.
Smooth lessingia (*Lessingia micradenia* var. *glabrata*)	CNPS 1B	Habitat: Chaparral and cismontane woodland on serpentinite. Elevation: 120-420 meters. Blooms: July-November.	**Absent.** Suitable habitats and serpentine soils are absent from the site.
Mt. Hamilton lomatium (*Lomatium observatorium*)	CNPS 1B	Habitat: Cismontane woodlands. Elevation: 1219-1330 meters. Blooms: March-May.	**Absent.** Suitable habitat is absent from the property.
Showy golden madia (*Madia radiata*)	CNPS 1B	Habitat: Cismontane woodlands and valley and foothill grasslands. Elevation: 25-900 meters. Blooms: March-May.	**Unlikely.** Marginally suitable habitat is present on this site in the form of ruderal grasslands; however, the grassland value of the site has been severely degraded through disturbance to the site.
Arcuate bush-mallow (*Malacothamnus arcuatus*)	CNPS 1B	Habitat: Chaparral and cismontane woodland. Elevation: 15-355 meters. Blooms: April-September.	**Absent.** Suitable habitat is absent from the property.
Hall's bush-mallow (*Malacothamnus hallii*)	CNPS 1B	Habitat: Chaparral and coastal scrub. Elevation: 10-760 meters. Blooms: May-September (uncommonly in October).	**Absent.** Suitable habitat is absent from the property.
Robust monardella (*Monardella villosa* ssp. *globosa*)	CNPS 1B	Habitat: Openings in broadleaved upland forest and chaparral as well as in cismontane woodlands, coastal scrub, and transitional valley and foothill grasslands. Elevation: 100-915 meters. Blooms: June-July (uncommonly in August).	**Absent.** Suitable habitat is absent from the property. Ruderal grassland occurring on the site has been severely degraded through disturbance and management of the site and does not provide suitable habitat for the robust monardella.
Prostrate vernal pool navarretia (*Navarretia prostrate*)	CNPS 1B	Habitat: Coastal scrub, meadows and seeps, valley and foothill grasslands on alkaline soils, and vernal pools. Occurs in mesic areas. Elevation: 15-700 meters. Blooms: April-July.	**Absent.** Suitable habitat is absent from the property.

TABLE 2. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

PLANTS – cont'd.

Other special status plants listed by CNPS

Species	Status	Habitat	*Occurrence in the Study Area
Santa Cruz Mountains beardtongue (*Penstemon rattanii* var. *kleei*)	CNPS 1B	Habitat: Chaparral, lower montane coniferous forest, and North Coast coniferous forest. Elevation: 400-1100 meters. Blooms: May-June.	**Absent.** Suitable habitat is absent from the property.
Mt. Diablo phacelia (*Phacelia phacelioides*)	CNPS 1B	Habitat: Chaparral and cismontane woodlands on rocky soils. Elevation: 500-1370 meters. Blooms: April-May.	**Absent.** Suitable habitat is absent from the property.
Hairless popcorn-flower (*Plagiobothrys glaber*)	CNPS 1A	Habitat: Meadows and seeps on alkaline soils and coastal salt marshes and swamps. Elevation: 15-180 meters. Blooms: March-May.	**Absent.** Suitable habitat is absent from the property.
Rock sanicle (*Sanicula saxatilis*)	CR, CNPS 1B	Habitat: Broadleaved upland forest, chaparral, and valley and foothill grasslands on rocky soils. Elevation: 620-1175 meters. Blooms: April-May.	**Absent.** Marginally suitable habitat is present within the project site for this species in the form of the ruderal grassland. The soils of the site are not known to be and were not observed as being rocky.
Maple-leaved checkerbloom (*Sidalcea malachroides*)	CNPS 4	Habitat: Broadleafed upland forest, coastal prairie, coastal scrub, North Coast coniferous forest, and riparian woodland, often within disturbed areas. Elevation: 2-730 meters. Blooms: April-August.	**Absent.** Suitable habitat is absent from the property.
Most beautiful jewel-flower (*Streptanthus albidus* ssp. *peramoenus*)	CNPS 1B	Habitat: Chaparral, cismontane woodland, and valley and foothill grassland on serpentinite. Elevation: 94-1000 meters. Blooms: April-September (uncommonly in March and October).	**Absent.** Serpentine grassland habitat is absent from the site; furthermore, the grassland value of the site has been severely degraded through management of the site and dense populations of non-native grassland species.
Caper-fruited tropidocarpum (*Tropidocarpum capparideum*)	CNPS 1B	Habitat: Alkaline hills in valley and foothill grasslands. Elevation: 1-455 meters. Blooms: March-April.	**Unlikely.** Marginally suitable habitat is present within the project site for this species in the form of the ruderal grassland. However, this species has one collected specimen from the county, collected near Saratoga, and would not be expected to occur on such an urban ruderal grassland.

TABLE 2. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS (adapted from CDFG 2009 and USFWS 2009)

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

Species	Status	Habitat	*Occurrence in the Study Area
Bay checkerspot butterfly (*Euphydryas editha bayensis*)	FT	Native grasslands on serpentine soils. Host plant is *Plantago erecta*.	**Absent**. Suitable habitat is absent from the site, and host vegetation species were not observed within the site.
Callippe silverspot butterfly (*Speyeria callippe callippe*)	FE	Native grasslands. Host plant is *Viola pedunculata*.	**Absent.** Suitable habitat is absent from the site, and host vegetation species were not observed within the site.
Vernal pool tadpole shrimp (*Lepidurus packardi*)	FE	Inhabits deep vernal pools of unplowed grasslands in the Central Valley containing clear to highly turbid water.	**Absent**. Suitable habitat is absent from the site.
Steelhead – Central California coast ESU (*Oncorhynchus mykiss irideus*)	FT	Migrate up freshwater rivers or streams and spend the remainder of their time in the ocean.	**Absent**. Aquatic habitats required for this species are absent from the site.
California tiger salamander (*Ambystoma californiense*)	FT, CC, CSC	Breeds in vernal pools and stock ponds of central California. Adults aestivate in grassland habitats adjacent to breeding sites.	**Absent.** Breeding and aestivation habitat are absent from the site.
California red-legged frog (*Rana draytonii*)	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and coast range, preferring pools with overhanging vegetation.	**Absent.** Suitable habitat for this species is absent from the site.
Western snowy plover (*Charadrius alexandrinus nivosus*)	FT, CSC	Nests and feeds along beaches and sandy flats in areas with very little vegetation. May also forage on open mudflats.	**Absent.** Suitable nesting and foraging habitat for this species is absent from the site.
California clapper rail (*Rallus longirostris obsoletus*)	FE, CE	Occurs in salt marshes and nests within vegetation near the top edge of the high-tide line.	**Absent.** Suitable nesting and foraging habitat for this species is absent from the site.
Peregrine falcon (*Falco peregrinus anatum*)	CE	Individuals breed on cliffs in the Sierra or in coastal habitats, also may nest on tall towers in urban areas; occurs in many habitats of the state during migration and winter.	**Unlikely.** The site provides marginal and regionally typical foraging habitat for transients and migrating birds. Breeding habitat is absent.
San Joaquin kit fox (*Vulpes macrotis mutica*)	FE, CT	Frequents desert alkali scrub and annual grasslands and may forage in adjacent agricultural habitats. Utilizes enlarged (4 to 10 inches in diameter) ground squirrel burrows as denning habitat.	**Absent.** The fact that the project site is an urban infill site surrounded by dense urban development and busy roadways (including Highway 85) would preclude the occurrence of the San Joaquin kit fox. Furthermore, the site supports only poor quality habitat for this species which further reduces the expectation that this species would attempt to migrate to and take residence there.

TABLE 2. 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
Foothill yellow-legged frog (*Rana boylii*)	CSC	Frequents partly shaded, shallow, swiftly-flowing streams and riffles with rocky substrate in a variety of habitats.	**Absent.** Breeding and aestivation habitat are absent from the site.
Western pond turtle (*Actinemys marmorata*)	CSC	An aquatic turtle of ponds, marshes, slow-moving rivers, streams and irrigation ditches with aquatic vegetation. Needs basking sites and sandy banks or grassy open fields for egg laying.	**Absent.** Suitable basking and breeding habitat are absent from the site.
Coast horned lizard (*Phrynosoma coronatum frontale*)	CSC	Found primarily in lowlands along sandy washes where scattered low shrubs provide cover.	**Absent**. Suitable habitat is absent from the site.
White-tailed kite (*Elanus leucurus*)	CP	Open grasslands and agricultural areas throughout central California.	**Possible.** Typically, this species is found in less densely developed areas; however, **s**uitable foraging habitat is present within the site for this species. In addition, potential nesting habitat is available in the vicinity of the site in the form of tall trees along Chesbro Avenue and Cahalan Avenue.
Burrowing owl (*Athene cunicularia*)	CSC	Open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. This species is often associated with California ground squirrels.	**Possible.** As of the preparation of this report, burrowing owls are considered to be absent from the site. No individual owls or their evidence (i.e. white wash, feathers, and pellets) were observed during the 2010 protocol-level burrowing owl survey conducted on the 8.32 acre parcel of the site (APN 464-22-030). As the site supports the California ground squirrel and generally open grassland habitat and due to the fact that burrowing owls are volant creatures known to occur within the City of San Jose, there is a possibility that they may utilize the site in the future as wintering habitat and/or breeding habitat.
Black swift (*Cypseloides niger*)	CSC	Migrants and transients found throughout many habitats of state. Breeds on steep cliffs or ocean bluffs, or in cracks and crevasses of inland deep canyons.	**Unlikely.** Suitable nesting habitat for this species is absent from the site. Marginal foraging habitat for this species is present but would not be expected to be utilized in a meaningful way.
Tricolored blackbird (*Agelaius tricolor*)	CSC	Breeds near fresh water, primarily emergent wetlands, with tall thickets. Forages in nearby grassland and cropland habitats.	**Unlikely.** Suitable nesting habitat for this species is absent from the site. Marginal foraging habitat for this species is present but would not be expected to be utilized in a meaningful way.

TABLE 2. LIST OF SPECIAL STATUS SPECIES THAT COULD OCCUR IN THE PROJECT VICINITY

ANIMALS – cont'd.

California Species of Special Concern and Protected Species

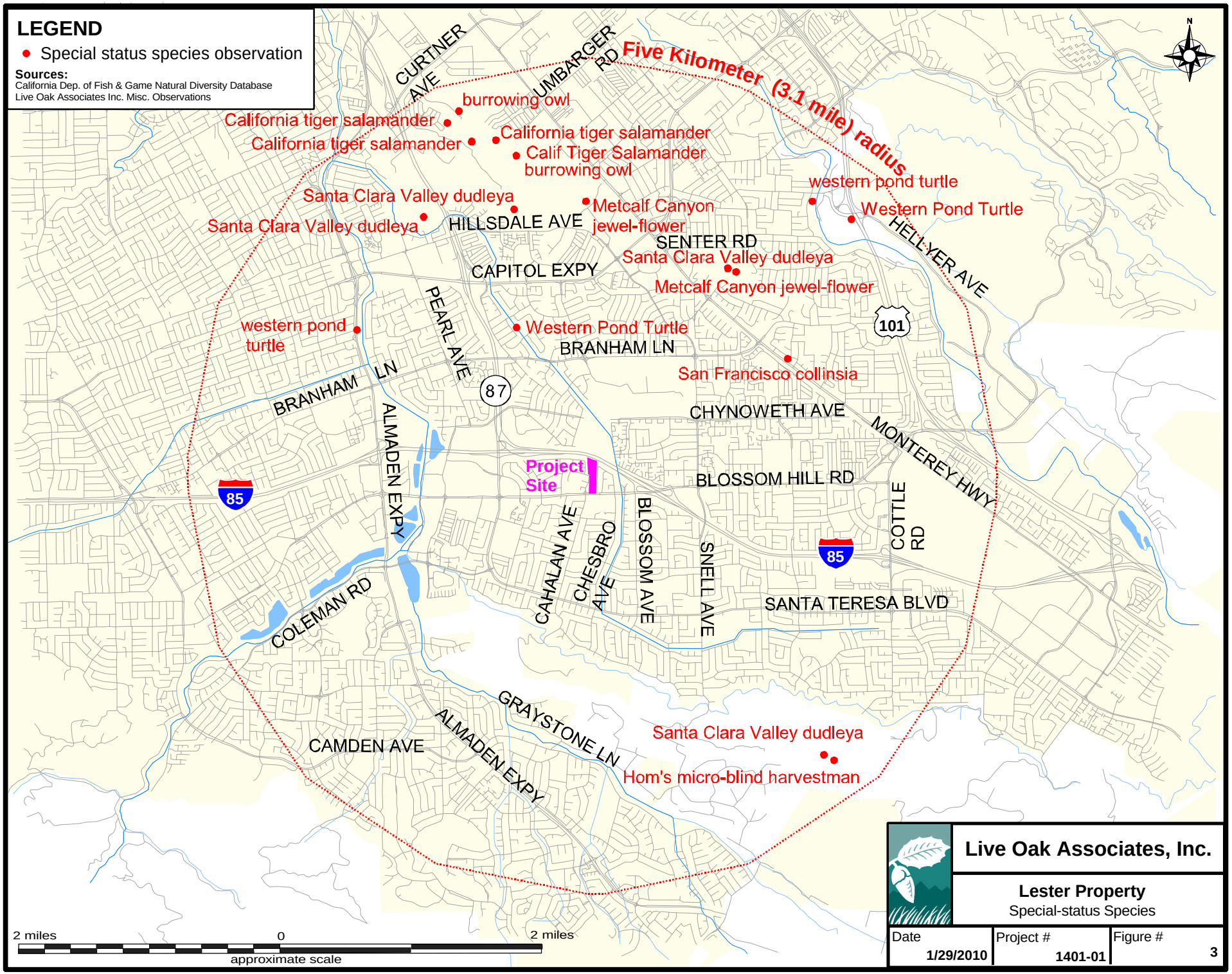
Species	Status	Habitat	*Occurrence in the Study Area
Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*)	CSC	Breeds and winters primarily in wet meadow and emergent wetland habitats. Also may occur in desert riparian and grassland habitats.	**Unlikely.** Suitable nesting and foraging habitat for this species is absent from the site. This species may fly over or take refuge within this site en route to more suitable habitat.
Alameda song sparrow (*Melospiza melodia pusillula*)	CSC	Occur in tidal marsh habitats along the east and south margins of the San Francisco Bay.	**Unlikely.** Suitable nesting and foraging habitat for this species is absent from the site. This species may fly over or take refuge within this site en route to more suitable habitat.
Pallid bat (*Antrozous pallidus*)	CSC	Grasslands, chaparral, woodlands, and forests of California; most common in dry rocky open areas that provide roosting opportunities.	**Unlikely.** Suitable foraging habitat is present within the site, but roosting habitat is currently absent. The pallid bat has been identified approximately 3.5 miles to the southwest of the site, so there is an off-chance that this species could fly over the site from time to time.
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 in CA.	**Unlikely.** Suitable foraging habitat is present within the site, but roosting habitat is currently absent.
San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*)	CSC	Chaparral and woodlands with a moderate canopy and a moderate to dense understory.	**Absent**. Suitable habitat is absent within the property. In addition, no woodrat nests have been observed onsite during the various surveys conducted in 2010.
American badger (*Taxidea taxus*)	CSC	Drier open stages of most shrub, forest and herbaceous habitats with friable soils.	**Unlikely**. The American badger would not be expected to use the site in a significant way, if at all. Habitats of the site support only extremely marginal value for this species. Furthermore, the urban nature of the site would make getting to the site difficult for the badger.
Ringtail (*Bassariscus astutus*)	CP	Riparian and heavily wooded habitats near water.	**Absent**. Suitable habitat is absent from the property.

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


LEGEND
Special status species observation
Sources:
California Dep. of Fish & Game Natural Diversity Database
Live Oak Associates Inc. Misc. Observations
Five Kilometer (3.1 mile) radius
CURTNER AVE
UMBARGER RD
burrowing owl
California tiger salamander
California tiger salamander
California tiger salamander
Calif Tiger Salamander
burrowing owl
western pond turtle
Western Pond Turtle
Santa Clara Valley dudleya
Santa Clara Valley dudleya
HILLSDALE AVE
Metcalf Canyon jewel-flower
SENTER RD
Santa Clara Valley dudleya
Metcalf Canyon jewel-flower
HELLYER AVE
CAPITOL EXPY
PEARL AVE
western pond turtle
Western Pond Turtle
BRANHAM LN
101
San Francisco collinsia
BRANHAM LN
87
ALMADEN EXPY
CHYNOWETH AVE
MONTEREY HWY
Project Site
BLOSSOM HILL RD
85
CAHALAN AVE
CHESBRO AVE
BLOSSOM AVE
SNELL AVE
COTTLE RD
85
SANTA TERESA BLVD
COLEMAN RD
GRAYSTONE LN
ALMADEN EXPY
CAMDEN AVE
Santa Clara Valley dudleya
Hom's micro-blind harvestman
N
2 miles
0
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approximate scale
Live Oak Associates, Inc.
Lester Property
Special-status Species
Date
1/29/2010
Project #
1401-01
Figure #
3

3.0 IMPACTS AND MITIGATION MEASURES

3.1 SIGNIFICANCE CRITERIA

General plans, area plans, and specific projects are subject to the provisions of the California Environmental Quality Act (CEQA). The purpose of CEQA is to assess the impacts of proposed projects on the environment before they are constructed. For example, site development may require the removal of some or all of its existing vegetation. Animals associated with this vegetation could be destroyed or displaced. Animals adapted to humans, roads, buildings, pets, etc. could potentially replace those species formerly occurring on a site. Plants and animals that are state and/or federally listed as threatened or endangered may be destroyed or displaced. Sensitive habitats such as wetlands and riparian woodlands may be altered or destroyed. These impacts may be considered significant or not. According to *Guide to the California Environmental Quality Act*, "Significant effect on the environment" is interpreted as a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest. Specific project impacts to biological resources may be considered "significant" if they will:

- have a substantial adverse effect, the 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 site;

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

Furthermore, CEQA Guidelines Section 15065 states that a project may trigger the requirement to make a "mandatory findings of significance" if "the project has the potential to subsequently 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 on 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 City of San Jose Tree Ordinance

The City of San José has a Tree Ordinance (Chapter 13.32 of the Municipal Code), which regulates the removal of trees. The City's Tree Ordinance seeks 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-size 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 which indicates the number, species, trunk circumference and location of all trees which would be removed or impacted by the project.

3.2.5 Habitat Conservation Plan

Six local partners (the County of Santa Clara, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, and the Cities of San Jose, Gilroy and Morgan Hill) and three wildlife agencies (the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service) are in the process of designing a multi-species habitat conservation plan. The study area of the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) primarily covers southern Santa Clara County, which includes the City of San Jose with the exception of the bayland areas. An administrative draft version is currently available for review, with the projected completion of 2010. The HCP/NCCP will address listed species and species that are likely to become listed during the plan's 50-year permit term. The covered species include, but are not limited to, western burrowing owl, California tiger salamander, California red-legged frog, central California coast steelhead, and central valley Chinook salmon. The (HCP/NCCP) Planning Agreement requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value.

3.3 ENVIRONMENTAL IMPACT/MITIGATION

As described in *Section 1.0,* the proposed project is the redevelopment of the site into a residential community. The potential impacts and mitigations resulting from future development of the site are discussed further below and have been divided into “potentially significant impact” and “less than significant impacts” to make clear the biological issues which would be considered significant under CEQA.

Potentially Significant Impacts

3.3.1 Potential Impacts to Special Status Animal Species Including Nesting Migratory Birds

Impact. Of the 24 special status animal species potentially occurring in the region, a total of two may reside within or immediately adjacent to the site in the future. The remaining species would not occur, would be unlikely to occur on the site, or would only occasionally pass through or briefly forage within the site. Most of these species are absent from the site due to the project location (i.e. outside of common range for the species and/or the site's location being highly urban in nature) or lack of suitable breeding and/or foraging habitat (i.e. aquatic, woodland, or riparian habitat).

The two species that may potentially reside on or immediately adjacent to the site include the white-tailed kite and burrowing owl. Site development may result in direct mortality (including nest abandonment) of individuals of these two species which are protected by state and federal law. Also, non-listed raptors and other migratory birds which are protected by the Federal Migratory Bird Treaty Act (Section 3.2.2) may occur on the project site or within a close enough distance from the site that development activity occurring near the project site may result in nest abandonment. Possible project impact to such species is discussed in detail below:

White-tailed Kite and Other Non-listed Raptors and Migratory Birds. The loss of habitat for white-tailed kite and other non-listed raptors and migratory birds would not be considered significant. However, impacts to individual white-tailed kites or other protected birds would be considered significant. The trees occurring on the site provide marginally suitable habitat for some species of birds, but the large trees within the immediate vicinity of the site, especially including the row of eucalyptus trees approximately 30 feet to the west of the site, provide suitable nesting habitat for raptors including the white-tailed kite, as well as more common raptor and migratory species likewise protected by the state and federal law. No active nests or nests from previous years were observed onsite or within 250 feet of the site during the January to March 2010 surveys. Nonetheless, breeding pairs could choose to nest in the onsite trees or in the nearby trees in future years. Project construction at the time of nesting (February 1 through August 31) could induce the adults to abandon the nest when juveniles are present, thus leading

to their starvation. The mortality of juveniles would constitute a significant adverse impact of the project.

Burrowing Owls. Development of the project site would result in the conversion of ruderal fields into habitat unsuitable for burrowing owls. As previously mentioned, protocol-level burrowing owl surveys were conducted on the 8.32-acre parcel of the site (APN 464-22-030) between January to March 2010. No owls or signs of owls were observed onsite during these surveys. Nonetheless, owls could move onto the site in the future. Based on the results of the 2010 surveys, it has been concluded that the loss of habitat for burrowing owls would not be considered significant, but the mortality of individuals that could move onto the site in the future would be considered significant. Should site grading occur during the nesting season for this species (February 1 through August 31) nests and nestlings that may be present would likely be destroyed. Resident owls may also be buried in their nest burrows outside of the nesting season (September 1 through January 31). Any actions related to site development that result in the mortality of burrowing owls would constitute a violation of the Federal Migratory Bird Treaty Act and provisions of the California Fish and Game Code. Therefore, the mortality of burrowing owls would constitute a significant adverse environmental impact.

Mitigation. Project impacts to several special status or otherwise protected avian species would be potentially significant as discussed above. Measures have been described below that would be appropriate for mitigating the magnitude of impacts to these species.

White-tailed Kite and Other Non-listed Raptors and Migratory Birds. Site development during the typical nesting season (February 1 through August 31) could result in the abandonment of an active nest. The mortality of individuals that may result would constitute a significant adverse impact of the project; the loss of habitat would not constitute a significant adverse impact. The following mitigation measures are warranted:

- ***Mitigation Measure 3.3.1a:*** Should project construction be scheduled to commence between February 1 and August 31, a pre-construction survey will be conducted by a qualified biologist for nesting birds within the onsite trees as well as all trees within 250 feet of the site. This survey will occur at most 30 days prior to of the on-set of nest-disturbing construction activities (as determined by a qualified biologist).

- ***Mitigation Measure 3.3.1b:*** If pre-construction surveys undertaken during the nesting season locate active nests within or near construction zones, these nests, and an appropriate buffer around them (as determined by a qualified biologist) will remain off-limits to construction until the nesting season is over. Suitable setbacks from occupied nests will be established by a qualified biologist and maintained until the conclusion of the nesting season.

Burrowing Owls. While burrowing owls have been determined to be currently absent from the site, the fact that they are a volant species suggests that they may move onto the site at some point in the future. If this occurs, site development will potentially result in the mortality of burrowing owls, and mitigation measures that protect burrowing owls from possible direct mortality or nest failure will be warranted. Therefore, the following measures are warranted:

- ***Mitigation Measure 3.3.1c:*** A pre-construction survey will be conducted by a qualified biologist for burrowing owls and timed to occur so that the final survey is within 30 days of the on-set of construction. This survey will be conducted according to methods described in the *Staff Report on Burrowing Owl Mitigation* (CDFG 1995). All suitable habitats of the study area will be surveyed during this survey.

- ***Mitigation Measure 3.3.1d:*** If pre-construction surveys undertaken during the breeding season (February 1 through August 31) locate active burrows within or near construction zones, all actively used burrows within the complex, and an appropriate buffer around them (as determined by a qualified biologist) will remain off-limits to construction until the end of the breeding season or until it has been determined by a qualified biologist that all young of the year have fledged and no burrowing owls are utilizing any of the burrows (this is likely to include use of a burrow scoping device or other state of the art methods of burrow investigation).

- ***Mitigation Measure 3.3.1e:*** During the non-breeding season (approximately September 1 through January 31), resident owls may be passively relocated to alternative habitat by a qualified ornithologist. This plan must provide for the owl's relocation to nearby lands possessing available nesting and foraging habitat. Any mitigation or relocation plan for the owls is subject to review and approval by CDFG.

Less than Significant Impacts

3.3.2 Potential Impact to Special Status Plant Species

Impact. Of the 39 special status plant species potentially occurring in the region, none would occur or would be likely to occur on the site due to the absence of suitable habitat, the urban infill nature of the site, and significant disturbances to the natural character of the site over time.

Possible impacts to regional populations of these species from eventual site development would not be significant as none of these special status plants would be impacted.

Mitigation. None warranted.

3.3.3 Potential Impacts to Riparian Habitat and Other Sensitive Natural Communities, Including Federally Protected Wetlands

Impact. The site does not support riparian habitat or other sensitive natural communities such as serpentine or wetland habitat. Therefore, sensitive habitats would not be impacted as a result of the proposed project.

Mitigation. None warranted.

3.3.4 Impact to Movement or Nursery Sites of Fish or Wildlife Species

Impact. The site does not appear to constitute a "movement corridor" for native wildlife, although many species potentially move within it and through it. Site development will have little effect on home range and dispersal movements of native wildlife now using habitats where site development may eventually occur. Many migratory species that now pass through the study area are neo-tropical migrant birds that are likely to pass through and over the site even when it is eventually developed. A considerable amount of open space lands in the vicinity of the site will continue to be used by native species for home range and dispersal movements. Therefore, this project will result in a less than significant effect on regional wildlife movements.

Mitigation. None warranted.

3.3.5 Impact to Habitat for Fish and Wildlife Species

Impact. Development of the project site would convert ruderal fields and areas already developed which are used by some native wildlife species into an active residential community. While the site provides some habitat for regional wildlife populations, it is not of unique or particularly significant value to such populations. The project will not result in a fish or wildlife population dropping below self-sustaining levels, or threaten to eliminate an animal community.

Therefore, development of the site would not constitute a significant adverse environmental impact on wildlife resources.

Mitigation. None warranted.

3.3.6 Conflict with Local Policies or Ordinances

Impact. The proposed project would need to abide by the City of San Jose's Tree Ordinance. While the removal of any or all of the trees scattered throughout the site would not be expected to be a significant impact, if any trees are impacted by site development a formal tree report must be prepared by a qualified arborist and submitted to the City of San Jose. The removal of ten native ordinance-sized trees, twenty non-native ordinance-sized trees (excluding commercially maintained orchard trees), or the removal of 100 non-ordinance-sized would constitute a significant impact under CEQA.

Mitigation. None warranted.

3.3.7 Conflict with an Adopted Habitat Conservation Plan

Impact. There are no adopted Habitat Conservation Plans for the project area at this time. However, the Santa Clara Valley HCP/NCCP, if and when approved (which is projected for 2010), would cover the Lester Property. HCP/NCCP Planning Agreement requires that the agencies comment on reportable interim projects and recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value.

Mitigation. None warranted.

3.3.8 Degradation of Water Quality in Seasonal Creeks, Reservoirs and Downstream Waters

Impact. The proposed project will require grading, excavation, and vegetation removal, thereby resulting in the project site becoming vulnerable to sheet, rill or gully erosion. Eroded soil is generally carried as sediment in surface runoff to be deposited in natural creek/river beds, canals, and adjacent wetlands.

To avoid or minimize sedimentation to offsite waters, the applicant will be required to develop an erosion control plan. The applicant must also comply with standard erosion control measures that employ best management practices (BMPs), will likely need to develop a SWPPP per State Water Quality Control Board Stormwater Permit, and will comply with the City of San Jose's City Council Policies 6-29 and 8-14. If the applicant abides by the above requirements, impacts to downstream waters from erosion and polluted stormwater runoff will be reduced to a less than significant level.

Mitigation. None warranted.

LITERATURE CITED

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March 30, 2010

Vince Cantore
SummerHill Homes
5000 Executive Parkway Ste. 150
San Ramon, CA 94583

Subject: DRAFT **Arborist Report**
Lester property, San Jose

Mr. Cantore:

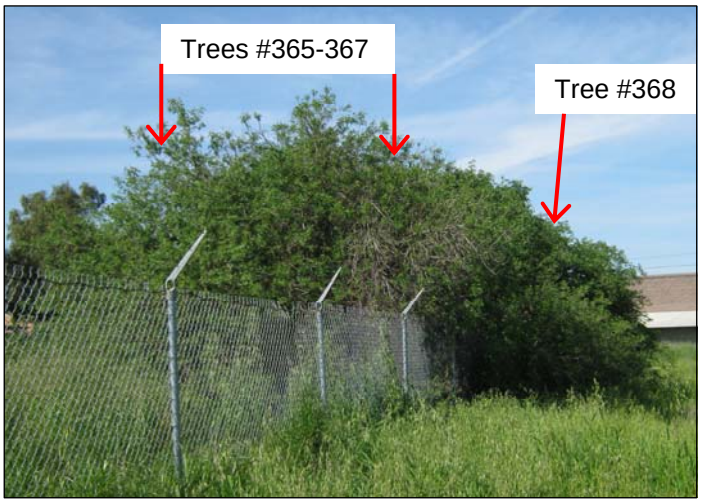
SummerHill Homes is planning to develop the Lester property, in San Jose CA. To meet the City of San Jose's tree ordinances (13.28 and 13.32) requirement, SummerHill Homes requested HortScience, Inc. prepare an **Arborist Report** for the site.

I visited the site on March 11, 2010. This letter summarizes my observations and recommendations.

Description of the Trees
Thirteen trees were surveyed at the site, including four (4) off-site trees. Off-site trees were not tagged and diameters were estimated. Descriptions of individual trees are provided in the ***Tree Survey Form*** and locations are shown on the ***Tree Survey Map*** (See attachments).

The site was an open field, with the majority of the trees scattered along the periphery. There was evidence (tree stumps) of an abandoned Christmas tree farm on the southern half of the site.

The most common species was red elderberry, with six (6) trees (Table 1, following page). Three of these (#365-367) were located on City property, just west of the fence in the northwest corner of the site (Photo). The remaining three were growing along the western fence line. All had multiple stems arising at the base and appeared to have been cut to the ground and resprouted at some point in the past. The red elderberries were in good condition, with forms typical of the species.



Elderberries #365-368 looking north. Trees #365-367 were off-site (L) and #368 was on-site (R).

The next most common species was Monterey pine, with three (3) trees. These were remnants of an apparent Christmas tree farm. None of the trees had stems above 2" in diameter, but all were over the City's 6' height limit, requiring inclusion in the survey. These trees were generally in fair condition, and appeared to have sprouted from cut stumps.

The remaining four species were represented by single individuals and included the following:

- An off-site xylosma located in the northeast corner of the site. The tree was in good condition, with a portion of its crown extended onto the development site.
- Two small, multi-stemmed trees along the Blossom Hill Rd. frontage. One was a plum, the other an olive. Both were in fair condition and were growing through the fence.
- A multi-stemmed Calif. black walnut along Southcrest Way. This tree was also in fair condition and was growing through the fence.

Table 1. Tree condition & frequency of occurrence.
Lester property. San Jose CA.

Common Name	Scientific Name	Condition Rating		No. of
		Fair (3)	Good (4-5)	trees
Calif. black walnut	*Juglans hindsii*	1	-	1
Olive	*Olea europaea*	1	-	1
Monterey pine	*Pinus radiata*	3	-	3
Plum	*Prunus domestica*	1	-	1
Red elderberry	*Sambucus racemosa*	-	6	6
Xylosma	*Xylosma congestum*	-	1	1
Grand Total		**6**	**7**	**13**

Suitability for Preservation

Before evaluating the impacts that will occur during development, it is important to consider the quality of the tree resource itself, and the potential for individual trees to function well over an extended length of time. Trees that are preserved on development sites must be carefully selected to make sure that they may survive development impacts, adapt to a new environment and perform well in the landscape.

Our goal is to identify trees that have the potential for long-term health, structural stability and longevity. For trees growing in open fields, away from areas where people and property are present, structural defects and/or poor health presents a low risk of damage or injury if they fail. However, we must be concerned about safety in use areas. Therefore, where development encroaches into existing plantings, we must consider their structural stability as well as their potential to grow and thrive in a new environment.

Evaluation of suitability for preservation considers several factors:

- **Tree health**
  Healthy, vigorous trees are better able to tolerate impacts such as root injury, demolition of existing structures, changes in soil grade and moisture, and soil compaction than are non-vigorous trees.

- **Structural integrity**
  Trees with significant amounts of wood decay and other structural defects that cannot be corrected are likely to fail. Such trees should not be preserved in areas where damage to people or property is likely.

- **Species response**
  There is a wide variation in the response of individual species to construction impacts and changes in the environment. In our experience, for example, red elderberry is moderately tolerant of construction impacts, while olive is very tolerant of site disturbance.

- **Tree age and longevity**
  Old trees, while having significant emotional and aesthetic appeal, have limited physiological capacity to adjust to an altered environment. Young trees are better able to generate new tissue and respond to change.

- **Invasiveness**
  Trees with the potential to invade native habitats, reproduce rapidly, and grow in sub-optimal environments are considered invasive. Species with these qualities may alter the functional and aesthetic qualities of the habitats they invade. None of the surveyed trees are considered invasive.

Each tree was rated for suitability for preservation in use areas based upon its age, health, structural condition and ability to safely coexist within a development environment. Suitability ratings are provided for each tree in Table 2.

We consider trees with good suitability for preservation to be the best candidates for preservation. We do not recommend retention of trees with low suitability for preservation in areas where people or property will be present. Retention of trees with moderate suitability for preservation depends upon the intensity of proposed site changes.

Table 2: Tree Suitability for Preservation
Lester property. San Jose CA.

Good These are trees with good health and structural stability that have the potential for longevity at the site. The off-site xylosma was the only trees rated as having good suitability for preservation.

Tree No.	Species	Diameter (in.)
364	Xylosma	15

(**Continued, following page**)

Table 2: Tree Suitability for Preservation, continued
Lester property. San Jose CA.

Moderate

Trees in this category have fair health and/or structural defects that may be abated with treatment. Trees in this category require more intense management and monitoring, and may have shorter life-spans than those in the "good" category. All six (6) red elderberries were rated as having moderate suitability for preservation.

Tree No.	Species	Diameter (in.)
368	Red elderberry	6,2,1,1,1
365	Red elderberry	6,,4,4,3,2,1
366	Red elderberry	4,4,3,2,1
367	Red elderberry	4,4,4,3,3
369	Red elderberry	10,8,8,6,6,2
370	Red elderberry	6,4,4,3,3,2,2

Poor

Trees in this category are in poor health or have significant defects in structure that cannot be abated with treatment. These trees can be expected to decline regardless of management. The species or individual tree may possess either characteristics that are undesirable in landscape settings or be unsuited for use areas. Six (6) trees were rated as having low suitability for preservation.

Tree No.	Species	Diameter (in.)
371	Monterey pine	2,1
372	Monterey pine	2,1
373	Monterey pine	2,1
374	Olive	2,1,1,1
375	Plum	3,2,2,1,1,1
376	Calif. black walnut	6,41,4,3,2

Assessment of Impacts and Recommendations
You provided a copy of the Preliminary Site Plan prepared by HMH Engineers (no date). The plan showed the layout of roads and buildings. Easements and a future Blossom Hill Rd. dedication were also shown, but accurate trunk locations were not.

The Site Plan depicted a high-density, residential development, with connection to Chesbro Ave. and Blairburry Way, with direct access to homes along the eastern border from Southcrest Way.

Monterey pines #371-373 would be directly impacted by the proposed development, requiring their removal. Olive #374 and plum #375 fall within the future Blossom Hill Rd. dedication, and Calif. black walnut #376 within the future Southcrest Way dedication. These three trees would be removed to accommodate improvements in these areas.

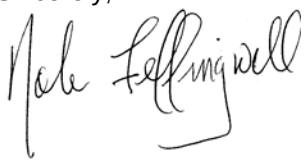
While there may be sufficient space to preserve red elderberries #368-370, in my opinion, they would offer little in the way of amenity to the property owner.

In summary, based on my assessment of the Plan, I recommend preservation of off-site trees (#364-367) and removal of on-site trees #369-376.

Off-site xylosma extends approximately 12' west over the fence line and may require pruning for construction clearance. Any pruning of off-site trees must be done with the property owner's permission. All pruning shall be in accordance with the Best Management Practices for Pruning (International Society of Arboriculture, 2002) and adhere to the most recent editions of the American National Standard for Tree Care Operations (Z133.1) and Pruning (A300).

Please contact me if you have any questions regarding my observations or recommendations.

Sincerely,



John Leffingwell
Board Certified Master Arborist WE-3966B
Registered Consulting Arborist #442

Att. ***Tree Survey Form***

Tree Survey Map

Tree Survey

Lester property
San Jose, California
March 2010

TREE No.	SPECIES	SIZE DIAMETER (in inches)	CONDITION 1=POOR 5=EXCELLENT	SUITABILITY FOR PRESERVATION	COMMENTS
364	Xylosma	15	4	Good	Off-site, no tag; extends 12' west over fence.
368	Red elderberry	6,2,1,1,1	4	Moderate	Multiple attachments at base; growing on fence line.
365	Red elderberry	6,,4,4,3,2,1	4	Moderate	Off-site, no tag; multiple attachments at base.
366	Red elderberry	4,4,3,2,1	4	Moderate	Off-site, no tag; multiple attachments at base.
367	Red elderberry	4,4,4,3,3	4	Moderate	Off-site, no tag; multiple attachments at base.
369	Red elderberry	10,8,8,6,6,2	4	Moderate	Multiple attachments at base; growing on fence line.
370	Red elderberry	6,4,4,3,3,2,2	4	Moderate	Multiple attachments at base; growing on fence line.
371	Monterey pine	2,1	3	Poor	Codominant trunks at 1'; old christmas tree planting.
372	Monterey pine	2,1	3	Poor	Codominant trunks at 1'; old christmas tree planting.
373	Monterey pine	2,1	3	Poor	Codominant trunks at 1'; old christmas tree planting.
374	Olive	2,1,1,1	3	Poor	Multiple attachments at base; growing through fence.
375	Plum	3,2,2,1,1,1	3	Poor	Multiple attachments at base; growing through fence.
376	Calif. black walnut	6,41,4,3,2	3	Poor	Multiple attachments at base; growing through fence.

Tree Survey Map

Lester Property
San Jose, CA

Prepared for:
SummerHill Homes
San Ramon, CA

March 2010

No Scale

Notes:

Base map provided by:
Google Earth

Tree locations are approximate.

HORT SCIENCE

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Phone 925.484.0211
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Tree #365-368

Tree #369