H. T. HARVEY & ASSOCIATES

Ecological Consultants

Guadalupe Gardens Seven Parcels
Biological Resources Report

Project #4750-01

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Section 1. Introduction

This report describes the biological resources present in seven separate parcels within the Guadalupe Gardens area, as well as the potential biological impacts of proposed development activities in these seven parcels and measures necessary to reduce these impacts to less-than-significant levels under the California Environmental Quality Act (CEQA). This assessment is based on the project maps and description provided to H. T. Harvey & Associates by David J. Powers & Associates through August 2023.

Even though the proposed project occurs within the general Permit Area identified in the approved Santa Clara Valley Habitat Plan (VHP) (ICF International 2012), the current project is not a "covered project" because it is part of lands controlled by San Jose International Airport, which is excluded from the VHP. This biological resources report, therefore, does not incorporate VHP conditions, avoidance, minimization, or compensatory mitigation measures, and the project is not obligated to comply with VHP requirements. However, special-status species occurrence information presented in the VHP was reviewed and utilized as a resource during preparation of this document, and land cover type designations were also adopted from the VHP.

1.1 Project Location

The project is located within Guadalupe Gardens, a 120-acre area located immediately south of the Norman Y. Mineta San José International Airport in San José, California (Figure 1). The seven parcels within the project site are bounded by West Hedding Street, Coleman Avenue, Asbury Street, and/or Ruff Drive (Figure 2). Surrounding areas consist of dense urban development in San José, several undeveloped vacant parcels to the northwest, and public open space and the Guadalupe River to the east. The project site is located on the *San José West*, *California* 7.5-minute United States Geological Survey (USGS) quadrangle.

1.2 Project Description

The Guadalupe Gardens Seven Parcels project consists of seven undeveloped areas totaling approximately 9.75 acres. This report focuses on proposed changes to the Land Use Designation of these seven City-owned parcels in *Envision San José 2040 General Plan* from Open Space Parks Habitat to Combined Industrial Commercial. The project would also rezone the seven parcels to Planned Development to allow commercial and industrial uses. The City of San José intends to market these seven parcels for lease, with revenues to be used for aviation-related objectives.

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Figure 1. Vicinity Map
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Figure 2. Project Site
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Section 2. Methods

2.1 Background Review

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

In addition, for plants, we reviewed all species on current California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) 1A, 1B, 2A, and 2B lists occurring in the project region, which is defined as the *San José West, California* USGS 7.5-minute quadrangles and surrounding eight quadrangles (*Mountain View*, *Milpitas, Calaveras Reservoir*, *San José East, Santa Teresa Hills, Los Gatos, Castle Rock Ridge,* and *Cupertino*). Quadrangle-level results are not maintained for CRPR 3 and 4 species, so we also conducted a search of the CNPS Inventory records for these species occurring in Santa Clara County (CNPS 2023). In addition, we queried the CNDDB (2023) for natural communities of special concern that occur within the project footprint, and we perused records of birds reported in nearby areas, such as at the Airport and along the Guadalupe River Trail, on eBird (Cornell Lab of Ornithology 2023) and on the South-Bay-Birds List Serve (2023).

2.2 Site Visits

Reconnaissance-level field surveys of the project footprint were conducted to provide a description of existing conditions by H. T. Harvey & Associates wildlife ecologist Ben Pearl, M.S. on May 22 and August 8, 2023, and plant ecologist Katherine Marlin, M.S. on May 22, 2023. Specifically, surveys were conducted to (1) assess existing biotic habitats and plant and animal communities within the project footprint, (2) assess the project footprint for its potential to support special-status species and their habitats, and (3) identify potential jurisdictional and sensitive habitats, such as waters of the U.S./state and riparian habitat.

Although the proposed project is not a VHP-covered project, VHP mapping of land cover types was reviewed, and we field-verified and modified such mapping as necessary based upon site conditions observed during the surveys. In addition, Wildlife Ecologist B. Pearl conducted a focused survey for (1) suitable burrowing owl roosting and nesting habitat (i.e., burrows of California ground squirrels [*Otospermophilus beecheyi*]) in the project footprint, (2) evidence of previous raptor nesting activity (i.e., large stick nests), and (3) potential bat roosting habitat in trees and buildings on and adjacent to these seven parcels. K. Marlin conducted a targeted survey for Congdon's tarplant (*Centromadia parryi* var. *congdonii*) within the project footprint during the May 22, 2023 survey.

Section 3. Regulatory Setting

Biological resources are regulated by a number of federal, state, and local laws and ordinances. Because no wetlands or other waters are present on or adjacent to the project site, this regulatory setting section focuses on other laws and ordinances that are potentially applicable to the project.

3.1 Federal Regulations

3.1.1 Federal Endangered Species Act

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

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

Project Applicability: The monarch butterfly (*Danaus plexippus*) is a candidate for listing under FESA. This species may occur in the project area as a non-breeding forager.

3.1.2 Federal Migratory Bird Treaty Act

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

Project Applicability: All native bird species that occur within the project footprint are protected under the MBTA.

3.2 State Regulations

3.2.1 California Endangered Species Act

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

Project Applicability: The Crotch's bumble bee (*Bombus crotchii*) is a candidate for listing under CESA. This species may occur in the project area as an occasional (though infrequent and scarce) non-breeding forager.

3.2.2 California Environmental Quality Act

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

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

The CDFW has produced three lists (amphibians and reptiles, birds, and mammals) of "species of special concern" that serve as "watch lists". Species on these lists are of limited distribution or the extent of their habitats has been reduced substantially, such that threat to their populations may be imminent. Thus, their populations should be monitored. They may receive special attention during environmental review as potential rare species, but do not have specific statutory protection. All potentially rare or sensitive species, or habitats capable of supporting rare species, are considered for environmental review per the CEQA Section 15380(b).

The CNPS, a non-governmental conservation organization, has developed CRPRs for plant species of concern in California in the CNPS Inventory of Rare and Endangered Plants. The CRPRs include lichens, vascular, and non-vascular plants, and are defined as follows:

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

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

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

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

Compliance with CEQA Guidelines Section 15065(a) requires consideration of natural communities of special concern, in addition to plant and wildlife species. Vegetation types of "special concern" are tracked in Rarefind (CNDDB 2020). Further, the CDFW ranks sensitive vegetation alliances based on their global (G) and state (S) rankings analogous to those provided in the CNDDB. Global rankings (G1–G5) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas S rankings are a reflection of the condition of a habitat within California. If an alliance is marked as a G1–G3, all of the associations within it would also be of high priority. The CDFW provides the Vegetation Classification and Mapping Program's (VegCAMP's) currently accepted list of vegetation alliances and associations (CDFW 2023).

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

3.2.3 California Fish and Game Code

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

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

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

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

Bats and other non-game mammals are protected by California Fish and Game Code Section 4150, which states that all non-game mammals or parts thereof may not be taken or possessed except as provided otherwise in the

code or in accordance with regulations adopted by the commission. Activities resulting in mortality of non-game mammals (e.g., destruction of an occupied nonbreeding bat roost, resulting in the death of bats), or disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), may be considered *take* by the CDFW.

Project Applicability: CDFW jurisdiction under Section 1602 of the California Fish and Game Code would extend up to the top of bank of the Guadalupe River, which is located 0.08 miles to the east from the closest project parcel. There will be no project impacts on riparian habitat subject to CDFW jurisdiction because no work is proposed within the top of bank of the Guadalupe River channel. Therefore, a CDFW LSAA would not be required for the project.

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

3.2.4 State Water Resources Control Board Stormwater Regulation

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

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

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

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

3.3 Local Regulations

3.3.1 City of San José Tree Ordinance

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

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

Project Applicability: According to a tree survey performed by HMH (2023), 56 of the 67 trees located within these seven parcels meet the City's size requirements for ordinance-sized trees. The project will comply with the City of San José's tree replacement guidelines and policies for any trees that need to be removed.

3.3.2 Santa Clara Valley Habitat Plan

The VHP (ICF International 2012) provides a framework for promoting the protection and recovery of natural resources, including endangered and threatened species, while streamlining the permitting process for planned development, infrastructure, and maintenance activities. The VHP allows the County of Santa Clara, Santa Clara Valley Water District (Valley Water), the Santa Clara Valley Transportation Authority, and the cities of Gilroy, Morgan Hill, and San José (collectively, the Local Partners or Permittees) to receive endangered species permits for activities and projects they conduct and those under their jurisdiction. The Santa Clara Valley Open Space Authority also contributed to VHP preparation. The VHP will protect, enhance, and restore natural

resources in specific areas of Santa Clara County and contribute to the recovery of endangered species. Rather than separately permitting and mitigating individual projects, the VHP evaluates natural-resource impacts and mitigation requirements comprehensively in a way that is more efficient and effective for at-risk species and their essential habitats.

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

Project Applicability. The project is located within the VHP permit area. However, the project is not a "covered project" because it is part of lands controlled by San Jose International Airport, which is excluded from the VHP. The project is therefore not obligated to comply with VHP conditions, avoidance, minimization, or compensatory mitigation measures.

Section 4. Environmental Setting

4.1 General Project Area Description

The project footprint is located in San José in Santa Clara County, California (Figure 1). The climate in the project vicinity is coastal Mediterranean, with most rain falling in the winter and spring. Mild cool temperatures are common in the winter. Hot to mild temperatures are common in the summer. Climate conditions in the vicinity include a 30-year average of approximately 14 inches of annual precipitation with a monthly average temperature range from 50.3ºF to 69.2ºF (PRISM Climate Group 2023). Elevations within the project footprint range from 61-71 feet above mean sea level (Google Inc. 2023). The Natural Resource Conservation Service (NRCS) has mapped three soil units within the project footprint: (1) 92.8% Hangerone clay loam, drained, 0 to 2 percent slopes, (2) 3.9% Urban Land – Bayshore complex, 0 to 2 percent slopes, drained, and (3) 3.3% Urbanland-Hangerone complex, 0 to 2 percent slopes, drained (NRCS 2023). The Hangerone soil series consists of very deep, poorly drained soils that formed in alluvium from mixed rock sources (NRCS 2023).

4.2 Land Cover

As described above, biotic habitats within the project footprint were classified according to the land cover classification system described in the VHP (ICF International 2012) and were mapped based on field verification of conditions during the 2023 field survey. The reconnaissance-level survey identified two land cover types within the project footprint: California annual grassland and urban-suburban (i.e., developed/landscaped) (Figure 3). These land cover types are described in detail below. Plant species observed during the reconnaissance survey are listed in Appendix A.

4.2.1 California Annual Grassland

Vegetation. California annual grassland (9.11 acres) is the dominant land cover type within the project footprint. The California annual grassland is located throughout the project site adjacent to Coleman Avenue and West Hedding Street (Photo 1). This land cover type is dominated by nonnative grasses such as wild oat (*Avena* sp.), ripgut brome (*Bromus diandrus*), smilo grass (*Stipa milliacea*), foxtail barley (*Hordeum murinum*), and Italian rye grass (*Festuca perennis*) as well as weedy forbs such as cheeseweed (*Malva parviflora*), fennel (*Foeniculum vulgare*), and black mustard (*Brassica nigra*), Italian thistle (*Carduus pycnocephalus*) and yellow star thistle (*Centaurea solstitalis*) (Photo 1).

Photo 1. California annual grassland habitat.

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Figure 3. Land Cover Map
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Although the majority of this land cover type consists of open grassland, scattered trees are present within these areas. According to a tree survey performed by HMH (2023), 67 trees are located within these seven parcels. These consist of non-native or ornamental tree species such as tree-of-heaven (*Ailanthus altissima*), Mexican fan palm (*Washingtonia robusta*), privet (*Ligustrum sp.*), London plane tree (*Platanus x hispanica*), and Peruvian pepper tree (*Schinus mole*), as well as California black walnut (*Juglans hindsii*), which is native to California but not thought to be native to the San José area (Photo 1). A few facultative wetland species such as bristly ox-tongue (*Helminthotheca echinoides*), English plantain (*Plantago lanceolata*), oval leaf knotweed (*Polygonum aviculare*), and fiddle dock (*Rumex pulcher*) were observed in very low numbers, being scattered sparsely throughout the project site, but no evidence of wetlands was observed on any parcels. This land cover has been regularly mown for decades. During our reconnaissance survey, vegetation in the California annual grassland was relatively dense and 15–40 inches tall, with very little evidence of bare ground. The grassland contained a number of species ranked by the California Invasive Plant Council (Cal-IPC) as being limited or moderate invasive, discussed in Section 5.3.5.

Wildlife. Wildlife use of grasslands within the project footprint is limited by human disturbance (e.g., mowing and homeless encampments), the limited extent of the grassland area, and the isolation of this habitat from more extensive grasslands in the region (i.e., in the Diablo Range to the east). As a result, some of the wildlife species associated with extensive grasslands in the South Bay, such as the grasshopper sparrow (*Ammodramus savannarum*), are absent from the grasslands within the project footprint. Many of the wildlife species that occur in this grassland area occur primarily in adjacent developed or riparian areas and use the grasslands within the project footprint for foraging. Such species include the house finch (*Haemorhous mexicanus*), bushtit (*Psaltriparus minimus*), and lesser goldfinch (*Spinus psaltria*), which forage on seeds in grassland areas, and the black phoebe (*Sayornis nigricans*), cliff swallow (*Petrochelidon pyrrhonota*), and Mexican free-tailed bat (*Tadarida brasiliensis*), which forage aerially over grassland habitats for insects.

Burrows of California ground squirrels were observed in small numbers (zero burrows were observed during the May 2023 survey, and three burrows were observed during the August 2023 survey) within the project footprint during the May and August 2023 site visits. This fossorial mammal species is an important component of grassland communities, providing a prey base for diurnal raptors and terrestrial predators and providing burrows that can be used by burrowing owls. Other rodent species that can potentially occur in the grassland habitat within the project footprint include the Botta's pocket gopher (*Thomomys bottae*), California vole (*Microtus californicus*) and deer mouse (*Peromyscus maniculatus*). Diurnal raptors such as red-tailed hawks (*Buteo jamaicensis*) and red-shouldered hawks (*Buteo lineatus*) forage for these small mammals over grasslands during the day, and at night nocturnal raptors, such as barn owls (*Tyto alba*), will forage for nocturnal rodents, such as deer mice.

Several reptile species regularly occur in grassland habitats, including the western fence lizard (*Sceloporus occidentalis*), gopher snake (*Pituophis catenifer*), and southern alligator lizard (*Elgaria multicarinata*). Burrows of California ground squirrels provide refuges for these reptile species, as well as for common amphibians that may occur in adjacent riparian habitat such as the western toad (*Anaxyrus boreas*) and Pacific tree frog (*Hyliola regilla*). Mammals such as the native striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and black-tailed

jackrabbit (*Lepus californicus*), as well as the nonnative Virginia opossum (*Didelphis virginiana*) and feral cat (*Felis catus*) use the grassland habitats within the project footprint for foraging.

4.2.2 Urban-Suburban

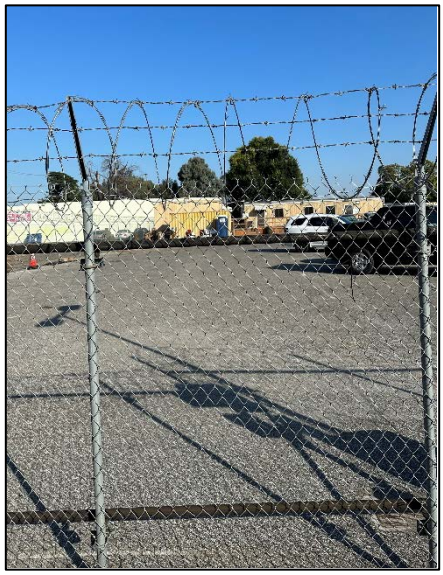

Photo 2. Urban-Suburban habitat.

Vegetation. A portion of the project footprint consists of existing paved and developed land use, which are considered the urban-suburban land cover type (Figure 3). These areas include paved areas such as asphalt parking lots, sidewalks, and roadways (Photo 2), and associated landscaping. Landscaped areas are barren except for some hardy, low-lying non-native species such as greenstem filaree (*Erodium moschatum*) or pineappleweed (*Matricaria discoidea*).

Wildlife. The urban-suburban areas of the project footprint serve as wildlife habitat only in a very limited capacity, and most wildlife species that occur in these areas are tolerant of frequent human disturbances. Species that use these areas include the nonnative European starling (*Sturnus vulgaris*), rock pigeon (*Columba livia*), house mouse (*Mus musculus*), and Norway rat (*Rattus norvegicus*), as well as the native raccoon and striped skunk. Western fence lizards commonly occur in urban-suburban areas and may bask on road or parking lot surfaces to raise their body temperature. Bird species including the American crow (*Corvus brachyrhynchos*), California scrub-jay (*Aphelocoma californica*), Anna's hummingbird (*Calypte anna*), California towhee (*Melozone crissalis*), bushtit, and dark-eyed junco (*Junco hyemalis*) will nest and forage in landscape vegetation. Large trees adjacent to the project footprint provide potential nesting sites for raptors, such as red-tailed hawks (red-shouldered hawks and Cooper's hawks (*Accipiter cooperii*). During the site visit, an active red-tailed hawk nest was observed in a eucalyptus tree across the street from site 5 on Asbury Drive (Photo 3).

Photo 3. Red-tailed hawk nest near the project site.

4.3 Wildlife Movement

Wildlife movement within and in the vicinity of the project footprint takes many forms and is different for the various suites of species associated with these lands. Bird and bat species move readily over the landscape in the project vicinity, foraging over and within both natural lands and landscaped areas. Mammals of different species move within their home ranges, but also disperse between patches of habitat. Generally, reptiles and

amphibians similarly settle within home ranges, sometimes moving to central breeding areas, upland refugia, or hibernacula in a predictable manner, but also dispersing to new areas. Some species, especially among the birds and bats, are migratory, moving into or through the project vicinity during specific seasons. Aside from bats, there are no other mammal species in the vicinity of the site that are truly migratory. However, the young of many mammal species disperse from their natal home ranges, sometimes moving over relatively long distances in search of new areas in which to establish.

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

Due to the density of development in the project region and the lack of continuous, well-vegetated pathways through the City, there are currently no well-defined movement corridors for mammals or reptiles within or through the project site. Wildlife species may move through the area using cover and refugia as they find them available. However, most dispersal by wildlife species in the region likely occurs along higher-quality habitats, such as the Guadalupe River corridor to the east, and along the edge of the Bay to the northwest.

The Guadalupe River, which eventually drains to the open waters of the San Francisco Bay, and its associated riparian corridor adjacent to the site serves as a movement corridor for several common and special-status species of birds, fish, mammals, reptiles, and amphibians in the project vicinity. In addition, a number of birds, mammals, reptiles, and amphibians utilize the riparian corridor of the Guadalupe River for movement purposes, as it provides sufficient vegetative cover preferred by these species when navigating across the landscape. Specifically, migratory passerines, rabbits, striped skunks, raccoons, Pacific treefrogs, and alligator lizards, amongst other species, are expected to move along this corridor adjacent to the project site.

In summary, the project footprint is not a particularly important area for movement by non-flying wildlife, and it does not contain any high-quality corridors allowing dispersal of such animals through the City. The Guadalupe River located approximately 0.08 miles east of the site provides a corridor for wildlife species to disperse north and south through San José, but development of the project's parcels would not affect any wildlife use of that movement corridor.

Section 5. Special-Status Species and Sensitive Habitats

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

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

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

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

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

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

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H. T. HARVEY & ASSOCIATES
Ecological Consultants

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

Guadalupe Gardens Seven Parcels Biological Resources Report (4750-01)
October 2023

5.1 Special-Status Plant Species

A review of potentially occurring special-status plants, based on background information and assessment of habitat on the project site, determined that no special-status plants have any potential to occur in the project footprint for at least one of the following reasons: (1) absence of suitable habitat types; (2) lack of specific microhabitat or edaphic requirements, such as serpentine soils; (3) the elevation range of the species is outside of the range of the project site; and/or (4) the species is presumed extirpated from the project region. Although suitable habitat for Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*) is absent from the project site, we made a concerted effort to look for this species (at least for vegetative *Centromadia* sp., in case they were not yet flowering) during our site visit because this species is known to occur in some north San José locations. No *Centromadia* were observed. Therefore, special-status plants are absent from the project site.

5.2 Special-Status Animal Species

We identified several special-status animal species as potentially occurring in the project vicinity, and Figure 4 shows CNDDB-mapped records of special-status animals in the site vicinity. However, the majority of these species were determined to be absent from the project site. Species considered for occurrence but rejected, as well as the reasons for their rejection, are as follows:

- The California tiger salamander (*Ambystoma californiense*), federally and state listed as threatened, and the California red-legged frog (*Rana draytonii*), federally listed as threatened and a California species of special concern, occurred historically in the project vicinity. No suitable breeding habitat for these species occurs on the site, and both species have been extirpated from the majority of the project region, including the entire urbanized Santa Clara Valley floor, due to development, the alteration of hydrology of its aquatic habitats, and the introduction of nonnative predators such as non-native fishes and bullfrogs (H. T. Harvey & Associates 1997, H. T. Harvey & Associates 1999a, H. T. Harvey & Associates 2012). As a result, these species are determined to be absent from the project site.
- The foothill yellow-legged frog (*Rana boylii*), federally listed as threated and state listed as endangered, occurred historically in the project vicinity. No aquatic habitat to support this species occurs on the site, and this species has been extirpated from valley floor areas of Santa Clara County, and is no longer known to occur along the County's streams below major reservoirs (H. T. Harvey & Associates 1999b). As a result, this species is determined to be absent from the project site.
- An examination of trees on the project site, as well as buildings on adjacent properties, failed to detect any cavities or crevices large enough to provide high-quality habitat for a roosting or maternity colony of common or special-status bat species. Further, no sign of bats (e.g., guano or urine staining) was observed on trees on the project site or adjacent buildings. Special-status bats, including the pallid bat (*Antrozous pallidus*), are not known to occur in the site vicinity, and are determined to be absent from the site due to a lack of suitable roosting habitat. Individual bats may fly over the site or forage opportunistically on the site on occasion.

- No suitable nesting habitat is present on or very close to the site for the loggerhead shrike (*Lanius ludovicianus*) or yellow warbler (*Setophaga petechia*), both of which are designated as California species of special concern. Migrant yellow warblers may forage in trees on the site, but this species is only considered a California species of special concern when nesting.
- No suitable nesting habitat or high-quality foraging habitat for the tricolored blackbird (*Agelaius tricolor*), state listed as threatened, is present on or near the project site.
- No suitable habitat for, and no nests of, the San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) is present on or adjacent to the project site.
- The western pond turtle (*Actinemys marmorata*), a California species of special concern, occurs in the Guadalupe River east of the project sites. However, western pond turtles are not expected to disperse across roads and over the distance between the river and the project sites, and the species is thus considered absent.

Several special-status species could potentially occur on the project site, as discussed below.

Burrows of California ground squirrels on several of the parcels provide ostensibly suitable roosting habitat for burrowing owls (*Athene cunicularia*), a California species of special concern. However, most of these burrows are located under or near trees, which provide perches for predatory raptors (e.g., eagles, falcons, hawks, and owls) that prey upon burrowing owls, and the adjacent grassland habitat provides limited foraging habitat due to high levels of disturbance. As a result, the site provides only very low-quality habitat for this species due to high levels of disturbance and the presence of trees. Burrowing owls occur more widely in the South Bay during the nonbreeding season, but they are not known to nest or occur on the site (CNDDB 2023, Cornell Lab of Ornithology 2023). Burrowing owls do have a long history of breeding in grasslands along taxiways and at the end of runways at the nearby San José International Airport; however, the number of owls observed during the breeding season has declined greatly in recent years, from 37 adults observed during the 2013 breeding season (U.S. Department of Agriculture 2021) to only 3 adults observed during the 2022 breeding season (TERG 2023). No burrowing owls or signs of recent burrowing owl use of the site (e.g., pellets, fecal material, or feathers) were observed on the site during the May 22, 2023 or August 8, 2023 site visits. As a result, burrowing owls are highly unlikely to occur on the site, especially as breeders, but it is possible that occasional non-breeding (i.e., migrant or wintering) burrowing owls could be present.

The golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), both state fully protected species, occur in open grasslands in the South Bay. However, the grasslands on the project site and in the immediate vicinity are not sufficiently extensive to support a nesting pair of either species, and both golden eagles and white-tailed kites are not known to nest in the site vicinity. Occasional individuals may occur on the site or in adjacent open space areas as non-breeding foragers. The proposed project will have little impact on these species' foraging habitat and no impacts on regional populations of the species.

The monarch butterfly (*Danaus plexippus*), a candidate species for listing under the Federal Endangered Species Act, may occur on the project site as a nonbreeder, especially during spring and fall migration. However, no

milkweeds (*Asclepias* spp.), which provide this species' larval hostplant, were detected on the site during reconnaissance surveys, so monarchs are not expected to breed on the site. Further, the monarch butterfly is not known to form winter aggregations in Santa Clara County, so no such clusters of monarchs would occur on the project site. As a result, monarchs would occur only as an occasional nonbreeding visitor, in low numbers.

The Crotch's bumble bee, a candidate species for listing under CESA, occurs in a number of locations in Santa Clara County, though all evidence suggests that it occurs in low numbers and sparsely, especially in urban areas. Several ground squirrel burrows, as well as burrows of smaller rodents, were found on-site which could provide appropriate habitat for a nest. However, the combination of mowing on-site that greatly reduces the availability of flowers for foraging, as well as the general lack of flowering plants in the project vicinity, make it highly unlikely that this species breeds on-site. As a result, the Crotch's bumble bee is expected to occur on the site only as a scarce, occasional forager, if it occurs at all.

In summary, the only special-status animal species that can potentially occur on the project site are the burrowing owl, which could occur as a breeder or non-breeding forager on the site, and the golden eagle, white-tailed kite, monarch butterfly, and Crotch's bumble bee, which may occasionally occur on the site or in adjacent open space areas as non-breeding foragers.

5.3 Sensitive Natural Communities, Vegetation Alliances, and Habitats

Natural communities have been considered part of the Natural Heritage Conservation triad, along with plants and animals of conservation significance, since the state inception of the Natural Heritage Program in 1979. The CDFW determines the level of rarity and imperilment of vegetation types, and tracks sensitive communities in its Rarefind database (CNDDB 2023). Global rankings (G) of natural communities reflect the overall condition (rarity and endangerment) of a habitat throughout its range, whereas state (S) rankings are a reflection of the condition of a habitat within California. Natural communities are defined using NatureServe's standard heritage program methodology as follows (Faber-Langendoen et al. 2012):

G1/S1: Critically imperiled

G2/S2: Imperiled

G3/S3: Vulnerable.

G4/S4: Apparently secure

G5/S4: Secure

In addition to tracking sensitive natural communities, the CDFW also ranks vegetation alliances, defined by repeating patterns of plants across a landscape that reflect climate, soil, water, disturbance, and other environmental factors (Sawyer et al. 2009). If an alliance is marked G1-G3, all of the vegetation associations

within it will also be of high priority (CDFW 2023). The CDFW provides VegCAMP's currently accepted list of vegetation alliances and associations (CDFW 2023).

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

5.3.1 Sensitive Natural Communities

A query of sensitive habitats in the CNDDB (2023) identified three sensitive natural communities as occurring within the nine 7.5-minute USGS quadrangles containing or surrounding the project footprint: (1) north central coast drainage Sacramento sucker/roach river (Rank GNR/SNR), (2) northern coastal salt marsh (Rank G3/S3.2), and (3) serpentine bunchgrass (Rank G2/S2.2). However, no streams or rivers, wetlands, or serpentine bunchgrass habitat occurs within the project footprint. Facultative wetland vegetation species are not present in sufficient density to qualify for the wetland vegetation indicator, nor were there any hydrology indicators such as soil surface cracking. Serpentine bunchgrass is absent, as no native bunchgrass species were present on site, soils were primarily Hangerone clay loam (NRCS 2023), and the project site is approximately 4 miles away from the nearest serpentine fee zone according to the Santa Clara Valley Habitat Agency Geobrowser (2023).

5.3.2 Sensitive Vegetation Alliances

The majority of the project footprint is dominated by wild oats and *Bromus* sp. and would be considered "Wild oats and annual brome grasslands (*Avena* spp. – *Bromus* spp.)" alliance (CDFW 2023). This alliance does not not have a global or state ranking, and because it is defined by dominance of nonnative species, is not considered sensitive by VegCAMP. No sensitive alliances occur within the project footprint.

5.3.3 CDFW Riparian Habitat

Due to its rarity and disproportionately high habitat values and functions to wildlife, the CDFW considers riparian habitat to be sensitive. As described above in Section 3.2.3, no riparian habitat is present on the project site.

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

No waters or wetlands of the U.S./state occur within the project footprint.

5.3.5 Nonnative and Invasive Species

Several nonnative, invasive plant species occur within the project footprint. Of these, the following have a rating of "limited" invasiveness (considered invasive but their ecological impacts are minor on a statewide level and their reproductive biology and other attributes result in low to moderate rates of invasiveness) according to the Cal-IPC (2023): Peruvian pepper tree, bristly ox-tongue, wild radish (*Raphanus sativus*), variable burclover (*Medicago polymoprha*), and English plantain. The following species have a "moderate" rating, indicating that they have substantial and apparent-but generally not severe-ecological impacts on physical processes, plant and animal communities, and vegetation structure, and that their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment would be generally dependent upon ecological disturbance: fennel, Italian thistle, yellow star thistle, stinkwort (*Dittrichia graveolens*), black mustard, rose clover (*Trifolium hirtum*), tree of heaven, Mexican fan palm, wild oats, ripgut brome, Italian rye grass, and foxtail barley. Due to their ubiquity in the region, and the fact that proposed project activities are expected to clear and develop all areas where populations of invasive species are located, project activities are not expected to result in the spread of nonnative and invasive plant species.

Section 6. Impacts and Mitigation Measures

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

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

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

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

C. "Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means"

D. "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites"

E. "conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance"

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

Potential impacts on biological resources as a result of the proposed project were systematically evaluated at the project level. These impacts were first evaluated to qualitatively describe how proposed project activities could impact biological resources, and whether impacts would be temporary (i.e., occurring only during project construction and the period immediately following) or permanent.

6.1 Impacts on Special-Status Species: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status

species in local or regional plans, policies, or regulations, or by the CDFW or USFWS (Less than Significant)

6.1.1 Impacts on California Annual Grassland and Associated Common Plant and Wildlife Species (Less than Significant)

Proposed project activities would result in permanent impacts on 9.11 acres of California annual grassland within the project footprint. These impacts would reduce the extent of vegetation within the impact area and would result in a reduction in abundance of some of the common plant and wildlife species, such as birds and bats, that occur on the site. However, the area of California annual grassland to be impacted occurs in a location in San José that has been subject to disturbance and fragmentation in the past and is embedded within a highly developed urban area, such that these areas do not provide regionally rare or especially high-value habitat for native vegetation or wildlife, or special-status species aside from the burrowing owl (discussed in Section 6.2.4 below). In addition, California annual grassland is abundant and widespread regionally and is not particularly sensitive, and the habitat within the project footprint is not especially valuable (from the perspective of providing important plant or wildlife habitat [again, aside from habitat for the burrowing owl discussed in Section 6.2.4]) or an exemplary occurrence of this habitat type. Therefore, impacts on this habitat are considered less than significant. Further, because the number of individuals of any common plant or animal species within this habitat, and the proportion of these species' regional populations that could be disturbed, is very small, the project's impacts would not substantially reduce regional populations of these species. Thus, these impacts do not meet the CEQA standard of having a *substantial* adverse effect and would not be considered significant under CEQA.

6.1.2 Impacts on Water Quality and Special-Status Aquatic Species (No Impact)

No direct impacts are proposed within the bed and banks of the Guadalupe River, which flows 0.08 miles east of the closest parcel within the project site, and no indirect impacts on the Guadalupe River, water quality within the channel, or fish species inhabiting the river are expected to occur as a result of project activities.

Construction projects in California causing land disturbances that are equal to 1 acre or greater must comply with state requirements to control the discharge of storm water pollutants under the NPDES *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit; Water Board Order No. 2009-0009-DWQ, as amended and administratively extended). Prior to the start of construction/demolition, a Notice of Intent must be filed with the SWRCB describing the project. A Storm Water Pollution Prevention Plan must be developed and maintained and it must include the use of BMPs to protect water quality until the site is stabilized. Standard permit conditions under the Construction General Permit require that the applicant utilize various measures, including on-site sediment control BMPs, damp street sweeping, temporary cover of disturbed land surfaces to control erosion during construction, and utilization of stabilized construction entrances and/or wash racks, among other factors.

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

6.1.3 Impacts on Nonbreeding Special-Status Animal Species (Less than Significant)

Several special-status invertebrate and bird species may occur within the project footprint as nonbreeding migrants, transients, or foragers, but they are not known or expected to breed or occur in large numbers within or near the project impact area. These are the monarch butterfly, Crotch's bumble bee, golden eagle, and white-tailed kite.

The monarch butterfly (a federal candidate species) may forage in the site vicinity, especially during spring and fall migration, but is not expected to breed or overwinter within the project footprint due to a lack of suitable habitat. The Crotch's bumble bee (a state candidate species) may forage in the site vicinity, but is not expected to breed within the project footprint due to a lack of suitable foraging habitat. The golden eagle and white-tailed kite (state fully protected species) are not expected to breed in the project footprint due to a lack of suitable nesting habitat, though individuals of these species may occasionally forage in the project footprint in small numbers.

Activities under the proposed project would have some potential to impact foraging habitats and/or disturb individuals of these species. Construction activities might result in a temporary direct impact through the alteration of foraging patterns (e.g., avoidance of work sites because of increased noise and activity levels during maintenance activities) but would not result in the loss of individuals, as individuals of these species would fly away from any construction areas or equipment before they could be injured or killed. Further, the project footprint does not provide important foraging habitat used regularly or by large numbers of individuals of any of these species. As a result, impacts of the project will have little impact on these species' foraging habitat and no substantive impact on regional populations of these species. Therefore, this impact would be less than significant.

6.1.4 Impacts on the Burrowing Owl (Less than Significant with Mitigation)

If burrowing owls occur on the project parcels, the project may impact burrowing owls as a result of the temporary and permanent removal of foraging habitat, as well as disturbance to or direct impacts on individuals during construction. Burrowing owl habitat surveys completed on the site in 2023 did not, however, detect burrowing owls or signs of burrowing owl presence in the project footprint. As discussed in Section 5.2 above, no records of burrowing owls are known from the project footprint. Owls have been known to nest, roost, and

forage northwest of the project footprint on the Airport airfield for decades (Albion Environmental, Inc. 1997) and continue to be present in these areas year-round (TERG 2023, U.S. Department of Agriculture 2021). However, the population at the Airport, and South Bay as a whole, has declined greatly in recent years, with only three adults observed at the Airport during the 2022 breeding season (TERG 2023). Based on these data, there is no evidence that burrowing owls currently occupy the project site. Annual burrowing owl surveys conducted by the Santa Clara Valley Habitat Agency have not detected burrowing owls nesting any closer to the project site than approximately 1 mile to the northwest, at the Airport, over the past three years (TERG 2023).

The project will result in the permanent loss of 9.11 acres of ostensibly suitable, though likely unoccupied, nesting, roosting, and foraging habitat for burrowing owls within the project footprint. Currently, the grasslands within the project footprint provide potential foraging habitat for owls, as well as suitable nesting and roosting habitat where burrows of California ground squirrels are present. However, these grasslands likely have limited value to burrowing owls due to the limited numbers of burrows present (i.e., zero burrows were observed during the May 2023 survey, and three burrows were observed during the August 2023 survey). Although the project is not covered by the VHP, the means by which the Santa Clara Valley Habitat Agency determines whether a project needs to pay burrowing owl impact fees is relevant to the issue of whether grasslands on the project site provide important habitat for breeding burrowing owls. The Habitat Agency considers any areas having suitable habitat within 0.5 mile of burrowing owl nests occupied within the prior 3 years to represent occupied burrowing owl habitat (i.e., to provide foraging habitat for nesting owls). Because the project parcels are located 1 mile (and more, for some parcels) from the nearest nesting site used by owls in 2020-2022, there is no expectation that burrowing owls rely on the grasslands on these parcels. Therefore, loss of potential burrowing owl habitat as a result of the project is a less-than-significant impact.

Some of the burrowing owls that may occur in the project vicinity during the nonbreeding season likely represent migrants or wintering owls from nesting populations outside the San Francisco Bay area. Project activities will also result in a reduction in available habitat for these birds. However, burrowing owls are known to occur more widely in the South San Francisco Bay region in winter than they do during the nesting season, using habitats within Coyote Valley and adjacent foothills that are not used for nesting by birds within the South Bay nesting population (ICF International 2012). Given the vast extent of grassland and ruderal habitat within the foothills of the Diablo Range and Santa Cruz Mountains (and to some extent on the valley floor in southern Santa Clara County) that provide suitable wintering habitat for owls, the loss of habitat within the project footprint is not expected to have a substantial impact on populations of burrowing owls that winter in the South Bay but nest outside the region.

Because a few pairs of burrowing owls still nest at the Airport, and additional owls occur in the region in winter, it is possible that owls may occasionally disperse onto the project site. If owls are present when construction occurs, individual burrowing owls may be affected by construction activities. Because they roost underground, burrowing owls may be killed or injured during development activities from trampling or compaction of burrows by construction personnel or equipment if appropriate protective measures are not implemented.

Construction activities that occur in close proximity to active burrows may disturb owls to the point of abandoning their burrows. Injury or mortality of burrowing owls resulting from construction activities would represent a significant impact given the low size of the South Bay burrowing owl population. Implementation of mitigation measure BIO-1 will reduce this impact to a less-than-significant level.

Mitigation Measure BIO-1: The applicant shall implement the following measures (based on those contained within Condition 15 of the VHP) prior to groundbreaking activities on each project parcel to ensure that individual burrowing owls are not injured or killed as a result of project activities.

Prior to any ground disturbance associated with the project, a qualified biologist shall conduct preconstruction surveys in all potentially suitable burrowing owl habitat on and within 250 feet of the area in which ground disturbance is proposed. To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of three hours. The survey shall begin one hour before sunrise and continue until two hours after sunrise (three hours total) or begin two hours before sunset and continue until one hour after sunset. A minimum of two surveys shall be conducted (if owls are detected on the first survey, a second survey is not needed). Owls observed shall be counted and their location shall be mapped. Surveys shall conclude no more than two calendar days prior to construction; thus, surveys must begin no less than four days prior to the start of construction, operations, or reclamation activities (two days of surveying plus up to two days between surveys and construction).

To avoid last-minute changes in schedule that may occur if burrowing owls are found, a preliminary survey may be conducted up to 14 days before construction. This preliminary survey may count as the first of the two required surveys, as long as the second survey concludes no more than two calendar days in advance of construction. If the preconstruction survey does not identify the presence of burrowing owls on or within 250 feet of the site, no further measures are necessary. However, should the preconstruction survey determine the presence of burrowing owls on or within 250 feet the site, then the applicant shall implement the following avoidance measures.

1. Avoidance during the Breeding Season. If evidence of burrowing owls is found during the breeding season (February 1 to August 31), all nesting or roosting sites that could be disturbed by project demolition or construction shall be avoided during the remainder of the breeding season (if owls remain throughout the breeding season) or while the nest (i.e., a burrow occupied during the period February 1 to August 31) is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). Although burrowing owls are unlikely to nest on the project site, there is a remote possibility that nesting may occur. Wintering owls in Santa Clara County often remain past February 1, at which time they cannot be distinguished from breeding birds. As a result, any owl present between February 1 and August 31 will be considered a potential breeder unless and until it leaves the site.

   Avoidance shall include establishment of a 250-foot non-disturbance buffer zone around nests. Demolition and construction may occur outside of the 250-foot non-disturbance buffer zone.

Demolition and construction may occur inside of the 250-foot non-disturbance buffer during the breeding season only if the nest is not disturbed, and a qualified biologist develops an avoidance, minimization, and monitoring plan that is reviewed and approved by the CDFW prior to project construction and meets all of the following criteria:

- A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline nesting and foraging behavior (i.e., behavior without construction).
- The same qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities.
- If there is any change in owl nesting and foraging behavior as a result of construction activities, all disturbance activities shall cease within the 250-foot buffer. Construction shall not resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project area and 250-foot buffer.
- If monitoring indicates that the nest is abandoned prior to the end of the nesting season (as would occur if a wintering owl lingered past February 1 and then eventually migrated to its breeding areas outside the region), and the burrow is no longer in use by owls, the non-disturbance buffer zone may be removed. The qualified biologist will excavate the burrow to ensure that no owls are present and to prevent reoccupation after receiving approval from CDFW.

2. Avoidance during the Non-Breeding Season. During the non-breeding season (September 1 through January 31), a 250-foot non-disturbance buffer shall be established around occupied burrows as determined by a qualified biologist. Demolition and construction activities outside of this 250-foot buffer are allowed. Demolition and construction activities within the 250-foot buffer are allowed if all of the following criteria are met in order to prevent owls from abandoning important overwintering sites:

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

3. Construction Monitoring. Based on the avoidance, minimization, and monitoring plan developed during construction, all non-disturbance buffer zones shall be established and maintained. A qualified biologist shall monitor the site consistent with the requirements described above to ensure that buffers are enforced and owls are not disturbed. The biological monitor shall also conduct training of construction personnel on the avoidance procedures, buffer zones, and protocols in the event that a burrowing owl flies into an active construction zone or within 250 feet of such zone.

4. Passive Relocation. Passive relocation shall only be allowed, with the approval of CDFW, during the non-breeding season (September 1 through January 31), and may only occur if the burrow needs to be removed or could collapse from construction activities. If passive relocation is allowed by CDFW, a qualified biologist shall passively exclude birds from their burrows during non-breeding season only by installing one-way doors in burrow entrances. These doors shall be in place for at least 48 hours to ensure owls have left the burrow, and then the qualified biologist shall excavate the burrow to prevent reoccupation. Burrows shall be excavated using hand tools. During excavation an escape route shall be maintained at all times. This may include inserting an artificial structure into the burrow to avoid having the overburden collapse into the burrow and trap owls inside.

6.1.5 Nitrogen Deposition Impacts (Less than Significant)

Several special-status plant and animal species that are absent from the project site and its vicinity occur on serpentine substrates in hills on either side of the Santa Clara Valley. These species include the Bay checkerspot butterfly and a number of rare plants, including the VHP-covered Tiburon Indian paintbrush (*Castilleja affinis* var. *neglecta*), coyote ceanothus (*Ceanothus ferrisiae*), Mount Hamilton thistle (*Cirsium fontinale* var. *campylon*), Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), and most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*).

The USFWS has identified critical habitat for the federally threatened Bay checkerspot butterfly (73 FR 50406) south of U.S. Route 101 and Metcalf Road in San José, approximately 12.0 miles southeast of the project footprint (Unit 5 at Metcalf) (USFWS 2008). The conservation of critical habitat is considered essential for the conservation of the Bay checkerspot butterfly, and this serpentine habitat also supports serpentine-associated rare plant species (including the VHP-covered species listed above). Nonnative grasses have been reported to increase in these habitats, crowding out native rare plants as well the native larval host plants needed by the Bay checkerspot butterfly, due to increased nitrogen deposition from human sources throughout San José and the greater Bay Area.

Nitrogen deposition contribution estimates in Santa Clara County were made as a part of the development of the VHP (ICF International 2012). About 46% of nitrogen deposition on habitat areas of concern for the base years (2005–2007) was estimated to come from existing development and traffic generated locally within the

VHP study area, which includes all of San José. The remainder of Santa Clara County was estimated to contribute a substantially smaller amount (17% of the nitrogen deposition) while the other eight Bay Area counties account for about 11%. Nitrogen deposition modeling completed for future years (2035 and 2060) as a part of the VHP process assumed that urban and rural development in the County and broader San Francisco Bay Area is expected to increase air pollutant emissions due to an increase in passenger and commercial vehicle trips and other new industrial and nonindustrial sources.

Providing new commercial space in San José (which is housing rich) may reduce some vehicle trips currently occurring to other cities in the region and thus reduce NOx emissions to some extent. However, development of the project parcels may also result in a net increase in new vehicle trips, which in turn will result in an increase in NOx emissions and contribute to the effects of nitrogen deposition on serpentine communities. Given the limited sizes of the project parcels, the number of new vehicle trips that could result from development of these parcels would be limited. The amount of NOx emitted by these vehicles would be very low, either when considered on a project-specific level or in the context of regional nitrogen emissions. Nitrogen emissions from the project (on a project-specific basis) would not result in any substantive impacts on serpentine communities by facilitating growth of non-native grasses that could compete with special-status serpentine plants and with Bay checkerspot host plants. Therefore, the proposed project would not contribute substantially to cumulative increases in nitrogen emissions that could result in adverse effects on habitat for the Bay checkerspot butterfly and rare serpentine-associated plants located off-site. Furthermore, the project's contribution to regional, cumulative impacts of nitrogen deposition would not be cumulatively considerable, and the cumulative impact would also be less than significant.

6.2 Impacts on Sensitive Communities: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFW or USFWS (No Impact)

The CDFW defines sensitive natural communities and vegetation alliances using NatureServe's standard heritage program methodology (CDFW 2023), as described above in Section 5.3. Aquatic, wetland, and riparian habitats are also protected under applicable federal, state, or local regulations, and are generally subject to regulation, protection, or consideration by the USACE, RWQCB, CDFW, and/or the USFWS (see Section 6.4 below). Surveys of the seven project parcels did not identify any sensitive natural communities, vegetation alliances/associations, or other sensitive communities identified in local or regional plans, policies, and regulations on or adjacent to any of these parcels. Thus, the proposed project will have no impacts on such habitats.

6.3 Impacts on Wetlands: Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means (No Impact)

Surveys of the seven project parcels did not identify any wetlands or other waters of the U.S. or state on or near the project site. Thus, no such habitats will be impacted by the project.

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

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

The Guadalupe River and the associated riparian corridor provide an important movement pathway for both aquatic and terrestrial wildlife species, connecting the associated wetlands to the San Francisco Bay. Songbirds that migrate along the Pacific Flyway disperse and forage along the Guadalupe River in relatively large numbers. Common, urban-adapted species such as raccoons and striped skunks may use the vegetation along the river to move north and south through the San José area. Small mammals, such as mice and shrews, will also use this vegetation to move between habitats. Common species of reptiles and amphibians, such as Pacific treefrogs, and alligator lizards, amongst other species, are also expected to move along this corridor adjacent to the project site. Proposed project development along the river will not result in any loss of aquatic, wetland, or riparian habitat along the Guadalupe River or in any substantial reduction in the value of the Guadalupe River corridor for wildlife movement. The project could indirectly increase the number of human users of the Guadalupe River trail, potentially subjecting animals within the riparian corridor to increased human disturbance. However, this trail is already heavily used by pedestrians and cyclists, and use of the riparian habitat along the river by homeless already introduces human disturbance within the riparian habitat. The increase in users of the Guadalupe River trail as a result of this project is not expected to contribute substantially to human disturbance of animals using the Guadalupe River corridor. Thus, aquatic and terrestrial species would continue to be able to move north to south along the Guadalupe River following project development. Therefore, the project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites, and this impact is determined to be less than significant.

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

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

Implementation of the proposed project has potential to result in the removal of ordinance-sized trees that are present within the project footprint. The project proponent shall be required to submit permit applications for tree removal once it determines exactly which, and how many trees will be removed as part of the project. In accordance with the provisions of the San José Municipal Code, the Standard Permit Conditions listed below would be implemented by the project.

Standard Permit Conditions

Trees impacted by the project will be replaced in accordance with all applicable laws, policies or guidelines, including Chapter 13 of the San José Municipal Code, General Plan policies MS-21.4, MS-21.5, MS-21.6, and CD-1.24, and City tree replacement ratios outlined in Table 1 below. Following the removal of trees on the site, a greater number of trees will be planted within the project footprint following construction.

Table 1. City of San José Standard Tree Replacement Ratios

Diameter of Tree to Be Removed	Type of Tree to be Removed[1]			Minimum Size of Each Replacement Tree
	Native	Nonnative	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12-18 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gallon container

[1]x:x = tree replacement to tree loss ratio; Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

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

Table 1 shows tree replacement ratios expected to be required. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

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

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

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

6.6 Impact due to Conflicts with an Adopted Habitat Conservation Plan: Conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan (No Impact)

As discussed previously, the current project is not a "covered project" under the VHP because it is part of lands controlled by San Jose International Airport, which is excluded from the VHP. Therefore, the project is not obligated to comply with VHP conditions, avoidance, minimization, or compensatory mitigation measures. No other adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan is applicable to the project. Therefore, implementation of the project would not conflict with any such plans.

6.7 Cumulative Impacts

Cumulative impacts arise due to the linking of impacts from past, current, and reasonably foreseeable future projects in the region. Future development activities in the City of San José will result in impacts on the same habitat types and species that will be affected by the proposed project. The proposed project, in combination with other projects in the area and other activities that impact the species that are affected under the project, could contribute to cumulative effects on special-status species. Other projects in the area include both development and maintenance projects that could adversely affect these species and restoration projects that will benefit these species.

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

minimization, compensatory mitigation, and conservation measures, cumulatively significant impacts on biological resources would occur.

However, the San José General Plan contains conservation measures that would benefit biological resources, as well as measures to avoid, minimize, and mitigate impacts on these resources, and the VHP includes numerous conservation measures to offset adverse effects on covered activities. Many projects in the region that impact resources similar to those impacted by the proposed project will be covered activities under the VHP and will mitigate impacts on sensitive habitats and many special-status species through that program, which will require payment of fees for habitat restoration. Further, the project would implement avoidance and minimization measures to reduce impacts on both common and special-status species, as described above.

As noted in Section 6.1.5, the amount of NOx emitted by new vehicle trips related to development of the project parcels would be very low, either when considered on a project-specific level or in the context of regional nitrogen emissions. Therefore, the project's contribution to regional nitrogen deposition impacts on sensitive serpentine communities would not be cumulatively considerable, and the cumulative impact would also be less than significant. Thus, the project will not contribute to substantial cumulative effects on biological resources.

Section 7. Compliance with Additional Laws and Regulations for Nesting Birds

Several species of common native birds protected by the MBTA and California Fish and Game Code may nest on or immediately adjacent to the project site on the ground, in trees or shrubs, or on buildings. The removal of vegetation or demolition of buildings supporting active nests may cause the direct loss of eggs or young, while construction-related activities located near an active nest may cause adults to abandon their eggs or young. This type of impact would not be significant under CEQA, in our opinion, because of the local and regional abundances of the species that could potentially nest on the site and the very low magnitude of the potential impact of development on these species (i.e., the project is expected to impact only a few pairs of these species, which is not a substantial impact on their regional populations). However, we recommend that the following measures be implemented to ensure that project activities do not violate the MBTA and California Fish and Game Code:

Measure 1. Avoidance of the Nesting Season. To the extent feasible, commencement of demolition and construction activities should be scheduled to avoid the nesting season. If demolition and construction activities are scheduled to take place outside the nesting season, all potential demolition/construction impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in the region extends from February 1 through August 31.

Measure 2. Pre-Activity/Pre-Disturbance Surveys. If it is not possible to schedule demolition and construction activities between September 1 and January 31, then pre-activity surveys for nesting birds should be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. We recommend that these surveys be conducted no more than seven days prior to the initiation of demolition or construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, and buildings) in and immediately adjacent to the impact areas for nests.

Measure 3. Non-Disturbance Buffers. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.

Measure 4. Nesting Deterrence. If construction activities will not be initiated until after the start of the nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project may be removed prior to the start of the nesting season (e.g., prior to February 1). This will preclude the initiation of nests in this vegetation, and minimize the potential delay of the project due to the presence of active nests in these substrates.

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