

Biological Resources Assessment Report

Site:

Corner of Withers Ave. and Pleasant Hill Road
Lafayette, California 94549
(APN: 166-160-015-3)

Prepared for:

Pallav Chatterjee
Civil Engineer

Project:

Biological Resources Assessment Report

Prepared by:

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(* = Federal US Fish & Wildlife Service
10(a)1(A) Permit Holder #TE-1017403-5
valid through March, 2029)

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1.0 Summary and Introduction

The following *Biological Resources Assessment Report* (Survey) (Report) assesses and provides results for a December 10, 2024 biological resources survey within a 2.5-acre vacant parcel at the corner of Withers Ave. and Pleasant Hill Drive, Lafayette, California 94549 (APN: 166-160-015-3) (Site) to ensure a proposed small subdivision residence addition (Project) complies with the protection of rare, special-status plant and wildlife species status designations overseen by the California Department of Fish and Wildlife (CDFW) and US Fish and Wildlife Service (USFWS).

For the Survey whose results appear below, it also assessed the Site to ensure regulatory compliance with BIO-1 and BIO-2 in the Contra Costa County Community Development Division *Mitigation and Monitoring Report Program* (MMRP) County File #CDMS22-00011 applicable to the site.

In so doing:

- a) The Survey assessed the Site's habitat to host rare, special-status plant and wildlife species that are present in the region within which the parcel occurs. See below for more details.

b) The Survey method assessed the potential for the Trees to host actively nesting bird species and roosting and/or maternal colony bat presence at the Site.

c) During this field survey process, the Survey method followed the methodology procedures noted in the BIO-1 and BIO-2 sections of the MMRP (See below in the *Methodology* section.)

d) The Survey assessed the presence of wetland resources, if any, on the Site. See below for more details.

As a summary for this Report, details below conclude the Site does not currently host any rare, special-status plant and wildlife species to prevent the proposed Project from moving forward. Likewise, wetland resources are absent from the Site, so no future avoidance measures would be necessary as part of the proposed Project.

Project Location and Project Purpose:

Zoned as a R-20 parcel, the Project occurs upon 2.5 acres located on the north side of Withers Avenue immediately west of Pleasant Hill Road. The Site is within an unincorporated region of Contra Costa, California (See the figures, below.)

Site Features:

The vacant parcel hosts several native tree species amid non-native grassland. Based on the tree species composition described in the next paragraph, the Site occurs in habitat best described as Coastal Oak Woodland¹.

Among the parcel's 147 trees, the vast majority were judged to be Valley White Oak (*Quercus lobata*). Coast Live Oak (*Quercus agrifolia*) was the next most common tree at the Site. Fewer number of the following tree species

were present: Claro Walnut (*Juglans hindsii*), California Buckeye (*Aesculus californica*), Monterey Pine (*Pinus radiata*), Coastal Redwood (*Sequoia sempervirens*), Canary Island Pine (*Pinus canariensis*), and Olive Tree (*Olea sp.*).

The Site moderately elevates upward from east to west, reaching an elevation of 300 feet at the top of its ridgeline. Surrounding the Site, multiple residential houses occur immediately to its north and west of the site. In addition, several residential parcels exist immediately south of the Site along Withers Avenue. A lined drainage watercourse channel occurs along the east property line at the base of the southeastern slope.

¹ See: <https://oaks.cnr.berkeley.edu/coastal-oak-woodland/>

Where residences are projected to occur on the Site, the grading pattern of the property will follow the existing drainage pattern, thereby ultimately connecting to an existing drainage system along Withers Avenue.

Priority Conservation Areas in Contra Costa County

According to the figure present below, the Site is not located within the figure denoting *Priority Conservation Areas in Contra Costa County*.

Likewise, the Site does not reside in the area where the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan applies.

As a result, this Report limits its assessment of biological resources to rare, special-status plant and wildlife species according to CDFW and USFWS status designations. These species are evaluated below and their Potential For Occurrence at the Site are noted in Appendix A, below.

2.0 Regulatory Measures Applicable To The Project

2.1 Federal Regulations

Endangered Species Act:

The federal Endangered Species Act (FESA) of 1973 protects species that the USFWS has listed as Endangered or Threatened. Permits may be required from USFWS if activities associated with a proposed project would result in the “take” of a federally listed species or its habitat. Under the Act, the definition of take is to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” USFWS has also

interpreted the definition of “harm” to include significant habitat modification that could result in take. Take of a listed species is prohibited unless (1) a Section 10(a) permit has been issued by the USFWS or (2) an Incidental Take Statement has been obtained through formal consultation between a federal agency and the USFWS pursuant to Section 7 of the Act.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918, last amended in 1989, prohibits killing, possessing, or trading in migratory birds, and protects the nesting activities of native birds including common species, except in accordance with certain regulations prescribed by the Secretary of the Interior. Over 800 native nesting bird species are currently protected under the federal law. This Act encompasses whole birds, parts of birds, bird nests, and eggs.

Clean Water Act

Section 404 of the Clean Water Act of 1972 regulates the discharge of dredge and fill material into Waters of the U.S. including wetlands. Certain natural drainage channels and wetlands are considered jurisdictional Waters of the U.S. The U.S. Army Corps of Engineers (USACE) is responsible for administering the Section 404 permit program. The agency determines the extent of its jurisdiction as defined by ordinary high water marks on channel banks. Wetlands are habitats with soils that are intermittently or permanently saturated, or inundated. The resulting anaerobic conditions naturally select for plant species known as hydrophytes that show a high degree of fidelity to such soils. Wetlands are identified by the presence of hydrophytic vegetation, hydric soils (soils intermittently or permanently saturated by water), and wetland hydrology

according to methodologies outlined in the 1987 Corps of Engineers Wetlands Delineation Manual and the 2008 Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0).

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

Note the Site is not applicable to this regulatory measure, given no wetland resources occur on the parcel or flow into it.

2.2 State Regulations

California Endangered Species Act

Pursuant to the California Endangered Species Act (CESA) and Section 2081 of the California Fish and Game Code, an Incidental Take Permit from the CDFW is required for projects that could result in the “take” of a state-listed Threatened or Endangered species. Take is defined under the Act as an activity that would directly or indirectly kill an individual of a species; take is defined in Section 86 of the California Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." If a proposed project would result in the take of a state-listed species, then a

CDFW Incidental Take Permit, including the preparation of a species conservation plan, would be required.

Nesting Birds and Birds of Prey

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

Streambed Alterations and Wetland Habitat

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

Note the Site does not host any wetland resources that include stream, so this regulatory measure is not applicable.

California Porter-Cologne Water Quality Control Act

Under the California Porter-Cologne Water Quality Control Act, the applicable Regional Water Quality Control Board (RWQCB) may necessitate Waste Discharge Requirements for the fill or alteration of Waters of the State, which according to California Water Code Section 13050 includes “any surface water or groundwater, including saline waters, within the boundaries of the state.” The RWQCB may, therefore, necessitate Waste Discharge Requirements even if the affected waters are not under USACE jurisdiction. Also, under Section 401 of the Clean Water Act, any activity requiring a USACE Section 404 permit must also obtain a state Water Quality Certification (or waiver thereof) to ensure that the proposed activity will meet state water quality standards. The applicable state RWQCB is responsible for administering the water quality certification program and enforcing National Pollutant Discharge Elimination System permits.

California Environmental Quality Act (CEQA)

CEQA guidelines for projects contain several questions to assist lead agencies with determining whether a project may have a significant effect on biological resources.

These questions are presented below and are addressed in this Report.

Would the project?:

- 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;
- 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;

- 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;
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; and/or
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

2.2 Tree Ordinances in Contra Costa County

Applicable Contra Costa County regulation measures applicable to trees on the Site follow²:

• Tree Protection Ordinance

Requires a permit to remove trees that are 6.5 inches in diameter at breast height (dbh) or greater, or that are located in certain areas. These areas include riparian areas, foothill woodlands, oak savannas, or stands of four or more trees. A permit is also required to trench, grade, or fill within the dripline of a protected tree.

• Heritage Tree Ordinance

Heritage trees, designated by the board of supervisors, cannot be removed without a permit, unless the tree is a nuisance.

• Tree Removal Permits

² See:

https://www.google.com/search?q=contra+costa+county+tree+ordinance&oeq=Contra+Costa+County+tree+ordinance&gs_lcrp=EgZjaHJvbWUqBwgAEAAygAQyBwgAEAAygAQyCagBEAAyFhgeMggIAhAAGBYyHjINCAMQABiGAXiABBiKBTINCAQQABiGAXiABBiKBTINCAUQABiGAXiABBiKBTIHCAyQABjvBTIKCAcQABiiBBiJBtikCAgQABiiBBiJBdIBCDkyNDBqMGo3qAllsAIB&sourceid=chrome&ie=UTF-8

Trees that provide land stability, are of a protected species or size, or provide visual screening or privacy require a tree removal permit. The Planning Division reviews each application on a case-by-case basis.

3.0 Field Survey Results

As noted above, Biologist Daniel Edelstein conducted a biological field survey on December 10, 2024 at the Site to identify the parcel's plant communities* and wildlife habitats, and to evaluate the potential for the parcel to host rare, special-status species that occur in the Lafayette area, including the following wildlife and species³ as well as species applicable to the aforementioned BIO-1 and BIO-2 MMRPs. The presence or absence of wetland resources was also assessed during the Survey.

(* = No rare, special-status plant species are designated as potential for occurrence at the Site based on its habitat quality, according to a report query of the California Natural Diversity Database⁴ and a California Native Plant Society⁵ report query for Walnut Creek 7.5-minute United States Geological Survey (USGS) quadrangle within which the Site exists⁶.)

Note that none of the wildlife species listed below were observed during the Survey. Likewise, no nesting common or rare-special-status birds and bats were detected during the Survey. More assessment details appear below.

³ See: file:///Users/danieledelstein/Downloads/CNDDDB_Special_Animals_List%20(4).pdf

⁴ CNDDDB, October, 2025, Walnut Creek USGS 7.5' quadrangle, USGS, Sacramento, CA (Query conducted on 12/9/24.)

⁵ See: <https://rareplants.cnps.org/Search/result?frm=T&ccl=CCA&sl=1&quad=3712281:&elev=:m:o>

⁶ CNDDDB, October, 2025, Walnut Creek USGS 7.5' quadrangle, USGS, Sacramento, CA (Query conducted on 12/9/24.)

- Amphibians & Reptiles. California Tiger Salamander. California Red-legged Frog, Foothill Yellow-legged Frog. Western Pond Turtle.
- Birds. Western Burrowing Owl. Least Bell's Vireo. Tricolored Blackbird.
- Mammals. San Joaquin Kit Fox and bat species.

In addition to the above assessment, the survey also evaluated any sensitive habitats, potential jurisdictional wetlands, regulated trees, and wildlife movement corridors on the Site, including the perennial Alamitos Creek that occurs on the eastern edge of the parcel (but not within it). See below for more details.

3.1 Biological Resources At The Site

To ensure protection of the wildlife species noted above are assessed for this report, the following section discusses potential occurrence of these special-status biological resources at the Site.

As background, note that assessment of the wildlife species with potential for occurrence at the Site appearing below is based on 1) species natural history accounts that define their typical presence in habitat that may match characteristics of the Site; 2) a query of the CNDDDB applicable to the Site⁷ and 3) and observations from the field survey. In addition, Appendix A, below, features a table listing species known to occur within the region with which the Site and occurs and their potential to occur on the parcel or adjacent to it.

⁷ CNDDDB, October, 2025, Walnut Creek USGS 7.5' quadrangle, USGS, Sacramento, CA (Query conducted on 12/9/24.)

California Tiger Salamander

California tiger salamander (*Ambystoma californiense*) is a federally and state listed threatened species. The Site is not located within federally designated critical habitat for this species⁸. This species is dependent on small shallow bodies of water for breeding. It can be found in grasslands, most frequently within 400 feet of breeding pools or ponds, often where California ground squirrels are prevalent and active.

California tiger salamanders will occupy burrows of ground squirrels during summer and fall months, emerging to move toward breeding sites when the rainy season commences. They typically disperse to burrows and other hiding places in oak woodlands and grasslands within a quarter mile or less by early summer.

Note this species is not expected to occur at the Site or nearby it, given 1) no watercourses occur on the Site or are connected to it; and 2) habitat near the parcel is developed, so it is marginal to poor quality for allowance of this species dispersal in late winter and early spring when dispersing individuals may seek breeding habitat. CNDDB records indicate that no recent sightings have occurred in the Walnut Creek United States Geological Survey 7.5' quadrangle within which the Site occurs and this species is considered locally extinct in the Lafayette area⁹

As a result, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species.

⁸ See: <https://map.dfg.ca.gov/metadata/ds0247.html>

⁹ CNDDB, October, 2025, Walnut Creek USGS 7.5' quadrangle, CDFW, Sacramento, CA (Query conducted on 12/9/24.)

San Joaquin Kit Fox

The San Joaquin Kit Fox (*Vulpes macrotis mutica*) is the smallest member of the dog family in North America, with an average body length of 20 inches, an average tail length of 12 inches, and a height of about nine to 12 inches at the shoulder. Adult males weigh about five pounds, while adult females weigh about 4.6 pounds. These slender mammals have relatively long legs and large ears.

This species historically inhabited grassland, scrubland, and wetland communities in the San Joaquin Valley and adjacent habitat, as well as large expanses of this habitat in Santa Clara County south of Lafayette.

Much of its original habitat has been developed near within Lafayette and toward the south where this species still occurs in small numbers toward the south and into Santa Clara County. The largest remaining intact habitat is found in and near the Carrizo Plain National Monument in western Kern County and in and near Tejon Ranch in the far south of the valley. As a result, the Site is not present within critical habitat designated elsewhere in California for this species¹⁰.

In total, development has significantly degraded movement and dispersal corridors for young kit foxes to move into suitable habitat within Lafayette and nearby it. In addition, juvenile survival and successful dispersal has been declining in recent years. Thus, successful movement of kit foxes between remaining core habitat areas and the Site is unlikely and sightings are expected to continue as rare. Note the CNDDDB for the Site's area does not list this rare species as present¹¹.

¹⁰ https://www.canids.org/CBC/16/san_joaquin_kit_fox_habitat_suitability.pdf

¹¹ CNDDDB, October, 2025, Walnut Creek USGS 7.5' quadrangle, CDFW, Sacramento, CA (Query conducted on 12/9/24.)

As a result, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species.

California Red-legged Frog

California red-legged frog (*Rana draytonii*) is federally listed as threatened and is a California Species of Special Concern. The Site is located within federally designated critical habitat for this species¹². Likewise, this species is not documented as present in the CNDDDB report for the Walnut Creek USGS 7.5 minute quadrangle within which the Site occurs.

California red-legged frog is California's largest native frog, and is generally restricted to riparian and lacustrine (lake) habitats. This species prefers deep, still pools, usually greater than two feet in depth, in creeks, rivers or lakes below 5,000 feet in elevation. Breeding habitats require freshwater emergent vegetation or thick riparian vegetation, especially willow thickets adjacent to shorelines. California red-legged frogs can survive in seasonal bodies of water that dry up for short periods if a permanent water body or dense vegetation is nearby. Dispersal distances are typically less than 0.3 mile (0.5 kilometer) from a pond, with a few individuals moving up to 1.2–1.9 miles (2–3 kilometers) overland, with movement occurring predominantly along creek drainages. Individuals are often found during the summer in foraging habitat not suitable for breeding, and therefore are presumed to move seasonally between summer foraging and winter breeding habitats.

Given the Site does not host this kind of summer or winter habitat conditions, it is not expected to occur on the parcel or to enter it seasonally.

¹² See: <https://databasin.org/maps/new/#datasets=1456b6535f0f4493896e63efbd8f25fb>

As a result of the above information, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species. No additional assessment or avoidance and/or mitigation measures are needed for this species in relation to the Project.

Foothill Yellow-legged Frog

Foothill Yellow-legged Frog (*Rana boylei*) is federal species of concern and California State Endangered. The Site is located within federally designated critical habitat for this species¹³.

This species was historically found in the Coast Ranges from northern Oregon, through California, and into Baja California, Mexico as well as in the foothills of the Sierra Nevada and southern Cascade Range in California.

No recent sightings of this species occur in the current CNDDb report for the Walnut Creek USGS 7.5 minute quadrangle within which the Site exists. Thus, the CNDDb declares this species is locally extinct (extirpated) from the Lafayette area¹⁴.

No individual of this species were seen during the survey. March through June is the most likely date range when any rare dispersing individuals would be present near the Site, but, as noted, none have been documented.

¹³ See: <https://dudek.com/foothill-yellow-legged-frog-listing-finalized/>

¹⁴ CNDDb, October, 2025, Walnut Creek USGS 7.5' quadrangle, CDFW, Sacramento, CA (Query conducted on 12/9/24.)

Given the above information, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species. No additional assessment or avoidance and/or mitigation measures are needed for this species in relation to the Project.

Western Pond Turtle

Western pond turtle (*Emys marmorata*) is a CDFW Species of Special Concern. It occurs in permanent or nearly permanent aquatic features in a wide variety of habitats throughout California, west of the Sierra-Cascade crest; it is absent from desert regions, except the Mojave Desert along the Mojave River and its tributaries. Its elevation range extends from near sea level to 1,430 meters (4,690 feet).

The Site is located within federally designated critical habitat for this species¹⁵. However, even though this species is documented as present in the CNDDDB report for the Walnut Creek USGS 7.5 minute quadrangle within which the Site occurs, none of the two CNDDDB observations are within two miles of the Site¹⁶.

Habitat requirements the Western Pond Turtle requires —basking sites such as partially submerged logs, rocks, mats of floating vegetation, or open mud banks — are not present on the Site or nearby it. In fact, the home range of this species is typically quite restricted; however, ongoing research indicates that in many areas, turtles may leave the watercourse in late fall and move into upland habitats where they burrow into duff and/or soil and overwinter. They remain

¹⁵ See: <https://www.fs.usda.gov/r6/issssp/downloads/xvertebrates/cs-hr-northwestern-pond-turtle-202112.pdf>

¹⁶ CNDDDB, October, 2025, Walnut Creek USGS 7.5' quadrangle, CDFW, Sacramento, CA (Query conducted on 12/9/24.)

active year-round and may move several times during the course of overwintering.

Based on the above information, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species. No additional assessment or avoidance and/or mitigation measures are needed for this species in relation to the Project. No additional analysis or mitigation measures are needed.

Birds at the Site:

In this section, I first note my methodology for surveying the potential presence of nesting bird species at the Site. Next, I present my Survey findings in relation to whether I observed the presence of rare, special-status bird species.

To ensure I detected the potential presence of any actively nesting bird species on the Site and within the buffer zone (i.e., 50 feet for songbird species and 250 feet for raptor species), I conducted my Survey by moving throughout the Site to detect nesting songbird and raptor species.

I employed high-powered 10 x 42 power Swarovski binoculars to search for foraging, roosting, and nesting birds as I monitored the ground and undergrowth vegetation throughout the Site and its perimeter.

In accessible buffer zone areas adjacent to the Site's western and northwestern portions, I assessed their understory, shrubs and trees for the presence of active nests (cup nests, stick nests, and cavities) germane to songbird, raptor and other bird species. A 25x to 50x zoom Swarovski scope

was also employed, where necessary, to survey for raptor nests within 250 feet of the Site.

In addition, I noted the bark of vegetation and the ground layer under buffer zone trees for evidence of songbird and raptor species, thereby checking for feathers, pellets, and whitewash.

Beyond visual identification, the songs and calls of all bird species were noted during the Survey. A list of the bird species detected during the Survey appears below in Appendix A. The potential presence of rare bird species for which I assessed the Site and buffer zone areas adjacent to it also appears below in Appendix B.

My methodology for rating the activity of potential nest sites employed by actively nesting bird species (if present) included the following three levels: 1) “Potential Nest Site,” meaning behavior of birds repeats in a spot where an indication of a nest site occurs; 2) “Probable Nest Site,” meaning a bird(s) were detected carrying nest building material; ejecting a fecal sac from a nest; or adding to/fixing a previously used nest — among several other behaviors that would result in me providing this designation; and, lastly, 3) “Confirmed Nest Site,” meaning an egg, hatchling, and/or begging calls of newborns were present at a detected nest site.

Note, however, because no active nests were observed during the Survey, so none of the three ratings above were applicable.

No actively nesting common or rare, special-status bird species were detected during the Survey. My non-presence finding included an assessment of all of the Site's trees, in addition to accessible ones in its buffer zone in every direction from the Site's boundaries.

See below for my Survey assessment of the rare, special-status species I noted have potential for nesting presence in the region within which the Site occurs.

The timing of the Survey is an important factor to discuss for this Report in relation to the Survey results in relation to birds at the Site. Most important, the Survey date is past the active nesting spectrum for nearly all of the region's nesting avian species, except for the early breeding presence of Anna's Hummingbird (*Calypte anna*) and Great Horned Owl (*Bubo virginiana*) that sometimes begin breeding as early as December annually. In this sense, an active December nest for these two species at the Site would be unlikely to occur¹⁷.

Rare, special-status bird species in the region that were also assessed for the Survey included:

Western Burrowing Owl

As a year-round resident of open, dry grassland, open shrub, and desert habitats, and in grass, forb and open shrub stages of pinyon-juniper and ponderosa pine habitats, Western Burrowing Owl formerly occurred as a common species in Contra Cost County.

¹⁷ See:
<https://birdsoftheworld.org/bow/species/annhum/cur/introduction> and
<https://birdsoftheworld.org/bow/species/grhowl/cur/introduction>

However, due to development that reduced its habitat, no documented nesting sites remain in the county¹⁸. The Site is not located within federally designated critical habitat for this species¹⁹. Likewise, this species is not documented as present in the CNDDDB report for the USGS 7.5 minute quadrangle within which the Site occurs.

Western Burrowing Owl primarily eats mostly insects; in addition, it also captures small mammals, reptiles, birds, and carrion. It hunts from a perch, hovers, hawks, dives, and hops after prey on ground, and uses rodent or other burrows for roosting and nesting cover.

The absence of burrows on the Site and open expanses of suitable foraging and nesting habitat for this day-active owl species are the greatest factors for its absence. Note the region's grassland and open shrub habitat in the region is now more likely to attract non-breeding season Western Burrowing Owl presence in lieu of nesting individuals.

Given the above information, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species. No additional assessment or avoidance and/or mitigation measures are needed for this species in relation to the Project. No additional analysis or mitigation measures are needed.

Least Bell's Vireo

Least Bell's Vireo was designated in 1980 as endangered by CDFW due to a significant range-wide decline in population related to extensive habitat loss and degradation associated with urban development, exotic plant invasion, and expansion of agricultural

¹⁸ See: <https://dudek.com/burrowing-owl-cesa-listing-project-impacts/>

¹⁹ Ibid.

practices into riparian zones. It was declared federally endangered by the USFWS in 1986.

Least Bell's Vireos primarily occupy riparian habitats along open water or dry parts of intermittent streams, generally below 1,500 feet in elevation. They are typically associated with the following vegetation types: southern willow scrub; cottonwood forest; mule fat scrub; sycamore alluvial woodland; coast live oak riparian forest; arroyo willow riparian forest; wild blackberry; and mesquite in desert localities.

The Site is not located within federally designated critical habitat for this species²⁰. It is rarely seen at any time of the year in the Lafayette area. Likewise, this species is not documented as present in the CNDDDB report for the Walnut Creek USGS 7.5 minute quadrangle within which the Site occurs.

Consequently, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species. No additional assessment or avoidance and/or mitigation measures are needed for this species in relation to the Project. No additional analysis or mitigation measures are needed.

Tricolored Blackbird

Tricolored Blackbird, which is a candidate for listing under the U.S. Endangered Species Act (ESA) overseen by the USFWS, as well as California's state ESA coordinated by CDFW, is an uncommon to rare occurrence at any time of year in most of Contra Cost County within which the Site occurs.

²⁰ <https://databasin.org/datasets/2cca406fc3024713bd37ab0fed6bfa78/>

Tricolored blackbirds nest in wetlands, triticale fields, and other upland habitats. They prefer wetlands with cattails, bulrushes, and willows, but now often nest in agricultural fields. They also nest in Himalayan blackberry thickets near stock ponds or irrigated pastures.

The Site is not located within federally designated critical habitat for this species²¹. Suitable breeding habitat is not present on the Site. This species is rarely seen at any time of the year in the Lafayette region. In addition, this species is not documented as present in the CNDDDB report for the Walnut Creek USGS 7.5 minute quadrangle within which the Site occurs.

Given the above information, no focused protocol surveys are suggested and it is not expected that the Project would result in negative impacts upon this species. No additional assessment or avoidance and/or mitigation measures are needed for this species in relation to the Project. No additional analysis or mitigation measures are needed.

Bats At The Site:

In this section, I first note my methodology for surveying the potential presence of roosting and maternal bat colonies at the Site. Next, I present my Survey findings in relation to whether I observed the presence of common and/or rare, special-status bat species.

²¹ <https://journal.wildlife.ca.gov/2024/06/06/tricolored-blackbird-survey-methods/>

For the roosting bat species portion of my Survey, I assessed all of the external portions of trees on the Site (See photos #4-#6, below.). In so doing, I checked crevices and openings for the potential presence of a) bats observed via my vision or through my binoculars; b) exfoliated or peeling bark that might indicate the presence of a roosting, sheltering site for bats; c) tree cavities that could potentially host roosting, sheltering bats; d) guano (or feces) on the exterior of the buildings or vegetation that would indicate the presence of a bat(s); e) urine stains that, again, that would suggest the presence of a bat(s); and f) oil stains that would, likewise, indicate repeated usage of an area upon, say, a tree branch by one or more bats returning to or leaving a cavity.

At the Site, its Valley White Oak, Coast Live Oak, and Claro Walnut were assessed as the most likely tree species to host roosting bats because these tree species host multiple crevices and cavities where over-wintering bats could occur. Exfoliated bark on these species also often offers roosting sites for bats (Again, see photos #4-#6, below.).

During the Survey, none of the following rare, special-status bat species typical for the Lafayette region²² were observed roosting at the Site: Townsend's big-eared bat (*Corynorhinus townsendii*), Pallid bat (*Antrozous pallidus*), Western red bat, Brazilian free-tailed bat (*Tadarida brasiliensis*), (Lasiurus blossevillei), and Yuma myotis (*Myotis yumanensis*).

²² *Special Animals*, CDFW, Sacramento, California (July, 2024 version).

As for breeding, maternal colony bat presence at the Site, none would be expected nor were detected during the Survey, given bats in the region do not breed in autumn (and early) when the Survey occurred.

Instead, December is reserved for roosting behavior among bats. This non-breeding behavior involves them as non-active and seeking sheltering spots as individuals or within congregational groups amid the assessed trees (Bats may also use building eaves/cavities/crevices as roosting sites, though none occur on the Site.)

Valley White Oak, Coast Live Oak, and Claro Walnut were assessed as the most likely tree species to host roosting bats because these tree species host multiple crevices and cavities where over-wintering bats could occur. Exfoliated bark on these species also often offers roosting sites for bats (See below photos.)

4. 0 Special-status Natural Communities On The Site

Special-status natural communities are those that are considered rare in the region, support special-status plant or wildlife species, or receive regulatory protection (e.g., wetlands under Section 404 of the Clean Water Act and/or Section 1600 of CDFW code). Riparian and habitat qualify as special-status communities, but they are outside of the Site's boundaries. aquatic, and serpentine communities present in the greater subject parcel are considered sensitive, however the serpentine area is outside of the project site and the small riparian and aquatic areas within the project site will be avoided. No impacts to special-status natural communities are anticipated.

5.0 Conclusions And Advisories

As mentioned above (with details present below in Appendix A), the Site during the Survey was judged to have zero to low potential to negatively impact rare, special-status plant and wildlife and plant species. Areas surrounding the Site on all sides are already heavily impacted by development of residences, roads, and transportation/energy infrastructure.

Consequently, the following conclusions relating to CEQA are appropriate for the Site:

The proposed Project will not substantially negatively impact 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.

The proposed Project will not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

No local, regional, or state habitat conservation plan exists for the Site, so the proposed Project will not be required to conduct actions to comply with any of these plans.

In summary, assessment details outlined above conclude no avoidance measures or mitigation actions/avoidance measures are deemed necessary for the Project to proceed.

See below for bird and bat survey guidelines that will ensure compliance with regulatory measures that may potentially apply in the future.

Advisory For Potential Need Of A Future Nesting Bird Survey:

If project-related work related to removal of trees is scheduled during the bird nesting season, February 1 – August 31, a qualified Avian Biologist shall conduct a pre-tree removal nesting bird survey to ensure that no nests would be disturbed during work activities.

The nesting bird survey should occur within 14 days prior to the start of tree removal activities. An appropriate minimum survey radius surrounding each removed tree is typically 50 feet for songbird/passerine bird species and 250 feet for raptor species. The survey should be conducted at appropriate times of the day or night to best observed the potential presence of nesting activity.

If the Avian Biologist documents nests within the Site or in nearby the aforementioned surrounding areas adjacent to trees scheduled for removal, an appropriate buffer zone shall be established between each active nest and any nearby tree removal activities. This buffer zone should be approved in consultation with California Department of Fish and Wildlife (CDFW) staff. The buffer shall be clearly marked/flagged and maintained until young birds have fledged and are foraging independently. Prior to tree removal, the Avian Biologist should conduct baseline monitoring of each active nest to define normal bird behavior and, thus, to establish a buffer distance that allows for

the continuance of normal behavior. This zone would be a non-encroachment area for workers and their equipment.

The qualified Avian Biologist should establish a monitoring plan to ensure tree removal activities do not negatively impact active nests. If necessary during tree removal activities, the Avian Biologist may increase the buffer zone area if nesting birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest).

If buffer establishment is not possible, the Avian Biologist shall have the authority to cease tree removal work in the area until the young have fledged and the nest is no longer active.

Advisory For Potential Need Of A Future Bat Survey:

Prior to any ground disturbing activities, tree, or brush removal, the following measures are recommended:

Approximately 14 days prior to tree removal activities from May through October, a qualified biologist should conduct a habitat assessment for potential roosting/maternal colonies for 50 feet in all directions where vegetation will be removed. If no roosting or maternal colonies are observed, a letter report confirming absence should be developed and no further avoidance measures is required. If bat roosting sites and/or maternal colonies are found, then the bats should not be disturbed without a pre-approved strategy in consultation with CDFW.

For example, if bats are found roosting outside of the nursery season (May 1 through October 1), CDFW will be consulted prior to any eviction or other action. If avoidance or postponement is not feasible, a Bat Eviction Plan will be submitted to CDFW for written approval prior to project implementation. A request to evict bats from a roost includes details for excluding bats from the roost site and monitoring to ensure that all bat have exited the roost prior to the start of activity and are unable to re- enter the roost until activity is completed. Any bat eviction will be timed to avoid lactation and young-rearing.

If bats are found roosting during the nursery season, they will be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or by monitoring the roost after the adults leave for the night to listen for bat pups. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. Therefore, if a maternal roost is present, a 50-foot buffer zone (or different size if determined in consultation with the CDFW) will be established around the roosting site within which no construction activities including tree removal or structure disturbance will occur until after the nursery season.

APPENDIX A

Species With Potential For Occurrence At The Site

Species	Status (Federal/State/ CNPS)	Suitable Habitat Description	Potential to Occur on Project Site
Wildlife			
San Joaquin kit fox (<i>Vulpes macrotis mutica</i>)	FE/ST	Annual grasslands or grassy with scattered shrubby vegetation. Needs loose-textured sandy soils for burrowing, and suitable prey base.	None. Large tracts of grassland and other suitable habitat not present on the Site.
Western Burrowing Owl (<i>Athene cunicularia</i>)	--/SSC	Open, dry, annual or perennial desert or scrubland, with available small mammal burrows.	None. No suitable grassland and small mammal burrows at the Site.
California Red-legged Frog (<i>Rana draytonii</i>)	FT/SSC	Rivers, creeks, and stock ponds and overhanging vegetation. Requires dense, shrubby or emergent riparian vegetation, and prefers short riffles and pools with slow-moving, well-oxygenated water. Needs upland habitat to aestivate (remain dormant during dry months) in small mammal burrows, cracks in the soil, or moist leaf litter.	None. No individuals are expected to occur on the Site due to absence of breeding and dispersal habitat.
California Tiger Salamander ~~an~~ (<i>Ambystoma californiense</i>)	FT/ST	Grasslands and oak woodlands, seasonal pools and stock ponds in the San Jose area, and elsewhere in central and coastal California. Needs upland habitat to aestivate (remain dormant during dry months) in small mammal burrows, cracks in the soil, or moist leaf litter. Requires seasonal water sources that persist into late March for breeding habitat.	None. No individuals are expected to occur on the Site due to absence of breeding and dispersal habitat.
Foothill Yellow-legged Frog (<i>Rana boylei</i>)	--/SSC	Partly shaded, shallow streams and riffles with rocky substrate in a variety of habitats. Requires at least some cobble-sized substrate for egg-laying and 15 weeks of available water to attain metamorphosis.	None. Dispersing individuals onto the Site are unlikely from the nearby creek.

Western pond turtle (<i>Emys marmorata</i>)	--/SSC	Ponds, marshes, rivers, streams, and irrigation ditches with aquatic vegetation. Needs basking sites (such as rocks or partially submerged logs) and suitable upland habitat for egg-laying (sandy banks or grassy open fields).	None. Dispersal of individuals from creek unlikely to ascend upland onto the Site where construction occurs.
Least Bell's vireo (<i>Vireo bellii pusillus</i>)	FE/SE	Rare summer resident of central California in riparian habitats below 2,000 feet in elevation. Often nests in large shrubs, along margins of bushes.	None. Suitable riparian habitat not found on the Site or the nearby creek area.
Tricolored Blackbird (<i>Agelaius tricolor</i>)	-/SE	Areas adjacent to open water with nesting substrate, which typically consists of dense, emergent freshwater marsh vegetation.	None. Suitable habitat not found on the Site or within the nearby creek area.

SOURCE: CDFW CNDDDB November 14, 2024

NOTE: Status Codes:

Federal (USFWS)

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

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

FD: Delisted under the Federal Endangered Species Act.

State (CDFW)

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

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

SFP: Fully Protected species under the California Fish and Game Code. SD: Delisted under the California Endangered Species Act.

APPENDIX B

Photos



Photo 1 — Looking north from Withers Avenue, the eastern portion of the Site is shown where a rope blocks its entrance at a road pullout.



Photo 2 —

Looking east, a dead Claro Walnut scheduled for removal occurs near the Site's entrance and is labeled as Tree #1.



Photo 3 —

Looking east the lower, eastern portions of the Site is shown. To the right of the photo, but not visible, residences occur from south to north, in addition to residences immediately north of the parcel.



Photo 4 —

Looking north, a dead Claro Walnut is a suitable candidate to host roosting bat species, given its lower trunk hosts peeling bark that provides a crevice bats require as a roosting area. Assessment of this crevice did not yield the presence of any bats. (See the next photo for a close-up of the crevice.)



Photo 5 —

Looking east, a close view of the crevice in tree #68 is shown. Despite its ideal location and deep crevice, it did not host roosting bat species.



Photo 6 —

On the same tree #68 at 10-feet high from the ground, the oval cavity above did not host any roosting bat individuals.



Photo 7 —

Looking northwest, a Valley White Oak hosts a dormant, deserted bird nest. It did not host any bird species during the Survey, nor would a nesting bird be expected based on the date of the survey that is outside the typical range of time when it would potentially be active. January through July would be a more likely timeframe for this nest to host a nesting Red-tailed Hawk, Red-shouldered Hawk or Great Horned Owl.

APPENDIX C — List of Wildlife Species Observed On The Site
 December 10, 2024 During A Survey Conducted
 By Consulting Biologist Daniel Edelstein

Birds	
Common Name	<i>Scientific Name</i>
Common Raven	<i>Corvus corax</i>
White-breasted Nuthatch	<i>Sitta carolinensis</i>
Stellar's Jay	<i>Cyanocitta stelleri</i>
Bushtit	<i>Psaltiriparus minimus</i>
Chestnut-backed Chickadee	<i>Poecile rufescens</i>
Oak Titmouse	<i>Baeolophus inornatus</i>
House Finch	<i>Carpodacus mexicanus</i>
American Crow	<i>Corvus brachyrhynchos</i>
Bats	
None observed	