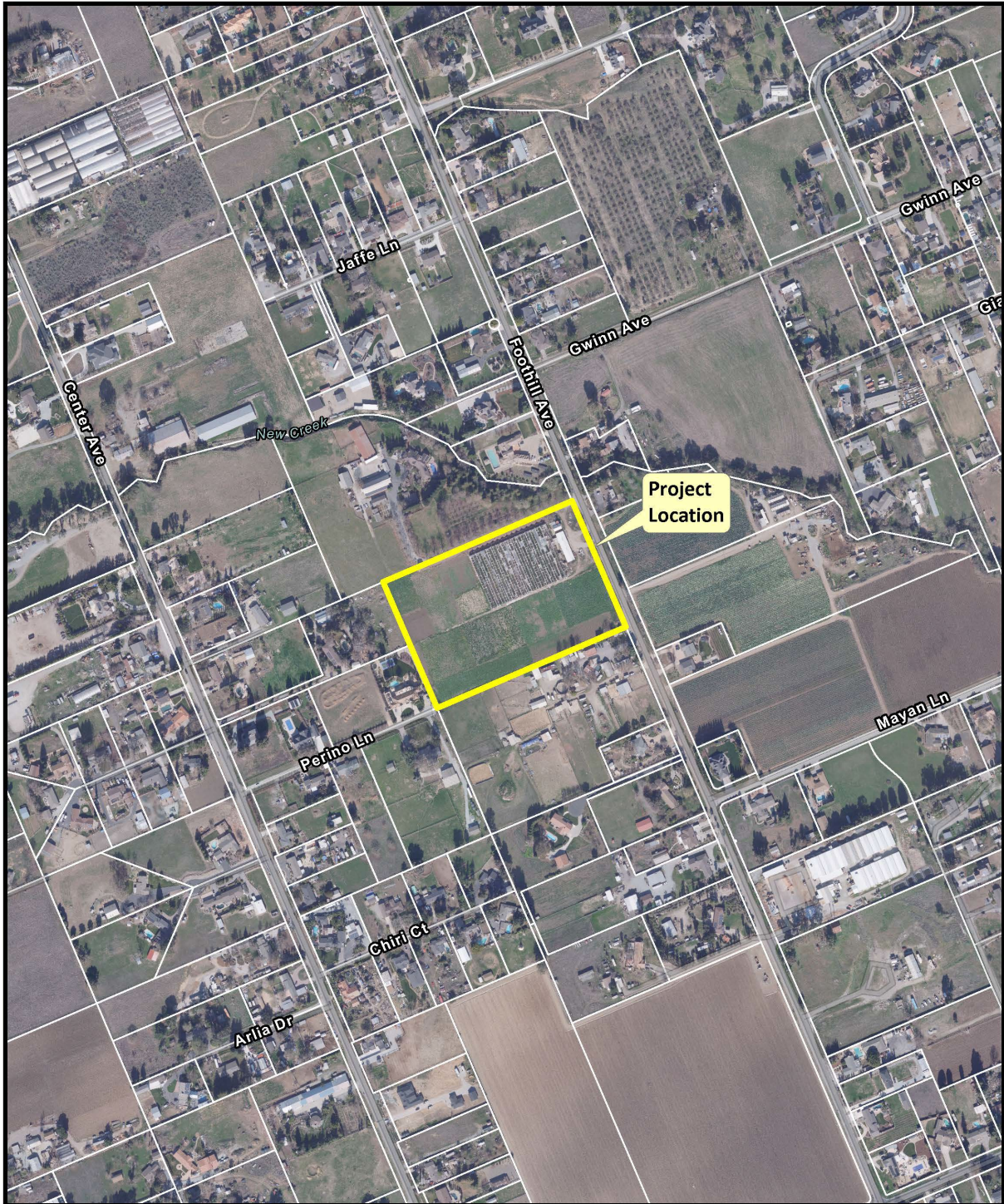


INITIAL STUDY

Environmental Checklist and Evaluation for the County of Santa Clara

File Number:	PLN21-223	Date: August 17, 2023
Project Type:	Two-Lot Tentative Subdivision Map	APN(s): 825-25-104
Project Location / Address:	12475 Foothill Avenue, San Martin, CA 95046	GP Designation: Rural Residential
Owner's Name:	Raj Durga	Zoning: RR-5Ac
Applicant's Name:	David Faria	Urban Service Area: N/A
Project Description		
<p>The proposed project is a two-lot subdivision of a 10-gross-acre parcel into two lots (Parcels 1 and 2) of 5 gross acres each. The subject property is located on Foothill Avenue in the rural, unincorporated community of San Martin, east of State Route 101 (see Figure 1). Figure 2 shows the tentative subdivision map. Grading of the project site would involve approximately 33 cubic yards (c.y.) of cut, and no fill for subdivision frontage improvements along Foothill Avenue. An existing 44,000 square feet (sq.ft.) greenhouse, a 3,600 sq.ft. shed, a 600 sq.ft. boiler room, a private well, a 10,000-gallon water tank, and a driveway located on proposed Parcel 1 are proposed to remain. An existing 26,000 sq.ft. greenhouse and leach field (associated with existing development) are proposed to be demolished. No tree removal is proposed.</p> <p>Once the property is subdivided, Parcel 1 and Parcel 2 could be individually developed with a single-family residence, an accessory dwelling unit (ADU) and a junior accessory dwelling unit (JADU). Future home development would be served by well and onsite septic systems. No construction of residences is proposed as a part of this subdivision. A feasible location for future residences and associated site improvements are shown on Figure 3.</p>		
Environmental Setting and Surrounding Land Uses		
<p>The subject property is located in the unincorporated community of San Martin. The parcel is currently being actively farmed. The project site is relatively flat and slopes from east to the west. New Creek is located to the north of proposed Parcel 1. No serpentine soils or serpentine rock outcrops are located on the subject property. The project site is in the Santa Clara Valley Habitat Plan (HCP) Area and is designated as <i>Area 3: Rural Development Not Covered</i>. According to mapping of the HCP, the project site habitat land cover consists of <i>Grain, Row-crop, Hay and Pasture, disked / Short-term Fallowed</i> and developed land designated <i>Rural Residential</i>. The property is not located in a County or State geohazard zone. The surrounding land uses are agricultural, open space, single-family homes; zoned Rural Residential.</p>		
Other agencies sent a copy of this document:		
Morgan Hill Unified School District and Santa Clara Valley Habitat Agency		

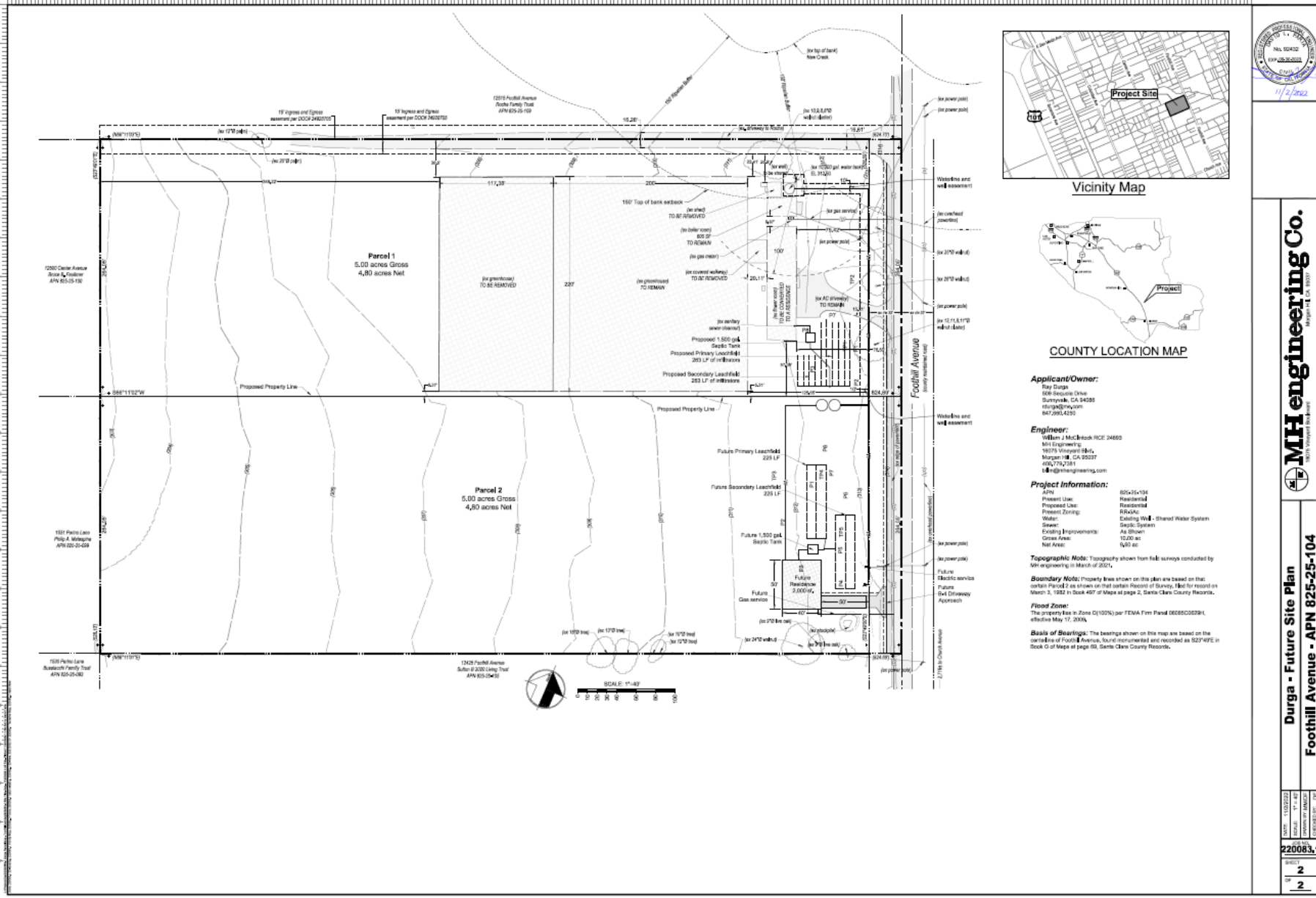


Location and Vicinity Map

Record No. PLN21-223
APN 825-25-104
12475 Foothill Ave., San Martin



Figure 1 – Location and Vicinity Map



Applicant/Owner:
 Day Durga
 806 Seaside Drive
 Sunnyvale, CA 94088
 ddurga@day.com
 647.993.4350

Engineer:
 William J. MacIsaac (P.E.) 24885
 MH Engineering
 18075 Vispourt Drive
 Morgan Hill, CA 95037
 408.774.2381
 wjmac@mhengineering.com

Project Information:
 APN: 60545104
 Present Use: Residential
 Proposed Use: Residential
 Present Zoning: RRM(A)
 Water: Existing WWS - Shared Water System
 Sewer: Septic System
 Existing Improvements: As Shown
 Gross Area: 10.00 ac
 Net Area: 10.00 ac

Topographic Note: Topography shown from fall surveys conducted by MH Engineering in March of 2021.

Boundary Note: Property lines shown on this plan are based on that which Parcel 2 as shown on the official Record of Survey filed for record on March 3, 1982 in Book 407 of Maps at page 2, Santa Clara County Records.

Flood Zone: The property lies in Zone O(100%) per FEMA Firm Panel 66085C0239-L effective May 17, 2004.

Basis of Bearings: The bearings shown on this map are based on the centerline of Foothill Avenue, found (monumented and recorded) as S27°49'E in Book 6 of Maps at page 69, Santa Clara County Records.



MH engineering Co.
 18075 Vispourt Drive
 Morgan Hill, CA 95037
 408.774.2381
 wjmac@mhengineering.com

Durga - Future Site Plan
Foothill Avenue - APN 825-25-104

DATE	1/12/2022
BY	WJM
CHECKED BY	WJM
PROJECT NO.	220083
SHEET	2

Figure 3 – Development Feasibility Site Plan

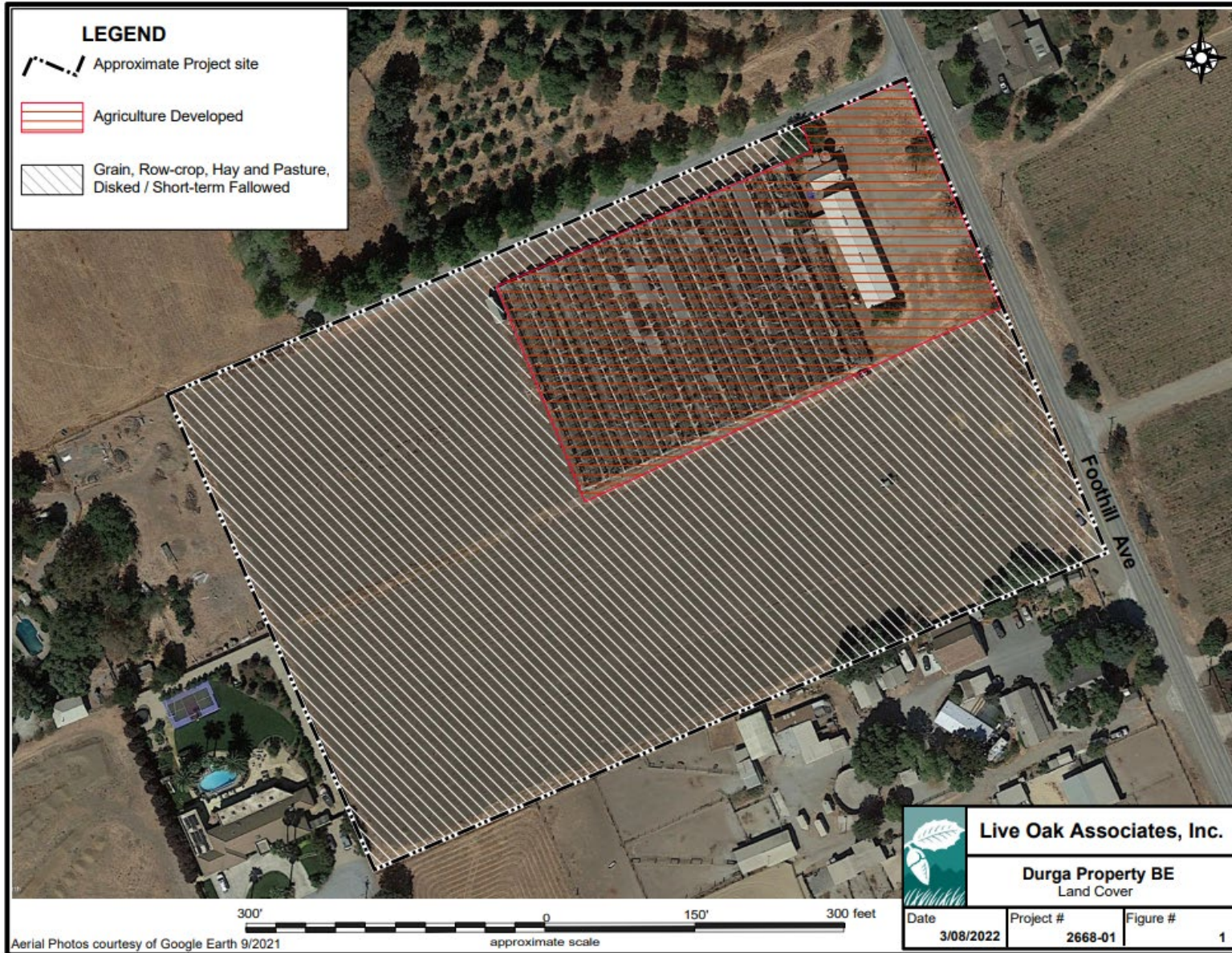


Figure 4 – Biological Resources Assessment (Land Cover Types)

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a “Potentially Significant Impact” as indicated by the checklist on the following pages.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

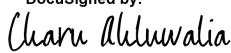
The proposed project could potentially result in one or more environmental effects in the following areas:

- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture / Forest Resources | <input type="checkbox"/> Air Quality |
| <input checked="" type="checkbox"/> Biological Resource | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Energy |
| <input type="checkbox"/> Geology/Soils | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials |
| <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Mineral Resources |
| <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services |
| <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation | <input type="checkbox"/> Tribal Cultural Resources |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Wildfire | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A **MITIGATED NEGATIVE DECLARATION** will be prepared.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or **NEGATIVE DECLARATION** pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or **NEGATIVE DECLARATION**, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.
- I find that the proposed project MAY have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.
- I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on the attached sheets. An **ENVIRONMENTAL IMPACT REPORT** is required, but it must analyze only the effects that remain to be addressed.

DocuSigned by:

E260F57503D0427...

Signature

08/17/2023
Date

CHARU AHLUWALIA
Printed name

For

ENVIRONMENTAL CHECKLIST AND DISCUSSION OF IMPACTS

A. AESTHETICS					
	IMPACT				
Except as provided in Public Resources Code section 21099, would the project:	<u>Potentially Significant Impact</u>	<u>Less Than Significant with Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	Source
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2,3,4, 6,17f
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings, along a designated scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3, 6,7 17f
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2,3
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3,4

SETTING:

The project site is in a rural residential area in the unincorporated community of San Martin, located along Foothill Avenue, between Gwinn Avenue and Mayan Lane. Foothill Avenue is not a State- or County-designated scenic road.

DISCUSSION:

b) No Impact - The subject property is not located within a scenic vista recognized by the County of Santa Clara General Plan and Zoning Ordinance, nor does it have a Design Review zoning overlay or Scenic Road zoning overlay. The proposed project will not have substantial adverse effect or substantially damage scenic resources such as trees, rocks, outcroppings, or historic buildings. The property is approximately two miles away from the closest scenic road (Coyote Reservoir Road) and one mile west from a scenic highway (Highway 101).

a, c & d) Less than Significant - Scenic vistas in the project area consist of views from the valley floor of the mountain ranges to the east (Diablo Range) and to the west (Santa Cruz mountains). Future development of the property with two single family residences would not obstruct any views from public roadways, given that the height of structures is limited by the Zoning Ordinance to 35 feet. The

project site is not located near scenic roads or other scenic resources (e.g., rock outcroppings, historic buildings, or trees having scenic value). The future development would blend into the surrounding rural residential development and therefore would not substantially degrade the existing visual character or quality of public views of the site and its surroundings.

New sources of light and glare would be limited to future residential development. However, given the limited nature of residential outdoor lighting (e.g., illumination of pathways and doors) and the fact that source of light would be similar to that of other single-family residences in the, the proposed project would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.

MITIGATION:

No mitigation is required.

B. AGRICULTURE / FOREST RESOURCES					
In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.					
WOULD THE PROJECT:	IMPACT				Source
	<u>Potentially Significant Impact</u>	<u>Less Than Significant with Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3,23,24,26
b) Conflict with existing zoning for agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9,21a
c) Conflict with an existing Williamson Act Contract or the County's Williamson Act Ordinance (Section C13 of County Ordinance Code)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
d) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 28

B. AGRICULTURE / FOREST RESOURCES

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.

WOULD THE PROJECT:	IMPACT				Source
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	
e) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17m, 17t, 32, 33
f) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17m, 17t, 17q, 17r, 23, 24, 25, 26, 32, 33

SETTING:

The 10-gross-acre lot is zoned RR-5Ac, which is a base zoning of Rural Residential (RR) and a lot-size combining district of 5 acres (-5Ac). Soil on the subject property is composed of Pleasanton loam (0 to 2 percent slopes), which is alluvium derived from sedimentary rock.

The site is designated as *Prime Farmland* (9 acres), *Farmland of Statewide Importance* (.2 acres) and *Urban and Built-Up Land* (0.8 acres) in the California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP) database. Surrounding properties are designated as *Farmland of Local Importance*, *Prime Farmland*, *Farmland of Statewide Importance* or *Urban and Built-Up Land*, in the FMMP database. The parcel is not under a Williamson Act Contract and contains no land classified as forest.

The subject property is in the unincorporated community of San Martin. The parcel is currently being actively farmed. Surrounding uses consist of single-family residential, agricultural, and open spaces, and zoned RR.

DISCUSSION:

b, c, d & e) No Impact - The subject property is not zoned Agriculture, nor are the surrounding properties, and therefore the proposed project does not conflict with existing zoning for agricultural uses. The property is not encumbered by a Williamson Act contract, or within a forestland/timberland area, and therefore the proposed development would not conflict with County Williamson Act Guidelines, the County's Williamson Act Ordinance, or existing zoning for forestland or timberland areas. No trees are proposed for removal, and the property is not within a forestland area, and therefore the proposed development does not result in the loss of forest land.

a & f) Less Than Significant - The project is a two-lot subdivision. No residential development is proposed with this subdivision. Future development permitted by right, if proposed, may be up to two single-family residences, two ADUs, and two JADUs (one of each per lot).

Residential uses incidental to the agricultural use of the land, including single family homes and ADUs, are considered compatible with agricultural use and permitted uses in the Rural Residential district. The site is primarily designated as *Prime Farmland* in the FMMP database. Future construction of the new residences and associated site improvements would partially result in the conversion and permanent loss of the prime agricultural soils. While the loss of prime agricultural soils due to future development would be permanent, it is a less-than-significant impact based on the California Agricultural Land Evaluation and Site Assessment Model (LESA) (1997) prepared by the California Department of Conservation. The LESA model is a point-based approach to analysis that rates a site's relative agricultural value based on the land evaluation (quality of soils) and site evaluation (site size, water availability, surrounding land use, and presence/absence of agricultural protections). Although the proposed project would convert a portion of prime farmland to a residential use, due to limited surrounding agricultural and resource conservation uses, and a smaller parcel size, the LESA model determines the proposed has a less than significant impact on the conversion of farmland. The total LESA score for this project is 64 with subscores for land evaluation (LE) and site assessment (SA) as 49 and 15 points respectively. A score between 60 to 79 points is considered significant unless either LE or SA subscore is less than 20 points. As the site assessment subtotal is below 20 points, the impact to farmland is considered to be less than significant.

The project site and surrounding properties are zoned RR and developed for residential uses; therefore, future residential development would not involve substantial changes to the existing agricultural environment.

MITIGATION:

No mitigation required.

C. AIR QUALITY					
Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations.					
WOULD THE PROJECT:	IMPACT				Source
	<u>Potentially Significant Impact</u>	<u>Less Than Significant with Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5,29, 30
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5,29, 30

C. AIR QUALITY					
Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations.					
	IMPACT				
WOULD THE PROJECT:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Source
c) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5,29, 30
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5, 29, 30

SETTING:

The proposed project is located within the San Francisco Bay Area Air Quality Management District (BAAQMD), which regulates air pollutants, including those that may be generated by construction and operation of development projects. These so-called criteria pollutants include reactive organic gases, carbon monoxide, nitrogen dioxide, and particulate matter (PM). BAAQMD also regulates toxic air contaminants (fine particulate matter), long-term exposure to which is linked with respiratory conditions and increased risk of cancer. Major sources of toxic air contaminants in the Bay Area include major automobile and truck transportation corridors (e.g., freeways and expressways) and stationary sources (e.g., factories, refineries, power plants).

DISCUSSION:

a, b, c & d) Less Than Significant. The subject property is located on Foothill Avenue in the unincorporated community of San Martin. The closest freeway or expressway is Highway 101, which is approximately one mile from the project site. The operational criteria pollutant screening size for single-family residential projects established by BAAQMD is 325 dwelling units. Future potential development of two single family residences, driveways, and possibly two ADUs and two JADUs would involve grading and construction activities. Operations would generate emissions from vehicle trips. However, emissions generated from construction and operation of future development would be well below the BAAQMD’s screening size level of 325 dwelling units for operational-related emissions (oxides of nitrogen) and 114 dwelling units for construction-related emissions (reactive organic gases) from residential land uses. Dust emissions would be controlled through standard Best Management Practices (BMPs) dust control measures. The proposed residential development would not generate significant concentrations of pollutants that sensitive receptors would be exposed to, nor would it result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

MITIGATION:

No mitigation required.

D. BIOLOGICAL RESOURCES

WOULD THE PROJECT:	IMPACT				Source
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	
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?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1, 7, 17b, 17o
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 US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3,7, 8a, 17b, 17e, 22d, 22e, 33
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?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 7, 17n, 33
d) Have a substantial adverse effect on oak woodland habitat as defined by Oak Woodlands Conservation Law (conversion/loss of oak woodlands) – Public Resource Code 21083.4?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 31, 32
e) 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,7, 17b, 17o
f) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	32
g) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3,4, 17l

SETTING:

The project site is located on the west side of Foothill Avenue, between its intersections with Gwinn Avenue and Mayan Lane, in San Martin (Figure 1). The site is bounded by rural residential development to the south, west, and north, and agricultural lands to the east. The channel of New Creek occurs is located off-site to the north and east. The site is approximately 0.7 miles east of more natural lands of the foothills of the Diablo Range and more than three miles west of more natural lands of the foothills of the Santa Cruz mountains.

Under the HCP, the project site's land cover is *Grain, Row-crop, Hay and Pasture, Disked / Short-term Fallowed*. The parcel is located in the HCP area; however, it is designated as Area 3 (*Rural Development Not Covered*). No serpentine soils or serpentine rock outcrops are located on the subject property. The project site does not contain any sensitive habitats and is not located in any plant or wildlife survey areas under the HCP.

A Biological Resources Assessment (Assessment) was prepared by Live Oak Associates, Inc. (dated March 17, 2022) for the project site, is in Attachment B. Preparation of this report included a review of pertinent data sources and literature on relevant background information and habitat characteristics of the project area. In addition, a reconnaissance-level field survey of the property was conducted on March 2, 2022, to assess the current site conditions, to identify and map existing vegetation communities, wetlands and waterways, and to assess the potential for special status species occurrence and/or presence of their respective habitats. The subject property has two land cover types occur, 1) Grain, Row-crop, Hay and Pasture, Disked / Short-term Fallow, and 2) Agricultural Developed (Figure 4). The Assessment identifies that the site is located to the south of the regional east-west movement corridors through the Coyote Valley area of south San Jose.

County of Santa Clara Tree Preservation Ordinance, Division C16 regulates tree removal on private land. This ordinance provides protection to certain trees that are 12-inches or greater in diameter. No tree removal is proposed with this project.

Jurisdictional waters include waters of the United States subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE) and waters of the State of California subject to the regulatory authority of the California Department of Fish and Wildlife (CDFW) and the California Regional Water Quality Control Board (RWQCB).

DISCUSSION:

d, f & g) No Impact – The subject parcel does not have any known mapped Oak Woodland area and thus would not impact any oak woodland habitat. Additionally, the project does not conflict with the HCP as there are no covered species or landcovers on the property. The project site occurs in Area 3 of the HCP Area, i.e., *Rural Development Not Covered*. County of Santa Clara Tree Preservation Ordinance, Division C16 regulates tree removal on private land. No tree removal is proposed with this project. Jurisdictional waters of the U.S. and state are absent from the project site. Therefore, the project will have no impact on jurisdictional waters.

b, c and e) Less Than Significant Impact – The site occurs to the south of identified regional east-west movement corridors through the Coyote Valley area of south San Jose. Per the Assessment by Live Oak Associates, due to residential and commercial development to the east and south of the site, it is unlikely that the subject site functions as a movement corridor, although wildlife may occur on the site from time to time during normal daily foraging movements. The future single-family residential development would not be expected to result in any significant impacts to any species that currently

moves within and through the site, as those species would likely continue to do so after project build out.

a) Less Than Significant Impact with Mitigation Incorporated.

Special-status Plants: Per the Assessment by Live Oak Associates all special status plants known to occur, or to have once occurred in the project vicinity are considered absent from the site because of long-term agricultural and other anthropogenic disturbance. Therefore, future development of the site is expected to have a less-than-significant impact on special status plants.

Special-status Wildlife: Per the Assessment by Live Oak Associates most special status animals known to occur, or to once have occurred, in the project vicinity are considered absent from the site due to a lack of suitable habitat, or they are considered unlikely to occur on the site or they have not been observed in the project vicinity in many decades. If the latter species occurred on the site at all, it would only be as rare migrants or rare foragers. The project is expected to have no impacts on any of the species that are considered absent from or unlikely to occur on the site. The latter species includes the following:

- Bay Checkerspot Butterfly (*Euphydryas editha bayensis*),
- Steelhead (*Oncorhynchus mykiss*),
- Monterey Hitch (*Lavinia exilicauda harengus*),
- Southern Coastal Roach (*Hesperoleucus venustus subditus*),
- California Tiger Salamander (*Ambystoma californiense*),
- Santa Cruz Black Salamander (*Aneides niger*),
- California Giant Salamander (*Dicamptodon ensatus*),
- Foothill Yellow-Legged Frog (*Rana boylei*),
- California Red-Legged Frog (*Rana draytonii*),
- Coast Horned Lizard (*Phrynosoma blainvillii*),
- Western Pond Turtle (*Emys marmorata*),
- Swainson's Hawk (*Buteo swainsoni*),
- Tricolored Blackbird (*Agelaius tricolor*),
- least Bell's vireo (*Vireo bellii pusillus*),
- Yellow-breasted Chat (*Icteria virens*),
- Grasshopper Sparrow (*Ammodramus savannarum*),
- Bank Swallow (*Riparia riparia*),
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*),
- San Joaquin kit fox (*Vulpes macrotis mutica*).

Additionally, the project is not expected to result in significant impacts to most special status animals, with the potential exception of burrowing owls and American badgers. Should they occur on the site in the future and for which measures are provided below to reduce any potential impacts to a less-than-significant level.

Western Burrowing Owls Although no burrowing owls or their sign was observed on the site during the site survey, and they are likely absent, the project site does provide suitable habitat for this species and there is some potential it could forage, nest and roost on the site in the future, prior to development. While the loss of habitat for these species as a result of development of the site would be less-than-significant, any project activities resulting in nest abandonment should they occur on the site during project construction activities may be considered a significant impact. Mitigation measures provided below would reduce any potentially significant impacts to a less-than-significant level.

MITIGATION:

BIO-1: Habitat assessment for burrowing owls shall be conducted within 30 days of grading, or construction activities that shall result in ground disturbance or vegetation removal, to confirm that habitat for burrowing owls remains absent from the site. If the habitat assessment confirms that habitat for this species remains absent from the site, then no further mitigation for burrowing owls would be required.

BIO-1b: Preconstruction Surveys for Burrowing Owls - Should a habitat assessment for burrowing owls confirm that site conditions have changed and that there is potential habitat present for this species (i.e., California ground squirrel burrows or other burrows of sufficient size), then the following measures shall be implemented to ensure that the project does not impact this species.

Pre-construction surveys A pre-construction survey shall be conducted by a qualified biologist for burrowing owls within 30 days of the on-set of grading, or construction activities. This survey shall be conducted according to methods described in the Staff Report on Burrowing Owl Mitigation (CDFW 2012).

Avoidance During the Breeding Season. If evidence of western burrowing owls is found during the breeding season (February 1–August 31), the project proponent shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). Avoidance shall include establishment of a 250-foot non-disturbance buffer zone around nests.

Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside of the 250-foot non-disturbance buffer during the breeding season if the nest is not disturbed, and the project proponent develops an avoidance, minimization, and monitoring plan that shall be reviewed by the County and CDFW prior to project construction based on the following criteria.

- The County and CDFW approves of the avoidance and minimization plan provided by the project applicant.
- 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, these activities shall cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.
- If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities shall cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.

Avoidance During the Non-Breeding Season. During the non-breeding season (September 1–January 31), the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites.

- A qualified biologist monitors the owls for at least 3 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, these activities shall cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the County that a qualified biologist excavates usable burrows to prevent owls from re-occupying the site. After all usable burrows are excavated, the buffer zone shall be removed, and construction may continue. Monitoring must continue as described above for the non-breeding season as long as the burrow remains active.

Construction Monitoring. Based on the avoidance, minimization, and monitoring plan developed (as required in the above section), during construction, the non-disturbance buffer zones shall be established and maintained if applicable. 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.

Passive Relocation. Any passive relocation plan would need to be approved by the County and CDFW, and would only occur during the non-breeding season (September 1–January 31) if the other measures described above do not allow work to continue. Passive relocation would only be proposed if the burrow needed to be removed, or had the potential of collapsing (e.g., from construction activities), as a result of the covered activity.

If passive relocation is eventually allowed, a qualified biologist can 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 48 hours to ensure owls have left the burrow, and then the 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 trapping owls inside.

Exceptions to Passive Relocation Prohibition. Any exceptions to passive relocation prohibitions would be subject to the approval of the County and CDFW.

BIO-2: Alternative Mitigation to BIO-1 The project can opt-in to the Santa Clara Valley Habitat Plan, and follow the mitigations measures for burrowing owls included under Condition 15 of the Habitat Plan (6-62, Santa Clara Valley Habitat Plan; Attachment A).

American Badgers are known to occur in the foothills to the west of the site; most of the habitat between the site and the foothills consists of range land and agricultural fields, therefore, it is possible badgers may use the site primarily for movement and foraging and may forage or pass through the site or have the potential to dig a day-use den from time to time. No badgers were observed on the project site during the site survey; however, should badgers occur onsite at the time of construction, the project could result in mortality of individuals of this species, which would constitute a significant impact under CEQA. Mitigation measures provided below would reduce any potentially significant impacts to a less-than-significant level.

MITIGATION:

BIO-3: *Preconstruction Surveys for Badgers* - During the course of the preconstruction surveys for other species, a qualified biologist shall also determine the presence or absence of badgers prior to the start of construction. If badgers are found to be absent, no other mitigations for the protection of badgers shall be warranted.

Avoidance and Monitoring. If an active badger den is identified during pre-construction surveys within or immediately adjacent to an area subject to construction, a construction-free buffer of up to 300 feet shall be established around the den. Once the biologist has determined that badger has vacated the burrow, the burrow can be collapsed or excavated, and ground disturbance could proceed. Should the burrow be determined to be a natal or reproductive den, and because badgers are known to use multiple burrows in a breeding burrow complex, a biological monitor shall be present onsite during construction activities in the vicinity of the burrows to ensure the buffer is adequate to avoid direct impact to individuals or natal/reproductive den abandonment. The monitor shall be required to be present until it is determined that young are of an independent age and construction activities would not harm individual badgers.

Tailgate Training. All workers on the project shall attend a tailgate training that includes a description of the species, a brief summary of its biology, and minimization measures and instructions on what to do if an American badger is observed.

Nesting Raptors and Other Nesting Migratory Birds No trees are located on the site, and although trees are present along the site's southwestern border on the adjacent property, these trees are far enough away from the location of the proposed project, which will occur in the northern portion of the property, that, in the event the trees are used by tree-nesting raptors and other birds, the project should not result in any disturbance to nests. Currently, the site is disced and so the site does not currently provide any vegetation cover or habitat for ground nesting birds either. However, should the field be left fallow and should vegetation grow on the site, the area of the proposed project could provide potential nesting habitat for several special status and non-special status bird species that nest on the ground and/or in agricultural fields. This includes special status birds such as the short-eared owl and grasshopper sparrow; and non-special status birds such as western meadowlarks (*Sturnella neglecta*). Should any birds nest on the site during project construction activities, including ground disturbance and vegetation removal, such activities could result in nest abandonment and in harm or mortality to unfledged young. This would be considered a potentially significant impact of the project as well as a violation of state and federal laws. Mitigation measures provided below would reduce any potentially significant impacts to a less-than-significant level.

MITIGATION:

BIO- 4: Preconstruction Surveys for Ground Nesting Migratory Birds - To the extent possible, any project-related ground disturbance or vegetation removal activities should occur outside of the bird breeding season, i.e., during the period from September 1st through January 31st. Project-related activities that occur during the bird breeding season, i.e., during the period from February 1st through August 31st, could be constrained in the vicinity of any active of ground nesting migratory birds. **If tree removal or ground disturbance activities are scheduled to commence during the breeding season, a qualified biologist shall conduct pre-construction nesting bird surveys to identify possible nesting activity within 15 days prior to such activities.** A construction-free buffer of suitable dimensions as determined by a qualified biologist must be established around any active raptor or migratory bird nest for the duration of the project, or until it has been determined that the young have fledged and are foraging independently from their parents.

E. CULTURAL RESOURCES					
WOULD THE PROJECT:	IMPACT				Source
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5 of the CEQA Guidelines, or the County's Historic Preservation Ordinance (Division C17 of County Ordinance Code) – including relocation, alterations or demolition of historic resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3, 16, 19, 41, 42
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5 of the CEQA Guidelines?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 19, 41, 42
c) Disturb any human remains including, those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 19, 41, 42

SETTING:

The project is a two-lot subdivision. Upon approval of the project, the frontage improvements and future development of the site will require grading and ground disturbance. Total grading quantities for the proposed development are 33 cubic yards of cut and no fill. The project site contains an existing 26,000 sq.ft. greenhouse and a leach field that is proposed to be demolished.

DISCUSSION:

a) No Impact. The project site contains an existing 26,000 sq.ft. greenhouse that is proposed to be demolished. The California Public Resources code defines a historical resource as a resource that has been listed or is eligible for listing on the California Historical Register of Historical Resources, a resource included in a local register of historical resources, or a resource identified as significant in a

historical survey meeting the requirements of the Public Resources Code. Neither the subject property nor the existing structures located on the parcel are listed in or eligible for listing in the California Register of Historic Resources or the County of Santa Clara Historic Resources Inventory. Thus, the parcel is not historical resource pursuant to Section 15064.5 of the CEQA Guidelines.

b and c) Less Than Significant. Archival research revealed no previously recorded sites within or adjacent to the project site. Upon approval of the project, the frontage improvements and future development of the site would include ground disturbance and grading activity which has the potential for uncovering previously unknown cultural resources. To protect any potential archeological and cultural resources on site, the below conditions of approval will ensure the proper actions are taken to reduce the adverse environmental impacts to cultural resources to a less than significant level.

In the event that human skeletal remains are encountered, the applicant is required by County Ordinance No. B6-18 to immediately notify the County Coroner. Upon determination by the County Coroner that the remains are Native American, the coroner shall contact the California Native American Heritage Commission, pursuant to subdivision (c) of section 7050.5 of the Health and Safety Code and the County Coordinator of Indian affairs. No further disturbance of the site may be made except as authorized by the County Coordinator of Indian Affairs in accordance with the provisions of state law and this chapter. If artifacts are found on the site a qualified archaeologist shall be contacted along with the County Planning Office. No further disturbance of the artifacts may be made except as authorized by the County Planning Office.

MITIGATION:

No mitigation required.

F. ENERGY					
WOULD THE PROJECT:	IMPACT				Source
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Result in potentially significant environmental impact do to wasteful, inefficient, or unnecessary construction of energy resources during project consumption or operation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 5
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5

SETTING:

The proposed two-lot minor subdivision does not include any construction and as such does not propose to consume any energy resources that would potentially be inefficient or unnecessary. However, if approved, it is reasonable to anticipate the project may result in the future construction of two new single-family residences, accessory dwelling units, and associated site improvements.

California Code of Regulations, Title 24, Part 6, is California’s Energy Efficiency Standards for Residential and Non-Residential Buildings. Title 24 was established by CEC in 1978 in response to a

legislative mandate to create uniform building codes to reduce California’s energy consumption and provide energy efficiency standards for residential and non-residential buildings.

DISCUSSION:

a & b) Less Than Significant. The project would increase electricity and natural gas consumption at the site relative to existing conditions. The project would be required to meet the California Code of Regulations Title 24 standards for building energy efficiency. Construction energy consumption would be temporary and would not require additional capacity or increased peak or base period demands for electricity or other forms of energy. The project would not result in wasteful, inefficient, or unnecessary consumption of energy.

MITIGATION:

No mitigation required.

G. GEOLOGY AND SOILS					
	IMPACT				
WOULD THE PROJECT:	<u>Potentially Significant Impact</u>	<u>Less Than Significant with Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	Source
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury or death involving:					
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	6, 17c, 43
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	6, 17c
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	6, 17c, 17n, 18b
iv) Landslides	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	6, 17L, 11, 8b
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	6, 14, 23, 24
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2, 3, 17c, 23, 24, 42

G. GEOLOGY AND SOILS					
WOULD THE PROJECT:	IMPACT				Source
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	
d) Be located on expansive soil, as defined in the report, <i>Soils of Santa Clara County</i> , creating substantial direct or indirect risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	14,23, 24,
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3,6, 23,24,
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2,3,4,41,42

SETTING:

The topography of the parcel is flat. The property is not located in the County’s Landslide Hazard Area, County’s Liquefaction Hazard Area, or adjacent to any earthquake fault zones. The County Geologist did not require a Geologic or Geotechnical Report or had any geologic requirements due to the lack of geologic hazards on the parcel.

DISCUSSION:

a- i, iii, & iv, b, c, d, e, & f) No Impact – County GIS does not identify any faults located near the project area. As such, the proposed project will not directly or indirectly cause potential substantial adverse effects due to the rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault. Additionally, the property is not within a Santa Clara County landslide hazard zone or a liquefaction hazard zone and therefore the proposed project does not directly or indirectly cause potential substantial adverse effects due to landslides or liquefaction. As such, there is no impact.

MITIGATION:

No mitigation required.

H. GREENHOUSE GAS EMISSIONS					
WOULD THE PROJECT:	IMPACT				Source
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5,29, 30
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5,29, 30

SETTING:

Given the overwhelming scope of global climate change, it is not anticipated that a single development project would have an individually discernible effect on global climate change. It is more appropriate to conclude that the greenhouse gas emissions generated by a proposed project would combine with emissions across the state, nation, and globe to cumulatively contribute to global climate change. The primary GHG associated with a development project is carbon dioxide, which is directly generated by fuel combustion (vehicle trips, use of natural gas for buildings) and indirectly generated by use of electricity.

DISCUSSION:

a & b) Less Than Significant. Future development of two single family residences, two ADUs, two JADUs and associated site improvements would involve grading and construction activities. Operations would generate emissions from vehicle trips. However, emissions generated from construction and operation of the residences would be well below the BAAQMD’s screening size level of 56 dwelling units for both operational- and construction related GHG emissions. Therefore, the proposed project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment or conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.

MITIGATION:

No mitigation is required.

I. HAZARDS & HAZARDOUS MATERIALS					
WOULD THE PROJECT:	IMPACT				Source
	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 4, 5
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2, 3, 5
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 1/4 mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	46
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	47, 48
e) For a project located within an airport land use plan referral area or, where such a plan has not been adopted, within two miles of a public airport or public use airport, or in the vicinity of a private airstrip, would the project result in a safety hazard, or excessive noise for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3, 22a
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5, 49
g) Expose people or structures either directly or indirectly to a significant risk of loss, injury or death involving wildland fires?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	4, 17g

SETTING:

The project site is located in a rural residential area of south Santa Clara County in the unincorporated community of San Martin. It is not located within a quarter mile of a school or within the Wildland Urban Interface. San Martin Airport is located approximately two miles from the project site.

DISCUSSION:

a, b, c, d, e, f & g) No Impact. The project is a two-lot residential subdivision. Therefore, it would not involve transport of hazardous materials or foreseeable risk of accident conditions that could release hazardous materials into the environment. The project site is not located within ¼ of a school. The site is located within two miles of a public airport. However, the project would not result in a safety hazard, or excessive noise for people residing or working in the project area. The project site would use as access Foothill Avenue, which is not part of an adopted emergency response plan or emergency evacuation plan. The site is not within the Wildland Urban Interface and therefore would not expose people or structures either directly or indirectly to a significant risk of loss, injury or death involving wildland fires.

MITIGATION:

No mitigation is required.

J. HYDROLOGY AND WATER QUALITY					
Would the project:	IMPACT				SOURCE
	<u>Potential vs Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	17b, 35, 36, 37
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 4
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 17n,
i) Result in substantial erosion or siltation on- or off-site	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 17p
II) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5, 36, 21a
III) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5
IV) Impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 17p, 18b, 18d
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3, 18b, 18d
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2, 3, 4, 17p

SETTING:

The property is not located in Federal Emergency Management Agency (FEMA) Zone. New Creek is located to the north of proposed Parcel 1. The proposed project is a two-lot subdivision. Once the property is subdivided, Parcel 1 and Parcel 2 could be developed with a single-family residence, ADU and a JADU. The domestic and emergency water would be provided by an existing onsite well located north of the property (approximately 150 feet from the proposed leach field) and an existing 10,000-gallon water tank.

DISCUSSION:

d, & e) No Impact. The project site is not located in tsunami, or seiche zones. The proposed project does not include the use of pollutants or hazardous materials. Additionally, the property is not located within a FEMA flood zone. Therefore, it is unlikely that pollutants from construction would be released due to flooding. Therefore, the project will not have any impact to hazardous materials or conflict or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

a, b & c) Less than Significant impact. Future development would require two on-site wastewater treatment systems (OWST). The OSWT feasibility for proposed Parcel 1 and 2 has been reviewed and approved by the Department of Environmental Health ensuring that the future proposed OWST could be designed and sized to meet all applicable water quality standards, soil requirements, and groundwater standards. Therefore, the proposed project does not substantially degrade surface or ground water quality, substantially decrease groundwater supplies, or interfere substantially with groundwater recharge.

Grading of the site for future development may slightly alter on-site drainage patterns. In addition, future development of the structures, and driveways would add impervious surfaces to the project site. The County requires erosion control standards be incorporated into project design in order to avoid erosion on- and off-site that could violate water quality standards during construction. The site is flat, and all stormwater run-off would be required to be retained on site. Therefore, site development would not substantially alter the existing drainage pattern of the site or area, increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite, or create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

MITIGATION:

No mitigation is required.

K. LAND USE					
	IMPACT				
WOULD THE PROJECT:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	SOURCE
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2, 4

b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	8a, 9, 18a
--	--------------------------	--------------------------	--------------------------	-------------------------------------	------------

SETTING:

The parcel is designated in the General Plan as Rural Residential and is zoned RR-5Ac. Surrounding uses are rural residences and undeveloped parcels.

DISCUSSION:

a & b) No impact. The project meets the allowable density of development for the Rural Residential general plan designation (R-LU 58) and minimum lot size and density requirements for the RR-5Ac zoning district (Zoning Ordinance Sections 2.20.040 and 3.10.030). The project will create two lots of 5 gross acres (Parcel 1 and Parcel 2), resulting in a density of 0.2 dwelling unit/acre. The project would subdivide for future construction of two residences, which are allowed uses in this zoning. This use would not physically divide an established community or conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

MITIGATION:

No mitigation is required.

L. MINERAL RESOURCES					
WOULD THE PROJECT:	IMPACT				SOURCE
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 2, 3, 6, 44
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 2, 3, 6, 8a

SETTING:

The project site is located within a Mineral Resource Zone (MRZ-1), which is classified as an area that has no significant mineral deposits or where it is judged that little likelihood exists for their presence.

DISCUSSION:

a & b) Less Than Significant. The project is located on MRZ-1, which is an area that has no significant mineral deposits or where it is judged that little likelihood exists for their presence. The project would restrict access to potential mineral resources on the project site; however, given the relatively small size of the site and the fact that it is not considered a locally important mineral

resource recovery site as designated by the Santa Clara County General Plan (Santa Clara County 1994b), a substantial loss of mineral resources would not occur. Therefore, the project would not result in the loss of availability of a known mineral resource that would be of regional or statewide value.

MITIGATION:

No mitigation is required.

M. NOISE					
WOULD THE PROJECT RESULT IN:	IMPACTS				SOURCE
	<u>Potentially Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	8a, 13, 22a, 46
b) Generation of excessive ground borne vibration or ground borne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	13, 46
c) For a project located within the vicinity of a private airstrip or an airport land use plan referral area or, where such a plan has not been adopted, within two miles of a public airport, public use airport, or private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 5, 22a

SETTING:

The project site is located in an area of rural residential uses approximately one mile east of State Route 101 and two miles east of South County Airport. Single family residences are located on three sides of the property, with the closest being on the south side, approximately 60 feet from the future proposed development sites. The County noise ordinance restricts construction-related noise near single-family residential areas to 60 dBA for mobile equipment operated Monday through Saturday from 7:00 AM to 7:00 PM.

DISCUSSION:

a, b & c) Less Than Significant. A temporary noise increase during construction would be generated by grading for subdivision improvements and future construction of residential buildings and driveways. However, noise from operating equipment would not exceed the 60 DBA ordinance limit for mobile equipment. Occupancy of the two residences would not be a significant new source of noise. Therefore, the proposed project would not generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards. Future construction of the two residences would not involve use of equipment that would cause ground borne vibration or ground borne noise levels.

MITIGATION:

No mitigation required.

N. POPULATION AND HOUSING					
WOULD THE PROJECT:	IMPACT				SOURCE
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 4
b) Displace substantial numbers of existing housing or people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 2, 3, 4

SETTING:

The project site is located in an area of rural residential uses.

DISCUSSION:

a & b) No Impact - The project would involve demolition of a greenhouse, and future construction of two single residences. The project would not change the density upon which the General Plan’s population projections were based. Therefore, it would not induce substantial unplanned population growth in an area. No extension of roads or infrastructure is proposed as part of this project.

MITIGATION:

No mitigation required.

O. PUBLIC SERVICES					
WOULD THE PROJECT:	IMPACT				SOURCE
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other					

performance objectives for any of the following public services:

i) Fire Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5
ii) Police Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5
iii) School facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5
iv) Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5, 17h
v) Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5

SETTING:

The project site is located in the unincorporated community of San Martin. Fire protection is provided by the South Santa Clara County Fire District. The Santa Clara County Sheriff’s Office provides police protection service. The project site is located within the Morgan Hill Unified School District. It is served by the San Martin/Gwinn Elementary School (located at 100 North St.), Britton Middle School (located at 80 W. Central Ave.), and Live Oak High School (located at 1505 East Main Ave).

DISCUSSION:

a) Less Than Significant. The future increase of two residences as part of the proposed subdivision, would not result in substantial adverse physical impacts to the public facilities that would provide services in this area. Any new square footage will have to pay the school impact fees.

MITIGATION:

No mitigation is required.

P. RECREATION					
WOULD THE PROJECT:	IMPACT				SOURCE
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 2, 4, 5, 17h
b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 4, 5

SETTING:

The Santa Clara County Parks and Recreation Department operates and maintains several parks and recreational facilities in unincorporated Santa Clara County.

DISCUSSION:

a & b) No Impact. The future increase of two residences as part of the proposed subdivision would not result in substantial adverse physical impacts to the recreation facilities in the area or require construction or expansion of such facilities.

MITIGATION:

No mitigation is required.

Q. TRANSPORTATION					
	IMPACT				
WOULD THE PROJECT:	<u>Potential v Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	SOURCE
a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 4, 5, 6, 7, 49, 52
b) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	6, 49, 50, 52
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3, 5, 6, 7, 52
d) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5, 49, 52

SETTING:

The project site is accessed from Foothill Avenue and approximately 0.7 miles south of East San Martin Avenue in the unincorporated area of San Martin.

VMT

Senate Bill 743 (SB 743), which became effective September 2013, initiated reforms to the CEQA Guidelines to establish new criteria for determining the significance of transportation impacts that “promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses.” Specifically, SB 743 directed the Governor’s Office of Planning and Research to update the CEQA Guidelines to replace automobile delay—as described solely by LOS or similar measures of vehicular capacity or traffic congestion—with VMT as the recommended metric for determining the significance of transportation impacts. The Office of Planning and Research has updated the CEQA Guidelines for this purpose by adding a new section 15064.3 to the Guidelines, which became effective statewide July 1, 2020. CEQA Guidelines section 15064.3, subdivision (b), establishes criteria for evaluating a project’s transportation impacts under CEQA. The lead agency has discretion to choose the most appropriate methodology to evaluate VMT.

DISCUSSION:

a, b, c & d) Less Than Significant. The Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA¹ recommends a method for screening out small projects that would be presumed to have less-than-significant VMT impacts. The method uses a daily trip rate as a screening level threshold based on the Class 1 and 3 Categorical Exemptions (Sections 15301 and 15303 of the CEQA Guidelines). For rural areas, this daily trip rate screening level would be 27.² The project is a two-lot residential subdivision in a rural area. However, approval would only enable two new single-family residence. The daily trip rate for a single-family residence provided by the Institute of Transportation Engineers (ITE) is 9.57.³ This would be below the screening level of 24. Therefore, the proposed project would not conflict with CEQA Guidelines Section 15064.3, subdivision (b).

As part of development of the proposed subdivision, each new parcel would have a 15-foot-wide driveway connecting with Foothill Avenue, as shown on Figure 3. The driveways would be approximately feet apart. The County’s Zoning Ordinance [4.20.050(B)(1) would restrict fence height to 3 feet within 20 feet of the right-of-way. In addition, the required setback for accessory structures would be 75 feet from Foothill Avenue. With these restrictions and given that Foothill Avenue is a straight road that is lightly traveled, the proposed development would not substantially increase hazards due to a geometric design feature. The subdivision and driveway design has also been reviewed by the Fire Marshal’s Office and provides adequate emergency access to both lots.

MITIGATION:

No mitigation is required.

R. TRIBAL CULTURAL RESOURCES					
	IMPACT				
WOULD THE PROJECT:	<u>Potentially Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	SOURCE
a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:					
i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	41, 42

¹Office of Planning and Research. December 2018. Technical Advisory on Evaluating Transportation Impacts in CEQA.

²According to OPR’s analysis, typical project types for which trip generation increases relatively linearly with building footprint (i.e., general office building, single tenant office building, office park, and business park) generate or attract an additional 110-124 trips per 10,000 square feet. Therefore, absent substantial evidence otherwise, it is reasonable to conclude that the addition of 110 or fewer trips could be considered not to lead to a significant impact. However, the 10,000 square-foot limit examples in the Class 1 and 3 applies to urban areas. Outside of urban areas, the example limit is 2,500 square feet, which would yield a trip rate of 24, which is the rate that would be considered not to lead to a significant VMT impact.

³ITE Trip Generation, 10th Edition, 2018.

Public Resources Code section 5020.1(k), or

ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

41, 42

SETTING:

Under an update to CEQA through state legislation known as AB 52, lead agencies must consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of a proposed project, if so requested by the tribe. Section 21084.2 of the Public Resources Code also specifies that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. The subject property does not contain any known Tribal Cultural Resources that are eligible or listed in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k).

DISCUSSION:

a) Less Than Significant. The County has not received any letters from Native American tribes requesting tribal consultation per Public Resources Code, Section 21080.3.1(b) regarding the potential for a Native American tribal cultural resource located on or near the project site. Hence, there is no evidence to indicate the presence of a tribal cultural resource listed or eligible for listing in the California Register of Historical Resources, or of significance pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. Therefore, the proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource, and no mitigation measures would be necessary.

MITIGATION:

No mitigation is required.

S. UTILITIES AND SERVICE SYSTEMS					
WOULD THE PROJECT:	IMPACT				SOURCE
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3,6,7

telecommunications facilities, the construction or relocation of which could cause significant environmental effects?			<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 6,24b
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3,6,7
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 5,6
e) Be in non-compliance with federal, state, and local management and reduction statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3,5, 6

SETTING:

The project site is located within PG&E's service area. The project site has no access to water or wastewater utilities.

DISCUSSION:

a, b, c, d & e) Less Than Significant. Electricity and gas would be provided by PG&E. Future residences would each have an on-site wastewater treatment system. Water would be supplied by an existing well. Stormwater would be retained on site. Therefore, no expansion of utilities would be required. Construction wastes associated with demolition of the existing greenhouse and future construction of new residences would be minor and would not exceed the capacity of existing solid waste disposal facilities.

MITIGATION:

No mitigation is required.

T. WILDFIRE					
If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:	IMPACT				SOURCE
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 2, 3, 6, 49, 54
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to,	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 2, 3, 6,8a, 17g, 54

	pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?			<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 2, 4, 5, 17g, 17h, 54
c)	Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 2, 4, 5, 17g, 17h, 54
d)	Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1, 3, 4, 5, 17i, 54

SETTING:

The project site is located in a flat area primarily developed with agricultural and rural residential uses. Project access would be from Foothill Avenue.

DISCUSSION:

a, b, c & d) Less Than Significant. The proposed project is a two-lot subdivision, demolition of an existing greenhouse, and future development of two new residences. Access to Foothill Avenue would not substantially impair an adopted emergency response plan or emergency evacuation plan. The project site is in an area of low risk of wildfire. Project development would not require installation or maintenance of other infrastructure that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment. In addition, because the project is located in a flat area of low fire risk, development would not expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

MITIGATION:

No mitigation is required.

U. MANDATORY FINDING OF SIGNIFICANCE					
WOULD THE PROJECT:	IMPACT				SOURCE
	YES			NO	
	<u>Potentially Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>	
a) Have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 to 54

	endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			<input checked="" type="checkbox"/>		
b)	Have impacts that are individually limited, but cumulatively considerable ("Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 to 54
c)	Have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1 to 54

DISCUSSION:

a) **Less Than Significant Impact with Mitigation Incorporated.** Although the proposed project is to subdivide a 10-gross-acre parcel and does not include any construction, due to the undeveloped nature of the project site, it has the potential for significant impacts in relation to undiscovered biological resources. However, the project would not substantially degrade the quality of the natural environment because the potentially significant impacts regarding biological resources as identified throughout this study can be mitigated to less than significant levels. Where mitigation measures are enforced as proposed in this Initial Study, the measures will be conditions of approval of the proposed project and the applicant will be responsible for implementation of the measures. Therefore, the potential for substantial impacts to biological or other resources as a result of the proposed project is reduced to a less than significant level.

b) **Less Than Significant.** No past, current, or probable future projects were identified in the project vicinity that, when added to project-related impacts, would result in cumulatively considerable impacts. No cumulatively considerable impacts would occur with development of the proposed project. As discussed in the analyses provided in this Initial Study, project impacts were found to be less than significant. The incremental effects of the proposed project are not cumulatively significant when viewed in context of the past, current, and/or probable future projects. No cumulative impacts would occur.

c) **No Impact.** The proposed project is a two-lot subdivision and future development of two single family residences. As described in the environmental topic sections of this Initial Study, the proposed project would not have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly.

Initial Study Source List*

1. Environmental Information Form
https://www.sccgov.org/sites/dpd/DocsForms/Documents/EnvAss_Form.pdf
2. Field Inspection
3. Project Plans
4. Working knowledge of site and conditions
5. Experience with other Projects of This Size and Nature
6. County Expert Sources:
 - Geologist
<https://www.sccgov.org/sites/dpd/PlansOrdinances/GeoHazards/Pages/Geology.aspx>
 - Fire Marshal
<https://www.sccgov.org/sites/dpd/AboutUs/Fire/Pages/Fire.aspx>
 - Roads & Airports
<https://www.sccgov.org/sites/rda/Pages/rda.aspx>
 - Environmental Health
<https://www.sccgov.org/sites/deh/Pages/deh.aspx>
 - Land Development Engineering
<https://www.sccgov.org/sites/dpd/AboutUs/LDE/Pages/LDE.aspx>
 - Parks & Recreation
<https://www.sccgov.org/sites/parks/Pages/Welcome-to-Santa-Clara-County-Parks.aspx>
 - Zoning Administration,
Comprehensive Planning,
Secretary
7. Agency Sources:
 - Santa Clara Valley Water District
<https://www.valleywater.org/>
 - Santa Clara Valley Transportation Authority
<http://www.vta.org/>
 - Midpeninsula Regional Open Space District
<https://openspace.org/>
 - U.S. Fish & Wildlife Service
<https://www.fws.gov/>
 - CA Dept. of Fish & Game
<https://www.wildlife.ca.gov/>
 - Caltrans
<https://dot.ca.gov/>
 - U.S. Army Corps of Engineers
<https://www.usace.army.mil/>
 - Regional Water Quality Control Board
<https://www.waterboards.ca.gov/>
 - Public Works Depts. of individual cities
 - Santa Clara County Habitat Agency
<https://www.scv-habitatagency.org>
8. Planning Depts. of individual cities:
 - Santa Clara County (SCC) General Plan
<https://www.sccgov.org/sites/dpd/PlansOrdinances/GP/Pages/GP.aspx>
 - The South County Joint Area Plan
https://www.sccgov.org/sites/dpd/DocsForms/Documents/GP_Book_B.pdf
9. SCC Zoning Regulations (Ordinance)
<https://www.sccgov.org/sites/dpd/DocsForms/Documents/ZonOrd.pdf>
10. County Grading Ordinance
https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodet=TITLE_CODE LAUS_DIVC12SULADE_CHIIIGRDR#TOPTITLE
11. SCC Guidelines for Architecture and Site Approval
https://www.sccgov.org/sites/dpd/DocsForms/Documents/ASA_Guidelines.pdf
12. SCC Development Guidelines for Design Review
https://www.sccgov.org/sites/dpd/DocsForms/Documents/DR_Guidelines.pdf
13. County Standards and Policies Manual (Vol. I - Land Development)
https://www.sccgov.org/sites/dpd/DocsForms/Documents/StandardsPoliciesManual_Vol1.pdf
14. Table 18-1-B of the Uniform Building Code (expansive soil regulations) [1994 version]
http://digitalassets.lib.berkeley.edu/ubc/UBC_1994_v2.pdf
15. SCC Land Use Database
16. Santa Clara County Heritage Resource (including Trees) Inventory [computer database]
17. GIS Database
 - a. SCC General Plan Land Use, and Zoning
 - b. USFWS Critical Habitat & Riparian Habitat
 - c. Geologic Hazards
 - d. Archaeological Resources
 - e. Water Resources
 - f. Viewshed and Scenic Roads
 - g. Fire Hazard
 - h. Parks, Public Open Space, and Trails
 - i. Heritage Resources - Trees
 - j. Topography, Contours, Average Slope
 - k. Soils
 - l. HCP Data (habitat models, land use coverage etc)
 - m. Air photos
 - n. USGS Topographic
 - o. Dept. of Fish & Game, Natural Diversity Data
 - p. FEMA Flood Zones
 - q. Williamson Act
 - r. Farmland monitoring program
 - s. Traffic Analysis Zones
 - t. Base Map Overlays & Textual Reports (GIS)
18. Paper Maps
 - a. SCC Zoning
 - b. Barclay's Santa Clara County Locaide Street Atlas
 - c. Color Air Photos (MPSI)
 - d. Santa Clara Valley Water District - Maps of Flood Control Facilities & Limits of 1% Flooding
 - e. Soils Overlay Air Photos
 - f. "Future Width Line" map set

Initial Study Source List*

19. 2023 CEQA Statute Guidelines [Current Edition]
https://www.califaep.org/docs/CEQA_Handbook_2023_final.pdf

Area Specific: San Martin, Stanford, and Other Areas

San Martin

- 20a. San Martin Integrated Design Guidelines
https://www.sccgov.org/sites/dpd/DocsForms/Documents/SanMartin_DesignGuidelines.pdf

- 20b. San Martin Water Quality Study

- 20c. Memorandum of Understanding (MOU) between Santa Clara County & Santa Clara Valley Water District

Stanford

- 21a. Stanford University General Use Permit (GUP), Community Plan (CP), Mitigation and Monitoring Reporting Program (MMRP) and Environmental Impact Report (EIR)
[Policies, Plans, and Documents - Department of Planning and Development - County of Santa Clara \(sccgov.org\)](https://www.sccgov.org/sites/dpd/DocsForms/Documents/Policies_Plans_and_Documents_-_Department_of_Planning_and_Development_-_County_of_Santa_Clara_sccgov.org)

- 21b. Stanford Protocol and Land Use Policy Agreement

[Policies, Plans, and Documents - Department of Planning and Development - County of Santa Clara \(sccgov.org\)](https://www.sccgov.org/sites/dpd/DocsForms/Documents/Policies_Plans_and_Documents_-_Department_of_Planning_and_Development_-_County_of_Santa_Clara_sccgov.org)

Other Areas

- 22a. South County Airport Comprehensive Land Use Plan and Palo Alto Airport Comprehensive Land Use Plan [November 19, 2008]

- 22b. Los Gatos Hillside Specific Area Plan
https://www.sccgov.org/sites/dpd/DocsForms/Documents/GP_Book_B.pdf

- 22c. County Lexington Basin Ordinance Relating to Sewage Disposal

- 22d. User Manual Guidelines & Standards for Land Uses Near Streams: A Manual of Tools, Standards and Procedures to Protect Streams and Streamside Resources in Santa Clara County by Valley Water Resources Protection Collaborative, August 2005 – Revised July 2006.
<https://www.valleywater.org/contractors/doing-business-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams>

- 22e. Guidelines and Standards for Land Use Near Streams: Streamside Review Area – Summary prepared by Santa Clara County Planning Office, September 2007.

- 22f. Monterey Highway Use Permit Area
https://www.sccgov.org/sites/dpd/DocsForms/Documents/SanMartin_GeneralPlanInformation.pdf

Soils

23. USDA, SCS, “Soils of Santa Clara County

24. USDA, SCS, “Soil Survey of Eastern Santa Clara County”

Agricultural Resources/Open Space

25. Right to Farm Ordinance

26. State Dept. of Conservation, “CA Agricultural Land Evaluation and Site Assessment Model”
<https://www.conservation.ca.gov/dlrp/Documents/TOC%20and%20Intro.pdf>

27. Open Space Preservation, Report of the Preservation 2020 Task Force, April 1987 [Chapter IV]

28. Williamson Act Ordinance and Guidelines (current version)
<https://www.sccgov.org/sites/dpd/Programs/WA/Pages/WA.aspx>

Air Quality

29. BAAQMD Clean Air Plan
http://www.baaqmd.gov/~media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-proposed-final-cap-vol-1-pdf.pdf?la=en

30. BAAQMD CEQA Air Quality Guidelines (2022)-
<https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines>

31. BAAQMD Annual Summary of Contaminant Excesses & BAAQMD, “Air Quality & Urban Development - Guidelines for Assessing Impacts of Projects & Plans” [current version]

Biological Resources/ Water Quality & Hydrological Resources/ Utilities & Service Systems”

32. Site-Specific Biological Report

33. Santa Clara County Tree Preservation Ordinance
https://www.sccgov.org/sites/dpd/DocsForms/Documents/Tree_Ordinance.pdf

Section C16, Santa Clara County Guide to Evaluating Oak Woodlands Impacts

https://www.sccgov.org/sites/dpd/DocsForms/Documents/Oakwoodlands_Guide.pdf

Santa Clara County Guidelines for Tree Protection and Preservation for Land Use Applications

https://www.sccgov.org/sites/dpd/DocsForms/Documents/Brochure_TreePreservation.pdf

34. Clean Water Act, Section 404
<https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404>

Initial Study Source List*

35. Santa Clara Valley Water District – GIS Data:
<https://www.valleywater.org/learning-center/watersheds-of-santa-clara-valley>

36. CA Regional Water Quality Control Board, Water Quality Control Plan, San Francisco Bay Region [1995]

37. Santa Clara Valley Water District, Private Well Water Testing Program [12-98]

38. SCC Nonpoint Source Pollution Control Program, Urban Runoff Management Plan [1997]

39. County Environmental Health / Septic Tank Sewage Disposal System - Bulletin "A"

40. County Environmental Health Department Tests and Reports

Archaeological Resources

41. Northwest Information Center, Sonoma State University

42. Site Specific Archaeological Reconnaissance Report

Geological Resources

43. Site Specific Geologic Report

44. State Department of Mines and Geology, Special Report #42

45. State Department of Mines and Geology, Special Report #146

Noise

46. County Noise Ordinance

https://www.sccgov.org/sites/cpd/programs/NP/Documents/NP_Noise_Ordinance.pdf

Hazards & Hazardous Materials

47. Section 21151.4 of California Public Resources Code

48. State Department of Toxic Substances, Hazardous Waste and Substances Sites List

49. County Office of Emergency Services Emergency Response Plan [1994 version]

Transportation/Traffic

50. Transportation Research Board, "Highway Capacity Manual", Special Report 209, 1995.

51. SCC Congestion Management Agency, "Monitoring and Conformance report" (Current Edition)

52. Official County Road Book

53. Site-specific Traffic Impact Analysis Report

Wildfire

54. Office of Planning and Research. 2020. Fire Hazard Planning Technical Advisory

*Items listed in bold are the most important sources and should be referred to during the first review of the project, when they are available. The planner should refer to the other sources for a particular environmental factor if the former indicates a potential environmental impact.

Attachment A

Santa Clara Valley Habitat Plan Condition 15 – Western Burrowing Owl Mitigation
[\(\[scv-habitatagency.org\]\(http://scv-habitatagency.org\)\)](http://scv-habitatagency.org)

6.6.1 Selected Covered Wildlife Species

Conditions 15–18 identify conditions on covered activities that are specific to some of the covered species. Activities that may affect these covered species must also adhere to other applicable conditions in this chapter, including Condition 1, *Avoid Direct Impacts on Legally Protected Plant and Wildlife Species*. A summary of species surveys, preconstruction surveys, and construction monitoring requirements is provided in **Table 6-8**.

Condition 15. Western Burrowing Owl

To avoid or minimize direct impacts of covered activities on western burrowing owls, the procedures described below will be implemented. This condition incorporates survey, avoidance, and minimization guidelines from the following western burrowing owl conservation plans and other sources pertaining to the study area. The avoidance and minimization process for western burrowing owl as required in this condition is illustrated in **Figure 6-4**.

- *CDFG Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game 1995).
- *CDFG Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game 2012).
- *Draft Burrowing Owl Habitat Conservation Strategy and Implementation Plan* (City of San José 2000).
- *City of Morgan Hill—Citywide Burrowing Owl Habitat Mitigation Plan* (City of Morgan Hill 2003).
- Personal communication with Jack Barclay regarding ongoing monitoring efforts in the study area including annual monitoring at San José International Airport.
- Various unpublished reports from survey efforts in the study area.
- Guidance from CDFG.

Western Burrowing Owl Habitat Survey

Western burrowing owl habitat surveys will be required in the study area in all modeled occupied nesting habitat (see **Figure 5-11**). Surveys are not required in sites that are mapped as potential burrowing owl nesting or only overwintering habitat. Modeled habitat types may change throughout the permit term based on the best available scientific data. For example, the Implementing Entity will be conducting annual surveys or collecting annual survey data of other organizations in occupied nesting habitat throughout the permit area to determine the annual status of known nesting areas the number of adult breeding owls present. The Implementing Entity will also coordinate with other South Bay local

governments, special districts, and non-profit organizations every 3 years to assess status of the burrowing owl population in the entire study area and the expanded study area for burrowing owl conservation, outside areas of modeled occupied habitat.

Habitat surveys in occupied nesting habitat are required in both breeding and non-breeding seasons. If the project site falls within occupied nesting habitat, a qualified biologist will map areas with burrows (i.e., areas of highest likelihood of burrowing owl activity) and all burrows that may be occupied (as indicated by tracks, feathers, egg shell fragments, pellets, prey remains, or excrement) on the project site. This mapping will be conducted while walking transects throughout the entire project footprint, plus all accessible areas within a 250-foot radius from the project footprint. The centerline of these transects will be no more than 50 feet apart and will vary in width to account for changes in terrain and vegetation that can preclude complete visual coverage of the area. For example, in hilly terrain with patches of tall grass, transects will be closer together, while in open areas with little vegetation they can be 50 feet apart.

This methodology is consistent with other accepted survey protocols for this species (California Burrowing Owl Consortium 1993). The Implementing Entity may update this protocol during the permit term based on changes to the accepted protocol with the concurrence of the Wildlife Agencies. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.

If suitable habitat is identified during the habitat survey, and if the project does not fully avoid impacts to the suitable habitat, preconstruction surveys will be required. Suitable habitat is fully avoided if the project footprint does not impinge on a 250-foot buffer around the suitable burrow.

Preconstruction Survey

Prior to any ground disturbance related to covered activities, a qualified biologist will conduct preconstruction surveys in all suitable habitat areas as identified during habitat surveys. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on the project site, particularly in areas within 250 feet of construction activity.

To maximize the likelihood of detecting owls, the preconstruction survey will last a minimum of three hours. The survey will begin 1 hour before sunrise and continue until 2 hours after sunrise (3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. Additional time may be required for large project sites. A minimum of two surveys will be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed will be counted and their location will be mapped.

Surveys will conclude no more than 2 calendar days prior to construction. Therefore, the project proponent must begin surveys no more than 4 days prior to

construction (2 days of surveying plus up to 2 days between surveys and construction). To avoid last minute changes in schedule or contracting that may occur if burrowing owls are found, the project proponent may also conduct a preliminary survey 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 2 calendar days in advance of construction.

Implementation of Covered Activities in Burrowing Owl Habitat

In order to allow covered activities to go forward in burrowing owl habitat prior to the formal take authorization of individuals described above, project applicants will employ avoidance measures described below to ensure that direct take does not occur. Application of these measures is illustrated in **Figure 6-4**. The below avoidance measures apply to all projects that affect any burrowing owl habitat, regardless of whether surveys are required by this condition. In other words, if a project is occurring outside of modeled occupied nesting habitat, the project proponent is obligated to ensure avoidance and minimization of impact to burrowing owls according to the measures described below.

Avoidance Measures

Breeding Season

If evidence of western burrowing owls is found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). Avoidance will include establishment of a 250-foot non-disturbance buffer zone around nests. Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside of the 250-foot non-disturbance buffer during the breeding season if:

- the nest is not disturbed, and
- the project proponent develops an avoidance, minimization, and monitoring plan that will be reviewed by the Implementing Entity and the Wildlife Agencies prior to project construction based on the following criteria.
 - The Implementing Entity and the Wildlife Agencies approves of the avoidance and minimization plan provided by the project applicant.
 - 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, these activities will cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.
- ❑ If monitoring indicates that the nest is abandoned prior to the end of nesting season and the burrow is no longer in use by owls, the non-disturbance buffer zone may be removed. The biologist will excavate the burrow to prevent reoccupation after receiving approval from the Wildlife Agencies.

The Implementing Entity and the Wildlife Agencies have 21 calendar days to respond to a request from the project proponent to review the proposed construction monitoring plan. If these parties do not respond within 21 calendar days, it will be presumed that they concur with the proposal and work can commence.

Non-Breeding Season

During the non-breeding season (September 1–January 31), the project proponent will establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites.

- A qualified biologist monitors the owls for at least 3 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, these activities will cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the Implementing Entity 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.

Construction Monitoring

Based on the avoidance, minimization, and monitoring plan developed (as required in the above section), during construction, the non-disturbance buffer zones will be established and maintained if applicable. A qualified biologist will

monitor the site consistent with the requirements described above to ensure that buffers are enforced and owls are not disturbed. The biological monitor will 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.

Passive Relocation

Passive relocation would not be allowed under the Plan until the positive growth trend described in Section 5.4.6 is achieved. Once this occurs, passive owl relocation may be allowed, with the approval of the Wildlife Agencies, on project sites in the non-breeding season (September 1–January 31) if the other measures described in this condition do not allow work to continue. Passive relocation would only be proposed if the burrow needed to be removed, or had the potential of collapsing (e.g., from construction activities), as a result of the covered activity.

If passive relocation is eventually allowed, a qualified biologist can passively exclude birds from their burrows during non-breeding season only by installing one-way doors in burrow entrances. These doors will be in place for 48 hours to ensure owls have left the burrow, and then the biologist will excavate the burrow to prevent reoccupation. Burrows will be excavated using hand tools. During excavation an escape route will 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 trapping owls inside. Other methods of passive relocation, based on best available science, may be approved by the Wildlife Agencies during Plan implementation.

Exceptions to Passive Relocation Prohibition

Due to the relatively low numbers of burrowing owls in the study area, it is not expected that the prohibition of passive relocation will result in project delays. However, it is possible that a covered activity could not proceed due to avoidance measures for burrowing owl in this condition if owls continually persist on a site where avoidance is not feasible. In such cases, a project proponent may apply for an exception based on the following process. For this condition, the term exception means an allowance to conduct passive relocation of burrowing owls during the non-breeding season only when this activity is not otherwise allowed. This exception process is necessary to allow reasonable use and development of a property based on the variety of constraints and factors that may affect the property. In situations where exceptions are granted, other portions of this condition may still apply. Exceptions will be used in a minority of cases with special circumstances that limit or restrict the ability of a landowner to fully apply the condition.

Exceptions may be requested through the standard application process described in Section 6.8, or through a separate request process. Private applicants must apply for a passive relocation exception through their local jurisdiction. Project

proponents must develop and submit with the request for exception a passive relocation plan. The passive relocation plan must document the following.

1. That owls have occupied the site for a full year without relocating voluntarily. Surveys documenting presence must be completed by a qualified biologist and results must be provided in a written report. The report should confirm that one or more individuals (i.e., unique owl[s]) were monitored for a year and that the owl(s) had used the site for a full year²⁰.
2. The proposed process for relocation, including schedule for the proposed passive relocation and name of the qualified biologist.

The local jurisdiction, the Implementing Entity, and the Wildlife Agencies will meet to discuss the proposed passive relocation plan. Exceptions will be considered based on, but not limited to, the following factors:

1. The parcel is equal to or less than 3 acres and is more than 1,000 feet from other suitable nesting or foraging habitat such that it is unlikely the site can sustain burrowing owls into the future.
2. If the site has historically been used for nesting (within the last 3 years).
3. If the site is a target for a burrowing owl temporary or permanent management agreement.

As part of the review process, the Implementing Entity and Wildlife Agencies will consider the implications of an exception on the burrowing owl population and progress toward the biological goals and objective of the Plan. A passive relocation exception will not be granted if the Implementing Entity and Wildlife Agencies determine that such an exception, as mitigated, would preclude implementation of the conservation strategy of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies. The local jurisdiction or the Implementing Entity must make written findings that document these considerations and the rationale for the exception.

Additional mitigation may be required as part of an approval to implement passive relocation that is otherwise prohibited by the Plan. The need for and form of additional mitigation will be determined and approved by the Implementing Entity and Wildlife Agencies. Additional mitigation could include payment of additional fees, or contribution of occupied lands to the Reserve System. Applicable fees may be imposed by the local jurisdiction for processing exception requests. Mitigation will be proportional to the impact occurring as a result of a specific eviction and will fully mitigate such evictions.

The Implementing Entity will compile a list of all exceptions granted each calendar year for inclusion in the annual report to the Wildlife Agencies.

²⁰ If monitoring reveals that an owl(s) has vacated the site for 10 consecutive days or more, the project applicant may assume that the owl has voluntarily relocated and a qualified biologist may take measures to collapse suitable habitat to discourage new owls from occupying the site.

Attachment B

**Biological Resources Assessment prepared by Live Oak Associates, Inc.
(Dated March 17, 2022)**



LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

March 17, 2022

Mr. Raj Durga
509 Sequoia Drive
Sunnyvale, CA 94086

RE: Biological Evaluation of the approximately 10-acre Durga Property project, located at 12475 Foothill Avenue in San Martin, Santa Clara County, California (APN 825-25-104).

Dear Mr. Durga,

At your request, Live Oak Associates, Inc. (LOA) completed a biological evaluation for your approximately 10-acre project site, located at 12475 Foothill Avenue, between the intersections of Foothill Avenue with Gwinn Avenue and Mayan Lane, in San Martin, Santa Clara County (APN 825-25-104).

As we understand it, based on the site plan provided to us from M.H. Engineering dated 12/2/2021, your project includes the subdivision of your parcel into two approximately 5-acre parcels and construction of a single-family home and associated infrastructure on the southernmost undeveloped parcel, including septic tanks, leach fields, and a driveway. It will also include the removal of a leach field associated with the existing development on the site. Currently, the northernmost parcel of the site is developed with agricultural structures including storage buildings and greenhouses, the latter which are not currently in use.

LOA plant and wetland ecologist Pamela Peterson and LOA wildlife ecologist Katrina Krakow conducted a reconnaissance-level survey of the property on March 2, 2022. The primary objective of the site visit was to 1) identify the constituent species and habitats of the site; and 2) assess the potential of the site to support sensitive habitats (e.g., wetland and riparian habitats) or suitable habitat for special status plant or animal species. Photos of the project site taken during the March survey are included in Appendix B.

Prior to the site visit, background sources of information were reviewed, including but not necessarily limited to, Google Earth aerial images of the site (1998 thru 2021), the site plan prepared by MH Engineers dated December 2, 2021, the Natural Resource Conservation Service's (NRCS) websoil survey (accessed on-line on March 7, 2022), the on-line National Wetlands Inventory (accessed on-line on February 22, 2022), the *California Natural Diversity*

Data Base (accessed on-line on March 1, 2022), special status species lists prepared by the California Department of Fish and Wildlife (CDFW 2021), U.S. Fish and Wildlife Service (USFWS 2021), and California Native Plant Society (CNPS 2022), the Santa Clara Valley Habitat Plan (SCVHP) Geobrowser (accessed on-line on February 22, 2022), and manuals and references related to plants and animals found in and around Santa Clara County.

EXISTING CONDITIONS

Regional Setting

The project site occurs on the west side of Foothill Avenue at 12475 Foothill Avenue, between its intersections with Gwinn Avenue and Mayan Lane, in San Martin. The site is bound by rural residential development to the south, west, and north, and by Foothill Avenue and agricultural fields to the east. The channel of New Creek occurs just off-site to the north and east. Land uses in the surrounding area are predominantly rural residential. The site occurs approximately 0.7 miles west of more natural lands in foothills of the Diablo Range and approximately three miles east of natural lands of foothills of the Santa Cruz mountains.

The project site occurs in the Gilroy 7.5" U.S. Geological Survey (USGS) quadrangle and is generally topographically level at an approximate elevation of 310 feet (94 meters) National Geodetic Vertical Datum (NGVD).

Soils


Two soil types occur on the site (NRCS 2022; accessed on-line on March 7, 2022): Pleasanton Loam 0-2% slopes and San Ysidro Loam 0-2% slopes. The majority of the site is underlain by Pleasanton Loam which was formed in alluvium derived from sedimentary rock and is not considered a hydric soil. A hydric soil is a soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part, and which may support hydrophytic (wetland) vegetation when there is a suitable wetland hydrology. San Ysidro soils only occur along the northern border of the site. The latter was also developed in alluvium and is also not considered a hydric soil. Neither of the two soils of the site are serpentine or alkaline soils, two soil types that may support rare plant species endemic on serpentine and alkaline soils.

Habitats

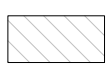
Two land cover types occur on the site: Grain, Row-crop, Hay and Pasture, Disked / Short-term Fallow and Agricultural Developed (Figure 1). These land cover types are described in greater detail below.

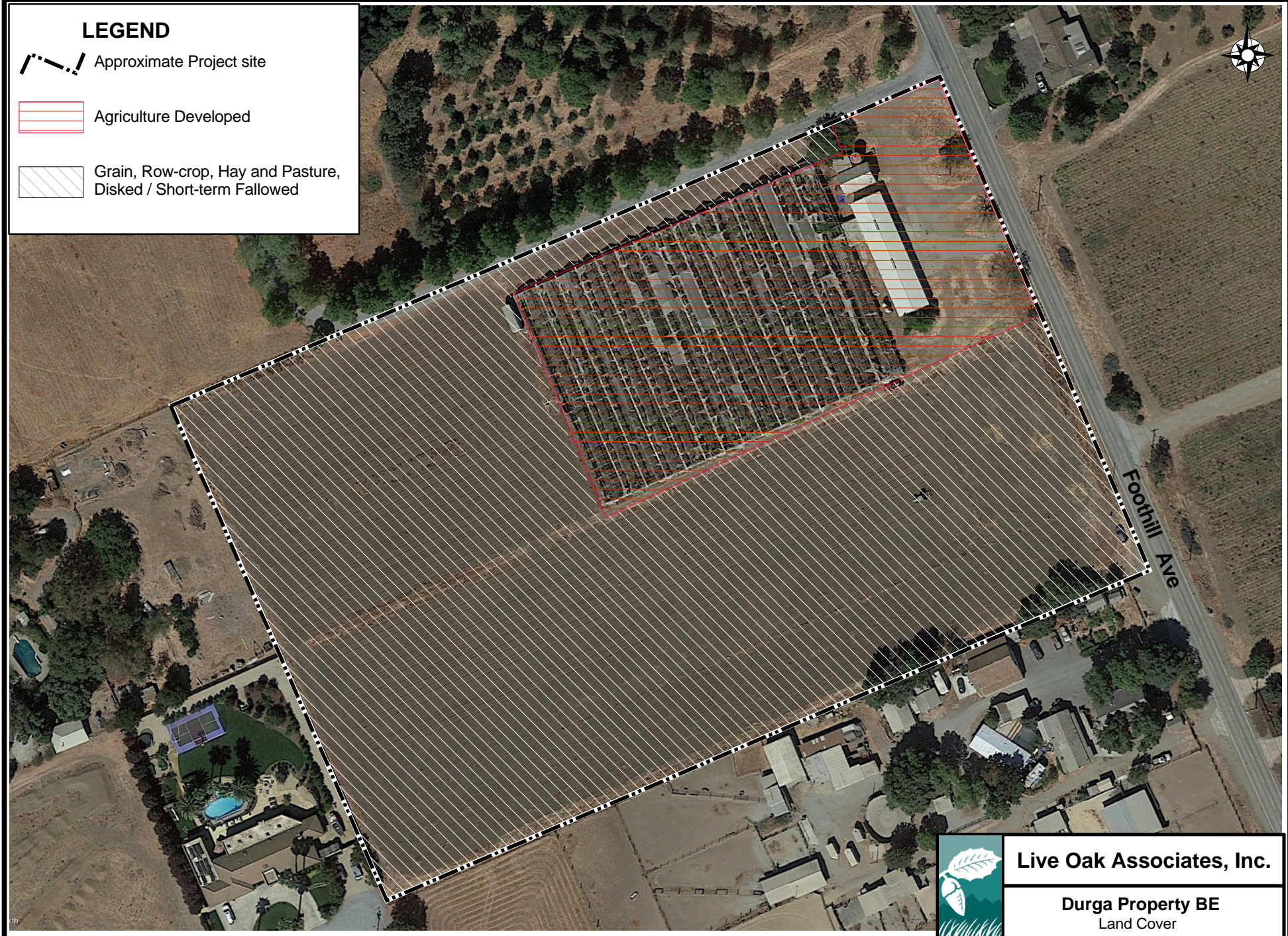


LEGEND

 Approximate Project site

 Agriculture Developed

 Grain, Row-crop, Hay and Pasture, Disked / Short-term Fallowed



Aerial Photos courtesy of Google Earth 9/2021

approximate scale



Live Oak Associates, Inc.

Durga Property BE
Land Cover

Date	Project #	Figure #
3/08/2022	2668-01	1

Grain, Row-crop, Hay and Pasture, Disked / Short-term Fallow. The vast majority of the site is comprised of agricultural fields that were currently fallow and supported a dense cover by herbaceous non-native annual vegetation between one to two feet in height. Species observed within the fallow agricultural fields of the site during the March 2022 survey included, but was not necessarily limited to, non-native forbs such as cheeseweed (*Malva neglecta*), field mustard (*Brassica rapa*), wild radish (*Raphanus sativa*), broad-leaf filaree (*Erodium botrys*), shepherd's purse (*Capsella bursa-pastoris*), common groundsel (*Senecio vulgaris*), rough cat's-ear (*Hypochaeris radicata*), curly dock (*Rumex crispus*), burclover (*Medicago polymorpha*), milk thistle (*Silybum marianum*), serrated lettuce (*Lactuca serriola*), henbit (*Lamium amplexicaule*), and salsify (*Tragopogon* sp.); and non-native grasses such as perennial ryegrass (*Festuca perennis*), ripgut (*Bromus diandrus*), and foxtail (*Hordeum murinum* ssp. *leporinum*). Native species observed within the fallow fields were limited to a few that are common in disturbed habitats and included common fiddleneck (*Amsinckia menziesii*) and stinging nettle (*Urtica dioica*).

Wildlife observed in the site's vicinity during the survey included species commonly found in urban and agricultural environments including red-tailed hawk (*Buteo jamaicensis*), rock pigeon (*Columba livia*), mourning dove (*Zenaida macroura*), American crow (*Corvus brachyrhynchos*), California scrub jay (*Aphelocoma californica*), northern mockingbird (*Mimus polyglottos*), Anna's hummingbird (*Calypte anna*), black phoebe (*Sayornis nigricans*), American robin (*Turdus migratorius*), European starling (*Sturnus vulgaris*), song sparrow (*Melospiza melodia*), white-crowned sparrow (*Zonotrichia leucophrys*), house finch (*Haemorhous mexicanus*), Botta's pocket gopher (*Thomomys bottae*) sign, and striped skunk (*Mephitis mephitis*). Because of continuous agricultural disturbance on the site and the site's surrounding land uses, the site provides marginal habitat for most wildlife species, except those commonly found in urban and agricultural environments.

Agricultural Developed. This land cover type includes existing agricultural storage facilities and associated parking areas, as well as greenhouses, occurring in the northeastern portion of the site. The greenhouses are not currently being used. Vegetation growing within the unused greenhouses is similar to that growing in the fallow fields.

Jurisdictional Waters

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

There was no evidence of any hydrological features observed on the site during the March site visit. Google Earth imagery was also reviewed dating back to 1998 to look for any signs of wetland signatures on the site and none were identified. Lastly, the National Wetland Inventory

(NWI) was reviewed and no wetlands have been mapped on the site in the NWI. Therefore, jurisdictional waters are considered absent from the site.

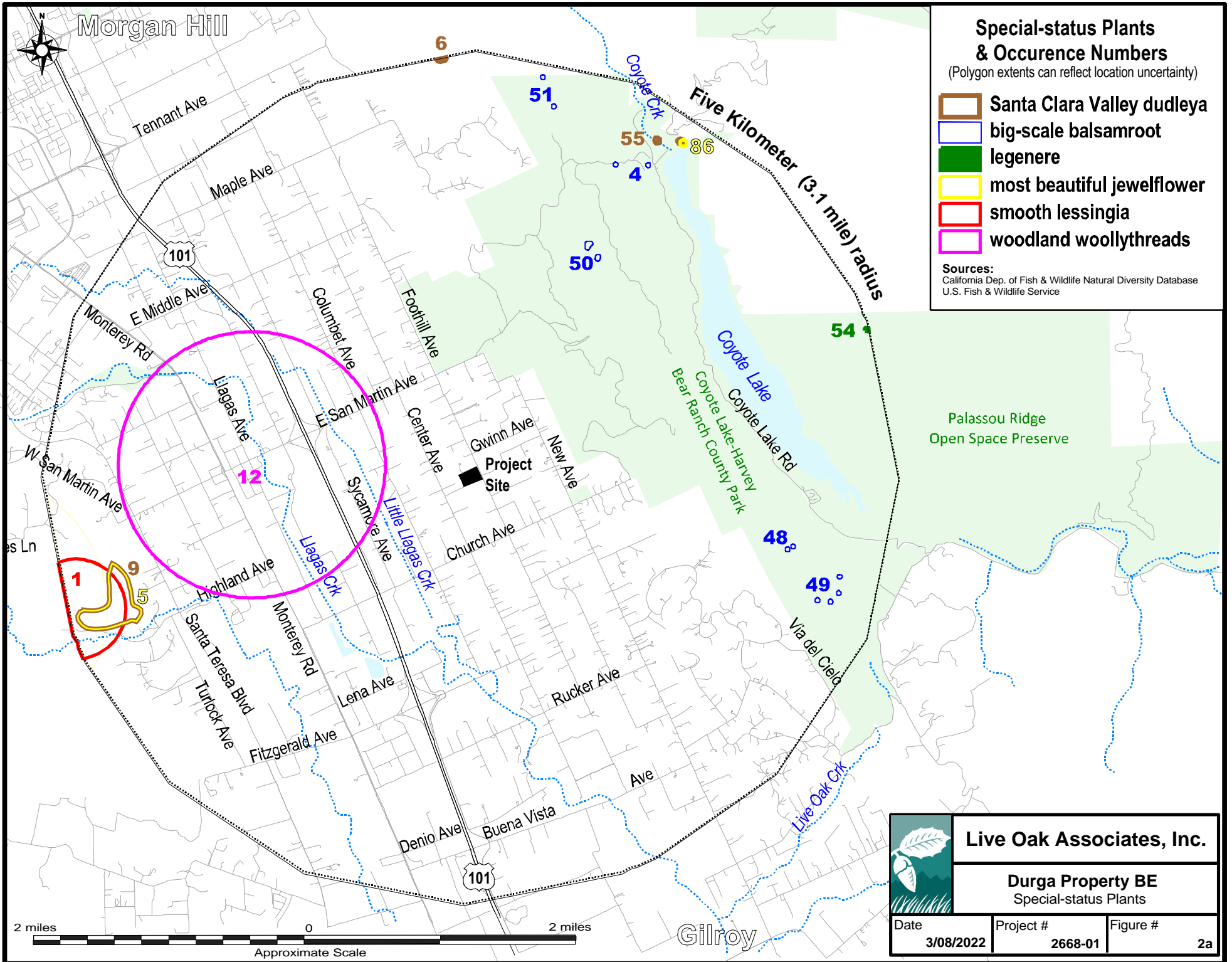
Special Status Species


Special status species include plants and animals that are listed as threatened or endangered under the state and federal Endangered Species Acts (ESA); other plant and animal species considered to be species of concern or fully protected species in California; and plants maintained on lists compiled by CDFW and the California Native Plant Society (CNPS).

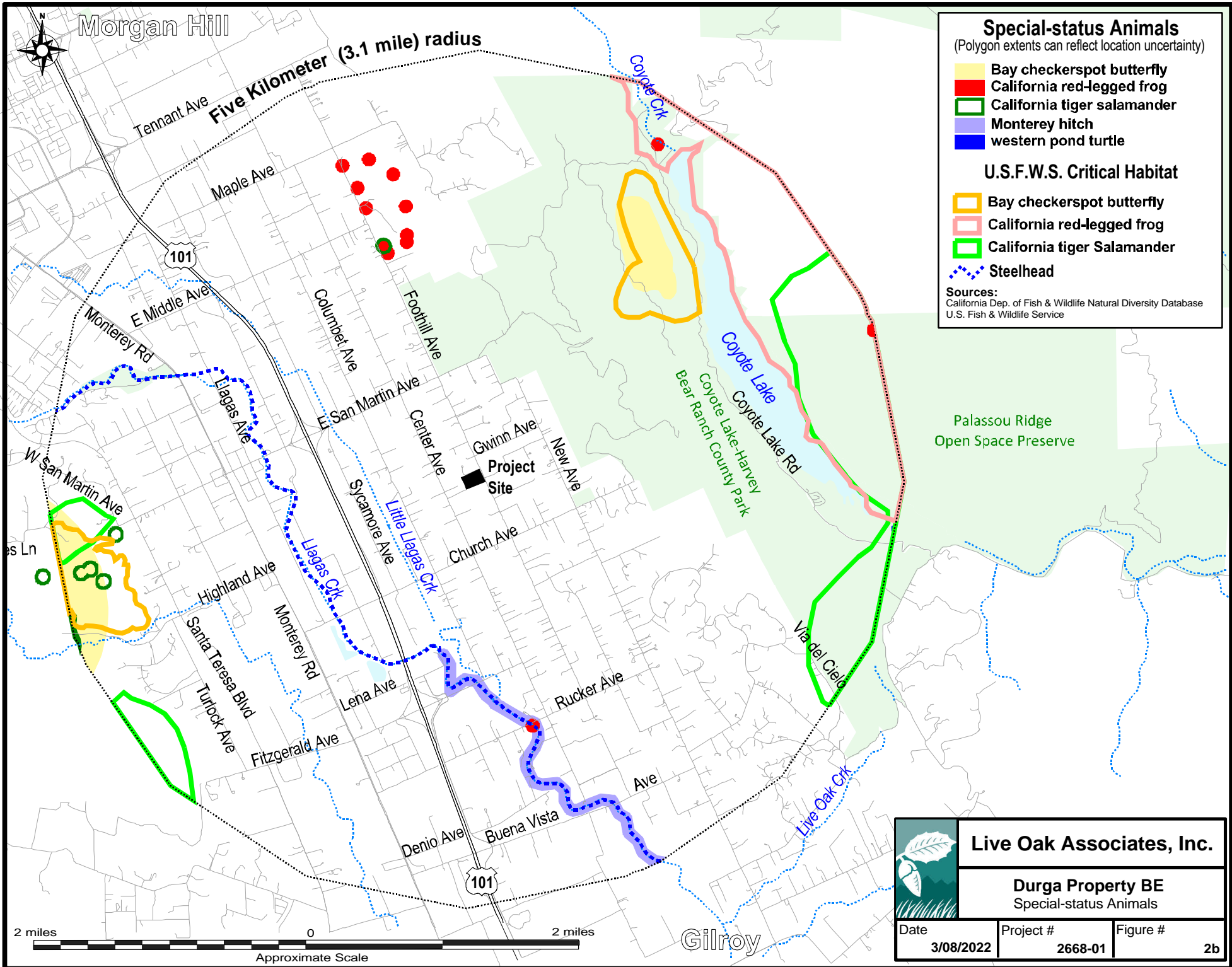
A search of published accounts for all relevant special status plant and animal species was conducted for the Gilroy USGS 7.5" quadrangle in which the project site occurs and for the eight surrounding quadrangles (Morgan Hill, Mt. Sizer, Mississippi Creek, Mt. Madonna, Gilroy Hot Springs, Watsonville East, Chittenden, and San Felipe) using the California Natural Diversity Data Base (CNDDDB) Rarefind (CDFW 2022; accessed on-line on February 25, 2022). Special status species documented as occurring, or historically occurring, within a five-kilometer (approximately three-mile) radius of the project site are depicted in Figure 2.

The project site does not provide any habitat for any special status plant species due to the level of long-term agricultural practices and other anthropogenic disturbance on the site. Special status animals known to occur, or to once have occurred, in the project vicinity, and their likelihood of occurrence on the site, are included in Table 1, below. Animals with a range that occurs outside of the site's immediate vicinity or that occur in habitats that are absent from the site, such as serpentine, streams, ponds, redwoods, marshes, coastal scrub, etc., are considered absent from the site, and these species have been eliminated from consideration in Table 1. These latter species include the Bay checkerspot butterfly (*Euphydryas editha bayensis*), steelhead (*Oncorhynchus mykiss*), Monterey hitch (*Lavinia exilicauda harengus*), southern coastal roach (*Hesperoleucus venustus subditus*), California giant salamander (*Dicamptodon ensatus*), and western pond turtle (*Emys marmorata*).

Figure 2. CNDDDB



 Live Oak Associates, Inc.		
Durga Property BE Special-status Plants		
Date	Project #	Figure #
3/08/2022	2668-01	2a




 Live Oak Associates, Inc.		
Durga Property BE Special-status Animals		
Date	Project #	Figure #
3/08/2022	2668-01	2b

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

ANIMALS (adapted from CDFW 2022 and USFWS 2022)

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

Common and scientific names	Status	General habitat description	*Occurrence in the study area
California tiger salamander (<i>Ambystoma californiense</i>)	FT, CT	Breeds in stagnant pools with continuous inundation for a minimum of three months, which may include vernal pools and stock ponds of central California; adults aestivate in grassland habitats adjacent to the breeding sites.	Absent. Suitable upland and breeding habitat is absent from the site and immediate vicinity for this species. The closest known occurrences are nearly two miles to the north of the site.
Foothill yellow-legged frog (<i>Rana boylei</i>)	CE	Occurs in swiftly flowing streams and rivers with rocky substrate with open, sunny banks in forest, chaparral, and woodland habitats, and can sometimes be found in isolated pools and ponds.	Absent. Suitable habitat is absent from the site for this species.
California red-legged frog (<i>Rana draytonii</i>)	FT, CSC	Dense, shrubby riparian vegetation such as arroyo willow, cattails, and bulrushes with still or slow-moving water. Perennial streams or ponds are preferred, and a salinity of no more than 4.5‰.	Absent. Suitable habitat for this species is absent from the site and surrounding area. The closest recorded occurrences of this species are associated with golf course ponds that occur nearly two miles to the north of the site. In addition, the nearby ephemeral New Creek is not known to support this species.
Swainson's hawk (<i>Buteo swainsonii</i>)	CT	Breeds in stands with few trees in juniper-sage flats, riparian areas, and in oak savannah. Requires adjacent suitable foraging areas such as grasslands or alfalfa fields supporting rodent populations.	Unlikely. Breeding habitat is absent on the site for this species; however, this species may occasionally forage over the site. Currently, the only breeding pair known in Santa Clara County nests annually just over 11 miles north of the site.
Bank swallow (<i>Riparia riparia</i>)	CT	Occurs in open areas near flowing water, nests in steep banks along inland water or coast. State-wide.	Absent. Suitable habitat for this species is absent from the site and the vicinity of the site.
Tricolored blackbird (<i>Agelaius tricolor</i>)	CT	Breeds near fresh water, primarily emergent wetlands, with tall thickets. Forages in grassland and cropland habitats.	Unlikely. Breeding habitat is absent from the site for this species, but this species may rarely forage on the site.

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

ANIMALS (adapted from CDFW 2022 and USFWS 2022)

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

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Least Bell's vireo (<i>Vireo bellii pusillus</i>)	FE, CE	Breeds in dense early successional riparian vegetation. Forages primarily in riparian habitats.	Absent. Suitable habitat is absent from the site and surrounding area for this species. The northeastern corner of the site occurs within an SCVHP Wildlife Survey area for this species due to the proximity of New Creek; however, the creek within 250 feet of the site does not support breeding habitat for this species.

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

ANIMALS (adapted from CDFW 2022 and USFWS 2022)

California Species of Special Concern and Protected Species

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Santa Cruz black salamander (<i>Aneides niger</i>)	CSC	Occurs in deciduous woodland, coniferous forests, and coastal grasslands around the Santa Cruz Mountains and foothills. This species is also known to occur on the developed flats in pockets within older developments. They can be found under rocks near streams, in talus, under damp logs, rotting wood, and other objects.	Unlikely. Although this species is known from older developments with rotting wood structures, the state of the greenhouses on this property would not likely support this species.
Coast horned lizard (<i>Phrynosoma blainvillii</i>)	CSC	Occurs in grasslands, scrublands, oak woodlands, etc. of central California. Common in sandy washes with scattered shrubs. Prefers open areas for sunning, bushes for cover, patches of loose soil for burial, and an abundant supply of ants and other insects.	Absent. Habitat is absent from the site and surrounding areas for this species.
Yellow-breasted chat (<i>Icteria virens</i>)	CSC	Breeds in dense, shrubby vegetation, including riparian vegetation.	Unlikely. Breeding habitat is absent and foraging habitat is marginal on the site for this species, and it would only be expected to occur on the site as a rare migrant or forager.
Grasshopper sparrow (<i>Ammodramus savannarum</i>)	CSC	Breeds in dense grassland vegetation, including hay fields.	Unlikely. The agricultural field on the site would provide poor nesting and foraging habitat for this species.

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

ANIMALS (adapted from CDFW 2022 and USFWS 2022)

California Species of Special Concern and Protected Species

Common and scientific names	Status	General habitat description	*Occurrence in the study area
Loggerhead shrike (<i>Lanius ludovicianus</i>)	CSC	Nests in shrubs and trees; forages in a variety of habitats including grasslands and agricultural lands.	Possible. Nesting habitat is absent from the site; however, this species may occasionally forage over the site.
White-tailed kite (<i>Elanus leucurus</i>)	CP	Rolling foothills and valley margins with scattered oaks & river bottomlands or marshes next to deciduous woodland. Prefers open grasslands, meadows, or marshes for foraging close to isolated, dense-topped trees for nesting and perching.	Possible. Nesting habitat is absent from the site; however, trees on adjacent properties support potential nesting habitat, therefore, this species may occasionally forage over the site.
Golden eagle (<i>Aquila chrysaetos</i>)	CP	Rolling foothills, mountain areas, sage-juniper flats, and deserts. Prefers cliff-walled canyons or large trees for provide nesting and forages in open areas.	Unlikely. Nesting habitat is absent from the site and immediate surroundings, and the site provides only very marginal foraging habitat for this species.
Burrowing owl (<i>Athene cunicularia</i>)	CSC	Frequents open, dry annual or perennial grasslands, deserts, and scrublands characterized by low growing vegetation. Dependent upon burrowing mammals, most notably the California ground squirrel, for nest burrows.	Unlikely. Habitat for burrowing owls, i.e., small mammal burrows of sufficient size, is currently absent from the site. However, should site conditions change and should ground squirrels colonize the site in the future, the site could provide nesting/roosting habitat for this species.
Pallid bat (<i>Antrozous pallidus</i>)	CSC	Occurs in grasslands, chaparral, woodlands, and forests; most common in dry rocky open areas providing roosting opportunities. Roost sites include caves, mines, rock crevices, and large cavities of trees.	Possible. While suitable roosting habitat is absent from the site, this species may occasionally forage over the site.
Townsend's big-eared bat (<i>Corynorhinus townsendii</i>)	CSC	Primarily a cave-dwelling bat that may also roost in buildings, bridges, rock crevices, and hollow trees. Occurs in a variety of habitats.	Possible. While suitable roosting habitat is absent from the site, this species may occasionally forage over the site.
San Francisco dusky-footed woodrat (<i>Neotoma fuscipes annectens</i>)	CSC	Found in hardwood forests, oak riparian and shrub habitats.	Absent. Suitable habitat for this species is absent from the site.

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

ANIMALS (adapted from CDFW 2022 and USFWS 2022)

California Species of Special Concern and Protected Species

Common and scientific names	Status	General habitat description	*Occurrence in the study area
American badger (<i>Taxidea taxus</i>)	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils, specifically grassland environments. Natal dens occur on slopes.	Possible. Although a badger is unlikely to breed on the site, badgers are known to occur in the foothills to the east of the site; most of the habitat between the site and the foothills consists of agricultural fields, therefore, it is possible badgers may use the site primarily for movement and foraging and may forage or pass through the site or have the potential to dig a day-use den from time to time.

Explanation of Occurrence Designations and Status Codes

Present: Species observed on the sites at time of field surveys or during recent past.

Likely: Species not observed on the site, but it may reasonably be expected to occur there on a regular basis.

Possible: Species not observed on the sites, but it could occur there from time to time.

Unlikely: Species not observed on the sites, and would not be expected to occur there except, perhaps, as a transient.

Absent: Species not observed on the sites, and precluded from occurring there because habitat requirements not met.

FE Federally Endangered

FT Federally Threatened

FPE Federally Endangered (Proposed)

FC Federal Candidate

CSC California Species of Special Concern

CE California Endangered

CT California Threatened

CR California Rare

CP California Protected

CNPS California Native Plant Society

CRPR California Rare Plant Rank

1A Plants Presumed Extinct in California

1B Plants Rare, Threatened, or Endangered in California and elsewhere

2 Plants Rare, Threatened, or Endangered in California, but more common elsewhere

3 Plants about which we need more information – a review list

4 Plants of limited distribution – a watch list

BIOLOGICAL IMPACTS AND MITIGATIONS

The following analysis of biological impacts is based on the proposed project, as described previously. CEQA significance criteria, as well as an explanation of the legal framework, including the local, state, and federal laws for biological resources, is included in Appendix A.

Impacts to Jurisdictional Waters

Potential Impact. Jurisdictional waters of the U.S. and state are absent from the project site. Therefore, the project will have no impact on jurisdictional waters.

Mitigation. None required.

Impacts to Special Status Plants

Potential Impact. All special status plants known to occur, or to have once occurred, in the project vicinity are considered absent from the site because of long-term agricultural and other anthropogenic disturbance. Therefore, the project will have no impact on special status plants.

Mitigation. None required.

Impacts to Special Status Wildlife

Potential Impact. Most special status animals known to occur, or to once have occurred, in the project vicinity are considered absent from the site due to a lack of suitable habitat, or they are considered unlikely to occur on the site as habitats of the site are marginal for them or they have not been observed in the project vicinity in many decades. If the latter species occurred on the site at all, it would only be as rare migrants or rare foragers. The project is expected to have no impacts on any of the species that are considered absent from or unlikely to occur on the site. The latter species includes the Bay checkerspot butterfly (*Euphydryas editha bayensis*), steelhead (*Oncorhynchus mykiss*), Monterey hitch (*Lavinia exilicauda harengus*), southern coastal roach (*Hesperoleucus venustus subditus*), California tiger salamander (*Ambystoma californiense*), Santa Cruz black salamander (*Aneides niger*), California giant salamander (*Dicamptodon ensatus*), foothill yellow-legged frog (*Rana boylei*), California red-legged frog (*Rana draytonii*), Coast horned lizard (*Phrynosoma blainvillii*), western pond turtle (*Emys marmorata*), Swainson's hawk (*Buteo swainsoni*), tricolored blackbird (*Agelaius tricolor*), least Bell's vireo (*Vireo bellii pusillus*), yellow-breasted chat (*Icteria virens*), grasshopper sparrow (*Ammodramus savannarum*), bank swallow (*Riparia riparia*), San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), and San Joaquin kit fox (*Vulpes macrotis mutica*).

Due to a lack of ground squirrel burrows, the site also provides no current habitat for western burrowing owls (*Athene cunicularia*), and they are considered currently absent from the site and unlikely to occur on the site in the future due to ongoing agricultural disturbance; however, should site conditions change, and should California ground squirrels colonize the site in the future prior to project construction, the site could potentially provide roosting and/or nesting

habitat for burrowing owls, and if this is the case, then the project could result in impacts to this species which would be considered significant under CEQA. Therefore, we have provided measures below to ensure that the project results in no impacts to burrowing owls.

For several special status species, the site provides no breeding habitat, but the species may forage over or move through the site from time to time. The project is not expected to have any impact on these latter species which includes the golden eagle (*Aquila chrysaetos*), loggerhead shrike (*Lanius ludovicianus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and pallid bat (*Antrozous pallidus*) as the project will not result in any significant impacts on foraging or movement habitat for these species.

The agricultural fields of the site may provide nesting and foraging habitat for one special status bird species if left fallow during the breeding season, i.e., the western burrowing owl (*Athene cunicularia*), American badgers (*Taxidea taxus*) may also occur in the agricultural field, and white-tailed kites (*Elanus leucurus*) may nest in trees adjacent to the site. While the loss of nesting and foraging habitat for these species as a result of the construction of a single-family home would be less-than-significant, any project activities resulting in nest abandonment and harm or mortality to individuals of these species may be considered a significant impact (see ***Impacts to Nesting Raptors and Other Nesting Migratory Birds***, ***Impacts to western Burrowing Owls***, and ***Impacts to American Badgers*** below). Mitigation measures provided below would reduce any potentially significant impacts to a less-than-significant level.

Mitigation. No mitigation would be required for most special status animals; however, see measures for burrowing owls in the section ***Impacts to western Burrowing Owls*** and measures for nesting short-eared owls in the section ***Impacts to Nesting Raptors and Other Nesting Migratory Birds***, below.

Impacts to Western Burrowing Owls

Potential Impact. A habitat assessment for burrowing owls should be conducted within 30 days of project implementation that will result in ground disturbance or vegetation removal, to confirm that habitat for burrowing owls remains absent from the site. If the habitat assessment confirms that habitat for this species remains absent from the site, then no further mitigation for burrowing owls would be required.

Should a habitat assessment for burrowing owls confirm that site conditions have changed and that there is potential habitat present for this species (i.e., California ground squirrel burrows or other burrows of sufficient size), then the following measures will be implemented to ensure that the project does not impact this species.

Pre-construction surveys A pre-construction survey will be conducted by a qualified biologist for burrowing owls within 30 days of the on-set of construction. This survey will be conducted according to methods described in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012).

Avoidance During the Breeding Season. If evidence of western burrowing owls is found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). Avoidance will include establishment of a 250-foot non-disturbance buffer zone around nests. Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside of the 250-foot non-disturbance buffer during the breeding season if the nest is not disturbed, and the project proponent develops an avoidance, minimization, and monitoring plan that will be reviewed by the County and CDFW prior to project construction based on the following criteria.

- The County and CDFW approves of the avoidance and minimization plan provided by the project applicant.
- 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, these activities will cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.
- If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities will cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.

Avoidance During the Non-Breeding Season. During the non-breeding season (September 1–January 31), the project proponent will establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites.

- A qualified biologist monitors the owls for at least 3 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, these activities will cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the County 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.

Construction Monitoring. Based on the avoidance, minimization, and monitoring plan developed (as required in the above section), during construction, the non-disturbance buffer zones will be established and maintained if applicable. A qualified biologist will monitor the site consistent with the requirements described above to ensure that buffers are enforced and owls are not disturbed. The biological monitor will 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.

Passive Relocation. Any passive relocation plan would need to be approved by the County and CDFW, and would only occur during the non-breeding season (September 1–January 31) if the other measures described above do not allow work to continue. Passive relocation would only be proposed if the burrow needed to be removed, or had the potential of collapsing (e.g., from construction activities), as a result of the covered activity.

If passive relocation is eventually allowed, a qualified biologist can passively exclude birds from their burrows during non-breeding season only by installing one-way doors in burrow entrances. These doors will be in place for 48 hours to ensure owls have left the burrow, and then the biologist will excavate the burrow to prevent reoccupation. Burrows will be excavated using hand tools. During excavation an escape route will 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 trapping owls inside.

Exceptions to Passive Relocation Prohibition. Any exceptions to passive relocation prohibitions would be subject to the approval of the County and CDFW.

The above mitigation measures for burrowing owls will reduce any potential impacts to a less-than-significant level.

As an alternative to the above mitigation, should the project applicant opt-in to the Santa Clara Valley Habitat Plan (SCVHP), then they would follow all measures for burrowing owls that are included under Condition 15 and that would also mitigate any potentially significant impacts to this species to a less-than-significant level.

Implementing the above mitigation for burrowing owls will reduce any project impacts to this species to a less-than-significant level.

Impacts to Nesting Raptors and Other Nesting Migratory Birds

Potential Impact. No trees occur on the site, and although trees do occur along the site's southwestern border on the adjacent property, these trees are far enough away from the

location of the proposed project, which will occur in the northern portion of the property, that, in the event the trees are used by tree-nesting raptors and other birds, the project should not result in any disturbance to nests. Currently, the site is disced and so the site does not currently provide any vegetation cover or habitat for ground nesting birds either. However, should the field be left fallow and should vegetation grow on the site, the area of the proposed project could provide potential nesting habitat for several special status and non-special status bird species that nest on the ground and/or in agricultural fields. This includes special status birds such as the short-eared owl and grasshopper sparrow; and non-special status birds such as western meadowlarks (*Sturnella neglecta*). Should any birds nest on the site during project construction activities, including ground disturbance and vegetation removal, such activities could result in nest abandonment and in harm or mortality to unfledged young. This would be considered a potentially significant impact of the project as well as a violation of state and federal laws. Mitigation measures provided below would reduce any potentially significant impacts to a less-than-significant level.

Mitigation. To the extent possible, any project-related ground disturbance or vegetation removal activities should occur outside of the bird breeding season, i.e., during the period from September 1st through January 31st.

Project-related activities that occur during the bird breeding season, i.e., during the period from February 1st through August 31st, could be constrained in the vicinity of any active nests. If tree removal or ground disturbance activities are scheduled to commence during the breeding season, pre-construction nesting bird surveys will be conducted by a qualified biologist to identify possible nesting activity within 15 days prior to such activities. A construction-free buffer of suitable dimensions as determined by a qualified biologist must be established around any active raptor or migratory bird nest for the duration of the project, or until it has been determined that the young have fledged and are foraging independently from their parents.

Impacts to American Badgers

Potential Impact. American badgers are known to occur in the foothills to the east of the site; most of the habitat between the site and the foothills consists of agricultural fields, therefore, it is possible badgers may use the site primarily for movement and foraging and may forage or pass through the site or have the potential to dig a day-use den from time to time. No badgers or badger burrows were observed on the project site during the March 2022 survey; however, should badgers occur onsite at the time of construction, the project could result in mortality of individuals of this species, which would constitute a significant impact under CEQA.

Mitigation. Implementation of the following measures prior to construction activities will reduce impacts to American badgers from direct mortality to a less-than-significant level.

Pre-construction Surveys

During the course of the preconstruction surveys for other species, a qualified biologist shall also determine the presence or absence of badgers prior to the start of construction. If badgers are found to be absent, no other mitigations for the protection of badgers shall be warranted.

Avoidance and Monitoring

If an active badger den is identified during pre-construction surveys within or immediately adjacent to an area subject to construction, a construction-free buffer of up to 300 feet shall be established around the den. Once the biologist has determined that badger has vacated the burrow, the burrow can be collapsed or excavated, and ground disturbance can proceed. Should the burrow be determined to be a natal or reproductive den, and because badgers are known to use multiple burrows in a breeding burrow complex, a biological monitor shall be present onsite during construction activities in the vicinity of the burrows to ensure the buffer is adequate to avoid direct impact to individuals or natal/reproductive den abandonment. The monitor will be required to be present until it is determined that young are of an independent age and construction activities would not harm individual badgers.

Tailgate Training

All workers on the project shall attend a tailgate training that includes a description of the species, a brief summary of its biology, and minimization measures and instructions on what to do if an American badger is observed.

Impacts to Movement Corridors or Nursery Sites

Potential Impact. The site occurs to the south of identified regional east-west movement corridors through the Coyote Valley area of south San Jose. Due to residential and commercial development that occurs to the east and south of the site, it is unlikely that the site itself functions as a movement corridor, although wildlife may occur on the site from time to time during normal daily foraging movements. The construction of a single-family home on the site would not be expected to result in any significant impacts to any species that currently moves within and through the site, as those species would likely continue to do so after project build out. Aside from the potential for nesting birds, including burrowing owls, as described above, the project is not expected to result in any significant impacts to any nursery sites, as these are absent from the project site.

Mitigation. None required.

Loss of Protected Trees

Potential Impact. The project will not result in impacts to any trees as trees are absent from the site.

Mitigation. None required.

Consistency with the Santa Clara Valley Habitat Plan (SCVHP)

Potential Impact. According to the SCVHP Geobrowser (accessed on February 22, 2022), the project site occurs within Area 3 (Rural Development Not Covered) and Fee Zone B (Agricultural and Valley Floor Lands) of the SCVHP.

The very northeast corner of the site falls within a SCVHP Wildlife Survey Area for the least Bell's vireo and tri-colored blackbird due to the presence of New Creek just offsite to the north and northeast. As indicated above, LOA conducted a habitat assessment of New Creek from the Foothill Avenue bridge and determined that nesting habitat for these two species was absent from the creek in the vicinity of the project site.

As the project site occurs in Area 3 of the SCVHP Plan Area, i.e., "Rural Development Not Covered", the project may not be required to proceed through the SCVHP. However, should the project proceed through the SCVHP, based on the existing conditions of the site and land covers identified during LOA's site visit, SCVHP conditions which may be applicable to the proposed project include Condition 1 (Avoid Direct Impacts on Legally Protected Plant and Wildlife Species) and Condition 3 (Maintain Hydrological Conditions and Protect Water Quality).

By implementing mitigation measures included in this BE for nesting birds, American badgers, and burrowing owls, and by complying with a grading permit, including BMPs to protect water quality, the project will be in compliance with these SCVHP conditions should it seek coverage under the SCVHP.

Mitigation. None required.

Impacts to Water Quality in Downstream Waters

Potential Impact. Proposed construction activities may result in soils left barren in the development footprint. Additionally, extensive grading often leaves the soils of construction zones barren of vegetation and, therefore, vulnerable to sheet, rill, or gully erosion. Furthermore, runoff is often polluted with grease, oil, pesticide and herbicide residues, heavy metals, etc. These pollutants may eventually be carried to sensitive riparian and wetland habitats used by a diversity of native wildlife species.

The applicant is expected to comply with the provisions of a grading permit, including standard erosion control measures that employ best management practices (BMPs). Projects involving the grading of large tracts of land must also be in compliance with provisions of a General Construction permit (a type of NPDES permit) available from the California Regional Water Quality Control Board. Compliance with the above permit(s) should result in no impact to water quality in seasonal creeks, reservoirs, and downstream waters from the proposed project and should not result in the deposition of pollutants and sediments in sensitive riparian and wetland habitats.

Mitigation. None required.

CONCLUSIONS

In summary, the proposed project would not result in impacts to any special status plant species as ongoing agricultural disturbance of the site makes the site unsuitable for these species.

Additionally, the project is not expected to result in significant impacts to most special status animals (with the potential exception of burrowing owls, nesting white-tailed kites, and badgers should they occur on the site in the future and for which measures are provided to reduce any potential impacts to a less-than-significant level) and to two special status birds that are known to nest on the ground and/or in agricultural fields. Mitigation measures for special status and non-special status birds that may nest in habitats of the site are provided to lessen impacts to a less-than-significant level.

The project is also not expected to result in significant impacts to any nest trees for tree-nesting raptors, however, the project may impact tree-nesting raptors nesting in trees adjacent to the site. There is the potential to impact bird species that are known to nest on the ground or in agricultural fields, therefore mitigation measures are provided to reduce these impacts to a less-than-significant level.

The project is not expected to result in significant impacts to any wildlife corridors or nursery sites (except for birds that may nest on the site, as already mentioned); to protected trees; to any sensitive and regulated riparian or wetland habitats; or to water quality in downstream waters.

By implementing mitigation measures provided in this report, as well as following measures included in the project's grading permit to protect water quality, the project is expected to comply with applicable conditions of the SCVHP.

This concludes our biological evaluation of the project site. Should you wish to discuss our report or any of our conclusions, please feel free to reach out to me at ppeterson@loainc.com or Rick Hopkins at rhopkins@loainc.com.

Sincerely,



Pamela E. Peterson
Senior Project Manager
Plant and Wetland Ecologist

REFERENCES

California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA. 36pp.

California Department of Fish and Wildlife. 2021. Special Animals List. State of California Natural Resources Agency, Sacramento, CA.

California Department of Fish and Wildlife. 2022. California natural diversity database. The Resources Agency, Sacramento, CA. Accessed on-line on March 1, 2022.

California Native Plant Society. 2021. Inventory of Rare and Endangered Vascular Plants of California (7th Edition). Rare Plant Scientific Advisory Committee, David P. Tibor, Convening Editor. California Native Plant Society, Sacramento, CA.

Calflora [web application]. 2022. Berkeley, California: The Calflora Database [a non-profit organization]. Accessed on-line on March 3, 2022, at <https://www.calflora.org/>

ICF International. 2012. Final Santa Clara Valley Habitat Plan.

Natural Resource Conservation Service. 2022. Custom Soil Resource Report for Santa Clara Area, California, USDA. Accessed on March 1, 2022, at <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>.

U. S. Fish and Wildlife Service. 2021. Endangered and threatened wildlife and plants.

U.S. Fish and Wildlife Service. 2022. National Wetlands Inventory. Accessed on February 22, 2022 at <https://www.fws.gov/wetlands/>.

APPENDIX A:

SIGNIFICANCE CRITERIA AND RELEVANT GOALS, POLICIES, AND LAWS

Significance Criteria

General plans, area plans, and specific projects are subject to the provisions of the California Environmental Quality Act. The purpose of CEQA is to assess the impacts of proposed projects on the environment before they are constructed. For example, site development may require the removal of some or all existing vegetation. Animals associated with this vegetation could be destroyed or displaced. Animals adapted to humans, roads, buildings, pets, etc., may replace those species formerly occurring on a site. Plants and animals that are state and/or federally listed as threatened or endangered may be destroyed or displaced. Sensitive habitats such as wetlands and riparian woodlands may be altered or destroyed. These impacts may be considered significant. According to *2019 CEQA Status and Guidelines (2019)*, “Significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic interest. Specific project impacts to biological resources may be considered “significant” if they will:

- 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 Wildlife or U.S. Fish and Wildlife Service;
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service;
- 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
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan

Relevant Goals, Policies, and Laws

Santa Clara County Tree Protection Ordinance. Santa Clara County has a tree protection ordinance (Section C16-1 through C16-17 of the Municipal Code). The ordinance defines protected trees as follows:

A protected tree shall consist of any of the following:

(a) Any tree having a main trunk or stem measuring 37.7 inches or greater in circumference (12 inches or more in diameter) at a height of 4½ feet above ground level, or in the case of multi-trunk trees a total of 75.4 inches in circumference (24 inches or more of the diameter) of all trunks in the following areas of the County:

(1) Parcels zoned "Hillsides" (three acres or less);

(2) Parcels within a "-d" (Design Review) combining zoning district;

(3) Parcels within the Los Gatos Hillside Specific Plan Area.

(b) Any tree within the "-h1" Historic Preservation zoning district for New Almaden having a main trunk or stem measuring six inches or more in diameter (18.8 inches or greater in circumference) at a height of 4.5 feet above ground level, or in the case of multi-trunk trees, a total of 12 inches in diameter (37.7 inches in circumference) of all trunks at 4.5 feet above ground. For parcels having a base zoning district of "HS, Hillside" within the "-h1" combining zoning district, this provision supersedes C16-3(a)(1).

(c) Any heritage tree, as that term is defined in Section C16-2.

(d) Any tree required to be planted as a replacement for an unlawfully removed tree, pursuant to Section C16-17(e) of this division.

(e) Any tree that was required to be planted or retained by the conditions of approval for any use permit, building site approval, grading permit, architectural and site approval (ASA), design review, special permit or subdivision.

(f) On any property owned or leased by the County, any tree which measures over 37.7 inches in circumference (12 inches or more in diameter) measured 4.5 feet above the ground, or which exceeds 20 feet in height.

(g) Any tree, regardless of size, within road rights-of-way and easements of the County, whether within or without the unincorporated territory of the County.

A "Heritage Tree" is defined by the ordinance as:

Any tree which, because of its history, girth, height, species, or other unique quality, has been recommended by the Historical Heritage Commission (HHC) and found by the Board of Supervisors to have a special significance to the community shall be designated a heritage tree. Such trees shall be listed individually on the heritage resource inventory, adopted by resolution of the Board of Supervisors. Such resolution may be amended as necessary to add or delete trees from the inventory.

A tree removal permit would be required from the County for the removal of protected trees and “Heritage Trees”.

Habitat Conservation Plans. The site occurs within the permit area of the Santa Clara Valley HCP/NCCP (SCVHP) Study Area, occurring in “Area 3: Private Development Not Covered” and in Fee Zone B (Agricultural and Valley Floor Lands).

The northeastern corner of the site is designated as an SCVHP wildlife survey area for least Bell’s vireo and tri-colored blackbird due to the vicinity of New Creek just offsite.

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

Migratory Birds. The Federal Migratory Bird Treaty Act (FMBTA: 16 USC 703-712) prohibits killing, possessing, or trading in any bird species covered in one of four international conventions to which the United States is a party, except in accordance with regulations prescribed by the Secretary of the Interior. The name of the act is misleading, as it actually covers almost all birds native to the United States, even those that are non-migratory. The FMBTA encompasses whole birds, parts of birds, and bird nests and eggs.

Native birds are also protected under California state law. The California Fish and Game Code makes it unlawful to take or possess any non-game bird covered by the FMBTA (Section 3513), as well as any other native non-game bird (Section 3800), even if incidental to lawful activities. Moreover, the California Migratory Bird Protection Act, enacted in September 2019, clarifies native bird protection and increases protections where California law previously deferred to federal law.

Birds of Prey. Birds of prey are protected in California under provisions of the State Fish and Game Code, Section 3503.5, which states that it is “unlawful to take, possess, or destroy any birds in the order *Falconiformes* or *Strigiformes* (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation

adopted pursuant thereto.” Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered “taking” by the CDFW.

Additionally, the Bald and Golden Eagle Protection Act (16 U.S.C., scc. 668-668c) prohibits anyone from taking bald or golden eagles, including their parts, nests, or eggs, unless authorized under a federal permit. The act prohibits any disturbance that directly affects an eagle or an active eagle nest as well as any disturbance caused by humans around a previously used nest site during a time when eagles are not present such that it agitates or bothers an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.

Bats. Section 2000 and 4150 of the California Fish and Game Code states that it is unlawful to take or possess a number of species, including bats, without a license or permit, as required by Section 3007. Additionally, Title 14 of the California Code of Regulations states it is unlawful to harass, herd, or drive a number of species, including bats. To harass is defined as “an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering.” For these reasons, bat colonies in particular are considered to be sensitive and therefore, disturbances that cause harm to bat colonies are unlawful.

Wetlands and Other Jurisdictional Waters

Jurisdictional waters include waters of the United States subject to the regulatory authority of the U.S. Army Corps of Engineers (USACE) and waters of the State of California subject to the regulatory authority of the California Department of Fish and Wildlife (CDFW) and the California Regional Water Quality Control Board (RWQCB).

Clean Water Act, Section 404. The USACE regulates the filling or grading of Waters of the U.S. under the authority of Section 404 of the Clean Water Act. Drainage channels and adjacent wetlands may be considered “waters of the United States” or “jurisdictional waters” subject to the jurisdiction of the USACE. The extent of jurisdiction has been defined in the Code of Federal Regulations and clarified in federal courts.

The definition of waters of the U.S. have changed several times in recent years. In January 2020, the Environmental Protection Agency (EPA) and USACE jointly issued the Navigable Waters Protection Rule. The new rule was published in the Federal Register on April 21, 2020, and took effect on June 22, 2020.

On August 30, 2021, the U.S. District Court for the District of Arizona issued an order vacating and remanding the Navigable Waters Protection Rule. In light of this order, the EPA and USACE have halted implementation of the Navigable Waters Protection Rule and are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime until further notice.

The pre-2015 regulatory regime defines waters of the U.S. as:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
6. The territorial sea;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

All activities that involve the discharge of dredge or fill material into waters of the U.S. are subject to the permit requirements of the USACE under Section 404 of the Clean Water Act. Such permits are typically issued on the condition that the applicant agrees to provide mitigation that result in no net loss of wetland functions or values. No permit can be issued without a CWA Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards.

Porter-Cologne Water Quality Act/Clean Water Act, Section 401. There are nine Regional Water Quality Control Boards statewide; collectively, they oversee regional and local water quality in California. The RWQCB administers Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act. The RWQCB for a given region regulates discharges of fill or pollutants into waters of the State through the issuance of various permits and orders. Pursuant to Section 401 of the Clean Water Act, the RWQCB regulates waters of the State that are also waters of the U.S. Discharges into such waters require a Section 401 Water Quality Certification from the RWQCB as a condition to obtaining certain federal permits, such as a Clean Water Act Section 404 permit (Section 3.6.1). Discharges into all Waters of the State, even those that are not also Waters of the U.S., require Waste Discharge Requirements (WDRs), or a waiver of WDRs, from the RWQCB.

The Porter-Cologne Water Quality Control Act, Water Code Section 13260, requires that “any person discharging waste, or proposing to discharge waste, within any region that could affect

the 'waters of the State' to file a report of discharge" with the RWQCB. Waters of the State as defined in the Porter-Cologne Act (Water Code Section 13050[e]) are "any surface water or groundwater, including saline waters, within the boundaries of the state." This gives the RWQCB authority to regulate a broader set of waters than the Clean Water Act alone; specifically, in addition to regulating waters of the U.S. through the Section 401 Water Quality Certification process, the RWQCB also claims jurisdiction and exercises discretionary authority over "isolated waters," or waters that are not themselves waters of the U.S. and are not hydrologically connected to waters of the U.S.

The RWQCB also administers the Construction Stormwater Program and the federal National Pollution Discharge Elimination System (NPDES) program. Projects that disturb one or more acres of soil must obtain a Construction General Permit under the Construction Stormwater Program. A prerequisite for this permit is the development of a Stormwater Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer. Projects that discharge wastewater, stormwater, or other pollutants into a Water of the U.S. may require a NPDES permit.

California Department of Fish and Game Code, Section 1602. The CDFW has jurisdiction over the bed and bank of natural drainages and lakes according to provisions of Section 1602 of the California Fish and Game Code. Activities that may substantially modify such waters through the diversion or obstruction of their natural flow, change or use of any material from their bed or bank, or the deposition of debris require a Notification of Lake or Streambed Alteration. If the CDFW determines that the activity may adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement will be prepared. Such an agreement typically stipulates that certain measures will be implemented to protect the habitat values of the lake or drainage in question.

APPENDIX B:
PHOTOS OF THE PROJECT SITE



Photo 1. Looking west across the site from Foothill Avenue



Photo 2. Looking east across the site from the northwest corner.



Photo 3. Looking south across the site from the northern boundary.